

29 CFR PART 1903

INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

The OSHA Act

1903.1

Purpose and Scope

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) requires, in part, that every employer covered under the Act **furnish to his employees employment and a place of employment which are free from recognized hazards** that are causing or are likely to cause death or serious physical harm to his employees.

1903.1

Purpose and Scope

The Act also requires that employers [comply with occupational safety and health standards promulgated under the Act](#), and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct.

1903.1

Purpose and Scope

The OSHA Act authorizes the Department of Labor to:

- **Conduct inspections**
- **Issue citations**
- **Propose penalties for alleged violations.**

1903.1 Purpose and Scope



The Act contains provisions for **adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties** by the Occupational Safety and Health Review Commission, **if contested** by an employer or by an employee or authorized representative of employees, and for judicial review.

1903.2

Posting of notice; availability of the Act; regulations and applicable standards.

(a)(1) Such notice shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted.

Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

1903.2

Posting of notice; availability of the Act; regulations and applicable standards.

The notice or notices required by this section shall be posted at the location to which employees report each day.



Where employees do not usually work at, or report to, a single establishment, such notice shall be posted at the location from which the employees operate to carry out their activities.

1903.3

Authority for Inspection



(a) Compliance Safety and Health Officers of the Department of Labor are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection.

1903.4 Objection to Inspection

(a) Upon a refusal to permit the Compliance Safety and Health Officer, in exercise of his official duties, in accordance with 1903.3, the Safety and Health Officer shall terminate the inspection or confine the inspection.

The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Area Director.



1903.4

Objection to Inspection

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, where circumstances exist which make such pre-inspection process desirable or necessary:

- 1. The employer's past practice puts the Secretary on notice that a warrantless inspection will not be allowed;**
- 2. Procuring a warrant would avoid refusal of entry and the expenditure of significant time and resources.**

1903.5 Entry not a waiver

Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act.

Compliance Safety and Health Officers are not authorized to grant any such waiver.

1903.6 Advance notice of inspections

Advance notice of inspections may not be given, except in the following situations:

1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.
2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

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1903.6 Advance notice of inspections

Advance notice of inspections may not be given, except in the following situations:

3. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection.
4. In other circumstances where the Area Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

1903.7 Conduct of inspections

At the beginning on an inspection, Compliance Safety and Health Officers shall:

Present their credentials to the owner, operator or agent in charge at the establishment.

Explain the nature and purpose of the inspection.

Indicate generally the scope of the inspection and the records specified in 1903.3 which they wish to review.

(However, such designation of records shall not preclude access to additional records specified in 1903.3.)

1903.7 Conduct of inspections

(b) Compliance Safety and Health Officers shall have authority to take environmental **samples** and to take or obtain **photographs** related to the purpose of the inspection, employ **other reasonable investigative techniques** and **question privately** any employer, owner, operator, agent or employee of an establishment.

1903.7 Conduct of inspections

(c) In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous.

Compliance Safety and Health Officer shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

1903.7 Conduct of inspections

At the conclusion of the inspection, the Compliance Officer shall confer with the employer or his representative and informally advise him on any apparent safety or health violations disclosed by the inspection.



1903.7 Conduct of inspections



During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Officer any pertinent information regarding conditions in the workplace.

1903.8 Representatives of employers and employees

(a) Compliance Officers shall be in charge of inspections and questioning of persons.

A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the Compliance Officer during the physical inspection for the purpose of aiding such inspection.

1903.8 Representatives of employers and employees

A Compliance Officer may permit additional employer and authorized employee representatives to accompany him where he determines that such additional representation will further aid the inspection.



1903.8 Representatives of employers and employees

A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

1903.8 Representatives of employers and employees

(d) Compliance Officers are authorized to deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection

1903.9 Trade Secrets

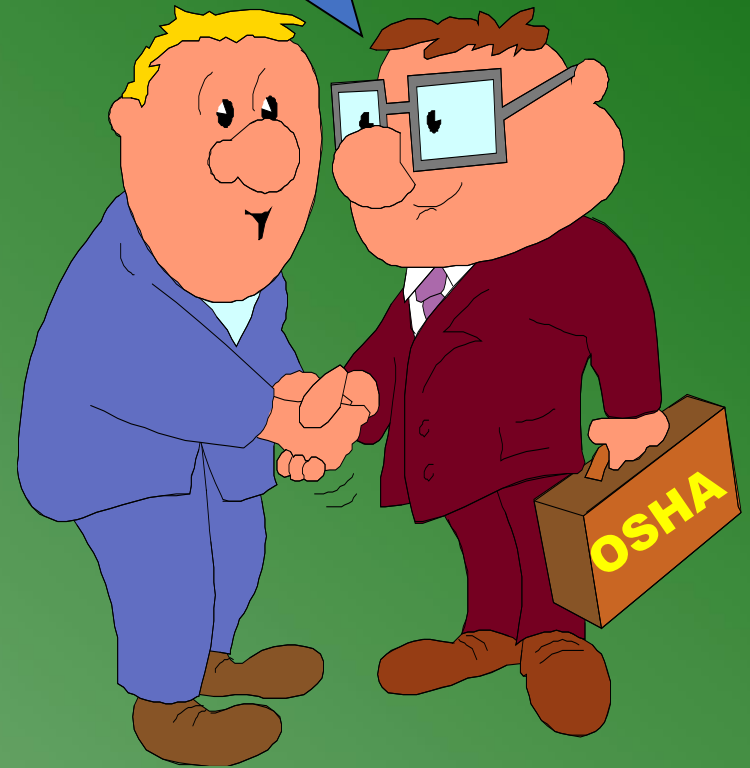
(a) Section 15 of the Act provides: “All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section.

1903.10 Consultation with employees

Compliance Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection.

HELLO, I'M FROM OSHA.

COULD I SPEAK TO YOU ABOUT YOUR JOB?



1903.10 Consultation with employees

During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Compliance Officer.

EXCUSE ME... MR. OSHA, SIR...
COULD I TALK TO YOU ABOUT
AN UNSAFE CONDITION?



1903.11 Complaints by employees

(a) Any employee or representative of employees who believe that a violation of the Act exists may request an inspection by giving notice to the Area Director or Compliance Officer. Any such notice shall:

- 1. Be reduced to writing.**
- 2. Set forth the grounds for the notice.**
- 3. Be signed by the employee or representative.**

1903.11 Complaints by employees

(b) If upon receipt of such notification the Area Director determines that the complaint meets the requirements set forth, and reasonable grounds that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this section shall not be limited to matters referred to in the complaint.

1903.11 Complaints by employees

(d) Section 11(c) of the Act provides:

“No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.”

1903.12 Inspection not warranted

(b) If the Area Director determines that inspection is not warranted because the requirements of 1903.11(a) have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of 1903.11(a).

1903.13 Imminent danger

Whenever and as soon as a Compliance Officer concludes on the basis of an inspection that conditions or practices exist which could reasonably be expected to cause death or serious physical harm before such danger can be eliminated through enforcement procedures, he shall inform the affected employees and employers of the danger and recommend restraining such conditions or practices in accordance with the provisions of section 13(a) of the Act.

1903.14 Citations

(a) The Area Director shall review the inspection report of the Compliance Officer.

If on the basis of the report the Area Director believes that the employer has violated a requirement of section 5 of the Act, of any standard, rule or order promulgated pursuant to section 6 of the Act, or of any substantive rule published in this chapter, he shall issue to the employer a citation.

No citation may be issued after the expiration of 6 months following the occurrence of any alleged violation.

1903.14 Policy regarding employee rescue activities

(f) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

(1)(i) Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and

(ii) The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

1903.14 Policy regarding employee rescue activities

(f) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

(2)(i) Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and

(ii) The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

1903.14 Policy regarding employee rescue activities

Such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and

1903.14 Policy regarding employee rescue activities

(ii) Such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and

(iii) The employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

1903.14(a) Petition for modification of abatement date

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

1903.14(a) Petition for modification of abatement date

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

1. All efforts to achieve compliance.
2. Specific additional abatement time necessary.
3. The reasons additional time is necessary.
4. All interim steps being taken to protect employees.
5. A certification that a copy of the petition has been posted.

1903.14(a) Petition for modification of abatement date

(c)(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred.

The petition shall remain posted for a period of ten (10) working days.

The authorized employee representative shall be served with a copy of such petition.

1903.14(a) Petition for modification of
abatement date

(c)(2) Affected employees or their representatives may file an objection in writing to such petition within ten (10) days of the date of posting and if not, shall constitute a waiver of any further right to object to said petition.

1903.14(a) Petition for modification of abatement date

(d) Where any petition is objected to by the Secretary or affected employees, the petition, citation, and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period.

1903.15 Proposed penalties

After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Officer of the proposed penalty under section 17 of the Act, or that no penalty is being proposed.

1903.15 Proposed penalties

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to size of the business, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act.

1903.16 Posting of citations

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred.

If because of the nature of the employer's operations it not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees.

1903.16 Posting of citations

(b) Each citation shall remain posted until the violation has been abated, or for three (3) working days, whichever is later.

***The filing of a notice of contest by the employer shall not affect his posting responsibility, **unless and until** the Review Commission issues a final order vacating the citation.**

1903.17 Employer and contests before the Review Commission

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, **notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission.**

Such notice of intention to contest **shall be postmarked within 15 working days** of the receipt.

Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty.

1903.18 Failure to correct a violation for which a citation has been issued

(a) If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Area Director shall notify the employer by certified mail of such failure and of the additional penalty proposed under section 17(d) of the Act by reason of such failure.

1903.19 Abatement verification

(b)(1) Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

1903.19 Abatement verification

(c) Abatement certification

(1) Within 10 calendar days after the abatement date, the employer must certify to OSHA that each cited violation has been abated, unless:

(i) The Compliance Officer observes abatement, within 24 hours after a violation is identified; and

(ii) Notes in the citation that abatement has occurred.

1903.19 Abatement verification

(c) Abatement certification

(3) The employer's certification that abatement is complete must include for each cited violation:

The **date and method** of abatement; and

A **statement** that affected employees and their representatives have been informed of the abatement.

1903.19 Abatement verification

(d) Abatement documentation

(1) The employer must submit to the Agency along with the information on abatement certification required by paragraph (c)(3), documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Agency indicates in the citation that such abatement documentation is required.

1903.20 Informal conferences

At the request of an affected employer, employee, or employee representative, the Assistant Regional Director may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty or notice of intention to contest.

The settlement of any issue shall be subject to the rules of procedure prescribed by the Review Commission.

1903.20 Informal conferences

If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Assistant Regional Director.

If the conference is requested by the employee, or employee representative the employer shall be afforded an opportunity to participate, at the discretion of the Assistant Regional Director.