



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL2-0.122

EFFECTIVE DATE: April 15, 1999

SUBJECT: Enforcement Guidance for the U.S. Postal Service

ABSTRACT

Purpose: To provide direction to the field when conducting U.S. Postal Service inspections.

Scope: This instruction applies OSHA-wide

References: OSHA Instruction CPL 2.45B, June 15, 1989, the Field Operations Manual(FOM)

OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM)

State Impact: State adoption not required, See Paragraph.VI

Action Offices: National, Regional, Area Offices, and District Offices

Originating Office: Directorate of Compliance Programs

Contact: Russelle R. McCollough (202-693-1850)
Directorate of Compliance Programs
Frances Perkins Building, N-3648
200 Constitution Avenue, NW
Washington, D.C. 20210

By and Under the Authority of
Charles N. Jeffress
Assistant Secretary

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- I. Purpose. This instruction establishes policies and procedures for conducting enforcement and related activity in facilities of the U.S. Postal Service. Detailed data entry instructions to assist Area Offices in processing U.S. Postal Service cases have been provided by the Directorate of Information Technology.
- II. Scope. This instruction applies OSHA-wide.
- III. References.
 - A. OSHA Instruction CPL 2.25I, Scheduling System for Programmed Inspections
 - B. OSHA Instruction CPL 2.45B, June 1989, the Field Operations Manual (FOM)
 - C. OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM)
 - D. OSHA Instruction CPL 2.111, Citation Policy for Paperwork and Written Program Requirement Violations
 - E. OSHA Instruction CPL 2.115, June 14, 1996, Complaint Policies and Procedures
 - F. OSHA Instruction, STP 2.22A, State Plan Policies and Procedures Manual
- IV. Cancellation. None
- V. Expiration Date. None
- VI. Federal Program Change. This instruction describes a Federal Program Change for which state adoption is not required. In an October 20, 1998, Memorandum to State Designees regarding State coverage under the *Postal Employees Safety Enhancement Act*, OSHA sought written notification of decision from the 23 affected State Plans. The States were asked to decide whether they wished to amend their State Plans to extend State jurisdiction to the U.S. Postal Service, or to decline to exercise such jurisdiction, in which case coverage would remain a Federal OSHA responsibility. All 23 State Plan States elected Federal enforcement coverage of the U.S. Postal Service. States may subsequently assume this jurisdiction through an appropriate State Plan amendment, but such action will only be considered on a fiscal year basis.

OSHA will publish appropriate modification to each State's subpart at 29 CFR 1952, "Level of Federal Enforcement," to document that coverage of U.S. Postal Service workplaces and employees remains a Federal OSHA responsibility.

- VII. Action. Regional Administrators and Area Directors will ensure that the policies and procedures established in this instruction are transmitted to and implemented in all Area and District Offices.

Policies and procedures for enforcement activity in the U.S. Postal Service after September 28, 1998, are to be the same as those followed for any other employer in the private sector, except as modified in this directive.

All programmed interventions such as targeted inspections, Agency Technical Assistance Requests (ATARs), local emphasis programs, or local problem solving initiatives involving the U.S. Postal Service that began prior to September 28, 1998, are to cease indefinitely. No programmed inspections shall be conducted at U.S. Postal Service facilities until further direction is received from the Deputy Assistant Secretary through the Director, Directorate of Compliance Programs (DCP). The Agency needs time to assess the impact of unprogrammed activity likely to occur during the early stages of the transition prior to committing resources to programmed activity.

- VIII. Background.

The U.S. Postal Service is the nation's largest civilian employer, with more than 850,000 employees at 40,000 locations. In FY 96, the U.S. Postal Service represented 29.8% of the total Federal workforce. Its lost time cases represented 42.2% of the Government's lost time cases and its total cases represented 48.9% of the Government's claims.

U.S. Postal Service injuries and illnesses contribute disproportionately to the Federal Government's injury and illness rates. In the 1997 chargeback year, the workers' compensation bill was \$551.14 million, up from \$547.14 million the previous chargeback year.

U.S. Postal Service workers suffer one of the highest injury rates in the Federal Government. In 1996 alone, 78,671 employees were injured on the job -- more than nine injuries and illnesses for every hundred workers. The total injury and illness rate among U.S. Postal Service employees represents almost half of the rate for the entire Federal Government, even though fewer than one-third of all Federal workers are employed by the U.S. Postal Service.

On September 14, 1998, the House approved by voice vote S2112, the *Postal Employees Safety Enhancement Act*. This legislation was signed by the President and became effective on September 28, 1998. *The Postal Employees Safety Enhancement Act* applies the Occupational Safety and Health Act of 1970 to the U.S. Postal Service in the same manner as the OSH Act applies to any private sector employer.

Authority for State Plan Coverage.

The *Postal Employees Safety Enhancement Act* subjects the U.S. Postal Service to all provisions of the OSH Act in the same manner as a private sector employer. Thus, the Act extends Section 18 to the U.S. Postal Service, granting the States with OSHA-approved State Plans the authority to regulate this Federal instrumentality. (Prior to enactment, a colloquy on the floor of the House of Representatives confirmed this intent.)

All 23 State Plan States elected not to cover the U.S. Postal Service. Thus, Federal OSHA will retain authority for coverage of the U.S. Postal Service nationwide. Federal coverage in State Plan States encompasses U.S. Postal Service employees and contract employees engaged in U.S. Postal Service mail operations. Jurisdiction over contractor-operated facilities engaged in mail operations, as well as postal stations in public or commercial facilities, will likewise be exercised by Federal OSHA. State Plan States may continue to exercise jurisdiction over all other private sector contractors working on U.S. Postal Service sites who are not engaged in U.S. Postal Service mail operations, such as building maintenance and construction workers.

Jurisdiction.

In State Plan States, Federal OSHA will exercise jurisdiction over the working conditions of U.S. Postal Service employees as well as contract employees engaged in U.S. Postal Service mail operations, *e.g.*, contract mail carriers and truck drivers transporting and unloading mail. Federal OSHA will likewise exercise jurisdiction over contractor-operated facilities engaged in mail operations and postal stations in public or commercial facilities.

IX. Consultation Services. The Consultation Program provides assistance to small employers in high hazard SIC codes. The Consultation Policy and Procedure Manual (CPPM), OSHA Instruction TED 3.5B, defines small employer as an employer of 250 or fewer employees at a worksite, and not more than 500 employees nationwide. A request for service from the U.S. Postal Service would be treated as a request from a larger employer, *i.e.*, only limited assistance should be provided, and requests should receive a low priority.

X. Inspections, Citations and Penalties.

A. U.S. Postal Service inspections opened prior to September 28, 1998, should be closed as described below. (See Appendices A1 and A2.)

1. Where an onsite inspection that began prior to September 28, 1998, has been completed and no return to the facility is necessary, appropriate Notices or letters should be issued for hazards/violations documented during the initial inspection. For all Notices, assurance of abatement should be tracked through to final abatement. If at all possible abatement assurance shall be verified through written reports, phone, fax, etc. A

return to the facility for abatement evidence will require that a new limited scope followup inspection be opened.

2. Where an onsite inspection that began prior to September 28, 1998, has not been completed, the following procedures apply:
 - a. If sufficient information is available to determine whether or not to issue a Notice or a letter, and no return to the facility is necessary, issue the appropriate Notice or letter.
 - b. If insufficient information is available to determine whether or not to issue a Notice or a letter, and a return to the facility is necessary, close out this original inspection and open a new limited scope inspection with a new OSHA-1. Follow inspection procedures outlined in the FIRM and other applicable OSHA policy for the private sector. For hazards documented during this new inspection, issue appropriate citations and proposed penalties. These cannot be repeated or failure-to-abate violations.
 3. Where an inspection is open because of a long term abatement agreement or unabated hazards, the following procedures apply.
 - a. Long Term Abatement: If abatement progress is satisfactory, continue working with the U.S. Postal Service through to final abatement assurance. If at all possible abatement progress should be checked through written reports, phone, fax, etc. If abatement progress is unsatisfactory, open a new limited scope followup inspection with a new OSHA-1. Follow inspection procedures outlined in the FIRM and other applicable OSHA policy for the private sector. For hazards documented during this new inspection, issue appropriate citations and proposed penalties. These cannot be repeated or failure-to-abate violations.
 - b. Unabated Violations: Where a Notice has been issued and no or an inadequate assurance of abatement has been received, contact the U.S. Postal Service again to request the necessary abatement assurance. If again no response or an inadequate response is received, open a new limited scope followup inspection with a new OSHA-1. Follow inspection procedures outlined in the FIRM and other applicable OSHA policy for the private sector. For hazards documented during this new inspection, issue appropriate citations and proposed penalties. These cannot be repeated or failure-to-abate violations.
- B. For complaints received prior to September 28, 1998, and not yet closed, apply the

following procedures: (See Appendices B1 and B2.)

1. Reassess all complaints received prior to September 28, 1998, but not yet closed.
 - a. For complaint inspections initiated prior to September 28, 1998, but not yet closed, follow procedures found in Section X. 1.
 - b. For complaints requiring an inspection, but for which no inspection has yet been initiated, follow complaint inspection procedures outlined in the FIRM, CPL 2.115, and other applicable OSHA policy for the private sector.
 - c. For complaints being handled by phone and fax and/or by letter, determine if a response has been received. If a satisfactory response has been received, send the appropriate letter to the complainant and close the case. If no or an inadequate response has been received, follow complaint inspection procedures outlined in the FIRM, CPL 2.115, and other applicable OSHA policy for the private sector.

C. Special Consideration: Ergonomics

1. Ergonomic inspections opened prior to September 28, 1998, that would have resulted in the issuance of a Notice or letter but for which no action occurred, should be closed through transmission of an Ergonomic Hazard Alert Letter to the appropriate U.S. Postal Service representative. Prior to issuing a letter for ergonomic hazards, concurrence from the Directorate of Compliance Programs must be obtained.
2. Complaints received prior to September 28, 1999, that address ergonomics but have not yet been responded to by an inspection and are more than two years old should be closed-out administratively. Prior to closing the case, however, the complainant should be contacted. OSHA's current ergonomic inspection procedures should be explained to the complainant. If it is determined that hazardous ergonomic conditions continue to exist, the complainant should be asked to resubmit a complaint. Complaints should be responded to in accordance with the FIRM, CPL 2.115, and other applicable OSHA policy for the private sector.
3. Notices issued to the U.S. Postal Service prior to September 28, 1998, for ergonomic hazards should be closed-out administratively. If, however, the Notice was based on an inspection conducted as the result of a complaint, prior to closing the case, the complainant should be contacted. OSHA's

current ergonomic inspection procedures should be explained to the complainant. If it is determined that hazardous ergonomic conditions continue to exist, the complainant should be asked to resubmit a complaint. Complaints should be responded to in accordance with the FIRM, CPL 2.115, and other applicable OSHA policy for the private sector.

- D. Violations documented during inspections initiated at a U.S. Postal Service site after September 28, 1998, will be issued as citations with penalties in accordance with the FIRM and other applicable OSHA policy for the private sector. Citations should be mailed via certified mail to the establishment in which the violations were identified. In addition, copies of citations should be mailed to the National offices of the U.S. Postal Service and each of the major unions representing U.S. Postal Service employees. Addresses are in Appendix C.
1. Notices issued to the U.S. Postal Service prior to September 28, 1998, may not be used for the purpose of substantiating a repeated violation. Notices do not become final orders of the Commission; only citations do. A repeated violation must be based on a violation that became a final order. However, prior Notices can be used to support employer knowledge for citing and/or classifying serious and willful violations.
 2. Failure-to-abate penalties may be based only on violations issued as citations after September 28, 1998. Notices cannot be used as the basis for failure-to-abate penalties.

XI. Recordkeeping. As of September 28, 1998, the U.S. Postal Service is covered by the private sector recordkeeping requirements at 29 CFR 1904.

- A. Although the *Postal Employees Safety Enhancement Act* did not provide for a transition period for the U.S. Postal Service to change its recordkeeping from the 29 CFR 1960 Federal agency recordkeeping requirements to the 29 CFR 1904 regulations, OSHA made an internal policy decision to allow the U.S. Postal Service a transition period. This internal policy decision required the U.S. Postal Service to begin maintaining injury and illness records in accordance with 29 CFR 1904 beginning January 1, 1999, and OSHA not to issue recordkeeping violations, with the exception of 1904.8, Reporting of fatalities and multiple hospitalization incidents, until March 31, 1999. Effective March 31, 1999, citations may be issued for any violation of 29 CFR 1904.

XII. Executive Order 12196 and 29 CFR Part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs*. These no longer apply to the U.S. Postal Service.

- XIII. Discrimination Complaints. Discrimination complaints by employees of the U.S. Postal Service, who are involved in activities protected under the OSH Act, now fall within the provisions of Section 11(c) of the OSH Act. Such complaints should be processed in the same manner as existing complaints under Section 11(c). Procedures outlined in 29 CFR Part 1977 and OSHA Instruction DIS.4B shall be followed.
- A. Section 11(c) complaints by employees of the U.S. Postal Service may be accepted after September 28, 1998. However, OSHA will not investigate those complaints from U.S. Postal Service employees when the protected activity occurred prior to that date. Prior to that date, U.S. Postal Service workers were not employees as defined by the OSH Act.
- XIV. IMIS Coding. In order to track intervention and inspection activity regarding the U.S. Postal Service under the privatization legislation effective September 28, 1998, OSHA will use specific conventions for coding this activity on IMIS forms as follows:
- A. Begin the Establishment Name with U.S. Postal Service in the first 19 positions. This will normalize site-name searches. The rest of the name may vary, e.g., U.S. Postal Service Bulk Mail Facility.
1. Always use the Standard Industrial Classification (SIC) code 4311. The U.S. Postal Service is the only employer in this SIC.
 2. Designate Ownership as Private Sector. Do not use the Federal Agency Code of 5100 after September 28, 1998.
 3. Use Private Sector Establishment Records for coding activity (OSHA-7, OSHA-90, OSHA-36, OSHA-55, or OSHA-1) with the U.S. Postal Service after September 28, 1998.
- B. The following steps will help create or choose such records when entering an inspection record. Note: Do not modify Federal Agency Establishment records on file for U.S. Postal Service activity which occurred prior to September 28, 1998.
1. When no Related Activity exists, the user must search for an establishment record for the U.S. Postal Service as a private sector employer. At the Establishment Search Selection screen, enter the establishment name. Be certain to use U.S. Postal Service as the first 19 characters. Optionally, the site street address may be entered in the Site Address. Press F3 to begin the search.
 - a. A list of establishments will be displayed. Review the list of establishments to determine if an establishment record which shows

ownership as “Private” has already been created for this site for the U.S. Postal Service. The records which are designated “Federal agency” will display the Federal agency code (5100) on the line beneath the street address. Select the correct establishment (using the TAB key or by typing the number of the record) and press F3 to Accept the Match.

b. If the message “No matching establishments were found” is displayed or if there is no correct establishment (i.e., a record with the correct site address and the private ownership code), press F5, Add New Record, to create a new establishment record.

2. If there is Related Activity, Enter Item 5, Related Activity, before entering any establishment information. The establishment record for the related activity will “prefill” in the new inspection.

a. After entering the Related Activity information, the user will be returned to the main OSHA-1 screen.

b. Press F5 to display the related activity’s establishment record for the U.S. Postal Service.

c. If the record indicates that the ownership of the U.S. Postal Service is “A,” or private sector, press ESC ESC to exit the establishment processing screen and complete the inspection in the normal manner.

d. However, if this record indicates that the ownership of the U.S. Postal Service is “D,” or Federal agency, you must create a new establishment record for the U.S. Postal Service. Complete the following steps:

C Press F3 Search. The search screen is displayed.

C Move the cursor to “Federal Agency” and remove the Federal agency code. (Check the address to make sure that it is correct.)

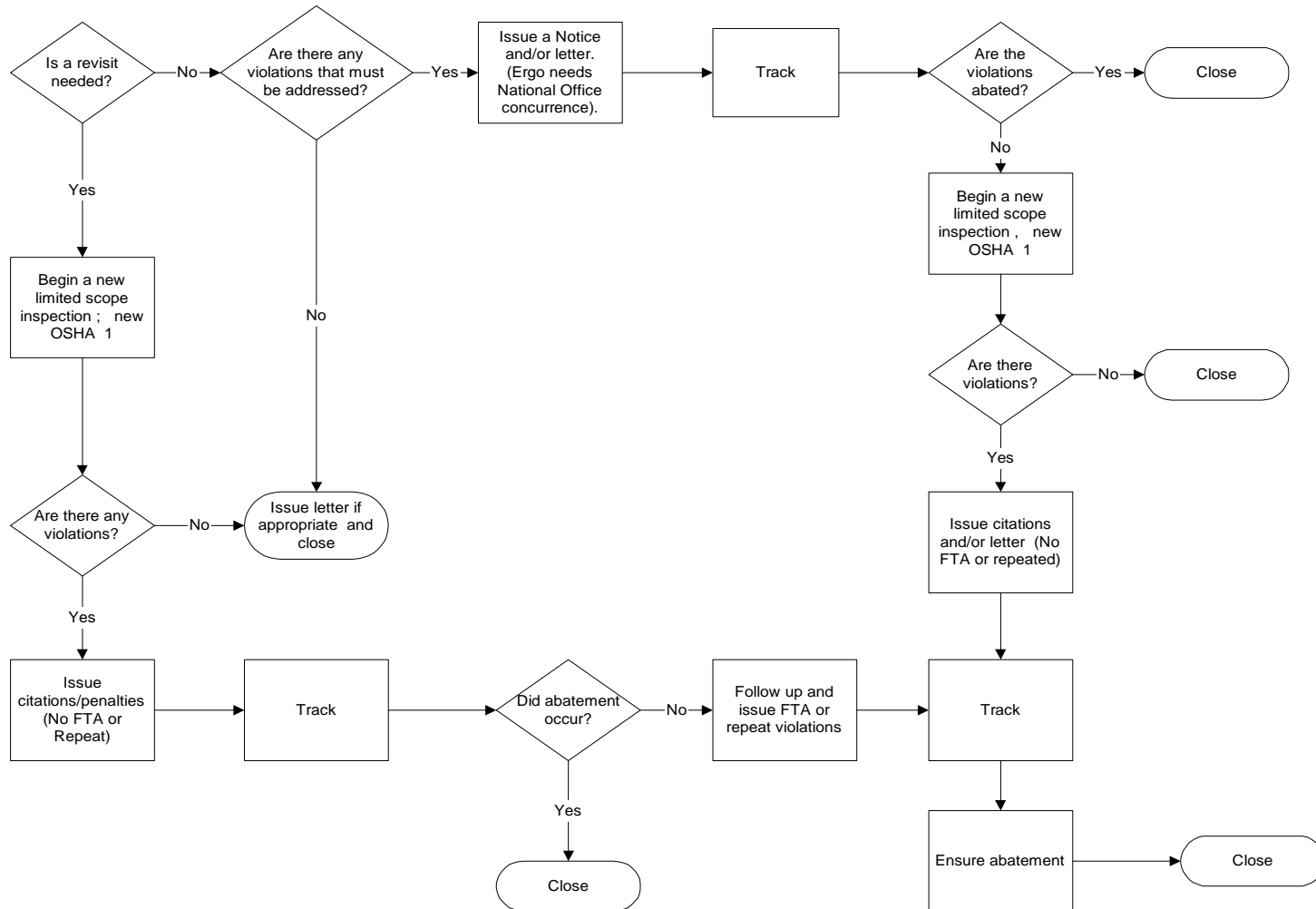
C Press F3 to begin an Establishment Search. A list of establishments will display. Review the list of establishments to determine if an establishment record which shows ownership as “Private” has already been created for this site for the U.S. Postal Service. The

records which are designated Federal agency will display the Federal agency code (5100) on the line beneath the street address. Select the correct establishment (using the TAB key or by typing the number of the record) and press F3 to Accept the Match.

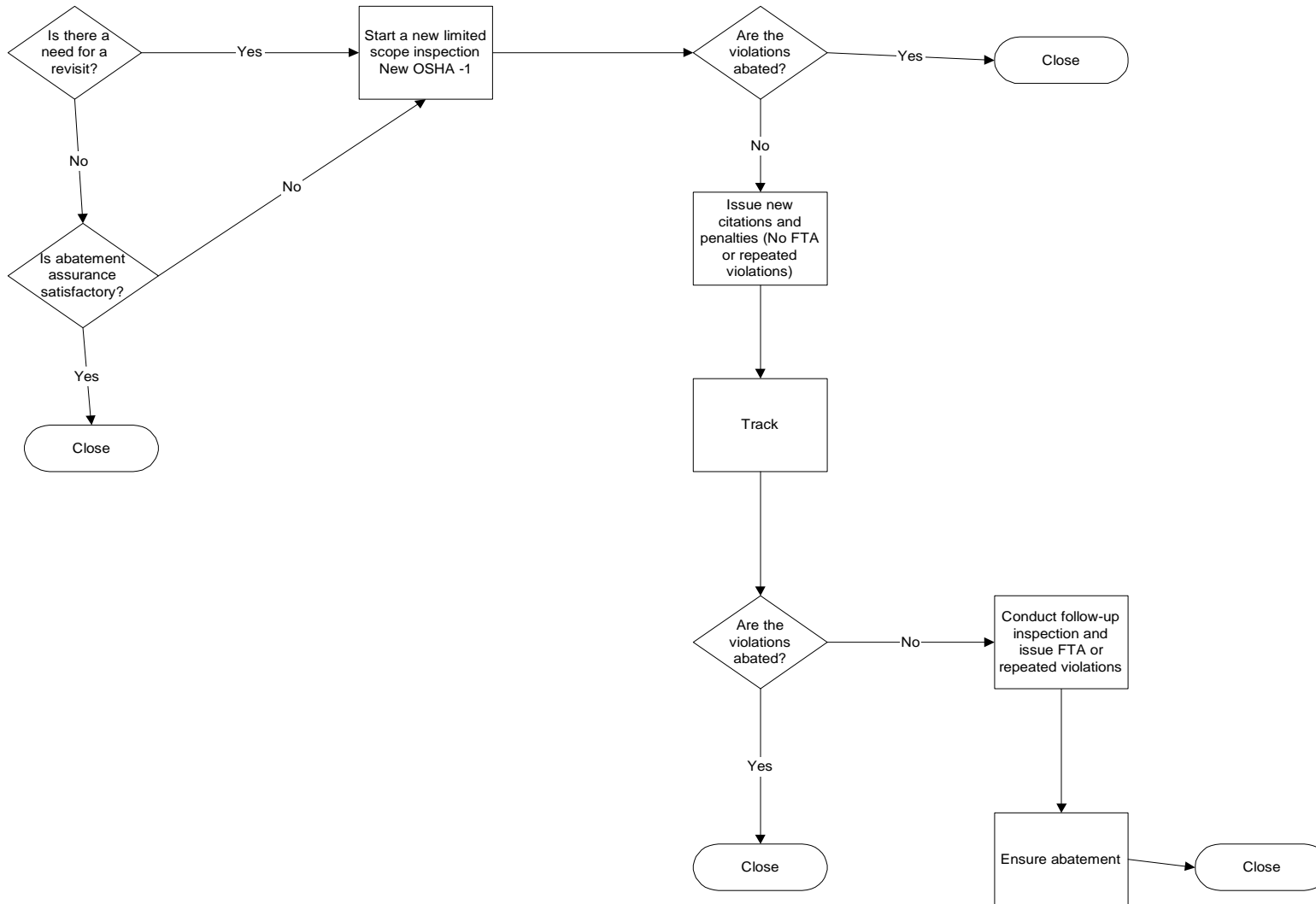
C If the message “No matching establishments were found” is displayed or if there is no correct establishment record (i.e., a record with the correct site address and the private ownership code), press F5, Add a New Record, to create a new establishment record.

- C. All OSHA activities occurring at a specific U.S. Postal Service site after September 28, 1998, must use one establishment record which shows Private Ownership. All prior activities must be associated with an establishment record which shows Federal agency ownership.
- XV. Coordination. All enforcement, compliance, and discrimination related issues or questions will be handled as appropriate by either the Office of General Industry Compliance, the Office of Health Compliance, or the Office of Investigative Compliance.

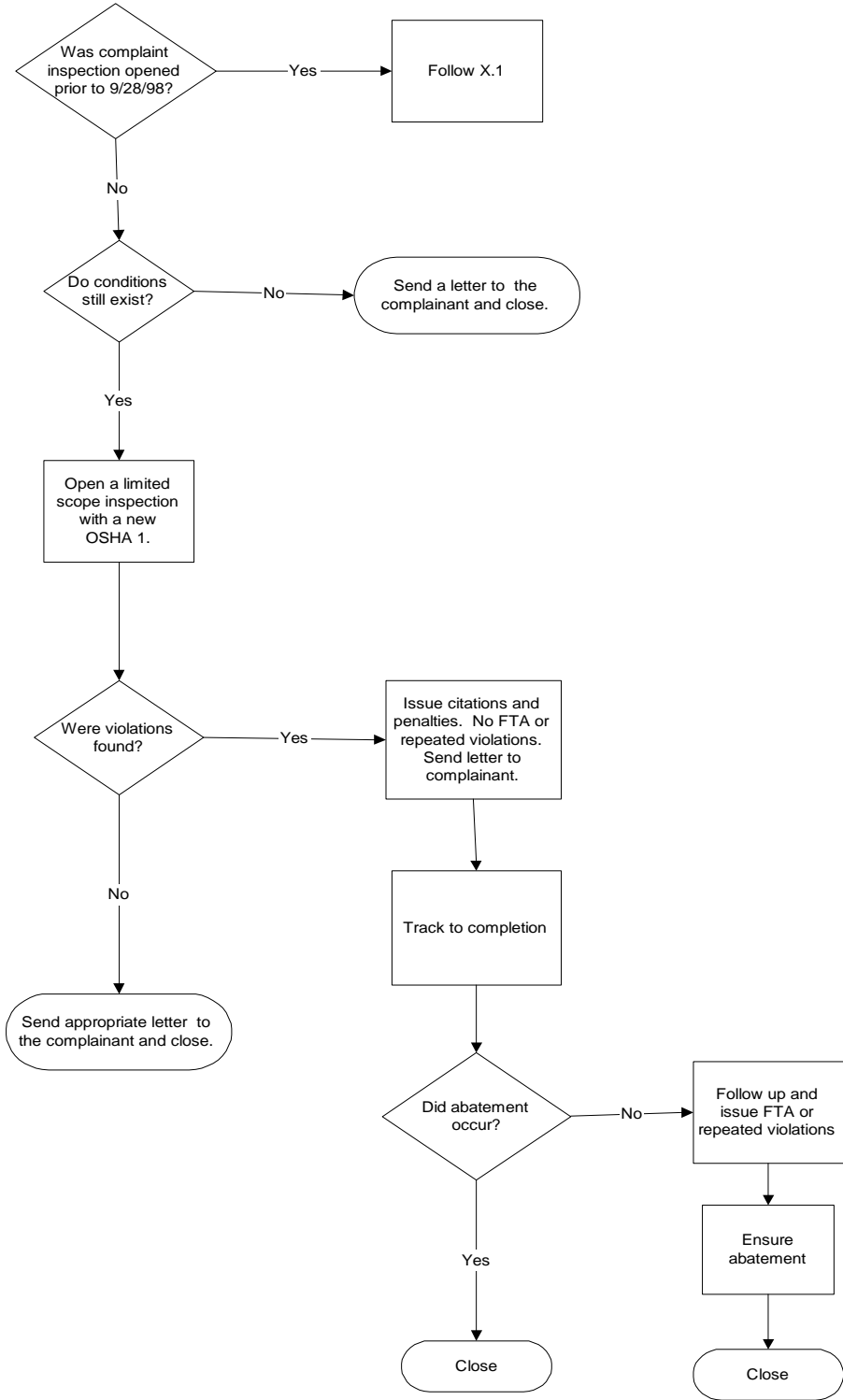
Appendix A1
 Inspections Open Prior to September 28, 1998
 (Incomplete Investigation)



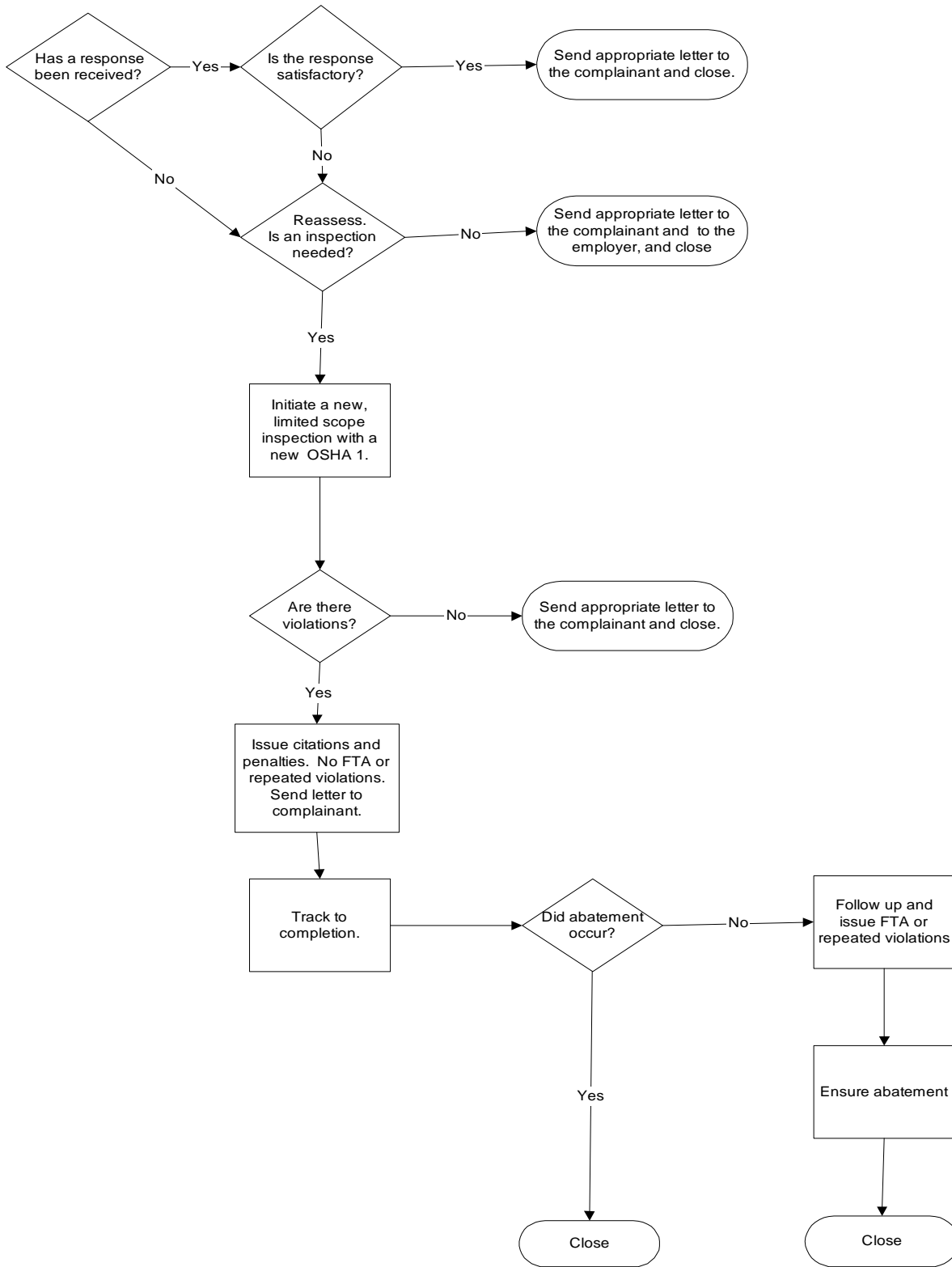
Appendix A2
Inspections with Long-term Abatement or with Unabated Hazards
Open Prior to September 28, 1998



Appendix B1
 Complaints Warranting Inspection
 (Based On Complaints Received Prior to September 28, 1998)



Appendix B2
Complaint Opened Prior to September 28, 1998 (Handled by Phone/Fax or Letter)



Appendix C Addresses

Citations should be mailed via certified mail to the establishment in which the violations were identified. In addition, copies of citations should be mailed to the National offices of the U.S. Postal Service and each of the three major unions representing Postal employees at the following addresses:

Manager, Safety and Risk Management
Office of Safety and Risk Management
Room 9801
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-4231

Director of Safety and Health
National Association of Letter Carriers
100 Indiana Avenue, N.W.
Washington, D.C. 20001

National President
National Postal Mailhandlers Union
Suite 500
1101 Connecticut Avenue, N.W.
Washington, D.C. 20036

Headquarters Safety and Health Specialist
American Postal Workers Union
1300 L Street, N.W.
Washington, D.C. 20005

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