Certification Page
Regular and Emergency Rules

Revised September 2016

☐ **Emergency Rules** *(After completing all of Sections 1 through 3, proceed to Section 5 below)* ☒ **Regular Rules**

1. General Information

a. Agency/Board Name Department of Workforce Services - OSHA Commission		
b. Agency/Board Address 1510 East Pershing Blvd.	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Marcia J. Price	f. Agency Liaison Telephone Number (307) 777-6746	
g. Agency Liaison Email Address marcia. price@wyo.gov	h. Adoption Date 10/27/17	
i. Program OSHA Division Practice and Procedure		

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☒ **No.** ☐ **Yes.** Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)

Chapter Number:	Chapter Name:	
3	Enforcement	☐ New ☒ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed
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		☐ New ☐ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed
		☐ New ☐ Amended ☐ Repealed

3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: 8/29/17

- approved as to form by the **Registrar of Rules**; and
- provided to the **Legislative Service Office** and **Attorney General:**

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ **No.** ☐ **Yes.** ☒ **N/A**

b. A public hearing was held on the proposed rules. ☒ **No.** ☐ **Yes. Please complete the boxes below.**

Date:	Time:	City:	Location:

c. If applicable, describe the **emergency** which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules

a. Date on which the Certification Page with original signatures and final rules were sent to the **Attorney General's Office for the Governor's signature**:

b. Date on which final rules were approved as to form by the **Secretary of State** and sent to the Legislative Service Office:

c. ☐ The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual	C Donald Alston
Printed Name of Signatory	Don Alston
Signatory Title	Co-Chair, Wyoming OSHA Commission
Date of Signature	10/27/2017

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

Principal Statement of Reasons for OSHA Practice and Procedure
Chapter 3 – Enforcement; Penalties:

The OSHA Commission proposes an update in Practice and Procedure, Chapter 3-Enforcement, Section 6-Penalties, to increase penalty fees, incorporating by reference the Federal penalties which were adopted January 13, 2017.

State of Wyoming
Department of Workforce Services

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Matthew H. Mead
Governor

John Cox
Director
John Ysebaert
Deputy Director

October 27, 2017

Public Comments
For OSHA Practice and Procedure Chapter 3 – Enforcement

On September 10, 2017, a public notice was published in the Casper newspaper for statewide notice.

The 45 day public comment period for this rule expired on October 26, 2017.

No public comments were received.

Chapter 3
Enforcement

Section 1. General.

(a) The purpose of this Chapter is to prescribe rules and set forth policies for carrying out the abatement, complaint, inspection, inspection priority, written notice or citation, proposed penalty, and trade secret provisions of the Act.

(b) Where this Chapter sets forth broad policies rather than substantive or procedural rules, such policies may be modified in circumstances where the Department determines that an alternative course of action would better carry out the objectives of the Act.

(c) Enforcement shall be used only to obtain compliance with the Act and the rules, regulations and standards established under the Act.

Section 2. Inspections.

(a) Any Department authorized representative may:

(i) Inspect at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment, except private residences, where work is performed by an employee of an employer;

(ii) 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;

(iii) Question privately any employer, owner, operator, agent or employee;

(iv) Review records required by the Act and regulations published in these Rules of Practice and Procedure; and,

(v) Inspect and review any other records which are directly related to the purpose of the inspection.

(b) The right of entry and inspection shall also include the authority to take samples and to take or obtain photographs, videos, etc. related to the purpose of the inspection and employ other reasonable investigative techniques. The term employ "other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of sampling equipment such as pumps, dosimeters and other similar devices to employees in order to measure their exposure, and shall provide such entry for the purpose of enforcement, inspection or technical assistance.

(c) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, the Department

representative shall have obtained the appropriate security clearance.

(d) Pre-Inspection process:

(i) Initial or pre-inspection conference. The Department representative shall explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records which they wish to review. Such designation of records shall not preclude access to additional records necessary for the inspection.

(ii) The Department representative shall notify the employer in writing of their right to refuse the representative entry to investigate health and safety conditions unless a warrant is obtained from a court of competent jurisdiction.

(iii) Inspections shall be such conducted so as to minimize disruption of operations of the employer's establishment.

(iv) A representative or representatives of the employer and a representative or representatives of the employee(s) shall be given an opportunity to accompany the Department representative before or during the physical inspection of any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, the Department representative shall consult in private with a reasonable number of employees concerning matters of health and safety in the workplace.

(A) Any representative(s) authorized by the employee(s) shall be an employee(s) of the employer. However, if at the discretion of the Department representative, good cause has been shown that a third party, who is not an employee of the employer (such as an industrial hygienist or a safety engineer), is reasonably necessary to conduct an effective and thorough physical inspection of the workplace, such third party may accompany the Department representative during the inspection.

(B) The Department representative is authorized to deny the right of accompaniment to any individual whose conduct interferes with a fair and orderly inspection.

(v) The Department representative may consult in private with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. 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 Department representative.

(vi) Upon a refusal to permit a Department representative to enter; inspect; review records; question any employer, owner, operator, agent, or employee in private; or to permit a representative of employees to accompany the Department representative during the physical inspection of any workplace the Department representative shall terminate the inspection or confine the inspection to other non- objectionable areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews. The Department representative shall endeavor to ascertain the reason for such refusal, and shall immediately

report the refusal and the reason to the Compliance Manager. The Compliance Manager shall consult with the OSHA Deputy Administrator and the Attorney General, or his representative, to initiate appropriate action.

(A) A warrant may be sought in advance of an attempted inspection or investigation if, in the judgment of the OSHA Deputy Administrator, circumstances exist which make such action desirable or necessary. Examples of circumstances in which it may be desirable or necessary to seek a warrant in advance of an attempt to inspect or investigate include, but are not limited to:

(I) When the employer's past practice either implicitly or explicitly puts the Department on notice that a warrantless inspection will not be allowed;

(1) Any permission to enter, inspect, review records, or question privately any individual, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Department representatives are not authorized to grant any such waiver.

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

(A) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(B) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(C) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection;

(D) In other circumstances where the OSHA Deputy Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection; and,

(E) Except as specified above, any person who gives advance notice of any inspection, investigation or response to a complaint to be conducted under the authority, and for the purpose of enforcement of the Act, without the consent of the OSHA Deputy Administrator shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than $10,000, or by imprisonment for than six (6) months or both.

(viii) Advance notice in any of the situations described in paragraph (vii) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(ix) As described in paragraph (vii) of this section, advance notice of inspections may be given only if authorized by the OSHA Deputy Administrator, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Manager without authorization if the OSHA Deputy Administrator is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer.

(A) The Department representative shall have authority to resolve all disputes as to who is to be the representative(s) authorized by the employees for the purpose of this section.

(B) If there is no authorized representative of employees, or if the Department representative is unable to determine with reasonable certainty who is such representative, he shall consult privately with a reasonable number of employees concerning matters of safety and health in the workplace.

(C) An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Department representative promptly to inform such representative of the inspection, may be subject to citation and penalty under W.S. 27-11-107 of the Act.

(x) At the conclusion of an inspection, the Department representative shall confer with the employer or his representative and informally advise him of any safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the representative any pertinent information regarding conditions in the workplace.

Section 3. Complaints By Employees.

(a) Any employee or representative of employees who believes that a violation of the Act or rule, regulation or standard promulgated under the Act, exists in any workplace where such employee is employed may request an inspection of such workplace by written notice of complaint to the Department. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Department representative no later than at the time of the inspection, except that, upon request of the employee or his representative giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department; in cases of alleged violation constituting imminent danger, the Compliance Manager may waive the requirements of written notice.

(b) If upon receipt of such notification the Compliance Manager determines that the complaint meets the requirements set forth in subsection a. of this Section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be

made as soon as practicable, to determine if such alleged violation exists. Inspections under this section may exceed matters referred to in the complaint.

(c) During, or prior to, any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Department representative of any violation of the Act which they have reason to believe exists in such workplace.

(d) If the Department representative determines that an inspection is not warranted because there are no reasonable grounds to believe that an alleged violation or danger exists with respect to a complaint, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position to the OSHA Deputy Administrator. Upon request of the complaining party, the OSHA Deputy Administrator may hold an informal conference in which the complaining party may present his views. After considering all written and oral views presented, the OSHA Deputy Administrator shall affirm, modify, or reverse the determination of the Department representative and furnish the complaining party a written notification of his decision and reasons. The decision of the OSHA Deputy Administrator shall be final and not subject to further review.

(e) If the Compliance Manager determines that an inspection is not warranted because the requirements of this section 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 this section.

(f) Whenever and as soon as the Department representative concludes that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and require the employer to cease operations immediately in order to eliminate such danger. If the employer does not cease operations to eliminate the danger, the Department, with concurrence of the Attorney General, may take action to restrain the employer from continuing operations where an imminent danger condition exists. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Department representative, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

(g) Complaints from individuals other than current employees or their representatives.

(i) Complaints from individuals who are not current employees or employee representatives, such as complaints by an ex-employee, concerned citizen, etc. do not constitute formal complaints under the criteria set forth in this section. These complaints will be treated as non-formal, where the employer is notified of allegations and are sent to the employer by facsimile or letter.

(ii) Non-formal imminent danger complaints. If, on the basis of evaluation of a non-formal complaint, it appears an imminent danger situation may be involved, an inspection will be conducted immediately, if resources are available.

Section 4. Inspection and Investigation Priority.

(a) General Requirements.

(i) Inspection and investigation priorities shall be established to effectively and efficiently utilize enforcement personnel. Unprogrammed activities such as fatalities, catastrophes, imminent danger complaints, and safety and health complaints shall have priority over programmed activities like targeted inspections and other industrial, governmental, and agricultural inspections.

(ii) Follow-up inspections will be considered within the basic priority activity which generated the requirement. For example, a follow-up inspection determined necessary as the result of a fatality investigation would be considered before those generated by complaint investigations. However, the seriousness and imminence of the hazard or condition requiring action must be considered.

(iii) All willful, repeat, and serious violations shall require follow-up inspections, unless positive proof of correction has been received. Positive proof consists of photos, videos, evidence of purchase or repair of equipment, invoices, receipts, records of training, etc.

(b) Inspection priorities. Priority of accomplishment and assignment of inspections shall be as follows:

(i) First - Cases of imminent danger, mishaps that result in the death of one or more employees or hospitalization of three or more employees.

(ii) Second - Formal complaints alleging unhealthy or unsafe working places or conditions.

(iii) Third - Targeted Industries as selected annually within the State.

(iv) Fourth - Other industrial, governmental and agricultural groups and places of employment.

(c) Inspection Category Instructions.

(i) Imminent danger, fatality and multiple hospitalization investigations. The specific incident, situation or area directly involved in the accident shall be investigated in detail. If time and resources permit, a complete inspection of the establishment is made in addition to the investigation. Other areas or operations in the establishment may have similar circumstances to those that caused the accident and should be brought under control immediately.

(ii) Complaints must be acted upon as soon as possible and inspections shall be conducted according to the following priority:

(A) Imminent Danger. Any complaint which alleges an imminent danger shall be investigated the same day received if possible, but no later than 24 hours after receipt of the complaint. If that is impossible, the employer shall be notified of the complaint allegations and instructed to correct them before the Department representative arrives.

(B) All other complaints will be investigated as quickly as possible.

(C) If a complaint is made to a Department representative during the course of an inspection, he shall act on it as part of that inspection.

(D) When acting on complaints the Department representative shall inspect the entire facility or workplace if time and resources permit, unless there has been an inspection of the entire facility within the previous two years.

(iii) Targeted Fixed Industry.

(A) In employment areas with injury rates of high frequency and severity, efforts shall be directed towards companies with the highest workers' compensation experience modification ratings, claims to employee ratio, claims costs to premium ratio, and average claims costs. The companies shall be selected annually based on statistics compiled within the state and shall be the first priority within the fixed industry group.

(B) The second priority in the fixed industry group is activities on the federal OSHA national emphasis list. Examples are: amputations, lead, silica, etc. Where possible, companies engaged in these activities will be identified through workers' compensation data.

(iv) Targeted Mobile Industry.

(A) The first priority is companies in the five highest mobile industry class codes or in the North American Industrial Classification System (NAICS) selected annually with positive experience modification ratings or high injury and illness rates.

(B) The second priority is those activities on the federal OSHA national emphasis list where hazards are observed.

(C) The third priority is construction sites identified by the federal OSHA construction identification system.

(D) The fourth priority is the remaining mobile sites where hazards are observed.

(v) Other industrial, governmental, and agricultural employers.

(A) The first priority is companies with positive experience modification ratings (EMR) in the highest fixed industry class codes or NAICS. Lists will be prepared using workers' compensation data showing companies with positive EMRs for inspection purposes.

(B) Beyond the inspection of fatalities, hospitalization cases, complaints, and the target industries, it is desired to establish the Department's presence as widely as possible within the framework of available resources.

Section 5. Notice of Violation or Citation.

(a) After completion of an enforcement inspection, the Compliance Manager shall review the casefile and may consult with the Department representative. If, on the basis of the review, the Compliance Manager believes that the employer has violated the Act; rule, regulation or standard promulgated under the Act; or any rule published in these rules or practice and procedure, he may consult with the office of the Attorney General, and shall issue a Citation and Notification of Penalty to the employer. A citation shall be issued, even though after being informed of a violation by the Department representative the employer immediately abates, or initiates steps to abate, such violation. A citation shall be issued in all cases, whether the violation is determined to be imminent danger, serious, or nonserious. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of one hundred eighty (180) days following the occurrence of any violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, rules, regulations, standards or order violated. Any citation shall also fix a time or times for the abatement of the alleged violation, except that in case of imminent danger it shall be abated immediately.

(c) When a citation is issued for a violation alleged in an employee complaint, a copy of the citation pertaining to the specific violation alleged to exist shall be sent to the employee or representative of employees who made such complaint or notification.

(d) After an inspection, if the Compliance Manager determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection or a notification of alleged violation he shall respond to the complainant.

(e) Every citation shall state that the issuance of a citation does not constitute a judgment that a violation of the Act; rule, regulation or standard promulgated under the Act; or any rule published in these rules or practice and procedure has occurred; and that the employer shall have the right to contest any violation, penalty or abatement period and the employee shall have the right to contest the abatement period.

(f) Citations shall be prominently posted at or near the site of violation and shall remain posted until all violations cited therein are corrected, or for a period of three (3) working

days, whichever is longer.

(i) If due to the nature of the operation it is not possible to post the citation at or near the site of violation, the citation shall be posted in a conspicuous place where notices to employees are normally posted.

(g) The citation shall contain the proposed penalty for each serious, willful, repeated, failure-to abate, and regulatory violation. The proposed penalties need not be posted with the citation at or near the site of violation.

(h) Abatement documentation procedures.

(i) Upon timely abatement of the violation, as stated in the citation, the employer shall notify the Compliance Manager in writing of the abatement of the violation. Information to be included for all violations will be the date and method of abatement and assurance that the employees and their representatives have been informed of the abatement. Documentation such as purchase or repair receipts, photographic or video evidence of abatement, or other written documents will be provided for willful, repeat, serious, and failure to abate violations. Excluded are those conditions that make it impossible to positively document abatement, such as backfilled trenches, equipment removed from service, etc. The employer may not be required to certify abatement when the Department representative observes corrective actions within 24 hours after a violation is identified and documents the abatement action.

(ii) Abatement documents shall be prominently posted at or near the site of violation and shall remain posted for three working days. If due to the nature of the operation it is not possible to post the Citation and Notification of Penalty at or near the site of violation, the abatement documents shall be posted in a conspicuous place where notices to employees are normally posted.

(iii) For willful, repeat, serious, and failure to abate violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. The tag must describe the nature of the violation. The tag must remain attached until the violation is corrected, the equipment is permanently removed from service, or the violation is vacated.

(i) Petition for Modification of Abatement Date.

(i) 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 violation, but abatement has not been completed because of factors beyond his control. A petition shall be filed with the Compliance Manager no later than the close of the next working day following the date on which abatement was originally required. A late filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

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

(A) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(B) The specific additional abatement time necessary in order to achieve compliance.

(C) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(D) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(E) A certification that a copy of the petition has been posted and, if appropriate, given to the authorized employee representative of affected employees and a certification of the date upon which such posting and service were made.

(I) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, the representative shall be given a copy of the petition.

(iii) Affected employees or their representatives may file an objection in writing to a petition with the OSHA Deputy Administrator. Failure to file an objection within ten (10) working days of the date of posting of the petition or receipt by an authorized representative shall constitute a waiver of any further right to object to a petition.

(iv) The Compliance Manager shall have the authority to approve any petition for modification of abatement date filed when no objection has been filed.

(v) The Compliance Manager shall not approve petitions until the expiration of fifteen (15) working days from the date it was posted or served by the employer.

(vi) Where any petition is objected to by affected employees or the Compliance Manager, the petition, Citation and Notification of Penalty, and any objections shall be forwarded to the OSHA Deputy Administrator.

Section 6. Penalties.

(a) The authority for penalties is provided in Wyoming. Statutues §§ 27-11-107 and 27- 11-108 of the Act.

(b) The Department adopts the penalties, as of January 13, 2017, for Wyo. Stat.§ 27-11-107(b)-(d), (f) and (g) as found at: https://www.osha.gov/penalties.html

(i) Willful violation. The penalty per willful violation under Section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than $9,054 and shall not exceed $126,749.

(ii) Repeated violation. The penalty per repeated violation under Section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed $126,749.

(iii) Serious violation. The penalty for a serious violation under Section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed $12,675.

(iv) Other-than-serious violation. The penalty for an other-than-serious violation under Section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed $12,675.

(v) Failure to correct violation. The penalty for a failure to correct a violation under Section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed $12,675 per day.

(vi) Posting requirement violation. The penalty for a posting requirement violation under Section 17(i) of the Act, 29 U.S.C. 666(i), shall not exceed $12,675.

(vii) This rule does not include any later amendments or editions of the incorporated matter.

(c) When determining the amount of any proposed penalty, consideration shall be given to the appropriateness of the penalty with respect to the size of the business of the employer, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(d) Appropriate penalties may be assessed with respect to an alleged violation even though after being informed of such alleged violation by the Department representative, the employer immediately abates, or initiates steps to abate the alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

(e) Payment of all fines and penalties imposed under this section shall be made to the county treasurer of the county in which the violation occurs to be credited to the county school fund in accordance with Article 7, Section 5 of the State Constitution.

(f) The Department shall not seek court action for the purpose of obtaining abatement or assessment of penalty against any employer for violation of the Act, or any rule, regulation or standard under the Act, until a fifteen (15) working day period has lapsed after the receipt of the Citation and Notification of Penalty by the employer.

(g) State and local government employers, agencies or departments shall not pay nor be assessed a monetary penalty for a violation of the Act; rules, regulations or standards promulgated under the Act; or any rule published in the rules or practice and procedure, but shall receive a notification of any violations and shall be as accountable as private employers. State and local government employers, agencies or departments shall be subject to all provisions other than monetary penalties the same as the private sector as provided in the State of Wyoming Occupational Health and Safety Act, Rules of Practice and Procedure, and rules and regulations promulgated by the Commission for Department enforcement; which means that State and local government employers are subject to court action, injunctions and all enforcement proceedings.

(h) The OSHA Commission will review the federal cost index annually to determine any changes to the penalties with a vote.

Section 7. Trade Secrets.

(a) All information reported to or otherwise obtained by the Department or its representative in connection with any inspection or proceeding under the Act which contains or which might reveal a trade secret shall be considered confidential for the purpose of this section, except that such information may be disclosed to other officers or employees concerned with carrying out the Act or when relevant in any proceeding under the Act. In any such proceeding the OSHA Deputy Administrator or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(b) No Department representative shall publish, divulge, disclose or make known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with such Department representative thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association, or permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any individual except as provided by law.

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Department representative has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except as provided by law.

(d) Upon the request of an employer, any authorized representative selected to accompany the Department representative during an inspection in an area containing trade secrets shall be an employee whose normal duty requires that he be in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Department representative shall consult in private with a reasonable number of employees who work in that area to determine conditions pertaining to health and safety.

Chapter 3
Enforcement

Section 1. General.

(a) The purpose of this Chapter is to prescribe rules and set forth policies for carrying out the abatement, complaint, inspection, inspection priority, written notice or citation, proposed penalty, and trade secret provisions of the Act.

(b) Where this Chapter sets forth broad policies rather than substantive or procedural rules, such policies may be modified in circumstances where the Department determines that an alternative course of action would better carry out the objectives of the Act.

(c) Enforcement shall be used only to obtain compliance with the Act and the rules, regulations and standards established under the Act.

Section 2. Inspections.

(a) Any Department authorized representative may:

(i) Inspect at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment, except private residences, where work is performed by an employee of an employer;

(ii) 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;

(iii) Question privately any employer, owner, operator, agent or employee;

(iv) Review records required by the Act and regulations published in these Rules of Practice and Procedure; and,

(v) Inspect and review any other records which are directly related to the purpose of the inspection.

(b) The right of entry and inspection shall also include the authority to take samples and to take or obtain photographs, videos, etc. related to the purpose of the inspection and employ other reasonable investigative techniques. The term employ "other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of sampling equipment such as pumps, dosimeters and other similar devices to employees in order to measure their exposure, and shall provide such entry for the purpose of enforcement, inspection or technical assistance.

(c) Prior to inspecting areas containing information which is classified by an agency of the United States Government in the interest of national security, the Department

representative shall have obtained the appropriate security clearance.

(d) Pre-Inspection process:

(i) Initial or pre-inspection conference. The Department representative shall explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records which they wish to review. Such designation of records shall not preclude access to additional records necessary for the inspection.

(ii) The Department representative shall notify the employer in writing of their right to refuse the representative entry to investigate health and safety conditions unless a warrant is obtained from a court of competent jurisdiction.

(iii) Inspections shall be such conducted so as to minimize disruption of operations of the employer's establishment.

(iv) A representative or representatives of the employer and a representative or representatives of the employee(s) shall be given an opportunity to accompany the Department representative before or during the physical inspection of any workplace for the purpose of aiding such inspection. Where there is no authorized employee representative, the Department representative shall consult in private with a reasonable number of employees concerning matters of health and safety in the workplace.

(A) Any representative(s) authorized by the employee(s) shall be an employee(s) of the employer. However, if at the discretion of the Department representative, good cause has been shown that a third party, who is not an employee of the employer (such as an industrial hygienist or a safety engineer), is reasonably necessary to conduct an effective and thorough physical inspection of the workplace, such third party may accompany the Department representative during the inspection.

(B) The Department representative is authorized to deny the right of accompaniment to any individual whose conduct interferes with a fair and orderly inspection.

(v) The Department representative may consult in private with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. 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 Department representative.

(vi) Upon a refusal to permit a Department representative to enter; inspect; review records; question any employer, owner, operator, agent, or employee in private; or to permit a representative of employees to accompany the Department representative during the physical inspection of any workplace the Department representative shall terminate the inspection or confine the inspection to other non- objectionable areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews. The Department representative shall endeavor to ascertain the reason for such refusal, and shall immediately

report the refusal and the reason to the Compliance Manager. The Compliance Manager shall consult with the OSHA Deputy Administrator and the Attorney General, or his representative, to initiate appropriate action.

(A) A warrant may be sought in advance of an attempted inspection or investigation if, in the judgment of the OSHA Deputy Administrator, circumstances exist which make such action desirable or necessary. Examples of circumstances in which it may be desirable or necessary to seek a warrant in advance of an attempt to inspect or investigate include, but are not limited to:

(I) When the employer's past practice either implicitly or explicitly puts the Department on notice that a warrantless inspection will not be allowed;

(1) Any permission to enter, inspect, review records, or question privately any individual, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Department representatives are not authorized to grant any such waiver.

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

(A) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(B) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

(C) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection;

(D) In other circumstances where the OSHA Deputy Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection; and,

(E) Except as specified above, any person who gives advance notice of any inspection, investigation or response to a complaint to be conducted under the authority, and for the purpose of enforcement of the Act, without the consent of the OSHA Deputy Administrator shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than $10,000, or by imprisonment for than six (6) months or both.

(viii) Advance notice in any of the situations described in paragraph (vii) of this section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(ix) As described in paragraph (vii) of this section, advance notice of inspections may be given only if authorized by the OSHA Deputy Administrator, except that in cases of apparent imminent danger, advance notice may be given by the Compliance Manager without authorization if the OSHA Deputy Administrator is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer.

(A) The Department representative shall have authority to resolve all disputes as to who is to be the representative(s) authorized by the employees for the purpose of this section.

(B) If there is no authorized representative of employees, or if the Department representative is unable to determine with reasonable certainty who is such representative, he shall consult privately with a reasonable number of employees concerning matters of safety and health in the workplace.

(C) An employer who fails to comply with his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the Department representative promptly to inform such representative of the inspection, may be subject to citation and penalty under W.S. 27-11-107 of the Act.

(x) At the conclusion of an inspection, the Department representative shall confer with the employer or his representative and informally advise him of any safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the representative any pertinent information regarding conditions in the workplace.

Section 3. Complaints By Employees.

(a) Any employee or representative of employees who believes that a violation of the Act or rule, regulation or standard promulgated under the Act, exists in any workplace where such employee is employed may request an inspection of such workplace by written notice of complaint to the Department. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the Department representative no later than at the time of the inspection, except that, upon request of the employee or his representative giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Department; in cases of alleged violation constituting imminent danger, the Compliance Manager may waive the requirements of written notice.

(b) If upon receipt of such notification the Compliance Manager determines that the complaint meets the requirements set forth in subsection a. of this Section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be

made as soon as practicable, to determine if such alleged violation exists. Inspections under this section may exceed matters referred to in the complaint.

(c) During, or prior to, any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Department representative of any violation of the Act which they have reason to believe exists in such workplace.

(d) If the Department representative determines that an inspection is not warranted because there are no reasonable grounds to believe that an alleged violation or danger exists with respect to a complaint, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position to the OSHA Deputy Administrator. Upon request of the complaining party, the OSHA Deputy Administrator may hold an informal conference in which the complaining party may present his views. After considering all written and oral views presented, the OSHA Deputy Administrator shall affirm, modify, or reverse the determination of the Department representative and furnish the complaining party a written notification of his decision and reasons. The decision of the OSHA Deputy Administrator shall be final and not subject to further review.

(e) If the Compliance Manager determines that an inspection is not warranted because the requirements of this section 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 this section.

(f) Whenever and as soon as the Department representative concludes that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he shall inform the affected employees and employers of the danger and require the employer to cease operations immediately in order to eliminate such danger. If the employer does not cease operations to eliminate the danger, the Department, with concurrence of the Attorney General, may take action to restrain the employer from continuing operations where an imminent danger condition exists. Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of such danger by the Department representative, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

(g) Complaints from individuals other than current employees or their representatives.

(i) Complaints from individuals who are not current employees or employee representatives, such as complaints by an ex-employee, concerned citizen, etc. do not constitute formal complaints under the criteria set forth in this section. These complaints will be treated as non-formal, where the employer is notified of allegations and are sent to the employer by facsimile or letter.

(ii) Non-formal imminent danger complaints. If, on the basis of evaluation of a non-formal complaint, it appears an imminent danger situation may be involved, an inspection will be conducted immediately, if resources are available.

Section 4. Inspection and Investigation Priority.

(a) General Requirements.

(i) Inspection and investigation priorities shall be established to effectively and efficiently utilize enforcement personnel. Unprogrammed activities such as fatalities, catastrophes, imminent danger complaints, and safety and health complaints shall have priority over programmed activities like targeted inspections and other industrial, governmental, and agricultural inspections.

(ii) Follow-up inspections will be considered within the basic priority activity which generated the requirement. For example, a follow-up inspection determined necessary as the result of a fatality investigation would be considered before those generated by complaint investigations. However, the seriousness and imminence of the hazard or condition requiring action must be considered.

(iii) All willful, repeat, and serious violations shall require follow-up inspections, unless positive proof of correction has been received. Positive proof consists of photos, videos, evidence of purchase or repair of equipment, invoices, receipts, records of training, etc.

(b) Inspection priorities. Priority of accomplishment and assignment of inspections shall be as follows:

(i) First - Cases of imminent danger, mishaps that result in the death of one or more employees or hospitalization of three or more employees.

(ii) Second - Formal complaints alleging unhealthy or unsafe working places or conditions.

(iii) Third - Targeted Industries as selected annually within the State.

(iv) Fourth - Other industrial, governmental and agricultural groups and places of employment.

(c) Inspection Category Instructions.

(i) Imminent danger, fatality and multiple hospitalization investigations. The specific incident, situation or area directly involved in the accident shall be investigated in detail. If time and resources permit, a complete inspection of the establishment is made in addition to the investigation. Other areas or operations in the establishment may have similar circumstances to those that caused the accident and should be brought under control immediately.

(ii) Complaints must be acted upon as soon as possible and inspections shall be conducted according to the following priority:

(A) Imminent Danger. Any complaint which alleges an imminent danger shall be investigated the same day received if possible, but no later than 24 hours after receipt of the complaint. If that is impossible, the employer shall be notified of the complaint allegations and instructed to correct them before the Department representative arrives.

(B) All other complaints will be investigated as quickly as possible.

(C) If a complaint is made to a Department representative during the course of an inspection, he shall act on it as part of that inspection.

(D) When acting on complaints the Department representative shall inspect the entire facility or workplace if time and resources permit, unless there has been an inspection of the entire facility within the previous two years.

(iii) Targeted Fixed Industry.

(A) In employment areas with injury rates of high frequency and severity, efforts shall be directed towards companies with the highest workers' compensation experience modification ratings, claims to employee ratio, claims costs to premium ratio, and average claims costs. The companies shall be selected annually based on statistics compiled within the state and shall be the first priority within the fixed industry group.

(B) The second priority in the fixed industry group is activities on the federal OSHA national emphasis list. Examples are: amputations, lead, silica, etc. Where possible, companies engaged in these activities will be identified through workers' compensation data.

(iv) Targeted Mobile Industry.

(A) The first priority is companies in the five highest mobile industry class codes or in the North American Industrial Classification System (NAICS) selected annually with positive experience modification ratings or high injury and illness rates.

(B) The second priority is those activities on the federal OSHA national emphasis list where hazards are observed.

(C) The third priority is construction sites identified by the federal OSHA construction identification system.

(D) The fourth priority is the remaining mobile sites where hazards are observed.

(v) Other industrial, governmental, and agricultural employers.

(A) The first priority is companies with positive experience modification ratings (EMR) in the highest fixed industry class codes or NAICS. Lists will be prepared using workers' compensation data showing companies with positive EMRs for inspection purposes.

(B) Beyond the inspection of fatalities, hospitalization cases, complaints, and the target industries, it is desired to establish the Department's presence as widely as possible within the framework of available resources.

Section 5. Notice of Violation or Citation.

(a) After completion of an enforcement inspection, the Compliance Manager shall review the casefile and may consult with the Department representative. If, on the basis of the review, the Compliance Manager believes that the employer has violated the Act; rule, regulation or standard promulgated under the Act; or any rule published in these rules or practice and procedure, he may consult with the office of the Attorney General, and shall issue a Citation and Notification of Penalty to the employer. A citation shall be issued, even though after being informed of a violation by the Department representative the employer immediately abates, or initiates steps to abate, such violation. A citation shall be issued in all cases, whether the violation is determined to be imminent danger, serious, or nonserious. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of one hundred eighty (180) days following the occurrence of any violation.

(b) Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Act, rules, regulations, standards or order violated. Any citation shall also fix a time or times for the abatement of the alleged violation, except that in case of imminent danger it shall be abated immediately.

(c) When a citation is issued for a violation alleged in an employee complaint, a copy of the citation pertaining to the specific violation alleged to exist shall be sent to the employee or representative of employees who made such complaint or notification.

(d) After an inspection, if the Compliance Manager determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection or a notification of alleged violation he shall respond to the complainant.

(e) Every citation shall state that the issuance of a citation does not constitute a judgment that a violation of the Act; rule, regulation or standard promulgated under the Act; or any rule published in these rules or practice and procedure has occurred; and that the employer shall have the right to contest any violation, penalty or abatement period and the employee shall have the right to contest the abatement period.

(f) Citations shall be prominently posted at or near the site of violation and shall remain posted until all violations cited therein are corrected, or for a period of three (3) working

days, whichever is longer.

(i) If due to the nature of the operation it is not possible to post the citation at or near the site of violation, the citation shall be posted in a conspicuous place where notices to employees are normally posted.

(g) The citation shall contain the proposed penalty for each serious, willful, repeated, failure-to abate, and regulatory violation. The proposed penalties need not be posted with the citation at or near the site of violation.

(h) Abatement documentation procedures.

(i) Upon timely abatement of the violation, as stated in the citation, the employer shall notify the Compliance Manager in writing of the abatement of the violation. Information to be included for all violations will be the date and method of abatement and assurance that the employees and their representatives have been informed of the abatement. Documentation such as purchase or repair receipts, photographic or video evidence of abatement, or other written documents will be provided for willful, repeat, serious, and failure to abate violations. Excluded are those conditions that make it impossible to positively document abatement, such as backfilled trenches, equipment removed from service, etc. The employer may not be required to certify abatement when the Department representative observes corrective actions within 24 hours after a violation is identified and documents the abatement action.

(ii) Abatement documents shall be prominently posted at or near the site of violation and shall remain posted for three working days. If due to the nature of the operation it is not possible to post the Citation and Notification of Penalty at or near the site of violation, the abatement documents shall be posted in a conspicuous place where notices to employees are normally posted.

(iii) For willful, repeat, serious, and failure to abate violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. The tag must describe the nature of the violation. The tag must remain attached until the violation is corrected, the equipment is permanently removed from service, or the violation is vacated.

(i) Petition for Modification of Abatement Date.

(i) 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 violation, but abatement has not been completed because of factors beyond his control. A petition shall be filed with the Compliance Manager no later than the close of the next working day following the date on which abatement was originally required. A late filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

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

(A) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(B) The specific additional abatement time necessary in order to achieve compliance.

(C) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(D) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(E) A certification that a copy of the petition has been posted and, if appropriate, given to the authorized employee representative of affected employees and a certification of the date upon which such posting and service were made.

(I) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, the representative shall be given a copy of the petition.

(iii) Affected employees or their representatives may file an objection in writing to a petition with the OSHA Deputy Administrator. Failure to file an objection within ten (10) working days of the date of posting of the petition or receipt by an authorized representative shall constitute a waiver of any further right to object to a petition.

(iv) The Compliance Manager shall have the authority to approve any petition for modification of abatement date filed when no objection has been filed.

(v) The Compliance Manager shall not approve petitions until the expiration of fifteen (15) working days from the date it was posted or served by the employer.

(iv) Where any petition is objected to by affected employees or the Compliance Manager, the petition, Citation and Notification of Penalty, and any objections shall be forwarded to the OSHA Deputy Administrator.

Section 6. Penalties.

(a) The authority for penalties is provided in Wyoming Statutes §§~~Section~~ 27-11-107 and ~~Section~~ 27- 11-108 of the Act.

(b) The Department adopts the penalties, as of ~~July 1, 2016~~January 13 ,2017, for Wyo. Stat.§ 27- 11-107(b)-(d), (f) and (g) as found at: https://www.osha.gov/penalties.html.

(i) Willful violation. The penalty per willful violation under ~~s~~Section 17(a) of the Act, 29 U.S.C. 666(a), shall not be less than $~~8,908~~9,054 and shall not exceed $~~124,709~~126,749.

(ii) Repeated violation. The penalty per repeated violation under ~~s~~Section 17(a) of the Act, 29 U.S.C. 666(a), shall not exceed $~~124,709~~126,749.

(iii) Serious violation. The penalty for a serious violation under ~~s~~Section 17(b) of the Act, 29 U.S.C. 666(b), shall not exceed $12,~~471~~675.

(iv) Other-than-serious violation. The penalty for an other-than-serious violation under ~~s~~Section 17(c) of the Act, 29 U.S.C. 666(c), shall not exceed $12,~~471~~675.

(v) Failure to correct violation. The penalty for a failure to correct a violation under ~~s~~Section 17(d) of the Act, 29 U.S.C. 666(d), shall not exceed $12,~~471~~675 per day.

(vi) Posting requirement violation. The penalty for a posting requirement violation under ~~s~~Section 17(i) of the Act, 29 U.S.C. 666(i), shall not exceed $12,~~471~~675.

(vii) This rule does not include any later amendments or editions of the incorporated matter.

(c) When determining the amount of any proposed penalty, consideration shall be given to the appropriateness of the penalty with respect to the size of the business of the employer, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(d) Appropriate penalties may be assessed with respect to an alleged violation even though after being informed of such alleged violation by the Department representative, the employer immediately abates, or initiates steps to abate the alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

(e) Payment of all fines and penalties imposed under this section shall be made to the county treasurer of the county in which the violation occurs to be credited to the county school fund in accordance with Article 7, Section 5 of the State Constitution.

(f) The Department shall not seek court action for the purpose of obtaining abatement or assessment of penalty against any employer for violation of the Act, or any rule, regulation or standard under the Act, until a fifteen (15) working day period has lapsed after the receipt of the Citation and Notification of Penalty by the employer.

(g) State and local government employers, agencies or departments shall not pay nor be assessed a monetary penalty for a violation of the Act; rules, regulations or standards promulgated under the Act; or any rule published in the rules or practice and procedure, but shall receive a notification of any violations and shall be as accountable as private employers. State and local government employers, agencies or departments shall be subject to all provisions other than monetary penalties the same as the private sector as provided in the State of Wyoming Occupational Health and Safety Act, Rules of Practice and Procedure, and rules and regulations promulgated by the Commission for Department enforcement; which means that State and local government employers are subject to court action, injunctions and all enforcement proceedings.

(h) The OSHA Commission will review the federal cost index annually to determine any changes to the penalties with a vote.

Section 7. Trade Secrets.

(a) All information reported to or otherwise obtained by the Department or its representative in connection with any inspection or proceeding under the Act which contains or which might reveal a trade secret shall be considered confidential for the purpose of this section, except that such information may be disclosed to other officers or employees concerned with carrying out the Act or when relevant in any proceeding under the Act. In any such proceeding the OSHA Deputy Administrator or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(b) No Department representative shall publish, divulge, disclose or make known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with such Department representative thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association, or permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any individual except as provided by law.

(c) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Department representative has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except as provided by law.

(d) Upon the request of an employer, any authorized representative selected to accompany the Department representative during an inspection in an area containing trade secrets shall be an employee whose normal duty requires that he be in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the Department representative shall consult in private with a reasonable number of employees who work in that area to determine conditions pertaining to health and safety.