

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive: **A-219**
Issued: November 1, 1997
Revised: October 30, 2007

SUBJECT: Inspection Criteria: Complaint Policies and Procedures

PURPOSE: This Program Directive (PD) establishes policies and procedures for handling complaints relating to workplace safety and health conditions.

SCOPE: This Program Directive applies to Oregon OSHA Enforcement.

**REFERENCES
/SOURCES:**

- a. Oregon OSHA Field Inspection Reference Manual (FIRM).
- b. ORS (Oregon Revised Statute) Chapter 654, "The Oregon Safe Employment Act" (OSEAct).
- c. Oregon Administrative Rules (OAR), Chapter 437, Division 1, "General Administrative Rules".
- d. OSHA Instruction CPL 02-00-140, "Complaint Policies and Procedures".

**SUMMARY
OF CHANGES:**

Significant features of the new policy are:

- a. The distinction between formal and non-formal complaints has been reestablished.
- b. The term *investigation* has been replaced with *inquiry*.
- c. Procedures for handling complaints submitted via Federal OSHA's website are outlined.

APPLICATION: This directive applies to complaints received addressing alleged hazards in all workplaces where Oregon OSHA has jurisdiction.

BACKGROUND: In 1996, OSHA revised its policy on complaints. The reworked policy eliminated the distinction between "formal" and "non-formal" complaints, and instead classified complaints as those that result in on-site inspections and those that result in investigations using telephone, fax, and similar means. However, this reclassification blurred the distinction between a complaint and a referral, leading to confusion as to how to handle various scenarios that may arise. This revision of the 1996 directive reestablishes the formal and non-formal complaint distinction.

These procedures continue to provide for quick resolution of complaints, speed hazard abatement and enable Oregon OSHA to focus its inspection resources on the workplaces where they are most needed. The policy continues to protect the right of current employees and their representatives to file complaints about workplace safety and health hazards.

1. DEFINITIONS:

- a. *Complaint.* A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:
 - (1) Imminent danger
 - (2) Serious
 - (3) Other than serious
- b. *Formal Complaint.* Complaint made by a current employee or a representative of employees that meets **all** of the following requirements:
 - (1) Asserts that an imminent danger, a violation of the Act, or violation of Oregon OSHA rules exposing employees to physical harm exists in the workplace;
 - (2) Is reduced to writing or submitted on an OSHA-7 form or Oregon OSHA Complaint Intake form; and
 - (3) Is signed by at least one current employee or a representative of a current employee.
- c. *Non-formal Complaint.* Any complaint alleging safety or health violations that does not meet all of the requirements of a formal complaint identified above and does not come from one of the sources identified under *Referral* below.

- d. *Inspection.* An on-site examination of an employer's worksite conducted by an Oregon OSHA compliance officer (CO), initiated as the result of a complaint, and meeting **at least one** of the criteria identified in 2.a. (below).
- e. *Inquiry.* A process conducted in response to a complaint that does not meet one of the identified inspection criteria. It does not involve an on-site inspection of the workplace, but rather Oregon OSHA advises the employer of the alleged hazard(s) or violations by telephone, fax, e-mail, or by letter if necessary. The employer is required to provide a response, and Oregon OSHA will notify the complainant of that response via appropriate means.
- f. *Electronic Complaint.* A complaint submitted via Federal OSHA's public webpage.
- g. *Permanently Disabling Injury or Illness.* An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to: amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.
- h. *Referral.* A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.
- i. *Representative of Employees.* Any of the following:
 - (1) An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
 - (2) An attorney acting for an employee.
 - (3) Any other person acting in a bona fide representative capacity, including members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

(The representational capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved of, the filing of the complaint on his or her behalf.)

2. CRITERIA WARRANTING AN INSPECTION:

- a. A complaint inspection of a workplace is normally warranted if **at least one** of the conditions below is met.
 - (1) A valid, formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on an Oregon OSHA Complaint Intake form, be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity. Additionally, there must be reasonable grounds to believe either that a violation of a safety or health rule exists that exposes employees to physical harm, or that an imminent danger of death or serious injury exists.
 - (2) The information alleges that a disabling injury or illness has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exist.
 - (3) The information alleges that an imminent danger situation exists.
 - (4) The information concerns an establishment and an alleged hazard covered by a local, or national emphasis program, or the employer is on a current inspection scheduling list.
 - (5) The employer fails to provide an adequate response to an inquiry, or the complainant who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s).
 - (6) The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeat citations during the past three years.
 - (7) A Bureau of Labor and Industries (BOLI) discrimination investigator requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace or for refusing to perform an allegedly imminently dangerous job or task.
 - (8) If an inspection is scheduled or has begun at an establishment and a complaint that would normally be handled via inquiry is received, that complaint may be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, the complainant must receive a written response addressing the complaint items.

3. ELECTRONIC COMPLAINTS:

- a. Electronic complaints submitted via the Federal OSHA public website are automatically forwarded via e-mail to a designated Area Office in the appropriate state. For employers in Oregon complaints are forwarded to the Federal OSHA Portland Area Office.
- b. The Federal OSHA Portland Area Office then forwards the complaint, via fax, to the appropriate Oregon OSHA Field Office Manager. In addition, the complaint is emailed to a member of the Safety Field Office Manager's staff, who will ensure the complaint is acted on.
- c. Information received electronically from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an Oregon OSHA Complaint Intake form be sent, or sign the information in person at the Field Office. Normally a complainant is given five working days to formalize an electronic complaint. The Field Office must actively follow up on information received electronically in order to provide the employee with the opportunity to make the complaint formal.

4. INFORMATION RECEIVED BY TELEPHONE:

- a. When taking a complaint by telephone, complete the Oregon OSHA Complaint Intake form (Appendix A) in as much detail as possible. During the course of the call, OR-OSHA will attempt to obtain the following information:
 - (1) Whether the caller is a current employee or an employee representative.
 - (2) The exact nature of the alleged hazard(s) and the basis of the caller's knowledge, as the individual receiving the information must determine, to the extent possible, whether the information received describes an apparent violation of OSHA standards or the OSEAct.
 - (3) The employer's name, address, telephone and fax numbers, as well as the name of a contact person at the worksite.
 - (4) The name, address, telephone number, and e-mail address of any union and/or employee representative at the worksite.
- b. As appropriate, OR-OSHA will provide the caller with the following information:

- (1) Describe the complaint process, and that OR-OSHA has the option of conducting an on-site inspection or conducting an inquiry through letter or phone/fax.
- (2) Inform the complainant that their name will be kept confidential at their request. To ensure confidentiality their signature is required in accordance with ORS 654.062(4) of the OSEAct;
- (3) Explain OSEAct enacted rights to employees in the event they suspect they were discriminated against. (Reference BOLI)
- (4) Inform the complainant that Oregon OSHA will mail the Oregon OSHA Complaint Intake form to them for signature. The form must be signed and returned to make it a formal complaint.

**5. AGRICULTURE LABOR HOUSING
AND FIELD SANITATION COMPLAINTS:**

- a. All complaints related to agriculture labor housing (ALH) or field sanitation will be evaluated by the local Field Office Manager or designated person to determine the most appropriate response to the complaint based on past and present information that is available. Due to the limited inspection window ALH complaints should be categorized as serious, and therefore responded to within five days. Once evaluated, the information will be input for statewide use on the shared spreadsheet located at: O:\cbsshare\osha\ALHLog\ALH-AG-FS Log.xls.
- b. The purpose of this procedure is to enhance our ability to evaluate, track and respond to these complaints in a timely and appropriate manner. This procedure will help avert potential issues with multiple complaints to Oregon OSHA and the Department of Labor (DOL) on the same employers/housing providers.
- c. ALH and field sanitation complaints will be handled as follows:
 - (1) The Field Office Manager or designee receiving the complaint will check the spreadsheet and then make the evaluation.
 - (2) The field office Administrative Specialist (AS) will immediately log the evaluated complaint on the spreadsheet.
- d. The Agricultural Program Manager will be the point person to ensure issues unique to agriculture labor housing are handled uniformly and responded to appropriately.

6. PROCEDURES FOR AN INSPECTION:

- a. Upon receipt of a complaint, the Safety/Health Field Office Manager (or his or her designee) will evaluate all available information and exercise professional judgment as to whether there are reasonable grounds to believe that a violation or hazard exists.
 - (1) If necessary, reasonable attempts will be made to contact the individual who provided the information in order to obtain additional details or to clarify issues raised in the complaint.
 - (2) The Safety/Health Field Office Manager may determine not to inspect a facility if he or she has a substantial reason to believe that the condition complained of is being abated.
- b. Where a complaint has been submitted but, in the professional judgment of the Safety/Health Field Office Manager, there are no reasonable grounds to believe that a violation or hazard exists, no inspection or inquiry will be conducted.
 - (1) Where a formal complaint has been submitted, the complainant will be notified in writing of OR-OSHA's intent not to conduct an inspection, the reasoning behind the determination, and the review rights provided under OAR 437-001-0290. The justification for not inspecting will be noted in the case file.
 - (2) Where a non-formal complaint has been submitted, if possible, the individual providing the information will be notified by appropriate means of OSHA's intent not to conduct an inquiry or inspection. The justification for not inspecting will be noted in the case file.
- c. If the information contained in the complaint meets at least one of the inspection criteria listed in 2.a. above, and there are reasonable grounds to believe that a violation or hazard exists, the Field Office is authorized to conduct an inspection.
 - (1) If appropriate, the Field Office will inform the individual providing the information that he or she will be advised of the results of any action taken as a result of the complaint.
 - (2) After the inspection, the Field Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued. This letter will be sent within 10 days after the citation is issued or 10 days from the closing conference if no citation is issued.

- d. Complaints classified as Imminent Danger will be responded to within 24 hours, those classified as Serious within 5 working days of receipt of the signed Oregon OSHA Complaint Intake form, and Other Than Serious within 30 working days of receipt of the signed Oregon OSHA Complaint Intake form. If the inspection is open more than 30 days, the CO will contact the complainant explaining the status.

7. PROCEDURES FOR AN INQUIRY:

- a. The Field Manager, or their designee, will evaluate each complaint, and other available information, to decide whether or not there are reasonable grounds to believe that a violation or hazard exists. If there are not reasonable grounds to believe that a violation or hazard exists, an inquiry will not be conducted.
- b. If the complaint warrants an inquiry, Oregon OSHA will contact the employer by letter or telephone and fax to notify him/her of the complaint and its allegation(s). The employer will be advised that he/she must investigate and determine whether the complaint is valid. The employer will be advised that a response is due within five(5) working days for phone/fax and 10 working days for letter and that Oregon OSHA requests the posting/sharing of information with employees, employee representative and/or the safety committee. Although the employer must respond within the above time frame, he/she may not be able to complete abatement action, but is encouraged to do so.
- c. Oregon OSHA will ask for the name of the contact person at the employer's worksite and may also request the name, address and telephone number of the union and/or employee representative, if any, for future contact or results of the inquiry. The company fax number is also requested. The employer is advised of what information is needed to answer the complaint. The employer is encouraged to respond by fax. In addition, documentation, such as invoices, sampling results, photos, video tape, etc., may be required of the employer as evidence of abatement, to ensure that the complaint hazard(s) has been eliminated.
- d. As soon as possible thereafter, the notification letter will be faxed or mailed to the employer.
- e. The complainant will be advised of the employer's response(s) and his/her rights to dispute the response. The employee need not put his/her dispute with the employer's response in writing. Disputed issues may be clarified by telephone. Discretion is allowed in situations where, in the professional judgement of the Field Office Manager or their designee, the complaint still does not warrant an

on-site inspection. In such situations, the complainant will be notified of Oregon OSHA's intent not to conduct an inspection, and the reasoning behind such a determination.

- f. When Oregon OSHA receives an adequate response from the employer, and the complainant does not dispute or object to the response, an on-site inspection normally will not be conducted.
- g. If no employer response or an inadequate response is received after the allotted five (5) working days for phone/fax and 10 working days for letter, an additional contact with the employer may be made before an inspection is initiated. Ultimately, if the employer provides no response; an inadequate response; or Oregon OSHA determines from other information that the condition is not being corrected, an inspection may be initiated.
- h. The complaint will be closed after Oregon OSHA has information that the hazard has been eliminated/abated.

8. COMPLAINANT PROTECTION:

- a. **Identity of the complainant.** Upon request of the complainant in writing, his or her identity will be withheld from the employer in accordance with OAR 437-001-0290(1). No information will be given to the employer that would allow the employer to identify the complainant. A signed complaint letter or Oregon OSHA Complaint Intake form with signature are considered to meet this requirement.
- b. **Discrimination Protection.**
 - (1) ORS 654.062(5) provides protection for employees who believe that they have been the subject of an adverse employment action in retaliation for engaging in activities related to workplace safety and health. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person as a result of engaging in such activities may file a discrimination complaint. Such a complaint **must** be filed within 30 days of the discharge or other discrimination with the Commissioner of the Bureau of Labor and Industries, any Circuit Court of the State of Oregon, or the U.S. Department of Labor.
 - (2) Complainants should always be advised of their discrimination rights and protections upon initial contact with OR-OSHA and whenever appropriate in subsequent communications.

9. RECORDING IN IMIS.

Information about complaint inspections or inquiries must be recorded in IMIS following current instructions given in the IMIS manual. Refer to Appendix D of this instruction for a list of macro letters and Appendix E for guidance on phone/fax complaints.

Has this condition been brought to the attention of: Employer Safety committee Other government agency

Results: _____

Confidentiality of complainant: Do **NOT** reveal name to employer

Name **MAY** be revealed to employer

Complainant is: Employee Ex-employee

Rep. of employees Family member Other: _____

Complainant name: _____ Phone: _____

Address: _____ Message no.: _____

City, State, ZIP: _____

NOTE: Under ORS 654.991(3) it is unlawful to make false statements, representations, or certifications in any application, record, report, plan, or other documents filed. To do so may be punishable by a fine of not more than \$10,000, imprisonment for not more than six months, or both.

Complainant signature: _____ Date: _____

If we do not receive this form signed, no action will be taken on this complaint.

OFFICE USE ONLY

Evaluated by: _____

Date evaluated: _____

Supervisor assigned: _____

Evaluation/action: Safety Health Request signature

Imminent danger (1) Serious (2) OTS (3)

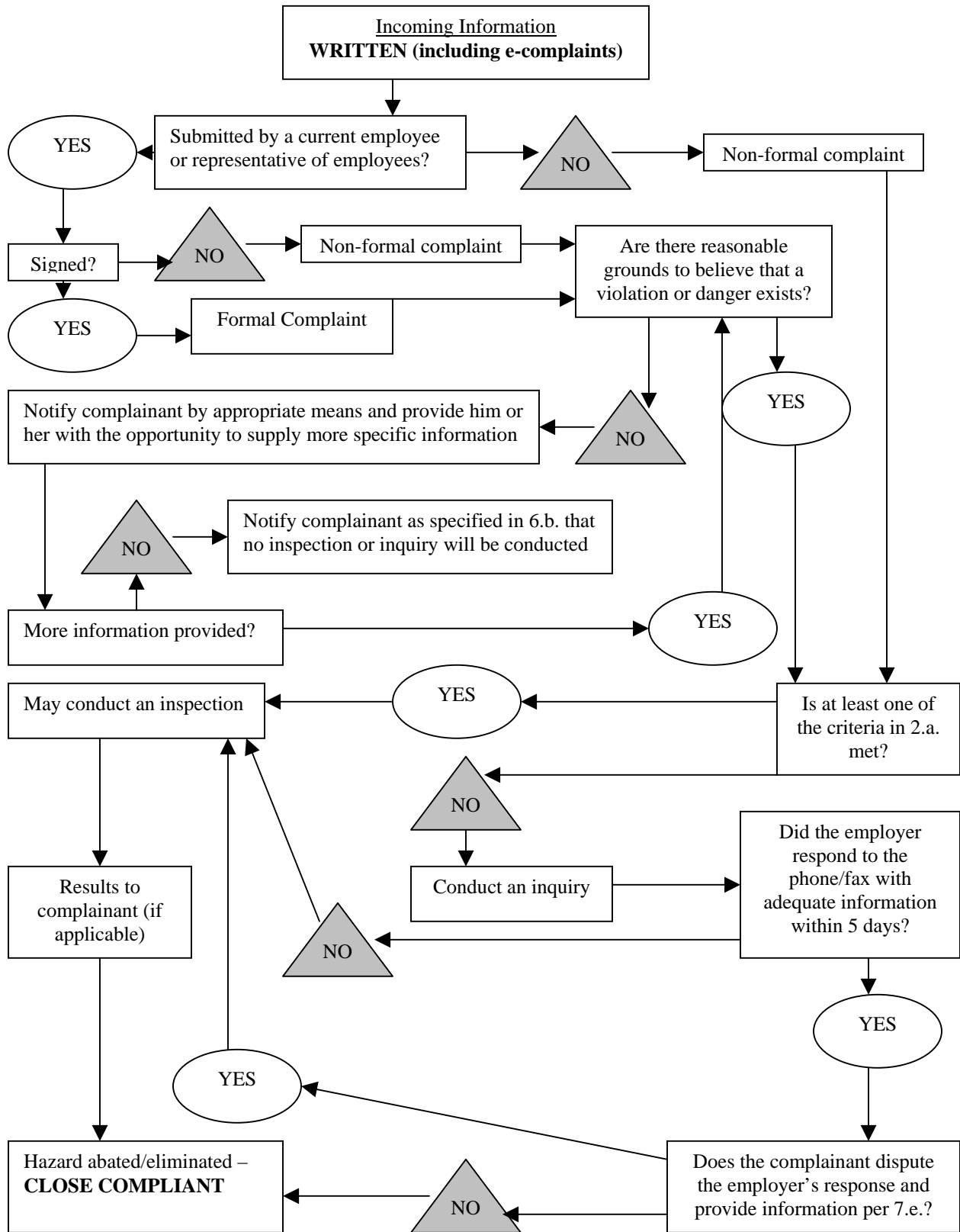
Inspection Phone/fax Letter No further action

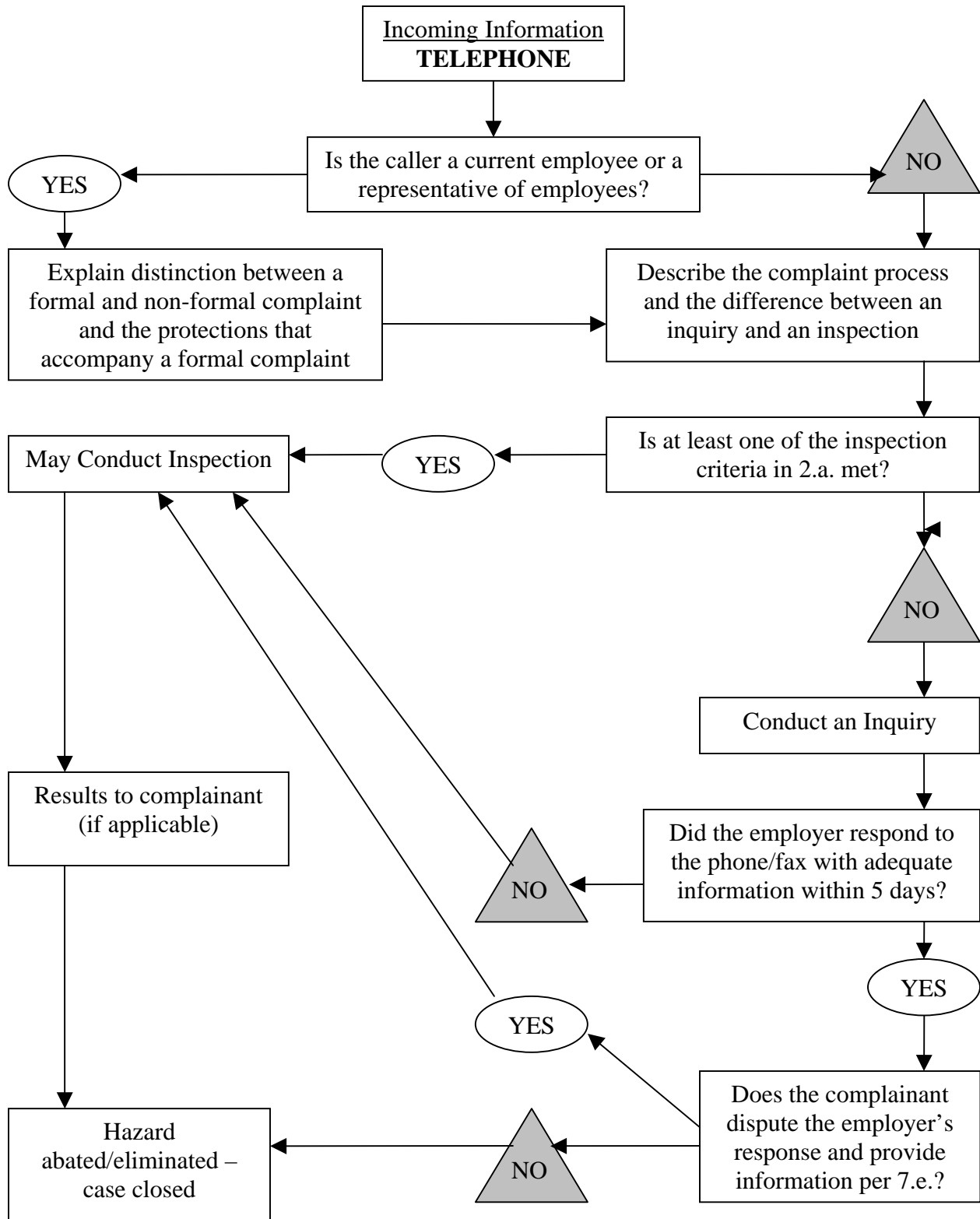
CO assigned: _____

Referred to outside agency (specify):

Comments:

APPENDIX B





APPENDIX C
Complaint Questionnaire

Obtain information from the caller by asking the following questions, where relevant.

For All Complaints:

1. What is the hazard?

2. How are workers exposed to this hazard? Describe the unsafe or unhealthful working conditions; identify the location.

3. What work is done in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (e.g., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?

4. With what frequency are workers doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed (so far as can be determined)? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and, if so, who took these actions? What were the results?

5. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?

6. What personal protective equipment (e.g., hearing protection, gloves or respirators) is required by the employer relevant to the alleged exposure? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.

7. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?

8. Is there an employee representative or a union in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s).

For Health Hazards

9. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What were the results?

10. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area which may reduce exposure to the hazard?

11. What administrative or work practice controls has the employer put in place?

12. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a physician for a work-related disease or condition? What was it?

13. Have there been any “near-miss” incidents?

14. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?

15. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

16. Do employees receive audiograms on a regular basis?

For Safety Hazards:

17. Under what adverse or hazardous conditions are employees required to work? This should include conditions contributing to stress and “other” probability factors.

18. Have any employees been injured as a result of this hazardous condition? Have there been any “near miss” incidents?

APPENDIX D

MACRO LETTERS USED

1. 5040**a/b**: Complaint Acknowledged-No Inspection
2. 5040**c**: Letter to Complainant for Signature Request
3. 5040**d**: Notification to Employer
Complaint Notification to Employer's Insurance Company
4. 5040**e**: Complainant Notification that letter was sent to Employer by mail
Complainant Notification that letter was faxed to Employer
5. 5040**f**: Complaint Progress Letter
6. 5040**g**: Notification to Complainant of Employer's Response
Acknowledgment to Employer of Response
7. 5040**g2**: Acknowledgment to Employer of Response when Complainant Letter is Unnecessary
8. 5040**h**: Response to Complainant of Inspection Results
9. 5040**i**: Second Letter to Employer
10. 5040**j**: Request for Additional Information from Employer on Investigation Results
11. 5040**k**: Response to Employer on Request for Extension
12. 5040**o**: Additional Information Memo
13. 5040**p**: Confirmation to Complainant on Withdrawal of Complainant
14. 5040**q**: Denial of Request for Confidential Information
15. 5040**r**: Complaint Referred Out

APPENDIX E IMIS RECORDING

A. Instructions for recording complaint data when complaints are handled by phone/fax method.

1. On the OSHA-7, complete the data items as follows:

- a. Item 37 - Mark "formal" for signed complaints from current employees or representatives of employees and "non-formal" for all others.
- b. Item 39 - Enter the following information:
 - TYPE - "D" (non-formal complaint notification to employer.)
 - DATE LETTER SENT - enter the date the employer was called.
 - DATE RESPONSE DUE - enter the date which is five working days later.
- c. Item 46 - "Optional Code" - write N-10-Phone.

B. Data Entry Options. Enter OSHA-7 into IMIS system and follow menu to process letters to employer and complainant.

Complaint allegations from OSHA-7 are drawn into letter to employer by the following commands: Press {shift}{F10} concurrently, then enter /usr/Wp/07/D##### (##### is the complaint number).