

Small Entity Compliance Guide for OSHA's Abatement Verification Regulation 29 CFR 1903.19



U.S. Department of Labor
Occupational Safety and Health Administration

1997

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Overview of

ABATEMENT VERIFICATION REGULATION 29 CFR 1903.19

What is abatement?

Abatement is the correction of the safety or health hazard/violation that led to an OSHA citation.

Does this regulation apply to me?

This regulation applies to you only if you have received a citation from OSHA during an inspection. (Procedures in States with OSHA-approved State Plans may differ. See pages 11, 12, and 25.)

What do I have to do?

- Fix*** the hazard.
- Certify*** that you've fixed the hazard.
- Notify*** your employees and their representatives that you have fixed the hazard.
- Send*** document(s) to OSHA saying that you have abated the hazard.
- Tag*** any cited movable equipment with a warning tag or a copy of the citation.

What happens if I don't comply?

You could get a citation for failure to ***certify*** to OSHA, ***notify***

employees, and *tag* movable equipment.

Abatement Verification: Who Does What

Employers must:

Certify that hazards/violations cited by OSHA during an inspection have been abated. OSHA has provided examples of simple abatement certification letters that employers may use to certify that they have abated each cited hazard.

Provide abatement documentation, abatement plans, and progress reports for some violations.

Inform affected employees and their representatives of the abatement action the employer has taken.

Allow employees to examine and copy abatement documents sent to OSHA.

Tag cited movable equipment to warn employees of the hazard. Employers can use tags of their own design or those that are available through OSHA.

OSHA will:

Indicate on the Citation and Notification of Penalty any serious items that require additional abatement documentation, abatement plans, and progress reports.

Document, during the inspection, any cited conditions that the employer permanently corrects; no further abatement certification is required for these corrected items.

Employees must:

Notify their employer, within 3 working days of the time abatement information is sent to OSHA, that they wish to review or copy that information.

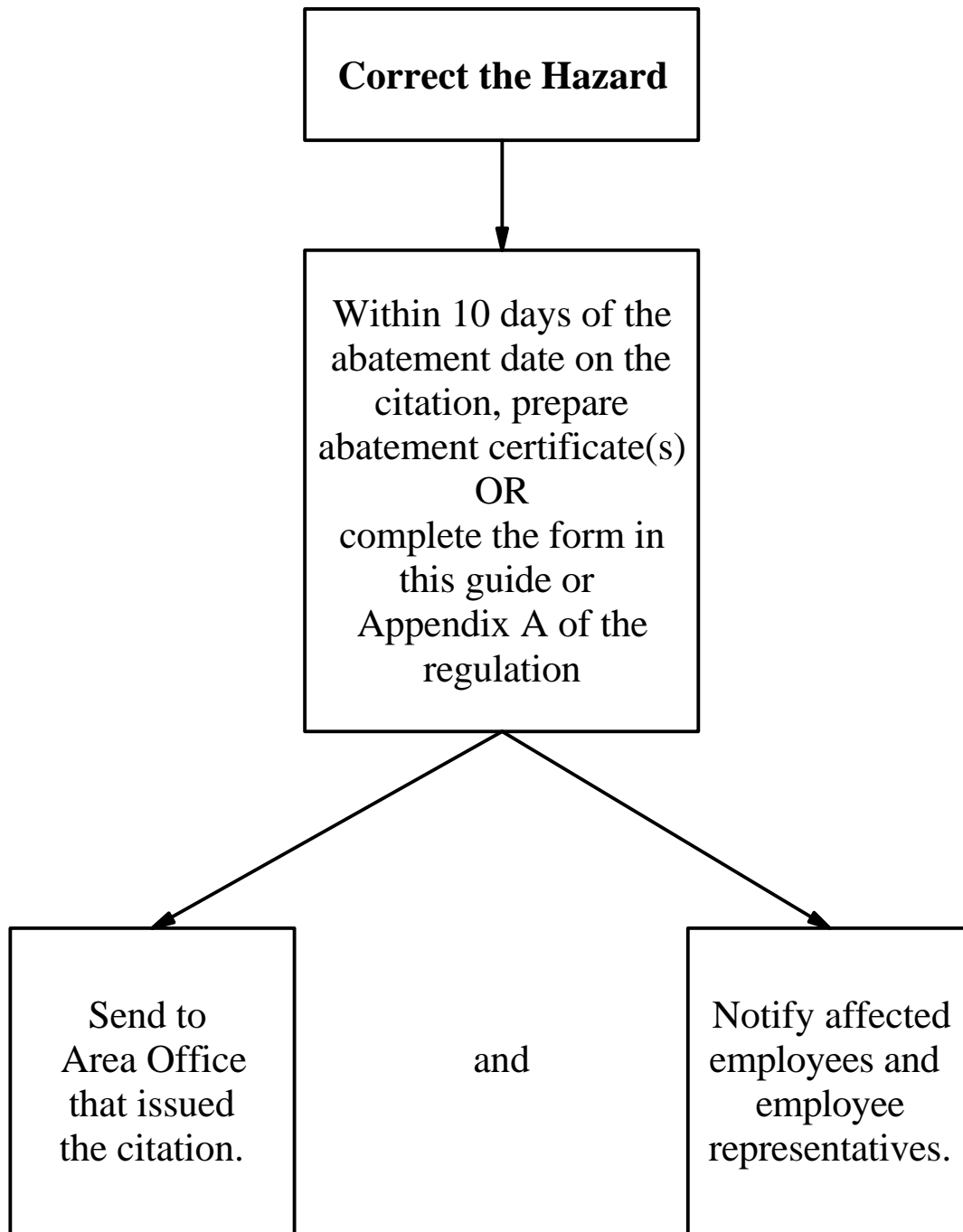


Figure 1 - How to Submit Abatement Certificates

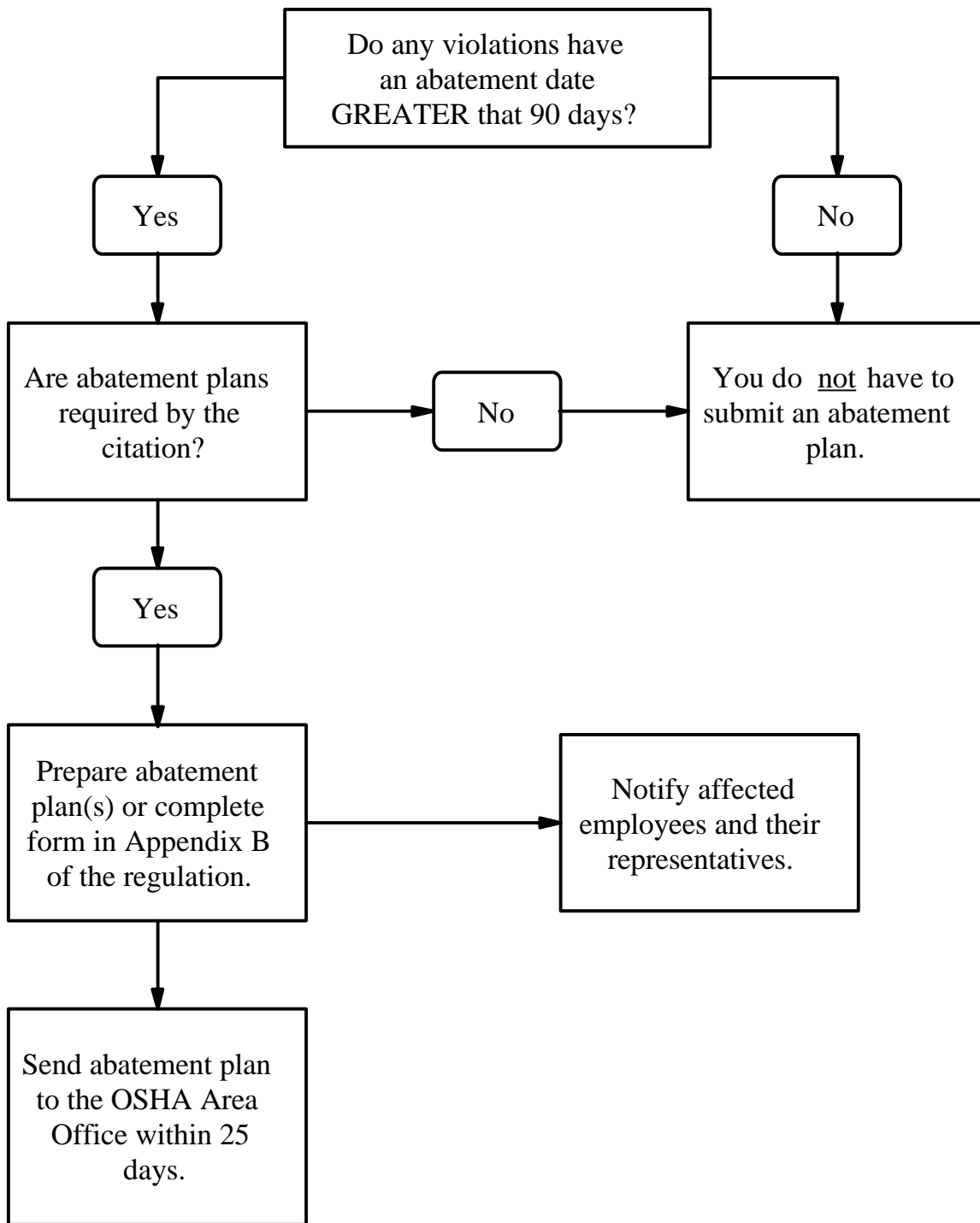


Figure 2 - How to Prepare Abatement Plans

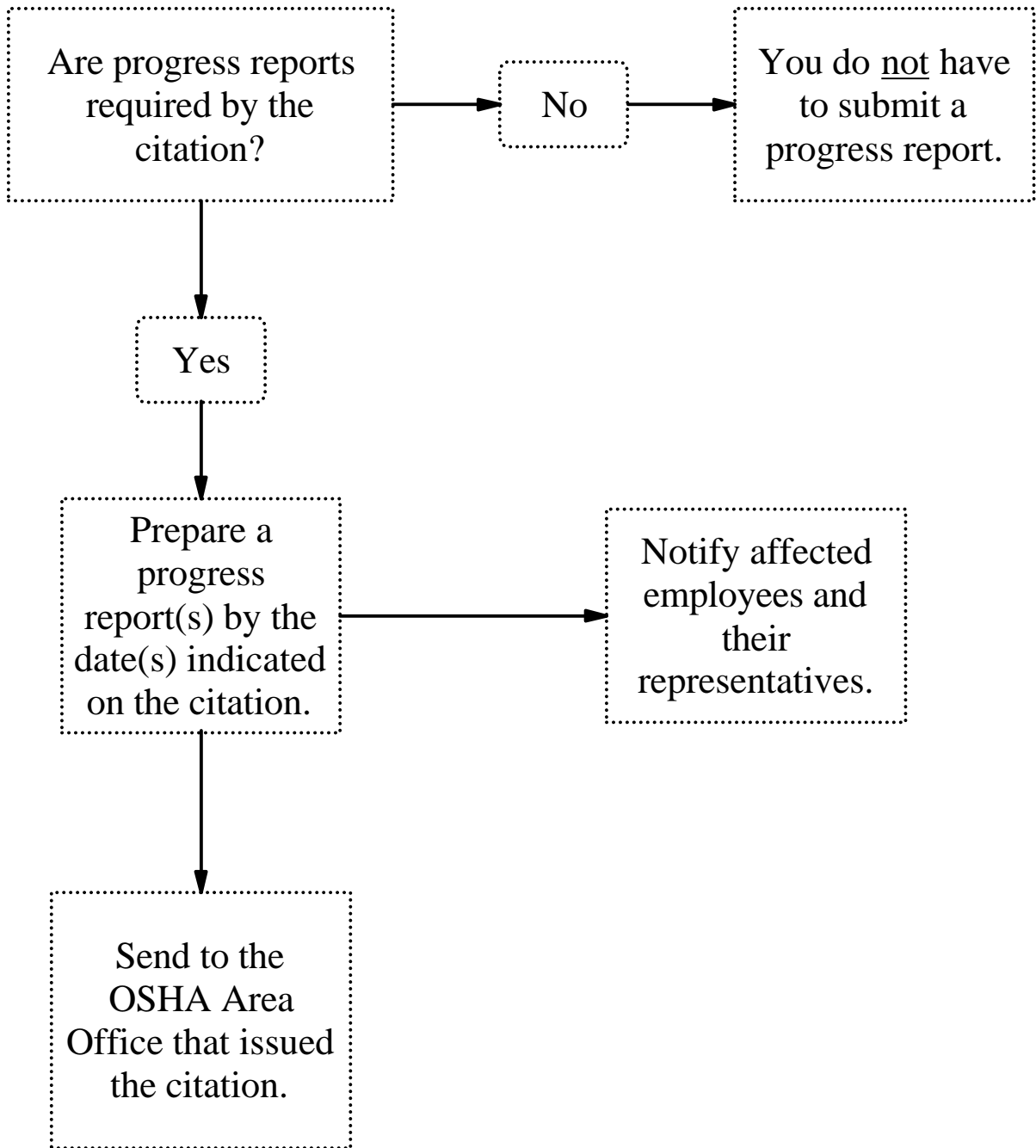


Figure 3 - How to Prepare Progress Reports

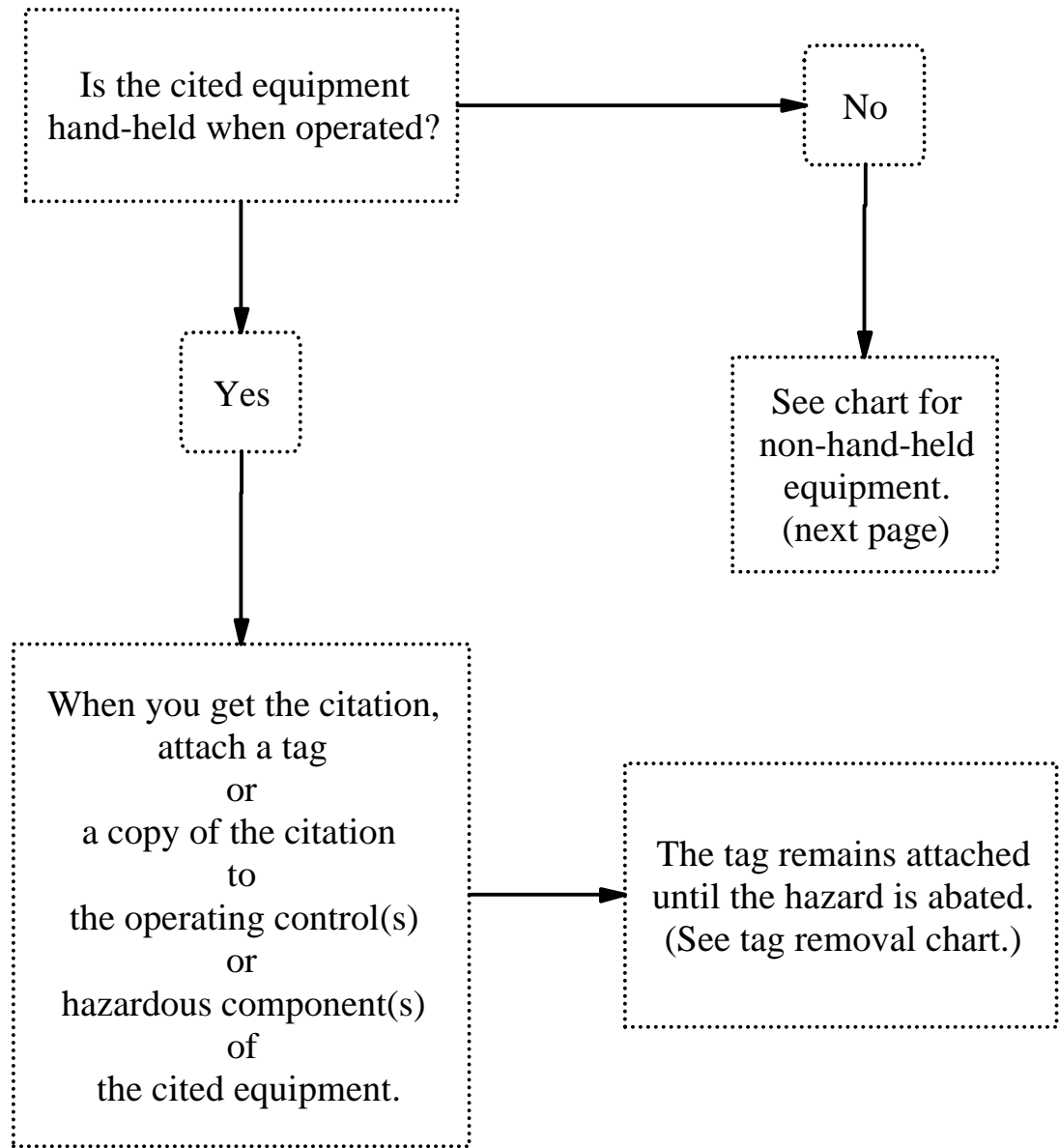
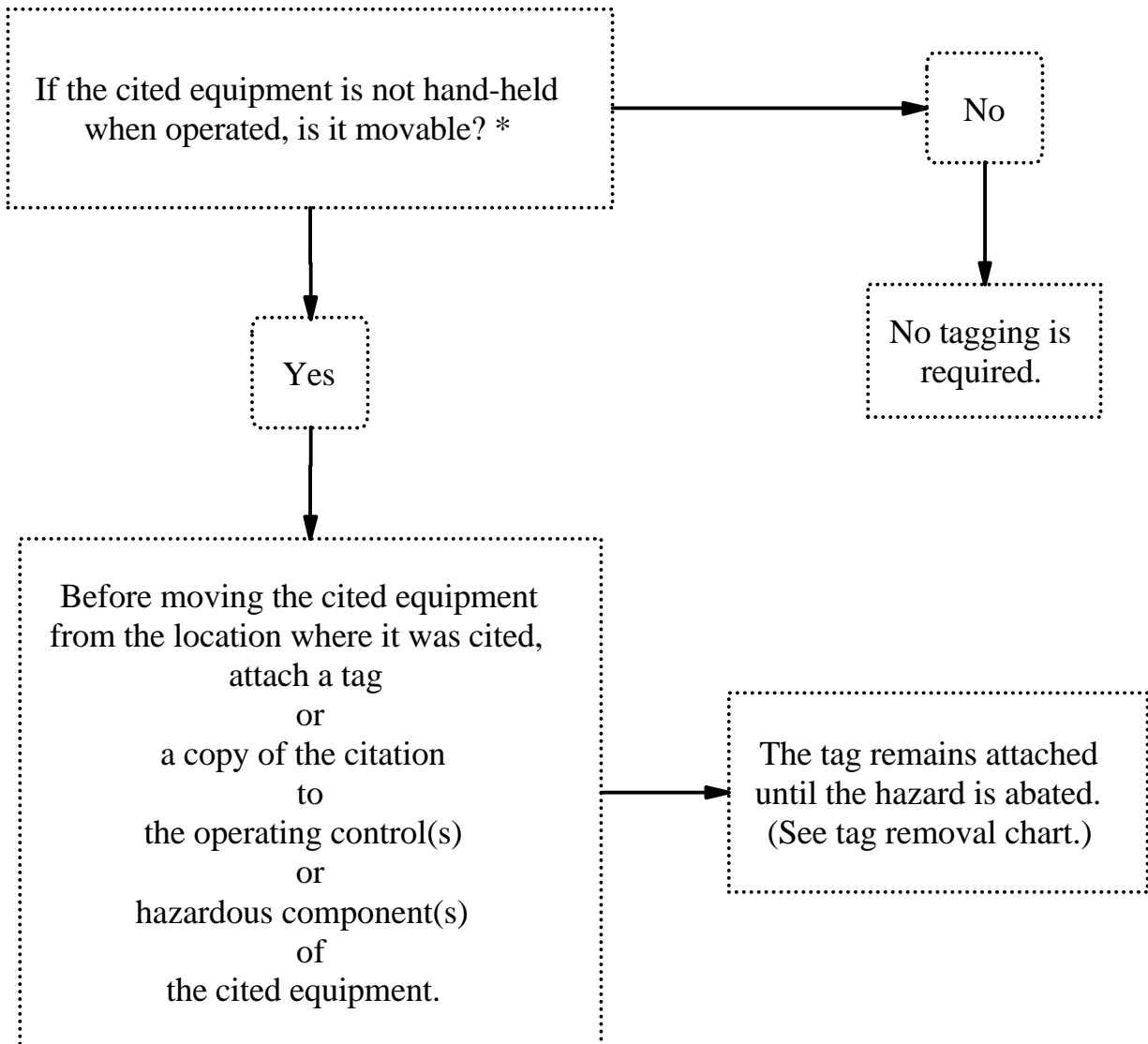


Figure 4 - Tagging Requirements for Hand-Held Equipment



* Movable equipment is a device or machine that is moved within the worksite where it is cited, or is moved to another worksite.

Figure 5 - Tagging Requirements for Non-Hand-Held Equipment

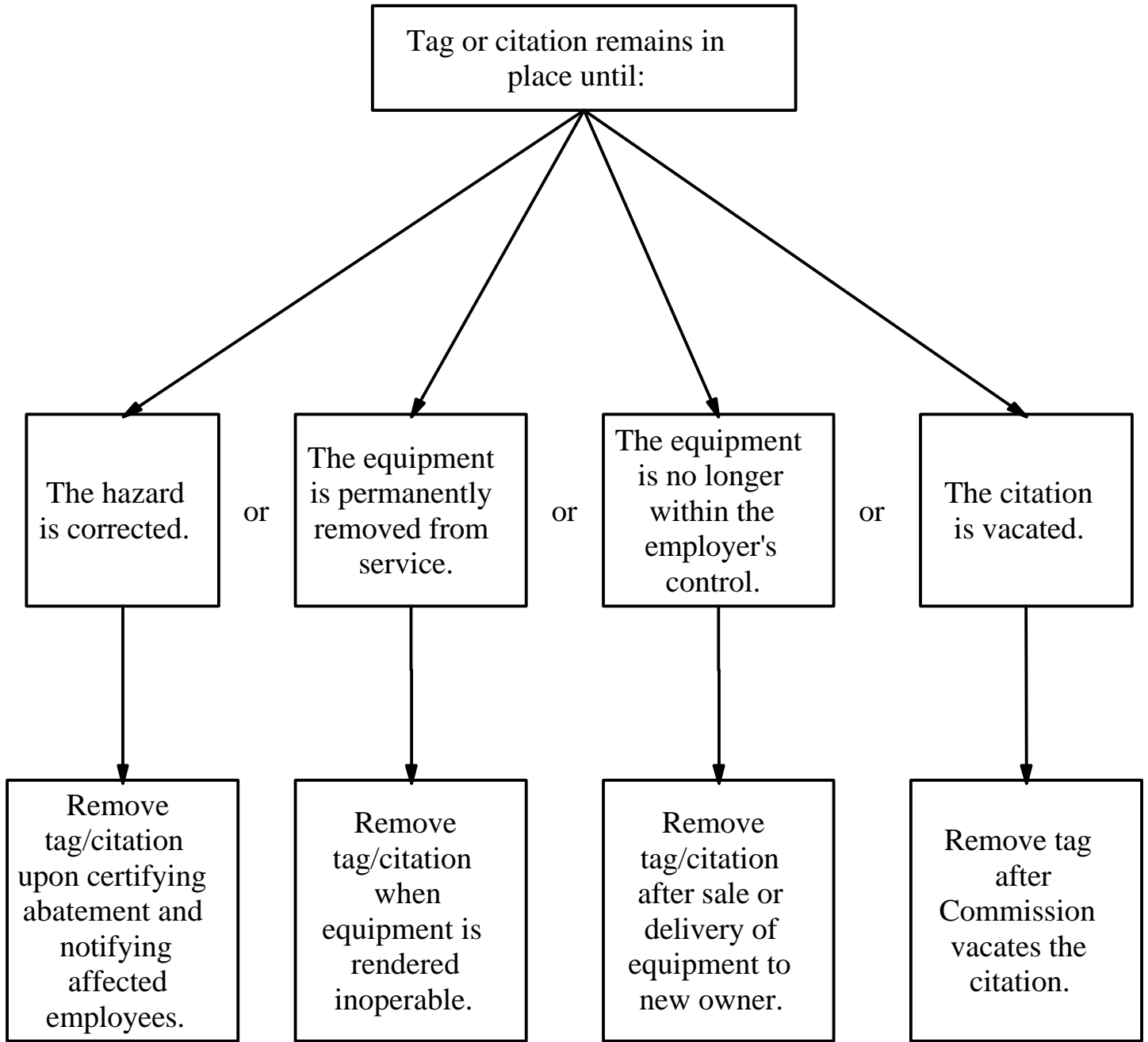


Figure 6 - When Can the Tag or Copy of the Citation Be Removed?

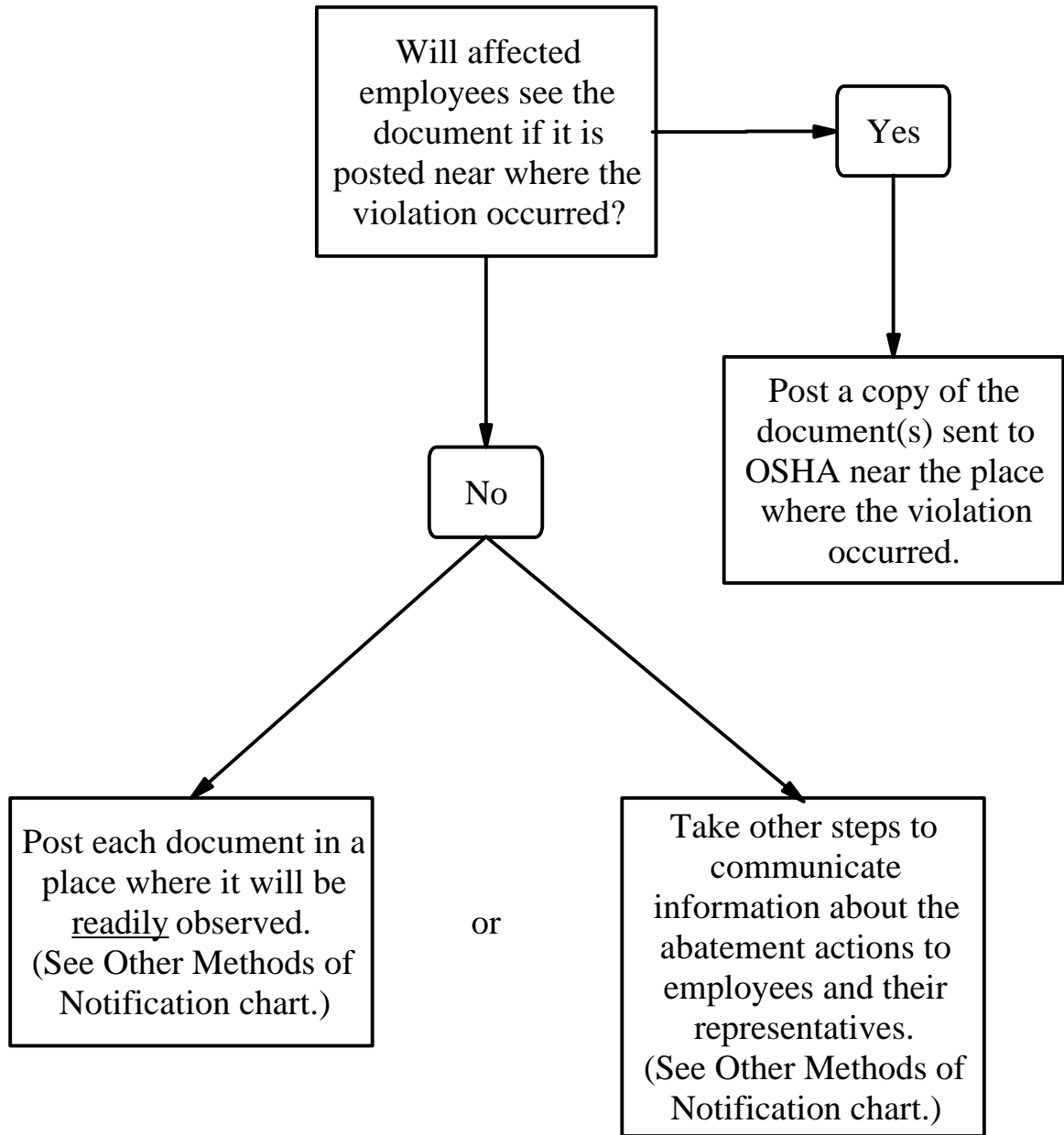


Figure 7 - How Do I Notify Employees that Abatement Has Occurred?

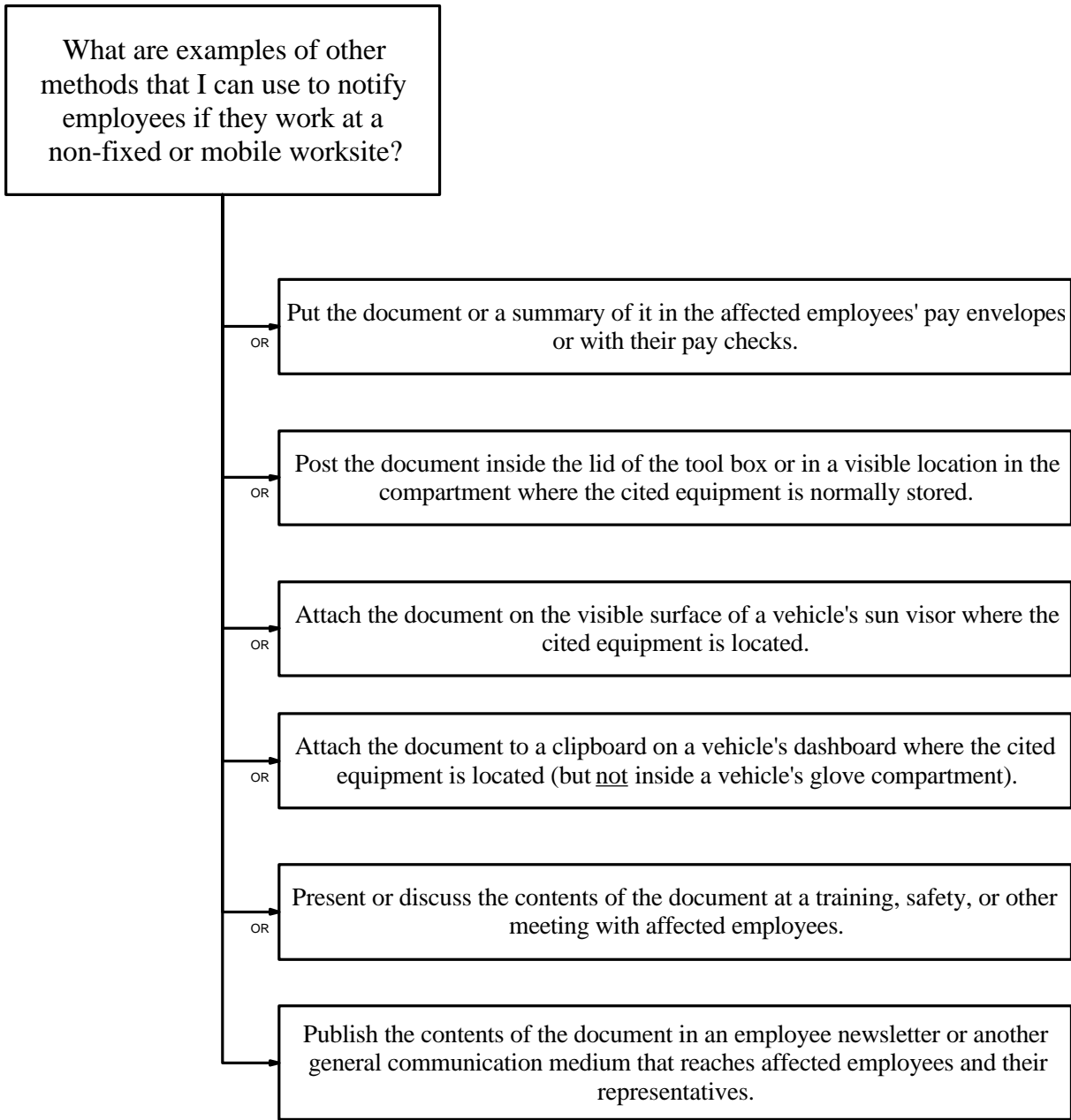


Figure 8 - What Other Methods Can I Use to Notify Employees of Abatement?

OSHA-Approved State Plan States

If the workplace (the site where the inspection took place) is in one of the 25 states with OSHA-approved State Plans (see list below), the abatement verification procedures and policy may be different from those in this guide.

These States are:

ALASKA, ARIZONA, CALIFORNIA, CONNECTICUT (Public Employees Only), HAWAII, INDIANA, IOWA, KENTUCKY, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW MEXICO, NEW YORK (Public Employees Only), NORTH CAROLINA, OREGON, PUERTO RICO, SOUTH CAROLINA, TENNESSEE, UTAH, VERMONT, VIRGINIA, VIRGIN ISLANDS, WASHINGTON, and WYOMING

Contact the State for specific requirements. See page 25 for specific addresses.

Information on State Plan States can also be obtained from the OSHA Internet Home Page (<http://www.osha.gov/>) under the title of Programs and Services.

QUESTIONS MOST FREQUENTLY ASKED
ABOUT ABATEMENT VERIFICATION
(29 CFR 1903.19)

SCOPE, APPLICATION, AND GENERAL ISSUES

[Paragraphs (a) and (b)]

What is abatement?

Abatement is the correction of the safety or health hazard/violation that led to an OSHA citation.

What is abatement verification?

It is the process by which an employer informs OSHA, affected employees, and their representatives that a hazard cited by OSHA has been corrected.

When does the regulation affect an employer?

When the employer receives an OSHA citation from an inspection that began after May 30, 1997.

How does the regulation apply to an employer in a state with an OSHA-approved State Plan?

Each of the 25 states with OSHA-approved State Plans must adopt its own abatement verification regulations or other equivalent mechanism that can be enforced in a manner as effective as OSHA's. Contact the State Plan agency for specific requirements. See pages 11 and 25 of this guide for more information.

Whose requirements do I follow if my home office is in one state and the worksite where I was cited is in another?

The state where your employees were working at the time of the inspection and citation.

How does the regulation differ from OSHA's previous procedures for abatement verification?

The new regulation provides a uniform system for documenting the correction of cited hazards, and the amount of documentation required now increases as the seriousness of the violation increases. The previous procedures did not use the sliding scale approach to abatement verification.

Does the new rule reduce paperwork?

Yes. When hazards are abated during an inspection, no abatement certification is required. Also, documentation or proof of abatement is not required for minor (other-than-serious) violations or for most violations classified as serious.

How will employees benefit from the new rule?

Employees and their representatives now will be informed of the abatement activities taken by their employers. Movable equipment that is cited must be tagged to alert employees to the danger posed by the equipment.

By regulation, how long after transmission of an abatement document to OSHA must an employer retain the submitted document?

Three working days, the required employee-notification period.

What effect does the regulation have on an employer’s right to contest a citation?

None. The regulation does not restrict the right of employers, employees, and employee representatives to contest citation item(s).

When do abatement verification obligations begin if an employer contests a citation?

Until a contested item is resolved, the abatement verification process is delayed for that item.

ABATEMENT CERTIFICATION

[Paragraph (c)]

What is the difference between abatement certification and abatement documentation?

Abatement certification is the “affidavit or signed statement” the employer sends to OSHA. Abatement documentation is the “proof of correction” the employer sends to OSHA as evidence that the hazard has been corrected, such as pictures or receipts or work orders.

What does OSHA mean by the phrase “the employer must certify” in paragraph (c)(1) of the regulation?

Certification means that the employer must submit a brief signed statement that the hazardous condition(s) has been corrected.

How is abatement certification accomplished?

An employer or an authorized employer representative must inform OSHA in a signed letter of the abatement actions they have taken. A sample abatement certification letter is available in Appendix A of the regulation. The letter must include the following identifying information:

- ! Inspection, citation, and item numbers for each violation.
- ! Date of abatement.
- ! A statement that the violation was abated.
- ! A brief description of how the hazardous condition was abated.
- ! A statement informing OSHA that affected employees and their representatives were informed of the abatement actions.
- ! A statement that the information provided in the letter is accurate.

ABATEMENT DOCUMENTATION

[Paragraph (d)]

What is acceptable documentation?

Documentation is acceptable if it clearly proves that the violation has been corrected. [The quality or acceptability of documentary evidence will be assessed by OSHA, either during abatement negotiations with the employer or after receipt of the abatement documentation.] OSHA will discuss documentation with you at the inspection closing conference, or when citations are issued. If the documentation you send is not acceptable, OSHA will let you know.

Which citations require documentary evidence of abatement in addition to certification?

All “willful” and “repeat” violations, and those serious violations for which the Area Director requires such evidence.

Are there examples of appropriate documentary evidence of abatement other than those examples provided in the regulation?

The regulation does not mandate specific types of documentary evidence of abatement; making this determination is the employer’s responsibility.

The following types of documentation are generally acceptable:

- ! A photograph or videotape of the abated condition.
- ! A copy of an invoice or sales receipt for equipment used to achieve abatement.

- ! A report by a safety and health professional describing actions taken to abate the hazard or describing the results of analytical testing that substantiates abatement.
- ! Documentation from the manufacturer that the article repaired is within the manufacturer's specifications.
- ! A copy of a signed contract for goods and services (for example, for needed protective equipment, an evaluation by a safety engineer, etc.).
- ! Records of training completed by employees (if the citation is related to training).
- ! A copy of program documents if the citation relates to a missing or inadequate program, such as a deficiency in the employer's respirator program or hazard communication program.

ABATEMENT PLANS

[Paragraph (e)]

When is an abatement plan required by OSHA?

When the abatement period on the citation is more than 90 calendar days and the citation states that an abatement plan is required.

For which violations can OSHA require abatement plans?

For serious, willful, and repeat violations having abatement periods lasting more than 90 days.

Are abatement plans required for other-than-serious violations?

No.

What happens if an employer asks for more time to abate, and this additional time extends the period of abatement to more than 90 days?

The Area Director may require an abatement plan if the violation is a serious, willful, or repeat violation. Your Petition for Modification of Abatement date (PMA) normally would require speaking to the Area Office that issued the citation. Full compliance with the conditions for requesting additional abatement time (see 29 CFR 1903.14a) may convince the Area Director that abatement plans are not needed.

Does an employer have to submit an abatement plan if a violation is corrected before the plan is due?

No. The employer must, however, still certify that abatement has occurred.

Can employers combine abatement plans into one submission to OSHA?

Yes, provided each plan is submitted on time.

PROGRESS REPORTS

[Paragraph (f)]

How do I know if a progress report is required?

The citation will say so.

Can an employer use the same form for the progress report and the abatement plan if these are required?

Yes.

Does an employer have to submit a progress report if a violation is corrected before the report is due?

No. The employer must, however, still certify to OSHA that abatement has occurred.

EMPLOYEE NOTIFICATION OF ABATEMENT ACTIONS

[Paragraph (g)]

What abatement information must be provided to affected employees?

The same information that is given to OSHA, as well as a notice of their right to examine and copy the information.

Who are “affected employees”?

Affected employees are those employees exposed to the hazard(s) identified as a violation(s).

Do employees have to be notified of the abatement certification letter?

Yes. A copy of the letter must be posted unless posting it will not inform affected employees because they work off-site or travel from one worksite to another. In such cases, other methods of notifying employees must be used. (see next question)

When posting would not fully inform employees, what are examples of methods that an employer can use to inform affected employees about abatement actions?

Employers who have mobile work operations, or who do not assemble employees routinely at a central location, may use a means other than posting to communicate with employees.

The following are examples of methods acceptable to OSHA when posting is ineffective:

- ! Including the document or summary of it in affected employees' pay envelopes or with their paychecks.
- ! Posting the document inside the lid of the tool box (gang box) or in a visible location in the compartment where the cited equipment is normally stored.
- ! Attaching the document to the visible surface of a vehicle's sun visor where the cited equipment is located.
- ! Attaching the document to a clipboard on a vehicle's dashboard where the cited equipment is located (but not inside a vehicle's glove compartment).
- ! Presenting or discussing the contents of the documents at a training, safety, or other meeting with affected employees.
- ! Publishing the contents of the document in an employee newsletter or another general communication medium that reaches affected employees and their representatives.

Any method that creates a hazard (such as a visibility hazard) cannot be used.

For how long must the abatement materials be posted?

Three working days after submission to OSHA.

TRANSMITTING ABATEMENT DOCUMENTS TO OSHA.

[Paragraph (h)]

In addition to the mail, what other means of transmitting abatement documents are acceptable to the Agency?

Hand delivery and facsimile (fax) are two examples of acceptable methods of transmitting documents. If the materials submitted are not legible, they may be deemed unacceptable by the Agency.

What about e-mail?

At present, e-mail transmission is not acceptable.

TAGGING MOVABLE EQUIPMENT

[Paragraph (i)]

What does tagging mean?

Tagging means that the employer puts a warning tag or a copy of the citation on the operating controls or cited components of the movable equipment.

What is the purpose of tagging?

The tag warns employees about the cited hazard, briefly describes the violation, and tells them where they can find the complete citation.

Are there any advantages to using a copy of the citation instead of a warning tag to meet the tagging requirement?

Yes. Affixing a copy of the citation to the operating controls or cited components of the movable equipment provides the employees with more information than is on the tag, and using a copy of the citation for this purpose also fulfills the employer's obligation under 29 CFR 1903.16 (Posting of citations). If a warning tag is used, the employer must still post a copy of the citation required by 29 CFR 1903.16, although the copy does not have to be posted at the point of violation.

What kind of a warning tag can be used?

Employers can use the warning tag displayed in Appendix C of the regulation or the tag provided by OSHA or they can use any "warning" tag that provides the information required by the regulation. For employers in the construction sector, tags that are designed and used as specified in 29 CFR 1926.20(b)(3) and 1926.200(h) can be substituted for the tags required by this abatement verification regulation when the tag also properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation.

What is movable equipment?

Any machine or device, hand-held or not-hand-held, that is moved within the worksite where it was cited, or is moved to another worksite.

Does an employer have to tag movable equipment that has been cited for an other-than-serious violation?

No. Movable equipment has to be tagged only if it is cited for a serious, repeat, or willful violation.

What is hand-held equipment?

It is equipment that is hand-held when operated. Examples of hand-held equipment are a hand grinder and a portable electric drill. A drill press is not considered to be hand-held equipment.

When does cited hand-held equipment have to be tagged?

The tag or citation has to be put on the operating controls or cited components of the equipment immediately after the citation is received.

Does cited hand-held equipment have to be tagged immediately, even if it is not moved or used?

Yes.

What is movable non-hand-held equipment?

It is equipment that is not hand-held when operated, such as a drill press, lathe, or other mounted equipment.

Does cited personal protective equipment (PPE), including respirators and eye and face protection, have to be tagged?

No. OSHA considers PPE deficiencies violations of the PPE standard, not movable equipment violations.

Does an employer who receives a citation for a violation involving rented equipment have to tag it?

Yes.

Does an employer have to tag equipment, such as a trailer or a truck, that was cited for not having chocks in place if that equipment has been moved?

No, because such a violation arises from an administrative or procedural violation (the use of chocks), not a hazard of the truck or trailer itself.

Does cited movable equipment have to be tagged if it is owned by an affected employee?

Yes. An employer's duty under the Occupational Safety and Health Act to maintain a safe and healthful workplace applies to employee-owned equipment that the employer allows to be used at the worksite.

Does an employer have to tag all similar movable equipment that poses the same hazard as the cited equipment but was not cited by OSHA (for example, all ladders if a single ladder was cited)?

Such tagging is not required by this regulation; however, the employer can be cited for a repeat or willful violation if an OSHA compliance officer identifies the violation during a later inspection.

When can the tag or copy of the citation be removed from the cited equipment?

The tag may be removed when the employer:

- ! Corrects the cited violation and submits all required abatement verification documents to the Area Director.
- ! Permanently removes the cited equipment from service (for example, makes it inoperable).
- ! Receives a Commission order stating that the Commission has vacated the citation (for contested citations only).
- ! No longer controls the equipment (for example, sells it and places it under the control of the buyer or returns it to the rental company).

Does a warning tag have to stay on cited equipment that is sold and is no longer under the control of the seller?

No. The seller of the cited equipment is not responsible for tagging or abating a hazard once the equipment is sold and is no longer under the seller's control.

If an employer buys tagged equipment, what will happen?

The buyer isn't responsible for the original citation, but can be cited by OSHA for having hazardous equipment (just like the former owner) if the hazard is still uncorrected.

Can the buyer of tagged equipment be cited for a willful violation?

If the buyer knew about the hazard (for example, the employer was told about the hazard by the seller or saw the warning tag or citation on the equipment), the buyer can be cited for a willful violation.

What should a buyer do with the tags or citations on cited equipment?

OSHA recommends that the buyer keep the tags or citations on the equipment until the hazard is corrected.

What if an employer buys equipment that has been cited, but there's no tag on it?

If the buyer knows that it has been cited, or knows (or should know) that it is hazardous, the buyer must correct the hazard before making the equipment available to employees for their use.

If an employer moves cited equipment for use on another worksite of that employer, does the tag stay on the equipment?

Yes.

Important Time Periods

For Correcting Violations:

- ! 90 calendar days -- Minimum period to correct a violation before OSHA can require an abatement plan.

For Sending Documents to OSHA:

- ! 10 Calendar days -- Maximum period after the abatement date to send a certification document.
- ! 25 calendar days -- Maximum period after receiving a citation to send an abatement plan.
- ! 55 calendar days -- Maximum period after receiving a citation to send the first progress report.

For Employee Notice:

- ! 3 working days¹ -- Minimum period that abatement-verification documents have to stay posted.
- ! 3 working days -- Maximum period after posting for employees or their representatives to request to examine and/or copy the documents.
- ! 5 working days -- Maximum period to provide the documents to employees or their representatives after they request them.

¹The definition of “working days” found in former 29 CFR 1903.21(c), now redesignated as 29 CFR 1903.22(c), is “. . . Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays . . .”.

SAMPLE ABATEMENT CERTIFICATION (Blank)

_____, Area Director
U.S. Department of Labor - OSHA
Address of the Area Office (on the citation)

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation
___ and item ___ was corrected on _____ by _____
_____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

SAMPLE ABATEMENT CERTIFICATION (Completed)

Ms. Jane Doe, Area Director
U.S. Department of Labor - OSHA
Address of the Area Office (on the citation)
My Company
111 High St
Any Town, ST 99999

The hazard referenced in Inspection Number 123456789 for the violation identified as Citation 1 and item 1 was corrected on 4/25/97 by installing a lower blade guard on the table saw

The hazard referenced in Inspection Number Same for the violation identified as Citation 1 and item 2 was corrected on 4/25/97 by installing a 42 inch high guardrail per OSHA across the storage loft's opening where OSHA said I needed one

The hazard referenced in Inspection Number Same for the violation identified as Citation 2 and item 1 was corrected on 4/26/97 by buying gloves for the employee who stocks the bulk supplies in the loft and making sure he uses them

The hazard referenced in Inspection Number for the violation identified as Citation and item was corrected on by

The hazard referenced in Inspection Number for the violation identified as Citation and item was corrected on by

The hazard referenced in Inspection Number for the violation identified as Citation and item was corrected on by

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

John Smith
Signature
John Smith
Typed or Printed Name

States with OSHA-Approved State Plans ²

Updated August 14, 1997

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² The most current directory of State Plan States is maintained on the OSHA Internet Home page (<http://www.osha.gov>) under the title of Programs and Services.

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