North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual



Table of Contents

Chapter 1 – Purpose, Scope and Quality Management

Chapter 2 – Compliance Programming

Chapter 3 – Inspection Procedures

Chapter 4 – Violations

Chapter 5 – Citations

Chapter 6 – Penalties

Chapter 7 – Imminent Danger

Chapter 8 – Fatality and Catastrophe Investigations

Chapter 9 – Complaints, Referrals and Accidents

Chapter 10 – Discrimination Complaints

Chapter 11 – Agricultural Safety and Health Inspections

Chapter 12 – Construction

Chapter 13 – Information Conferences, Contested Cases and Disclosures

Chapter 14 – Safety and Health Programs and Committees

Chapter 15 – Industrial Hygiene Compliance

Chapter 16 – Administrative File Activities

Chapter 17 – Ergonomics Inspection Procedures

Chapter 18 – Maritime Inspection Procedures

Definitions

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter I – Purpose, Scope and Quality Management



Chapter Effective: February 2000
Revision 5: 3/01/2018

Chapter I

Purpose, Scope and Quality Management

A. **Purpose.**

The North Carolina Department of Labor, Occupational Safety and Health (OSH) Division, Compliance Bureaus are charged with delivery of on-site safety and health compliance enforcement activity to private and public sector employers. The Compliance Program consists of an East and West Compliance Bureau, *Agricultural Safety and Health (ASH) Bureau* and Complaint Desk/Laboratory Section. The organizational structure includes an assistant director, an eastern bureau chief, a western bureau chief, an ASH bureau chief, 11 district supervisors, a staff industrial hygienist, 113 safety and health compliance officers, 2 complaint intake officers, a laboratory technician, and an administrative support staff. In addition, 3 positions have been assigned to work in the Employment Discrimination Bureau (EDB) to investigate discrimination complaints associated with Occupational Safety and Health.

The OSH Division is required to develop and maintain procedures that describe those specific processes that affect quality as defined in terms of satisfying customer requirements while completing legislative mandated activity and requirements. The purpose of the North Carolina Field Operations Manual (FOM) is to provide guidance to compliance personnel, to ensure responsibilities are carried out in an effective, efficient and consistent manner.

B. **Scope.**

The procedures in the FOM apply to all OSH compliance personnel.

C. **OSH Compliance Mission Statement.**

OSH compliance is committed to increasing awareness of workplace safety and health issues of the state's employers and employees through an efficient and effective compliance program. Each bureau employee is responsible for understanding customer needs and expectations, for integrating this information into the process, and for producing and delivering efficient and effective services in accordance with the overall quality policy of the department.

D. **OSH Quality Statement.**

Administrative Procedure Notice13 (APN 13) describes the OSH Division Quality Plan. This chapter of the FOM contains specific procedures associated with elements described in APN 13 including: management review, document control, corrective preventative actions, clarification of customer requirements, process control, control of quality records, internal evaluations and training.

E. **Responsibilities and Authorities.**

Administrative staff: The "admin staff" provides support to the bureau chiefs, supervisors and field staff. Their responsibilities include, but are not limited to, processing citations, copying case file information, mailing documents to employers and employees, receiving and distributing incoming mail, and numerous other administrative tasks associated with keeping the field office running smoothly.

All OSH compliance personnel: Ensure that services are managed, performed, and verified in conformance with the OSH compliance procedures. All employees have the authority to halt activity when nonconformity occurs and provide appropriate corrective action and notification.

Assistant director: Plans, coordinates and implements the programs and activities of the Compliance and Agriculture Safety and Health Bureaus in accordance with division goals. Responsible for ensuring the establishment, implementation, maintenance, and approval of the bureau level procedures.

Bureau chiefs: Ensure timely, quality service; identify opportunities for operational improvement; foster open communications; keep staff informed of issues impacting on responsiveness or service standards; ensure that programs have a current action plan for service delivery; and ensure that progress continues according to plan.

Bureau documentation coordinator: *Responsibilities include, but are not limited to: logging action requests into the annual log and updating as actions occur, distributing action requests to OSH management team (assistant director, bureau chiefs, bureau management representative) in a timely manner, monitoring customer complaint logs, ensuring procedural changes resulting from action requests are forwarded to ETTA for timely inclusion on the One Stop Shop.*

Bureau Management representative: Employee responsible for ensuring that the quality system is established, implemented and maintained in accordance with APN 13. The management representative will report to OSH management on the system performance regarding all documentation requirements. Additional responsibilities include, but are not limited to: annual compliance case file audits, scheduling quarterly management review meetings, and ensuring a timely response/determination is provided to any individual submitting an action request. This representative will monitor all action requests assigned to individual management team members and will provide regular updates on their status, until assignments are completed. The staff industrial hygienist is presently performing these duties.

Compliance safety and health officers (CSHO): The primary responsibility of the CSHO is to carry out the mandate given to the NC commissioner of labor, namely, "to ensure so far as possible every working man and woman in North Carolina safe and healthful working conditions...." To accomplish this mandate the NCDOL OSH Division employs a wide variety of programs and initiatives, one of which is enforcement of standards through the conduct of effective inspections. CSHOs receive inspection assignments, conduct inspections, prepare case files, make corrections as needed, ensure abatement of hazards, and complete case file management all in accordance with the FOM. Through inspections and other employee/employer contact, the CSHO can help ensure that hazards are identified and abated to protect workers. During these processes, the CSHO must use professional judgment to adequately document hazards in the case file, as required by the policies and procedures in effect in the division. The CSHO will be responsible for the technical adequacy of each case file.

District supervisor: The district supervisor has first level supervisory responsibility over CSHOs in the discharge of their duties and may also conduct compliance inspections. They receive and evaluate inspection assignments, assign inspections, evaluate case files, sign citations, hold informal conferences, issue informal settlement agreements, along with providing guidance and support to the CSHOs in accordance with the FOM.

F **Management Review.**

An OSH compliance review of processes and procedures will be conducted at least quarterly to ensure that effective, efficient service is being maintained. Quarterly management reviews of quality plan elements outlined in APN 13 will be conducted by a management team consisting of: the assistant director, the east bureau chief, the west bureau chief, the management representative (staff industrial hygienist), and the bureau documentation coordinator. Each quality plan element will be reviewed on at least a bi-annual (once every two years) basis. The following actions will take place during the management review process:

1. *The bureau management representative sets a date and time for the quarterly management review and transmits notice to all participants. If an action request involves another OSH Division Bureau, the affected bureau chief (or their designated representative) should be invited to attend the quarterly meeting.*

2. The management representative prepares an agenda for the management review and distributes it to all participants prior to the scheduled review.

3. The management representative ensures that all information and documents required for the review are assembled and made available.

4. *Quarterly meetings will be conducted between bureau chiefs, bureau documentation coordinator, management representative and the assistant director. At a minimum, the following items will be reviewed: customer complaint logs (if any customer complaints have been received since the previous meeting), action requests, and quality plan elements (which include the procedures outlined in the FIS). A response regarding OSH management's decision on each action request item will be documented and the response will be provided to the individual that submitted the request.*

5. If no action requests are submitted, the management review team will review several existing polices and improvement opportunities will be discussed. This will be the basis for the continuing improvement program.

6. Management review assignments will be made, as necessary and **due dates** will be assigned.

7. The bureau document coordinator prepares /maintains record of each review meeting.

8. *All completed actions will be processed by the bureau management representative.*

9. The assistant director and the bureau chiefs will close the review.

10. The state plan coordinator will schedule a quarterly meeting with the OSHA area director. The director, assistant director, bureau chiefs, state plan coordinator and OSHA area director will attend the meeting and review compliance activity, strategic plan activities, performance measures, and any pertinent procedural issues.

G. **Document Control.**

Document control is an important aspect of the OSH Division quality plan system. It is important for operational consistency and effectiveness to ensure that only current documents are available for use. The bureau documentation coordinator and the management representative are responsible for maintaining the document control system. The individual responsibilities of these positions are outlined below:

The bureau documentation coordinator:

1. *Develops the document control system, which describes how the documents will be accessed and retrieved. All documents will be maintained electronically. The document coordinator will work with ETTA Bureau representatives to ensure compliance procedures are maintained in the One Stop Shop.*

2. Ensures that only current and authorized instructional documents are available where the lack thereof could adversely affect the quality of services being conducted.

3. Reports to the assistant director, as appropriate, the status of the bureau's quality plan system relevant to changes in the current documents.

4. Ensures that prior documents are maintained for historical reference.

The management representative:

1. Ensures that quality documents are reviewed on bi- annual basis to ensure that they are effective and accurate.

2. Coordinates the writing, review, and revision of procedures.

3. Reviews revisions or changes to controlled documents and makes recommendations to assistant director.

4. Assists assistant director and bureau chiefs in developing a bureau training process for new/revised procedures.

5. Ensures that changes made to documents receive the same review and approval as the original document.

The assistant director:

1. Following management review, approves and authorizes controlled documents, revisions, or changes to documents within the Compliance Bureau.

2. Assesses the adequacy of documents for inclusion in the system.

H. **Corrective and Preventative Actions.**

It is important for the success of any organization to have systems in place that will allow for continuous improvement and elimination of nonconformities. OSH Division compliance management has determined that it is extremely important to have procedures and guidelines in place that allow OSH compliance to achieve strategic goals in the most effective manner possible. A critical component in the development and maintenance of effective procedures is employee input and response to customer complaints. *An Action Request Form is located on the One Stop Shop under NC OSH Resources, Quality Program.* The following procedures establish a method for OSH compliance employees to initiate effective corrective or preventive action within the North Carolina Department of Labor as it relates to the responsibilities of the bureau. The following procedure should be followed to initiate an action request for corrective or preventative actions:

1. OSH Employees should prepare and forward an Action Request Form to their immediate supervisor, a bureau chief or the management representative upon identification or observance of non-conformity or potential improvements to the system.

2. All Action Request Forms received by a supervisor, bureau chief or management representative will be forwarded to the documentation coordinator and will be logged on the Action Request Log. The bureau documentation coordinator will maintain a log of all action requests received and the status of the requests.

3. If a supervisor is notified of a potential error, mistake, or nonconformity, but does not receive a completed Action Request Form they should do the following: a) begin the process of analyses to determine root cause and initiate corrective action, or b) complete and submit an Action Request Form.

4. All employees should periodically review procedures, work instructions, and other related information to proactively prevent errors, mistakes, or non-conformities.

5. Action requests for preventative and corrective actions will be reviewed at the regular management review and all employees that submit an Action Request Form will receive a response from the management team in a timely manner. The document control coordinator *and the bureau management representative* will track the status of an action request.

6. Corrective action, in all cases, will be a high priority and completed quickly. When appropriate, corrective action will be accompanied by a root cause analysis and in cases where the root cause is identified, action will be taken to ensure that the appropriate process is changed to prevent a reoccurrence of the error, mistake, or nonconformity.

7. If any OSH Division employee receives an external customer complaint (for items that would not be addressed through the informal conference process), it should be forwarded to the appropriate bureau chief for resolution. The bureau chief will maintain a bureau customer complaint log and will ensure that complaints are addressed in an appropriate manner and the complainant is provided with a timely response to their complaint items. The compliant, findings, and resolution will be documented in the Bureau Customer

Complaint Logs. Bureau Customer Complaint Logs will be reviewed at the management review meetings.

I. **Clarification of Customer Requirements.**

Clarification of customer requirements may be summarized as: the process by which all OSH Division, Compliance Bureaus employees ensure that they have an accurate and complete understanding of customer requirements prior to work on a particular service or project (i.e. compliance inspection activity, conducting migrant pre-occupancy inspections, delivering speeches, conducting training, answering phone inquiries, fielding complaints, etc.) In order for this to successfully occur, the Compliance Bureaus must ensure that appropriate resources, and training, are provided and that employees possess the necessary skills to deliver services associated with their position. Management is committed to providing the necessary training and resources to enable delivery of quality customer service.

OSH compliance employees are expected to comply with departmental, division and bureau guidelines and procedures during the performance of work activities. The procedures contained in the FIS were developed to ensure that quality services are delivered in an effective, consistent manner. OSH Division compliance management expects all bureau employees to take the required steps to ensure that clarification of customer requirements occurs. Review of customer requirements and an assessment of resource requirements must be completed prior to delivery of services. This includes inspection preparation, developing lesson plans for training, clarifying objectives for speeches, etc. Specific approaches and methods for clarifying customer requirements are left to the discretion of employees within the OSH Compliance Bureau.

Customer requirements can be obtained through direct contact (telephone, mail, and in-person) with the customer (CSHOs will not contact employers prior to a compliance inspection activity, except as permitted in the FOM. Advanced notice of inspection activity is prohibited, unless authorized by the director). As outlined in the N.C. FOM, attempts should be made to contact complainants and referral sources, prior to an inspection activity to clarify information.

Once an employee defines the customer requirements for a particular service and begins to deliver the service, the employee is responsible for handling amendments or changes to customer requirements. This includes making changes to the product or service, modifying a project or project plan, and interfacing with affected individuals.

Department, division or bureau procedures may restrict the scope of change allowed in customer requirements. This is due in part to the structure of the bureau, which is operated state plan procedures and monitored by federal OSHA.

J. **Internal Evaluations of Quality (Audit Procedures).**

OSH Division policies and procedures have been developed to achieve program goals and objectives in a consistent, effective and efficient manner. It is important to monitor the effectiveness of our program and to determine if quality needs are being met. Internal evaluations will be conducted on a routine basis to measure effectiveness of procedures and to ensure the desired level of quality is maintained. The bureau management representative will conduct a random audit of case files on a quarterly basis (each office will have a case file audit on at least an annual basis). The purpose of these audits will be to ensure that the OSH Division is adhering

to process procedures in a consistent manner. These audits will be conducted in accordance with established procedures and documentation of all audits will be maintained in accordance with the retention schedule. Other actions such as accompanied inspections and random inspection monitoring will be conducted to monitor on-site services. The audits will be discussed during management reviews, and corrective actions will be taken, if necessary. Finally, positive and negative feedback of customers will also be evaluated during management reviews (complaint log, thank-you letters, phone calls, etc.) Follow-ups will be conducted to verify that appropriate corrective action has been taken.

K. **Inspection Process Control Procedure.**

The following is an overview of the compliance inspection process. Detailed procedures can be found in the relevant chapters of the FOM.

1. Inspection preparation.

   a. The CSHO receives an inspection assignment from the district supervisor.
   b. The CSHO utilizes OSHA records to research the employer's previous inspection history.
   c. If a complaint/referral/accident, the CSHO contacts the contact person (if known or documented on the applicable form) to verify information.
   d. The CSHO gathers equipment for the inspection.
   e. If needed, (ex: first inspection of SIC/NAICS) the CSHO reviews potential hazards associated with the SIC/NAICS.

2. Inspection activity.

   a. The CSHO presents credentials and conducts an opening conference in accordance with the FOM.
   b. The CSHO conducts the inspection in accordance with the FOM; complaint/referral/accident inspections are limited to specific items and other hazards in "plain view" and in accordance with the FOM.
   c. The CSHO documents violations observed in accordance with the FOM.
   d. After completion of the onsite activity the CSHO holds a closing conference in accordance with the FOM Chapter III.

3. Post inspection activity.

   a. The CSHO documents the report in *the Osha Express (OE) System* and completes appropriate forms.
   b. The CSHO assembles the case file in accordance with the FOM.
   c. The CSHO submits the completed case file to the supervisor for review of file content and approval of citations.
   d. The case file and citations are processed in accordance with the FOM.

4. Post citation activity – CSHO.

   a. The CSHO receives and reviews abatement information in accordance with the FOM.

b. If the employer requires more time to abate a hazard, the CSHO instructs the employer to provide the information as outlined in the FOM on the Request for Extension of Abatement form.
c. The CSHO reviews the information provided on the request for extension of abatement and discusses with the supervisor as appropriate.
d. The CSHO documents the extension status in a letter to the employer.
e. The CSHO tracks the abatement of hazards to closure.
f. The CSHO documents the abatement information in *OE*.
g. Once all abatements and payments are complete, the CSHO submits the completed case file with audit report to the supervisor for verification of completion.
h. The supervisor verifies appropriate closure of the file and submits to the admin staff, who will then close the file and tiff the case file summary page(s) into the document section of OE.

L. **Case File/Citation Processing Procedure.**

The following is an overview of the case file/citation process. Detailed procedures can be found in the relevant chapters of the FOM.

1. Case File/Citation Processing.

a. The district supervisor reviews completeness of file.
b. The district supervisor approves the file.
c. The district supervisor submits files requiring bureau chief approval to the bureau chief with citation approval sheet.
d. The bureau chief approves file and returns to district supervisor
e. The district supervisor submits the approved file to the admin staff.
f. The admin staff processes the citation package and returns it to the district supervisor for review and approval.
g. The district supervisor compares with case file and signs the citations/in compliance letter and returns the file to the admin staff.
h. The admin staff makes copies of the citations and inserts them into the case file.
i. The admin staff mails the citation packet to the employer by certified mail. The admin staff will also mail in-compliance letter to the employer.
j. The admin staff returns the case file to the CSHO.
k. The admin staff holds the letter to the complainant until the green card is returned or 15 working days have elapsed.
l. Once the green card/receipt is returned or 15 working days has elapsed the admin staff records the receipt date in OE and places the green card/receipt in the case file.
m. The admin staff mails copies of any citations and the letter to the complainant and/or next of kin within 5 working days.
n. If inspection is in-compliance, admin staff closes case file in OE and tiffs the case file summary page(s) into the document section of OE.

2. Post Citation Activity.

a. Upon receipt of a notice of contest or request for informal conference the admin staff date stamps the received request and gives to the district supervisor for review.
b. Admin staff retrieves case file and provides notice of contest/request for informal conference to district supervisor.
c. The district supervisor contacts the employer to verify requests and if appropriate schedules the informal conference in accordance with the FOM.
d. If the employer is filing a notice of contest see step (2l).
e. The district supervisor or designee holds the informal conference with the employer in accordance with FOM Chapter III.
f. The district supervisor completes the Informal Settlement Agreement (ISA) or No Change Letter (NCL) in accordance with the FOM, updates the case file with information from the meeting and returns the case file to the admin staff.
g. The district supervisor updates the OE System.
h. The admin staff mails the ISA or NCL certified (if not hand delivered to employer at IC).
i Upon receipt of the signed ISA or notice of contest, the admin staff provides the information and case file to the district supervisor.
j. If a signed ISA is received the district supervisor counter signs the ISA and provides the case file to the admin staff, copies are made, and a copy of the final signed ISA is mailed to the employer. The admin staff places the original signature copy in the file, updates OE and provides the case file to the CSHO.
k. The district supervisor attempts to contact the employer to notify that the time has elapsed and signed ISA is obtained or, the case is now a final order and then provides the case file to the CSHO.
l. If a notice of contest is received, the admin staff notifies the supervisor. The district supervisor verifies employer's intent to contest.
m The admin staff updates OE and notifies the OSH Review Commission.
n. The admin staff retrieves the case file and makes certified copies of the case file *per FOM Chapter XVI.*
o The CSHO contacts the AG's office to prepare for the hearing.

M. **Complaint/Referral/Accident Intake Procedures.**

The following is an overview of the complaint/referral/accident intake process. Detailed procedures can be found in the relevant FOM Chapter IX *and at the OSH Complaint Desk.*

1. General.

a. All OSH complaints/referrals/accidents will be directed to the OSH Complaint Desk.
b. *All complaints/referrals/accidents will be entered into the OE System.*
c. A hard copy of each complaint/referral/accident will be filed in the complaint desk area.
d. The supervisor of the complaint desk performs periodic audits of complaints/referrals/accidents received to verify information needed for

evaluation by the district supervisor.

e. The supervisor of the complaint desk will review the findings of these audits with CSHOs on the complaint desk during performance evaluation and more frequently if needed.
f. All fatality reports and any updates will be submitted to the complaint desk.
g. The complaint desk will issue all fatality reports and updates.

2. Phone Complaints/Referrals/Accidents.

a. Phone complaints/referrals/accidents are received by the OSH Complaint Desk.
b. If messages are left on the voice mail the Complaint Desk will call the complainant to obtain the needed information.
c. For anonymous messages the CSHO will obtain all the information provided.
d. All information is recorded in OE on the OE complaint/referral/accident form in accordance with FOM Chapter IX. The OE System gives each complaint/referral/accident a distinct tracking number.
e. The CSHO taking the call will review the OE appropriate form to verify completeness.
f. Completed forms are forwarded to the district supervisor by email covering the county that the employer's business resides. Imminent danger complaints are immediately sent to the district supervisor.

3. Electronic Complaints.

a. Electronic complaints/referrals/accidents are received by the CSHO at the Complaint Desk.
b. The Complaint Desk CSHO will respond to the source of the complaint/referral/accident indicating receipt.
c. All information is recorded in OE on the OE appropriate form in accordance with FOM Chapter IX and OIS.
d. Completed forms are forwarded to the district supervisor by email covering the county that the employer's business resides. Imminent danger complaints are immediately sent to the district supervisor.
e. The electronic complaint/referral/accident form will be forwarded to the district supervisor when the appropriate form has been recorded in OE.

4. Mail Complaints.

a. Mail complaints/referrals/accidents are received by the Complaint Desk.
b. All information is recorded in OE on the appropriate OE form in accordance with FOM Chapter IX and OIS.
c. Completed complaints/referrals/accidents are forwarded to the district supervisor by email covering the county that the employer's business resides. Imminent danger cases are immediately relayed to the district supervisor.
d. The mail complaint/referral/accident will be forwarded to the district supervisor when the complaint/referral/accident has been recorded on the appropriate OE form.

6. Unsatisfied Activities.

   a. The complaint desk supervisor, *the district supervisors and the bureau chiefs* will review the unsatisfied activities report monthly.
   b. The complaint desk supervisor will notify the bureau chiefs of any complaints 30 calendar days or more beyond receipt, that have not been addressed.

N. **Training.**

OSH compliance has a responsibility to ensure all employees received adequate training to complete the duties of their position in an effective manner. Well-trained employees are critical to fulfilling the mission of the OSH Division. Each employee will meet with his or her supervisor as soon as possible after beginning employment with the division, to begin the training and development process. During this meeting the supervisor will:

1. Assess the employees past experience, as it relates to their position;

2. Disseminate and review the employee's current job description;

3. Disseminate and review the employees work plan; and,

4. Establish an Employee Development Plan. (Newly hired safety and health compliance officers will be provided a copy of the most current revision of OPN 64 as their initial development plan. OPN 64 was developed to prepare CSHOs to conduct safety and/or health investigations in a professional manner. The division established minimum training requirements during the "Initial Training Program" which when completed will qualify a CSHO to conduct independent inspections.)

   OSH compliance uses various methods to meet training needs. A majority of the training within OSH compliance consists of on-the job training (OJT). However, the OJT training will be supplemented by other training methods including, but not limited to: informal training, formal training (topic specific training), and self-study (technical manuals, research, etc.). OSH compliance is committed to continuing education and efforts will be made to provide each employee with at least 40 hours of training annually (Compliance officers are required to receive at least 40 hours of training annually and to also attend a technical course once every three years). Following the initial establishment of an employee development plan (step 4 above), a new employee development plan will be established annually (this should be done in conjunction with the employee work plan). The supervisor and the employee should work, throughout the year, in completing any training included in the employee development plan.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter II – Compliance Programming



Chapter Effective: February 2000
Revision 29: 06/23/2026

Table of Contents

A. Program Planning

1. Purpose
2. Primary Consideration

B. Inspection/Investigation Types

1. Programmed
2. Unprogrammed

C. Inspection Scope

1. Comprehensive
2. Partial

D. Inspection Selection Criteria

1. General Requirements
2. Scheduling
3. Effect of Contest
4. Employer Contacts

E. Inspection Priorities

1. Order of Priority
2. Efficient Use of Resources

F. Inspection Scheduling

1. Unprogrammed Inspections
2. OSH Division Deferrals
3. Private Sector Programmed Inspections
4. Public Sector Programmed Inspections
5. Construction Targeting Intranet Schedule
6. Agricultural Safety and Health Programmed Inspections
7. Planning, Statistics and Information Management Bureau
8. Confidentiality Agreement with the North Carolina Department of Commerce, Division of Employment Security

Chapter II

Compliance Programming

A. Program Planning.

1. Purpose. The purpose of this chapter is to provide instruction and guidance to Occupational Safety and Health (OSH) Division personnel in planning and implementing compliance operations.

2. Primary Consideration. The primary consideration for compliance operations is the attainment of maximum effective inspection coverage. The guidelines in this chapter will be used for scheduling inspections to address this consideration.

B. Inspection/Investigation Types.

1. Programmed. Inspections of worksites that have been scheduled based upon objective and impartial selection criteria are classified as programmed. These worksites are selected according to targeting schedules for safety and health or special emphasis programs.

   a. Programmed Related. Inspections of employers on multi-employer worksites whose activities were not included in the programmed assignment, such as contractors working at an industrial plant, are classified as programmed related. All employers at the worksite will normally be inspected.

2. Unprogrammed. Inspections scheduled in response to alleged hazardous working conditions that have been identified for a specific employer at a specific worksite are classified as unprogrammed. These types of inspections are further classified as fatality/catastrophe, complaint, referral, monitoring, follow-up, reinspection or unprogrammed related. This category includes all employers directly affected by the subject of the unprogrammed activity.

   a. Unprogrammed Related. Inspections of employers at multi-employer worksites whose operations are at the same site but may or may not be directly affected by the subject of the conditions identified in B.2. are classified as unprogrammed related. Examples would be a referral regarding lack of fall protection against a prime contractor where the compliance safety or health officer (CSHO) finds employees of other contractors exposed to the same fall hazard or a complaint at a construction site where one contractor uses gasoline-powered equipment, but employees of the other contractor are also exposed to carbon monoxide. These 'other' contractors are classified as unprogrammed related.

   b. Monitoring Inspections. Monitoring inspections will be conducted as mandated by a settlement agreement or final order for abatement periods greater than six months or as determined by the supervisor and the professional judgment of the CSHO.

      i. The file is coded for a recommended monitoring visit using the optional code "S 4 M" in block 42 of the inspection report. "M" is followed by the number of the month that monitoring is due. Thus "S 4 M 3, 6, 9, 12" as

a code indicates that monitoring visits are required in March, June, September, and December.

ii. The administrative staff runs the "S 4 M" report as the "list of inspections requiring monitoring." The supervisor will conduct the monitoring inspection or assign it to a CSHO, preferably to the CSHO who conducted the initial inspection.

iii. After abatement is complete or the abatement dates have passed, the monitoring code is removed from the inspection report.

C. **Inspection Scope.**

Programmed and unprogrammed inspections fall into one of two categories, depending on the scope of the inspection.

1. Comprehensive. All areas of the facility will normally be inspected.

2. Partial. An inspection whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.

a. Every partial inspection will include, in addition to its principal focus, a review of injury and illness records, an assessment of any written programs required by the hazard referenced in the assignment and applicable to the employer, and an evaluation of the employer's general safety and health management program for the purpose of determining whether penalty reductions are warranted (reference Field Operations Manual (FOM) Chapter VI - Penalties, section B.9.iii - History/Record of Previous Violations).

b. The information gathered during the review and inspection will be used to confirm or revise the determination of the scope of inspection. Supervisors will determine whether the CSHO can expand the scope of the inspection.

c. A complaint or referral inspection assigned by the supervisor will adhere to requirements described in FOM Chapter IX – Complaints, Referrals and Accidents.

D. **Inspection Selection Criteria.**

1. General Requirements. The priority system for conducting inspections is designed to distribute available division resources as effectively as possible to ensure that maximum feasible protection is provided to the employees of the state.

2. Scheduling. The Planning, Statistics, and Information Management Bureau (PSIM) will ensure that inspections are assigned within the framework of the priorities outlined in this chapter, that they are consistent with the objectives of the division, and that appropriate documentation of scheduling assignments is maintained.

3. Effect of Contest. If an employer scheduled for a programmed or unprogrammed inspection has contested a citation and/or penalty received as a result of a previous inspection and no final order has been entered in the case, the following guidelines apply:

   a. If the employer has contested only the penalty, the inspection will be scheduled in accordance with the guidelines given under paragraph E. – Inspection Priorities, that is, it will be scheduled as though there were no contest.

   b. If the employer has contested all or any of the citation items, the following guidelines apply:

      i. Unprogrammed inspections will be scheduled in accordance with paragraph F.1. – Inspection Scheduling, of this chapter. The scope of such an inspection should normally be classified as partial. All areas related to items under contest should be excluded from the inspection, unless a potential imminent danger is involved.

      ii. Programmed inspections will be scheduled in accordance with paragraph F.3. – Private Sector Programmed Inspections, F.4. – Public Sector Programmed Inspections, F.5. – Construction Targeting Intranet Schedule, and F.6. – Agricultural Safety and Health Programmed Inspections, of this chapter. The scope of the inspection should cover all areas except those directly relating to the items being contested, unless a potential imminent danger is involved.

4. Employer Contacts. Requests for information initiated by employers or their representatives will not cause an inspection to be initiated. Nor will such employer inquiries protect them against regular inspections conducted pursuant to guidelines established by the division. However, if an employer or their representative indicates that an imminent danger exists or that a fatality or catastrophe has occurred, action will be taken in accordance with established inspection priority procedures as described in FOM Chapter VII – Imminent Danger or Chapter VIII – Fatality and Catastrophe Investigations.

E. **Inspection Priorities.**

1. Order of Priority. Unless otherwise noted, priority of accomplishment and assignment of personnel resources for inspection categories will be as follows:

Priority	Category
First	Imminent Danger
Second	Fatality/Catastrophe
Third	Complaints/Referrals

Priority	Category
Fourth	Follow-up/Monitoring
Fifth	Special Emphasis Programmed and Site Specific Targeting
Sixth	General Industry and Public Sector Programmed

2. Efficient Use of Resources. Unprogrammed inspections should be scheduled and conducted prior to programmed inspections. Therefore, the first through the fourth priorities (above) will be conducted prior to programmed assignments (the fifth and the sixth priorities).

   This procedure does not prohibit the district supervisor from making a programmed inspection assignment in conjunction with an unprogrammed assignment. Where the district supervisor gives the CSHO an unprogrammed assignment (e.g., complaint) in conjunction with a programmed inspection for the same site, only one inspection will normally be generated to address both assignments. If joint inspection assignments are made (i.e., safety and health), two inspections will normally be generated to address both assignments; one for safety and one for health.

F. **Inspection Scheduling.**

1. Unprogrammed Inspections. Inspections conducted in response to specific evidence of hazardous conditions at a worksite are considered unprogrammed inspections.

   a. Unprogrammed inspections (excluding follow-ups and monitoring) should be scheduled with the following priorities:

      i. Reports of alleged imminent danger situations from any source, including referrals and complaints, regardless of formality;

      ii. Fatalities/catastrophes (FAT/CAT); (see FOM Chapter VIII for detailed information related to FAT/CAT investigations);

      iii. Media and employer reports of accidents involving serious injuries or hazards of a serious nature;

      iv. Formal complaints assigned for inspection by the supervisor, CSHO referrals (including referrals based upon discrimination complaints) with serious hazards and referrals from other safety and health agencies with serious hazards;

      v. Formal complaints with non-serious hazards assigned for inspection by the supervisor;

vi. Nonformal complaints assigned for inspection by the supervisor.

b. Follow-up Inspections. In cases where a follow-up inspection is necessary, it should be conducted within one year of the final order date. The seriousness of the hazards requiring abatement should determine the priority among follow-up inspections. Follow-up inspections are **required** in the following situations:

i. Fatality inspections where violations were a proximate cause to the fatality;

ii. Willful violations [an inspection with a willful serious violation will be scheduled for a follow-up as required by and in accordance with North Carolina General Statutes (NCGS) 95-136(a)(3)];

iii. Repeat violations;

iv. Instance-by-instance (egregious);

v. Failure to abate notifications;

vi. Citations related to an imminent danger situation;

vii. Whenever an employer fails to provide abatement verification documents for violations that they did not contest, within 13 calendar days after the last violation abatement date, the supervisor will assign a follow-up inspection. The supervisor may authorize a CSHO to initially attempt to secure past due abatement verification documentation via telephone, letter or email. If the attempt to secure abatement documentation in this manner is not successful, the supervisor will assign a follow-up with the time frame specified in paragraph F.1.b. – Follow-up Inspections. The supervisor has the discretion to assign a follow-up inspection at any point in time, after documentation for the last violation abatement date is past due. If pursuing citations for an employer failing to return abatement certification and/or documentation prior to conducting a follow-up inspection, reference FOM Chapter V – Citations, paragraph G.3. – Citation Issuance Procedures;

viii. Whenever the supervisor believes that particular circumstances (e.g., the number and/or the type of violations, past history of the employer, complex engineering controls) indicate the need for a follow-up based on documentation and/or recommendations of the CSHO; and,

ix. When overexposures to air contaminants and noise are documented and cited, even if the employer provides evidence of abatement.

c. Exceptions to Recommended Follow-up Inspections.

i. On a very limited basis, a follow-up inspection may not be necessary where unquestionable proof of abatement has been presented (e.g., when the CSHO observed and documented the correction of the cited condition during the inspection). **Note:** This does not apply to air contaminant and noise overexposures.

ii. The supervisor may determine that a follow-up inspection is not required. Justification for not conducting follow-up inspections may include statements by the employee, employer representative, or other knowledgeable professionals attesting to the correction of the violation. Written signed statements are preferred; however, verbal communications are acceptable if summarized by division personnel in a written memorandum for the case file. **Note:** This does not apply to air contaminant and noise overexposures.

iv. If a follow-up inspection is to be conducted where an employer has been cited for a number of violations with varying abatement dates, the follow-up inspection should not be scheduled until after most, if not all, of the abatement dates set forth for the serious violations in the citation(s) have passed. If the employer has taken satisfactory corrective action, additional follow-up activity normally should not be scheduled unless the supervisor believes that complex engineering controls or other special factors involved in the case warrant such activity.

vii. When a citation is currently under contest, a follow-up inspection will not be scheduled regarding the contested items. If the employer contests the proposed penalty but not the underlying citation, a follow-up inspection normally should not be conducted unless the violations are considered high gravity and the supervisor decides that a follow-up is necessary. If a follow-up inspection is conducted at establishments involved in proceedings before the OSH Review Commission, the CSHO will explain in the opening conference that the inspection will not involve matters before the OSH Review Commission.

d. Follow-up Inspections for Temporary/Mobile Sites. If a temporary worksite, such as a logging or construction site, is closed or work on that particular site is complete before a follow-up can be conducted, at least one other worksite of the cited employer may be inspected to determine whether the employer has similar violations at other controlled worksites. The following procedures will be followed when considering another temporary worksite to inspect for this employer.

i. If the employer's main office is located in the CSHO's compliance district, the compliance officer will proceed to the office and attempt to initiate an opening conference with the employer's management representative. If the management representative is unavailable at the main office, the CSHO will attempt to contact a management representative (this can be done by phone if the representative is not immediately at the office).

ii. If the main office is outside the CSHO's district, the appropriate district supervisor will be notified prior to contacting the employer. The supervisor in the district where the main office is located and the CSHO's supervisor will decide the best way to proceed with the follow-up inquiry and inspection.

iii. If the employer's main office is located outside North Carolina, the CSHO will call the main office and attempt to initiate an opening conference with the employer's management representative by phone.

iv. When the opening conference is held, the CSHO will request a list of active sites in North Carolina from the employer. If the employer has no active sites in North Carolina at the time of the opening conference, the CSHO will request a list of future sites. If the employer is out of business, or no longer active in North Carolina, then no inspection will be conducted.

v. If the employer provides a list of active sites in North Carolina, the CSHO will select a site that is likely to include work similar to that of the original inspection. The CSHO will proceed to the selected worksite and conduct a comprehensive inspection. If the site selected is in a different compliance district, the appropriate district supervisor will be notified prior to the inspection. The supervisor in the district where the site is located and the CSHO's supervisor will decide the best way to proceed with the inspection.

e. Coding and Reports for Follow-up Tracking in OSHA Express (OE).

i. When entering the violation worksheet (OSHA 1B) for the original inspection, CSHOs will track their required follow-up activity utilizing the 'Dates' tab.

A. '19.n. Follow up' will be marked 'Yes'.

B. '19.o. Reason for Follow Up' will be filled with the qualifying information for the follow up. Typed selections may include:

1. Fatality with proximate cause violations

2. Willful/Repeat/Instance-by-instance/FTA violations

3. Imminent danger violations

4. Overexposure

5. No abatement documentation

6. Supervisor discretion

ii. Supervisors can track the follow-up reports utilizing the 'Follow-up Report' which is available in OE under 'Reports' and 'Inspections.' Supervisors should track follow-up activity with regularity ensuring all required follow-up inspections are being conducted.

2. OSH Division Deferrals. Employers who participate in voluntary cooperative programs may be exempt from programmed inspections and eligible for inspection deferrals. Cooperative programs within OSH include the Safety and Health Achievement

Recognition Program (SHARP) and safety and health consultation program, both managed by the Consultative Services Bureau (CSB); the Carolina Star Program, managed by the Education, Training and Technical Assistance (ETTA) Bureau; and OSH Partnerships, managed by CSB. As outlined in FOM Chapter III – Inspection Procedures, the Compliance Bureau will not conduct programmed planned inspections for specific deferral sites for the length of the deferment period. Affected sites will be marked with a deferral date and posted on the OSH Targeting System, with the exception of Building Star sites, which will be listed in the Building Star Exemptions List on the One Stop Shop. CSB, ETTA and Partnership Team Leaders will notify PSIM whenever a deferral has been suspended, an extension granted, or other changes have been made to site documentation. Changes will be reflected on the OSH Targeting System and One Stop Shop in the locations listed above.

Note: Deferrals are made by specific establishment and may not defer all establishments that might be covered by one inspection assignment.

3. Private Sector Programmed Inspections. Programmed inspections normally result in a comprehensive inspection of the worksite.

   a. General. The OSH Division uses a detailed procedure for identifying and selecting particular work establishments for inspection under the general industry assignment schedule. The administrative standards or factors used to develop this schedule are designed to provide broad, employer-neutral representative inspection coverage of working conditions and to place priority on the most hazardous employment classifications. These factors include:

      i. Frequency of injury and illness

      ii. Severity of injury and illness

      iii. Industry employee density

      iv. Length of time since the last comprehensive inspection

      v. Geographic dispersion of inspection activity

      vi. Compliance penetration into a diversity of industrial categories

      Sites will not be included for assignment if the specific site has received a comprehensive inspection of the same type within the past three years (opening conference to date assigned by supervisor for inspection). For example, a site would be excluded from the assignment list for a safety inspection if the site had received a comprehensive safety inspection within a three-year period; however, the site could be included on an assignment list for a possible comprehensive health inspection.

   b. General Industry Assignment Schedule. The Compliance Bureau in conjunction with PSIM and the Information Technology Division (IT) has established a selection process for employers in the private sector. The North Carolina Department of Labor (NCDOL) utilizes two hazard indexes, one for safety data and one for health data. The hazard index for safety is a function of the lost workday case incidence rate (frequency) or total (national) cases with days away,

restricted or transferred (DART) case rate, compiled annually by the Bureau of Labor Statistics (BLS), national industry rank report by serious safety violations (SSV) of 1.0 or higher per inspection (severity), and industry employee density. The hazard index for health is a function of a ranking system that uses an updated listing of national industry rank by serious health violations (SHV) of 0.5 or higher per inspection. Safety and health rankings data are generated by the Occupational Safety and Health Office of Statistics (OSTAT).

Using the compiled data, PSIM and IT apply the annual federal hazard indices for the North American Industry Classification System (NAICS) codes relevant to this State. Using these codes, industry classifications are ranked in descending order by their hazard index: the higher the hazard index, the higher the probability of selection. The upper half of the rankings is classified as Class I and Class II. Inspections are proportioned so that the majority of the general industry programmed planned inspections are selected from the Class I group. OSTAT SSV rankings are based on four consecutive years of national safety inspection data, which includes all standards cited. IT divides these rankings by class for targeting purposes. All Class I assignments for safety and health will be reviewed by the compliance supervisors using their professional judgment to determine if a safety and/or health inspection is warranted based on the industry's Class I ranking and taking into consideration the nature of the industry.

IT divides these rankings by class for targeting purposes. General industry (also referred to as general schedule) assignments on the Safety or Health General Schedule (GS) Targeting Schedules will be reviewed by the OSH Division deputy commissioner, OSH assistant deputy commissioner, and the compliance bureau chiefs prior to being posted on the OSH Targeting System. They will use their professional judgment to determine if safety and/or health inspections are warranted based on the industry's targeted class ranking, the number of sites selected for assignment, and taking into consideration the nature of the industry. The deputy and assistant deputy commissioners will discuss as needed with the compliance bureau chiefs to ensure that the OSH Division's limited resources are utilized in the most effective and efficient means possible. Compliance supervisors will also review general schedule assignments prior to assigning for inspection and use their professional judgment to make sure available division staff will reach the most hazardous industries in North Carolina.

c. OSH Division Safety Targeting Classes.

i. Class I. Any industry with the DART equal to or greater than twice the average national private sector rate, or the SSV ranking is in the highest 25% (75th percentile and above).

ii. Class II. Any industry with the DART equal to or greater than one- and one-half times the average national private sector rate but less than twice the average national private sector rate, or the SSV rank is at the 50th percentile but less than the 75th percentile.

iii. Class III. Any industry with the DART equal to, or greater than the average national private sector rate but less than one- and one-half times

the average national private sector rate, or the SSV rank is at the 25th percentile but less than the 50th percentile.

iv. Class IV. Any industry with a DART equal to, or greater than one half the average national private sector rate but less than the average national private sector rate or the SSV rank is in the lowest 25% (less than the 25th percentile).

v. Class V. Any industry with the DART less than one half the average national private sector rate.

d. OSH Division Health Targeting Classes. The hazard index for health inspection general industry assignments is based exclusively on the private sector national rankings of SHV per inspection. OSTAT compiles five fiscal years of data by industry (NAICS). Each industry must have ten or more inspections and 0.5, or more, serious violations cited to be included in the rankings. IT separates the industry codes into five categories (Class I-V).

e. Inspection Goal. The OSH Division established a goal for its program by estimating the number of programmed planned (general industry) inspections that are anticipated to be performed in a given year. To achieve this goal on a uniform basis, the hazard index of each classification (Classes I-V) is multiplied by a constant so that the number of establishment inspections in each classification is proportional to its hazard rating.

f. Random Selection (Employer Neutral). Random selection of worksites is accomplished for PSIM by IT utilizing the cold fusion application server, which provides a random number generator. The targeting system is a computer program that randomly selects the sites and produces the inspection assignments. The computer database includes a "universe" of active sites obtained from the North Carolina Department of Commerce, Division of Employment Security (DES) Unemployment Insurance (UI) master list and from Reference USA of businesses and industries in the state and each site's industry classification. Each site or any number of sites in this OSH Establishment Database can be randomly selected, utilizing the cold fusion application server. The system is designed to select sites from the random candidates file until the number of sites needed for each hazard classification is satisfied, or the available sites are exhausted. Assignment reports are generally produced on an annual basis and the selection is random to include the entire state. Assignments not inspected may be added to any new assignment list. Final geographic distribution of inspections for particular industry classifications is ultimately determined by the industry density for particular classifications within the state. The inspection assignment reports are located on the limited-access intranet and are available to compliance supervisors. The supervisors (or their designated CSHO II) make the inspection assignments and update the assignment information.

4. Public Sector Programmed Inspections. Through the OSH Division Public Sector Survey, injury and illness data is collected from state and local government employers controlling more than ten employees to aid in the planning and implementation of interventions for the reduction of workplace injuries and illnesses involving public sector employees. OSH Division interventions may include: inspections, consultations, and education and

training. The collection of this data is authorized under NCGS 95-133 – Office of Director of Occupational Safety and Health; Powers and Duties of Director, and NCGS 95-148 – Safety and Health Programs of State Agencies and Local Governments.

a. Collection Process/Identification of Employers for Inspection. PSIM will perform public sector data collection using survey forms to obtain public sector injury and illness information. PSIM will maintain a list of North Carolina public sector employers using the UI file of the DES database, the Reference USA database, and through public sector verification (as defined by 29 CFR 1904 – Recording and Reporting Occupational Injuries and Illnesses) for employers controlling, as a whole, more than ten employees.

Data collection will be conducted on an annual basis with the objective of securing occupational injury/illness data from each surveyed public sector employer for the previous calendar year. PSIM will mail survey forms to state and local government employers with a total of 11 or more employees. This is consistent with the North Carolina Occupational Safety and Health Act of 1973, which extended coverage of the Occupational Safety and Health Act of 1970 to include public sector employers.

Public sector employers will be surveyed each year consistent with their selected option (exercised in 2004) for the submission of their injury/illness data. Public sector employers were allowed to report their data by individual establishments (as defined in 29 CFR 1904 - Recordkeeping); by departments/divisions; or for the employer as a whole.

Survey recipients will complete the survey forms using injury and illness log data and include average employment and hours worked for the referenced calendar year. PSIM will sort the submitted surveys by employer categories (see the most current revision of OPN 128 - Public Sector Surveys and Inspections, Appendix A).

After a minimum of 90 calendar days from the date that the Public Sector Survey forms are initially mailed to the contact person for each survey, the names and addresses of non-responders will be added to the inspection targeting schedule.

b. DART Rates. Using the North Carolina Public Sector Data Collection System Database established by IT, a DART rate will be calculated for each public sector survey responder (individual establishment, department/division, or employer as a whole). The DART rate (includes Cases with Lost Workdays; Cases with Days of Restricted Work Activity; and Cases with Days of Transfer to another job) will be calculated as follows:

DART Rate = [N / EH] x 200,000

Where **N** = total of columns H and I on the OSHA 300 log; **EH** = total number of employee hours worked for a calendar year; and **200,000** = base of working hours for 100 full time equivalent employees.

The calculated DART rates will be used to identify public sector employers to be assigned to the targeting schedule for a programmed-planned OSH compliance inspection.

PSIM will calculate a three-year aggregate DART rate for all survey responders in the identified employer categories (see Appendix A of OPN 128 – Public Sector Surveys and Inspections) that includes the injury/illness data for the most recent three-year period. This aggregate public sector DART rate will be the target rate for each specific category and will also be used in determining the high DART rate employer categories to focus inspection activity (as referenced in the most current version of OPN 128).

c. Public Sector Targeting. Public sector targeting identifies the public sector survey participants to be assigned for a programmed-planned OSH compliance inspection. Those participants with a DART rate for the most recent survey year that is equal to or greater than the target rate for their specific category will be assigned to the targeting schedule with an emphasis on Class I and Class II.

Certain exemptions or exclusions may apply to various state and local government employers. These exemptions or exclusions include:

i. Previous Inspection. A specific public sector establishment covered by a survey with a DART rate at or above the target rate for its specific category will not be included for assignment if the specific establishment has received a comprehensive inspection of the same type within the past three years (opening conference date to date assigned by the supervisor for inspection). For example, a specific establishment would be excluded from a safety inspection if the site received a comprehensive safety inspection within a three-year period. However, the site could be included on an assignment list for a possible health inspection. If a number of establishments are covered under one survey response, the exclusion of one establishment will not exclude other establishments covered by the survey from being assigned for an inspection.

ii. Employer Size. Public sector employers controlling less than 11 employees, as a whole, will not be included in the survey or the targeting schedule. The employment level is based on employer input and various sources available to the PSIM Bureau. If a programmed planned assignment is made through the targeting schedule and on-site verification results reflect that the employer has ten or fewer employees controlled by the employer as a whole, the CSHO will contact their supervisor to discuss and make a management decision of whether to continue with the assigned inspection, even though the employer controls ten or fewer employees, making them exempt from maintaining the 300 log. Note that establishments of employers controlling ten employees or fewer could be assigned for an inspection as a result of an accident, complaint or referral.

iii. Private Sector Employers. Private sector employers working on public sector sites are not included in this program of targeting the public sector for comprehensive inspections. However, these employers may be inspected as programmed-related during the course of the inspection of a public sector establishment.

iv. Volunteer Fire Departments. This program will not apply to volunteer

fire departments for public sector employers with a population of 10,000 or less. However, the program does apply to employees (full time and part-time) of fire departments, regardless of the population.

d. Public Sector Assignment Schedule.

i. Targeting Schedule Generation. PSIM will utilize the North Carolina Public Sector Data Collection System and the database established by IT which will calculate the DART rates discussed in paragraph F.4.b – DART Rates. Survey responders will be sorted by their calculated DART rates, higher-to-lower, within each employer category. Survey non-responders within each employer category will be assigned as Class I within their category.

Survey responders will be divided into four classifications:

A. The top 25% (of all survey responders and any non-responders) will be Class I;

B. The second 25% will be Class II;

C. The third 25% will be Class III; and,

D. The fourth 25% will be Class IV.

Assignments to the targeting schedule will primarily be made from Class I and Class II survey participants. However, survey responders with a DART rate below the target rate for their specific category may be randomly selected for assignment to the inspection list using a random number generator developed by IT.

ii. Targeting Schedule. Public sector targeting assignments will be made available on an annual basis utilizing the most recently available calendar year of injury and illness data as collected through the Public Sector Survey. PSIM will provide the new targeting schedule to the Compliance Bureaus via the OSH Targeting System on the One Stop Shop.

iii. Previous Schedules. Public sector assignments not inspected in one year may be added to the new targeting schedule for the next year.

iv. Process of Inspection. Public sector assignments from the targeting schedule may be assigned in any order that makes efficient use of the division's resources. Compliance supervisors are encouraged to focus the inspection resources on those listed assignments on the public sector targeting schedule that are identified as being in one of the high DART rate categories, which is any category with an aggregate DART rate higher than the current public sector DART rate.

e. CSHO Responsibilities.

i. Inspection Preparation. Inspections conducted under the authority of this inspection targeting schedule will be comprehensive programmed inspections as discussed below:

A. If the assignment is for a single establishment, a comprehensive inspection will be conducted for that specific site location.

B. If the assignment listing is for a department/division, it may be impractical to perform a comprehensive inspection of all of the covered establishments as reflected on the secondary page of the assignment. The CSHO, in consultation with the compliance supervisor, must use their expertise and experience to determine which of the covered establishments to inspect.

1. The CSHO will perform a hazard assessment of the survey assignment which may include establishments covered by the high DART rate categories and should be considered for inspection.

2. The CSHO will inspect the employer's written safety and health programs and procedures; minutes from safety committee meetings and self-audits; and injury/illness records as part of the hazard assessment.

ii. Inspection Process. Consideration must be given to all potentially hazardous areas or operations. Where they are applicable to the survey assignment, those operations and processes covered by the identified high DART rate employer categories should be included in the inspection process.

A. All inspections should be initiated at the primary address of the survey assignment listed on the primary page of the targeting schedule.

B. During the inspections conducted under these assignments, the CSHO will review the OSHA 300 and 300A for the calendar years specified in the most current revision of OPN 128 – Public Sector Surveys and Inspections for the establishment, department/division, or employer identified on the assignment. (See the most current revision of Standards Notice (SN) 75 – Public Sector Establishments for Recordkeeping and OPN 128 for information related to public sector establishments.) The DART rates for the three years will be recalculated as per paragraph F.4.b.

1. If the recalculated DART rate for the survey year for the assignment is below the target rate for the employer's specific category, but the recalculated DART rate for the following year is at or above that target rate, the CSHO will complete the inspection.

2. If the recalculated DART rate for the survey year for the

assignment is at or above the target rate for the employer's specific category, the CSHO will proceed with the inspection even if the following year is below the target rate.

3. If the recalculated DART rates for both the survey year and following year are below the target rate for the employer's specific category, the CSHO will do a 'records only' inspection.

C. If one or more of the establishments covered by an assignment (as referenced on the secondary page of the assignment) is primarily an administrative or academic entity, a partial inspection may be conducted. The CSHO should review the injury/illness records; review any written safety and health program document; and conduct employee interviews to confirm the absence of any high hazard activities. The reason for a partial inspection will be documented in the inspection file.

D. The inspection process will be organized in a manner that causes the least amount of disruption for the inspected employer. If multiple assignments exist for the same public sector employer, every effort should be made to coordinate the scheduling of these inspections. CSHOs should hold a consolidated opening conference with the employer's top management to schedule on-site inspections within a reasonable period of time; and hold a consolidated closing conference at the end of the inspection process. Citations issued (if any) should be consolidated into one mailing. Post-inspection discussions with the employer's management (such as informal conferences) should be consolidated to the extent feasible.

iii. Recording and Tracking.

A. CSHOs will complete a separate inspection report for each establishment inspected under a public sector assignment as referenced in paragraph F.4.f.iii.C. below.

B. CSHOs will verify the establishments covered by the survey assignment. The list of designated establishments covered by a specific assignment is contained on the secondary page of the Public Sector Targeting Schedule. At the beginning of each inspection, the CSHO should review this list with the employer's management to ensure all active designated establishments are listed correctly and identify any closed or inactive establishments.

Note: CSHOs are to use the Site Information Change Request Form on the OSH Targeting System web page to communicate and relay establishment information, survey and establishment designations or other public sector changes to PSIM.

C. CSHOs will verify the employer's UI number and ensure they enter the correct public sector establishment number (UI number) on the inspection report for each establishment inspected. UI numbers contain 12 total letters or digits. For public sector establishments, the UI number will contain a 'P' or 'PS' in the last 5 spaces (1234567-P2345 or PS282). The correct 'P' or 'PS' number for each establishment is listed on the secondary page of the Public Sector Targeting Schedule. Employer unemployment insurance information included in inspection files will be marked "confidential" by the CSHO and will not be released by NCDOL. Any questions regarding a UI number will be directed to PSIM.

D. CSHOs will ensure they identify the employer correctly in the Ownership Block of the inspection report. Employers who are county or municipal employers will be identified as "B. Local Government." State employers will be identified as "C. State Government."

E. There are **no** specific codes for public sector inspections to be entered on the inspection report form under Strategic Plan Activities, National Emphasis Programs, Local Emphasis Programs or Local Initiatives.

F. If the inspection process includes actions by the CSHO that qualify as program improvements, the CSHO will enter the appropriate code under the Hazards Section of the Strategic Plan Activities block in the inspection report.

iv. North Carolina Public Sector Database. The Public Sector Survey uses the DES UI Database and the OSH Establishment Database as a basis to determine a list of all public sector employers (with 11 or more employees controlled by the employer as a whole). The UI Database is controlled and maintained by DES and the information contained therein is not releasable by anyone without explicit authorization from DES. PSIM and IT will periodically check for additions/removals of public sector employers from the database and make changes as required to conduct the survey. Compliance or CSB will forward to PSIM any differences found in NAICS Codes, addresses, number of employees, or employer names per F.4.f.iii.B. above.

PSIM has developed its own NC Public Sector (NCPS) Database for survey and inspection targeting purposes. The NCPS Database contains over 9,000 establishments and survey participants. It is updated as necessary by the PSIM Bureau. The information contained in this database is also not releasable to the general public due to the fact that the DES UI Database is used as the basis for its content.

5. Construction Targeting Intranet Schedule. The OSH Division targeting schedule is administered by OSTAT. The PSIM Bureau administers the schedule for the division and is the contact bureau for OSTAT. The schedule is authorized by federal OSHA. OSH Division compliance supervisors are permitted access to the schedule.

a. Schedule Overview. Construction targeting is designed to provide timely data on upcoming or active construction projects, including project location, owner, general contractor, and project specific information. OSHA's OSTAT operates and maintains the targeting schedule. OSTAT randomly selects sites in the ten OSH Division districts. OSHA employs F.W. Dodge as the provider of building project information.

b. Site Selection. The schedule is designed to select assignments on a random statistical basis. Construction targeting chooses a wide-range of sites for assignment including: residential (excluding single-family housing); non-residential projects; public buildings and heavy construction projects. Monthly, F.W. Dodge provides OSTAT with a list of construction projects, which are estimated to be 30% - 60% complete. Assignments issued are based on a construction duration model encompassing: accurate start date; estimated duration of project; type of project; dollar value; ownership; number of stories; and a seasonal adjustment. Construction projects are then randomly selected by OSH district. Each selected project is assigned a Project Identification Number (PID) or Dodge Number.

c. Construction Intranet Operation. Each OSH Division compliance supervisor is assigned a user ID and password. Compliance is instructed to coordinate assigning projects involving comprehensive safety and health inspection activity. Operators of the system may view inspection sites, special emphasis sites, early warning sites, and archived sites. Options may be selected for changing deletion criteria for the inspection site list, number of monthly requested inspection sites, developing a special emphasis program, request supplemental sites for inspection, archive sites, and search the database.

i. Inspection Site List. Randomly selected assignments for each OSH Division district. Supervisors may change deletion criteria of selection process to meet their district needs. Sites are available on a monthly basis.

ii. Special Emphasis Site List. Supervisors have the option to implement special emphasis programs using a variety of options.

iii. Early Warning Site List. Report that identifies major dollar value construction projects by estimated start date. This alerts compliance supervisors of these upcoming projects for planning purposes only. When an early warning project is 30% complete (estimated), the site will be assigned to the monthly inspection site list.

iv. Archiving Inspection Sites. When inspections are completed from the Inspection Site List or the Special Emphasis Site List, enter in OSHA Express (inspection report, Field 42) N-0-6 and the Dodge Number. Enter "N" in the TYPE field, "06" in the ID field and the "Dodge Number" in the VALUE field. Completed or canceled projects may be handled so as not to produce an inspection report and 000 Inspection. Instead of entering "completed" or "canceled" in the inspection report, click on an assignment in the Inspection Site List and then click the archive button. The next screen will ask the user to input the inspection

number, enter "completed", or enter "canceled." This step will archive the selected assignment and remove it from the Inspection Site List.

Note: Construction intranet targeting is designed to archive sites using the inspection report, Field 42 on OSHA Express. Selected projects are archived indefinitely.

6. Agricultural Safety and Health Programmed Inspections. Programmed inspections will be divided into two categories: Agricultural Worksite Inspections and Post-Occupancy Inspections of Migrant Housing. Agricultural worksite inspections will be comprehensive inspections of the workplace and will include all housing provided to migrant farm workers, if applicable. Post-occupancy inspections of migrant housing will be partial inspections and will include housing and field sanitation, if applicable.

   a. General. The Agricultural Safety and Health (ASH) Bureau, in conjunction with PSIM and IT, has established a selection process for agricultural worksites and post-occupancy inspections of migrant housing. The selection process is based on administrative standards and factors; it is designed to provide a broad, employer-neutral representation of inspections of agricultural employers. These programmed inspections are conducted to randomly monitor compliance with the Occupational Safety and Health Standards for Agriculture (Part 1928) and the Migrant Housing Act of NC.

   b. Targeting Schedule Generation. ASH, PSIM and IT will use the ASH database and the OSH Targeting System database to produce two randomly selected assignment listings as follows:

      i. Agricultural Worksite Inspections. Assignments will include employers who fall within agricultural industry classifications from the OSH establishment database who meet the following criteria:

         A. Employers with 11 or more employees controlled by the employer, who fall within agricultural industry classifications (NAICS 111, 112, 115), who are at or above the most recent national DART rate for the industry (NAICS 11 – Agriculture, forestry, fishing and hunting).

      ii. Post-Occupancy Inspections of Migrant Housing. Assignments will include operators of migrant housing who meet the following criteria:

         A. Registered operators of migrant housing who were inspected by the NCDOL for the most current year and found not to be in 100% compliance.

         B. Registered operators of migrant housing who were issued a new grower identification number for the current or previous year, inspected by the NCDOL for the most current year and found not to be in 100% compliance.

         C. Any operator of migrant housing that was issued a civil penalty in the previous year for violations of the Migrant Housing Act or

employers who have a received a willful, serious violation and a final order has been entered per NCGS 95-136(a)(3) – Inspections.

c. Targeting Schedule. Assignments for agricultural worksite inspections will be made available on an annual basis and assignments for post-occupancy inspections of migrant housing will be made available on a biannual basis using preoccupancy inspection data for the current registration year. PSIM will provide the new targeting schedule to the ASH Bureau via the OSH Targeting System on the One Stop Shop. The ASH bureau chief and the CSHO II will make the assignments to the compliance officers and update the targeting schedule.

d. ASH Targeting Classes for Post-Occupancy Inspections of Migrant Housing.

i. Class I. Any registered migrant housing site that was found not to be 100% in compliance at the time of the preoccupancy inspection and the number of violations observed were equal to or greater than 21. Eighty-five percent of all migrant housing sites in Class I will be added to the targeting schedule.

ii. Class II. Any registered migrant housing site that was found not to be 100% in compliance at the time of the preoccupancy inspection and the number of violations observed were between 11 and 20. Eighty-five percent of all migrant housing sites in Class II will be added to the targeting schedule.

iii. Class III. Any registered migrant housing site that was found not to be 100% in compliance at the time of the preoccupancy inspection and the number of violations observed were between 4 and 10. Eighty-five percent of all migrant housing sites in Class III will be added to the targeting schedule.

iv. Class IV. Any registered migrant housing site that was found not to be 100% in compliance at the time of the preoccupancy inspection and the operator was issued a new grower identification number for the current or previous year. Eighty-five percent of all migrant housing sites in Class IV will be added to the targeting schedule.

v. Class V. Any operator of migrant housing that was issued a civil penalty in the previous year for violations of the Migrant Housing Act. Seventy-five percent of all migrant housing sites in Class V will be added to the targeting schedule.

e. Previous Schedules. Assignments for post-occupancy inspections of migrant housing may be added to the new targeting schedule for the next year if the housing site was found not to be in 100% compliance during the preoccupancy inspection that year.

f. Inspection Assignment Process. ASH assignments from the targeting schedule may be assigned in any order that makes efficient use of the bureau's resources.

g. Inspection Goals. Each fiscal year, ASH will establish inspection goals based on the number of programmed inspections that are reasonably anticipated to be performed.

7. Planning, Statistics and Information Management Bureau. PSIM is responsible for working with OSHA's Office of Statistics, CSB, DES and IT on issues which may arise from use of this intranet targeting system. Compliance supervisors and the ASH Compliance bureau chief should contact PSIM with all questions or concerns about targeting.

8. Confidentiality Agreement with the North Carolina Department of Commerce, Division of Employment Security. NCDOL has signed a confidentiality agreement for the use of the UI database. The OSH Division has certified its understanding and acceptance that any UI information/data released to NCDOL by DES is to be used in accordance with NCGS 96-4(x) – Confidentiality of Records, Reports, and Information Obtained from Claimants, Employers, and Units of Government. It is forbidden to release, publish or otherwise disclose any information or data which can be used to identify, either directly or indirectly, a specific unit. Only authorized division personnel will use the DES data for the targeting purposes of the OSH Division.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter III - Inspection Procedures



Chapter Effective: February 2000
Revision 30: 10/16/2024

Table of Contents

A. Responsibilities

B. Preparation

1. General Planning
2. Preinspection Planning
3. Joint Safety and Health Inspections
4. Anticipatory Warrants
5. Inspection Materials and Equipment
6. Safety and Health Rules of the Employer
7. Expert Assistance
8. Immunization and Other Special Entrance Requirements
9. Personal Security Clearance
10. Identity Theft

C. Advance Notice of Inspections

1. Policy
2. Procedures

D. Conduct of Inspections

1. Entry of the Workplace
   a. Time of Inspection
   b. Severe Weather
   c. Presenting Credentials
   d. Refusal to Permit Inspection
   e. Forcible Interference with Conduct of Inspection or Other Official Duties
   f. Release for Entry
   g. Bankrupt or Out of Business
   h. Strike or Labor Dispute
   i. No Inspection
2. Employee Participation
3. Opening Conference
4. Walk Around Representatives
5. Special Situations
6. Inspection of Records and Posting
7. Walk Around Inspection
8. Closing Conference

E. Abatement

1. Period
2. Reasonable Abatement Date
3. Abatement Period Exceeding 30 Calendar Days
4. Verification of Abatement
5. Effect of Contest Upon Abatement Period
6. Feasible Administrative, Work Practice and Engineering Controls
7. Multi-step Abatement

Table of Contents, cont'd.

F. Employer Abatement Assistance

1. Policy
2. Type of Assistance
3. Disclaimers
4. Procedures
5. Services Available to Employers

G. Follow-up Inspections

1. Inspection Procedures
2. Failure to Abate
3. Sampling
4. Reports

H. Conduct of Monitoring Inspections

1. General
2. Procedures

I. NIOSH FACE and FFFIP Program

1. Purpose
2. Areas of Emphasis
3. NIOSH Program Investigations
4. Contact With NIOSH

Appendix III-A: Sources of Establishment Information

Appendix III-B: Archived File Retrieval Request Procedure

Appendix III-C: Warrant and Subpoena Application Forms

Appendix III-D Specific Jurisdictional Issues

Appendix III-E Video and Sound Recording Release

Chapter III

Inspection Procedures

A. **Responsibilities.**

1. The primary responsibility of the North Carolina Department of Labor, Occupational Safety and Health (OSH) division is to carry out the mandate given to the Commissioner of the Department of Labor (the department), namely,

   "to assure so far as possible every working man and woman in North Carolina safe and healthful working conditions."

2. The Occupational Safety and Health Act of North Carolina (the act) is found in the North Carolina General Statutes (NCGS) Chapter 95, Article 16 and outlines the duties of employers as follows:

   a. Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees

   b. Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article

3. To accomplish its mandate, the division employs a wide variety of programs and initiatives. A key component of the responsibilities of the division is the enforcement of standards through the conduct of effective inspections. Effective inspections require identification, professional evaluation and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case. This chapter specifies general procedures to be followed on all inspections.

B. **Preparation.**

1. General Planning. It is important that the compliance safety and health officer (CSHO) spend an adequate amount of time preparing for an inspection.

   a. CSHOs should plan individual inspections in advance in coordination with their district supervisor and reflecting the priorities in Chapter II – Compliance Programming.

   b. District supervisors should ensure that CSHOs carefully review available data for information relevant to the establishments scheduled for inspection. When CSHOs need additional information concerning the type of industry to be inspected, the district supervisor should be consulted. (See Appendix III-A - Sources of Establishment Information, for a list of available resources.)

   c. During review of previous inspection case files, CSHOs will note those citations that were issued and their abatement status as documented in the case file, especially those high gravity serious and willful. (See Appendix III-B –Archived File Retrieval Request Procedures, for instructions on requesting closed case files.)

2. Preinspection Planning. Due to the wide variety of industries and associated hazards likely to be encountered, preinspection preparation is often helpful to the conduct of a quality inspection. The CSHO together with the district supervisor, if appropriate, will carefully review the following:

   a. All pertinent information contained in the old case files and appropriate reference sources to become knowledgeable concerning the potential hazards and industrial processes that may be encountered. The CSHO, with the district supervisor, will identify the personal protective equipment necessary for protection against these anticipated hazards. The CSHO should also reference the Department's Safety and Health Manual.

   b. Based on experience and information on file concerning the establishment to be inspected, the CSHO will select the instruments and equipment that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration. (See Chapter XV – Industrial Hygiene Compliance and/or the OSHA Technical Manual.)

   c. Prior to an inspection or during the course of an inspection, the CSHO may come across "unusual or ground-breaking circumstances" where something serious has occurred or is anticipated, such as a possible ergonomics problem, fatality, explosion, serious health issues, willful citations, etc. In these cases, CSHOs are to determine the need for the Labor Section of the N.C. Attorney General's Office (AG's office) and the Director's Office involvement before they have closed the inspection. CSHOs are required to discuss the case with the district supervisor prior to contacting the AG's office. The purpose behind this guidance is to allow early involvement of the AG's office in cases likely to go to contestment. In this way, sufficient evidence needed to prove a case can be gathered (through subpoena, if necessary) and the issuance of legally defensible citations can be ensured.

      Early involvement by the AG's office is expected to enhance the division's ability to prove cases which should cut down on contestments and appeals. If the AG's office is contacted, the CSHO will note in the case file the attorney contacted and direct additional inquiries to the same attorney. If possible, the same attorney should also be involved at informal conferences and contestment hearings.

3. Joint Safety and Health Inspections. When joint inspections are conducted or when a referral is made in-house, the CSHOs should review the recommended citations to keep violated standards from being cited twice. Penalty adjustment factors should agree and, if there is no undo delay, an attempt should be made to issue the citations at the same time. Then, if the employer requests it, all post citation activity (like informal conferences) can also be handled jointly.

4. Anticipatory Warrants. 29 CFR 1903.4 authorizes the OSH division to seek a warrant in advance of an attempted inspection if circumstances are such that "preinspection process (is) desirable or necessary." The act also authorizes the director of the OSH division to issue administrative subpoenas to obtain necessary evidence.

   a. The policy of the division is generally not to seek warrants without specific evidence that the employer is likely to refuse entry. [See the Anticipatory Warrant List in the Field Information System (FIS) under Memos.] However, the director may, on a case-by-case basis, authorize compliance personnel to seek a

warrant in advance of an attempt to inspect or investigate whenever circumstances indicate the desirability of such warrants.

Note: *Examples of such circumstances would be evidence of being denied entry in previous inspections, or awareness that the employer's job will only last a short time, or that job processes will be changing rapidly.*

b. Administrative subpoenas may also be issued prior to any attempt to contact the employer or other person for evidence related to an inspection or investigation.

5. Inspection Materials and Equipment. The CSHO will have all report forms and handouts available and in sufficient quantity to conduct the inspection and all assigned personal protective equipment available for immediate use and in serviceable condition.

a. If, based on the preinspection review or upon facts discovered at the worksite, a need for unassigned personal protective equipment is identified, the district supervisor will ensure that any required equipment is provided. The district supervisor will ensure that the CSHO has been trained in the uses and limitations of such equipment, prior to its use.

b. All CSHOs are assigned and/or provided with approved hard hats, approved safety glasses with permanently or rigidly attached side shields and approved safety shoes. These will be immediately available during each inspection and will be worn by the CSHOs when required by the worksite hazards. This equipment (as a minimum) must be worn on all construction sites. This will set an example for industry and provide minimum acceptable protection for the CSHO.

c. Inspections involving the use of respirators will not be assigned without the CSHO having had an adequate fit test within the last year. Since respirators with tight-fitting face pieces require the skin to be clean shaven at the points where sealing occurs, CSHOs assigned to conduct inspections which involve the use of such respirators will not have interfering facial hair.

d. If there is a need for special or additional inspection equipment, the district supervisor will be consulted to ensure that training in the use and limitation of such equipment has been completed prior to its use. The district supervisor will ensure that a review or recheck in the use of all equipment is given to the CSHOs periodically.

e. If it is determined that the use of an Unmanned Aircraft System (UAS), or drone, would be beneficial to the collection of evidence during the inspection, the district supervisor will contact the UAS program manager. All attempts will be made to provide these services when available.

6. Safety and Health Rules of the Employer. 29 CFR 1903.7(c) requires that the CSHO comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.

7. Expert Assistance. When the need for additional expert assistance on a particular inspection is identified, the district supervisor will arrange through other division district supervisors for the assistance of CSHOs with experience relevant to the hazards and/or equipment of the inspection. If division specialists are not available, or when otherwise desirable, the director's office will arrange for the procurement of the services of

qualified consultants external to the department. Chapter VIII – Fatality and Catastrophe Investigations provides additional details on the selection of experts.

a. Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to, noise, air contaminants, complicated machine guarding and construction.

b. Division specialists may accompany the CSHO or perform their tasks separately. Consultants from outside the division must be accompanied by a CSHO. Division specialists and outside consultants will be briefed on the purpose of the inspection and personal protective equipment to be utilized.

c. All data, conclusions and recommendations from the assigned specialists will be made part of the inspection report, including information on any resultant actions.

8. Immunization and Other Special Entrance Requirements. Many pharmaceutical firms, medical research laboratories and hospitals have areas which have special entrance requirements. These requirements may include proof of up-to-date immunization and the use of respirators, special clothing or other protective devices or equipment.

a. The CSHO will not enter any area where special entrance restrictions apply until the required precautions have been taken. It will be ascertained prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the district supervisor and CSHO cannot make a determination through consultation, the bureau chief or district supervisor may telephone the establishment using the following procedures. Such communication will NOT be considered advance notice. (See 29 CFR 1903.6 – Advance Notice Inspections, and Section C – Advance Notice of Inspection, of this chapter if advance notice is to be given.)

i. Telephone as far in advance of the proposed inspection date as possible so the employer cannot determine a time relationship between the communication and a possible future inspection.

ii. State the purpose of the inquiry and that an inspection may be scheduled in the future. Do not give a specific date.

iii. Determine the type of immunization(s) and/or special precautions required and the building or area which has restricted access.

b. If immunization is required, the district supervisor will ensure that the inspecting CSHO has the proper immunization and that any required incubation or waiting period is met prior to the inspection. Those immunizations necessary to complete inspections will be provided by the division. (See Section D.7.e.ii – Walk Around Inspection, for procedures to follow if immunization areas are initially identified during walk around inspection.)

9. Personal Security Clearance. Some establishments have areas which contain material or processes which are classified by the U. S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the district supervisor will assign a CSHO who has the appropriate security clearances (from the Government). The director's office will ensure that an adequate number of CSHOs with appropriate security clearances are available.

10. Identity Theft. The OSH division is concerned with protecting the identity of employees, employers and others who may participate in an inspection. Any information obtained (verbally or through documents not included in the case file) during the course of an inspection that is considered personal identification will be maintained on the Confidential Information Log (located under Forms in the FIS). This log will be maintained in the attachments section of OSHA Express. This is the **only** place this type of personal identification information will be located. **Employer Federal tax ID numbers, employers using their personal social security number for their business, and Unemployment Insurance Number** will be included in the establishment details form of OSHA Express. This establishment information is considered to be protected as it requires multiple passwords to access, and is not included with any distributed case file information.

    The Confidential Information Log will be purged from closed case files per Chapter XVI – Administrative File Activities, Appendix B – Case File Retention/Disposition Guide for Closed Files. Examples of personal identification information include: employee's Social Security numbers; birth dates; Dunn & Bradstreet numbers; driver's license numbers; state identification card numbers; passport numbers; identification card numbers issued by a foreign consulate; personal identification numbers (PIN); electronic identification numbers; personal email names and addresses; internet account numbers; internet identification names; digital signatures; biometric data; internet passwords; parent's legal surnames prior to marriage; financial records, including but not limited to, checking or savings account numbers, debit card or credit card numbers, or any other information or numbers that can be used to access a company or person's financial resources. Any of the aforementioned examples of confidential information will be included and listed on this form if verbally provided to OSH or acquired from documents or information otherwise not made part of the case file. If this type of personally identifiable information (PII) is provided in written or typed format and the decision is made to actually incorporate that document into the case file, then the information will not be listed on this log and should not be redacted by OSH compliance or agricultural safety and health (ASH) staff.

C. **Advance Notice of Inspections.**

1. Policy. NCGS 95-136 – Inspections, and 29 CFR 1903.6 – Advance Notice of Inspections, contain a general prohibition against the giving of advance notice of inspections, except as authorized by the director's office.

    a. In the instance of an employer-reported fatality, hospitalization, amputation or loss of an eye, the CSHO or district supervisor may contact the employer to gather pertinent company and employee information and the location/details of the accident, as well as request that the accident scene be preserved to the extent possible prior to the CSHO visiting the site. This will not be considered advance notice as the employer would already be aware of the possibility of an OSH compliance activity as the result of their reporting. Care should be taken on the part of the CSHO and district supervisor to not divulge any specific information regarding an onsite inspection.

    b. The act regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, NCGS 95-136 prohibits unauthorized advance notice and authorizes the division to enter worksites "without delay" in order to preserve the element of surprise.

c. There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice.

d. Advance notice of inspections may be given in the following situations:

i. In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;

ii. When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary, (e.g., air monitoring on second shift or side-by-side air monitoring by the employer);

iii. To ensure the presence of employer and employee representatives or other appropriate personnel who, as determined by the director's office, are needed to aid in the inspection; or

iv. When the director's office determines that giving advance notice would enhance the probability of an effective and thorough inspection, for example, in complex fatality investigations.

e. Advance notice exists whenever the director's office authorizes the arrangement of a specific date or time with the employer for the CSHO to begin an inspection. Any delays in the conduct of the inspection will be kept to an absolute minimum. Lengthy or unreasonable delays will be brought to the attention of the director's office. Advanced notice does not include nonspecific indications of potential future inspections.

i. Although advance notice normally does not exist after the CSHO has arrived at the worksite, presented credentials and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection. For example, the employer representative on site may request a delay of entry pending the return of the president or some other higher ranking official, or sampling may have to be delayed for some reason after completion of the initial walk around.

A. Such delays will be as short as possible. If an employer's (or an employee representative's) request for delay appears reasonable, the CSHO may delay or interrupt the inspection for up to one hour. The district supervisor will be contacted if the delay exceeds one hour, or is anticipated to exceed one hour.

B. The district supervisor will decide whether the circumstances justify a delay of more than one hour and, if so, the length of the delay. If the delay appears reasonable, the inspection may be delayed or interrupted for the time judged necessary by the district supervisor, in accordance with Section C.1.d.ii.

C. Following the opening of an inspection, if a return visit to the site is necessary to complete any aspect of the inspection, any delays will be kept to an absolute minimum. In cases where screening sampling is performed and laboratory analysis of the samples is required, the onset of full shift sampling will begin as

soon as possible after receipt of results that indicate the need for additional sampling.

D. The district supervisor is required to approve and document any interrupted inspections or delayed inspections where the delay exceeds five working days from the last date on-site (or receipt of lab results) to the continuation of inspection activity.

ii. If the employer or the employee representative requests a delay which the district supervisor believes is unreasonable or without sufficient justification the CSHO will inform the party requesting the delay that agency policy does not allow for such a delay. If the employer or employee representative continues to insist on the delay, the situation will be treated as a refusal of entry and will be handled in accordance with the procedures in Section D.1.d.i.- Refusal of Entry on Inspection.

2. Procedures. In the situations described above, advance notice may be given by the CSHO only after authorization by the director's office. In cases of apparent imminent danger, however, advance notice may be given by the CSHO without such authorization if the director is not immediately available. The director's office will be notified as soon as possible and kept apprised of all details.

a. If it is decided to provide advance notice, the CSHO will do so by telephone or other appropriate contact. This contact normally will be made not more than 24 hours prior to the inspection. Documentation of the conditions requiring advance notice and the procedures followed will be included in the case file, under Section E – Unusual Circumstances.

b. If advance notice is to be given at a construction site or other multi-employer worksites, the CSHO will contact the general contractor. If there are two or more general contractors, all will be contacted. The general contractor will be informed of their responsibility to advise all subcontractors on the site of the inspection.

c. During the telephone contact with the employer, the CSHO will identify himself/herself, explain the purpose of the inspection, state when the inspection is expected to be conducted, ascertain the employer's normal business hours and whether special protective equipment or precautions are required. If security clearances or immunizations are necessary, the district supervisor will be notified. (See Section B.8. - Immunization and Other Special Entrance Requirements and Section B.9. - Personal Security Clearances.)

d. An important purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in the conduct of an effective and thorough inspection. A responsible management official will be requested to assist in the inspection. The CSHO will advise the employer that NCGS 95-136(c) requires that an employee representative be given an opportunity to participate in the inspection.

e. The CSHO will determine if employees at the establishment are represented by a labor organization(s) and if there is a safety committee with employee representatives. The CSHO will advise the employer that when advance notice is given, it is the employer's responsibility to notify the authorized employee representative(s) promptly of the inspection.

f. If a general contractor is contacted, they will be informed that it is that contractor's responsibility to instruct each subcontractor of the obligation to notify their relevant employee representatives promptly of the inspection.

g. Upon the request of the employer, and provided the employer furnishes the CSHO with information as to the identity and location of the employee representative, the CSHO will promptly inform the employee representative of the inspection and will provide any other information necessary in accordance with 29 CFR 1903.6(b) relating to the rights and responsibilities of the representative.

h. The advance notice requirement with respect to employee representatives applies only if there is a known representative authorized by employees, such as a labor organization or a recognized safety committee with employee representatives. The employer must be made to fully understand that the employer is not permitted to designate an employee representative. If there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the CSHO will consult with a reasonable number of employees during the inspection to determine the impact or possible adverse effects of the advance notice.

D. **Conduct of the Inspection.**

1. Entry of the Workplace. The CSHO will enter the establishment to be inspected with an attitude reflecting a professional, balanced, and thorough concern for safety and health.

a. Time of Inspection. Inspections will be made of the establishment during regular working hours and at other reasonable times. The district supervisor will be contacted before entry during other than normal working hours.

b. Severe Weather Conditions. If severe weather conditions encountered during an inspection cause workplace activities to shut down, the inspection will be continued at a later time as soon as weather permits.

i. If work continues during adverse weather conditions, but the CSHO decides that the weather interferes with the effectiveness of the inspection, the inspection will be terminated and continued when conditions improve.

ii. If work continues and the CSHO decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather will be noted since they may be the subject of later citation. However, under no circumstances will the CSHOs expose themselves to a hazardous condition (i.e., lightning strikes). Nor should they expose the employees to hazardous conditions.

c. Presenting Credentials. At the beginning of the inspection. the CSHO will attempt to locate the owner, operator or agent in charge at the workplace and present credentials. If the owner, operator or agent in charge is not available at the worksite, the CSHO will make the following arrangements:

i. When the person in charge is not present at the beginning of the inspection, the CSHO will identify the top management official or person

with safety responsibility. This person may be the foreman, lead man, gang boss or senior member of the crew.

ii. When neither the person in charge nor a management official is present, the CSHO will contact the employer by telephone and request the presence of the owner, operator or management official. The inspection will not be delayed unreasonably to await the arrival of the employer representative. This delay will not normally exceed one hour.

iii. If the person in charge at the workplace cannot be determined by (i) and (ii) above, record the extent of the inquiry in the case file and proceed with the physical inspection after contacting the district supervisor.

iv. If the person in charge arrives during the inspection, an abbreviated opening conference will be held, and the person will be informed of the status of the inspection and be given the opportunity to be included in the continued walk around inspection.

v. When an inspection is scheduled for a local government or other State facility, first contact the highest government official on site to inform him or her of the division's presence.

vi. On multi-employer sites, show credentials to a representative of each separate employer.

d. Refusal to Permit Inspection. NCGS 95-136 provides that CSHOs may enter, without delay and at reasonable times, any establishment covered under the act for the purpose of conducting an inspection. An employer has the right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant. If the controlling entity, general contractor or owner grants permission for an inspection, no subcontractor or other employer can refuse the CSHO entry to the site. However, each individual employer has the right to require a warrant for access to company items that are in their specific control (e.g., toolbox, access to employees, equipment).

i. Refusal of Entry or Inspection. The CSHO will not engage in argument concerning refusal. When the employer refuses to permit entry upon being presented proper credentials, or allows entry but then refuses to permit or hinders the inspection in some way, a tactful attempt will be made to obtain as much information as possible about the establishment. (See Appendix III-C - Warrant and Subpoena Application Forms)

A. If the employer refuses to allow an inspection of the establishment to proceed, the CSHO will leave the premises and immediately report the refusal to the district supervisor, who will initiate the appropriate action.

B. If the employer raises no objection to inspection of certain portions of the workplace, the CSHO will inform the district supervisor of the partial refusal. Normally the CSHO will continue the inspection, but confining it only to those certain portions to which the employer has raised no objections.

C. In either case, the CSHO will advise the employer that the refusal will be reported to the district supervisor and that the department may take further action, including obtaining legal process.

ii. Questionable Refusal. When permission to enter or inspect is not clearly given, the CSHO will make an effort to clarify the employer's intent.

A. If there is doubt as to whether the employer intends to permit an inspection, the CSHO **will not proceed** but will contact the district supervisor immediately. When the employer's intent is clarified, the CSHO will either conduct the inspection or proceed as outlined in Section D.1.d.i. – Refusal of Entry or Inspection.

B. When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the CSHO will contact the district supervisor, who will determine whether or not permission is being refused.

1. The CSHO may answer reasonable questions presented by the employer, such as those concerning the scope of the inspection, its purpose and anticipated length. Complaint and referral information should be withheld until there is reasonable certainty that the inspection will proceed.

2. The CSHO will avoid giving any impression of unyielding insistence or intimidation concerning the right to inspect.

C. If it becomes clear that the employer is refusing permission to enter, the CSHO will leave the establishment and contact the district supervisor.

iii. Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO will immediately contact the district supervisor for instructions on whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walk around, to examine records essential to the inspection, to take essential photographs and/or videos, to inspect a particular part of the premises, to conduct indispensable employee interviews, or to attach sampling devices.

iv. Administrative Subpoena. Whenever there is a reasonable need for records, documents, testimony and/or other supporting evidence necessary for completing an inspection, an administrative subpoena may be issued.

A. If any person refuses to provide requested information or evidence, the CSHO will explain the reason for the request. If he/she continues to refuse to produce the information or evidence requested, the CSHO will inform that person that the

refusal will be reported to the district supervisor and that the department may take further legal action.

B. If an administrative subpoena appears to be necessary, an administrative subpoena application will be completed by the CSHO. The administrative subpoena application form, along with a subpoena tracking form, is located on the One Stop Shop, in the FIS under Forms. The administrative subpoena application, together with written supportive documentation, will be forwarded within 24 hours to the bureau chief.

C. The bureau chief will evaluate the documentation and decide whether to request a subpoena. If the bureau chief determines that a subpoena is necessary, the administrative subpoena application along with all supporting documentation will be forwarded to the AG's office for preparation of the subpoena.

D. Upon completion of the subpoena, the AG's office will forward the subpoena to the Legal Affairs division for signature. The signed subpoena will be returned to the AG's office who will then return the signed subpoena to the CSHO. The CSHO will serve the subpoena on the employer.

E. The subpoena will normally be served in person. In exceptional circumstances, service may be by certified mail with return-receipt requested.

F. The person served with the subpoena may comply with the subpoena by making the information or evidence available immediately to the CSHO before or upon service, or by making the information or evidence available at the time and place specified in the subpoena.

G. If the person served honors the subpoena, the inspection or other investigation will proceed as usual.

H. If the person served refuses to honor the subpoena, the bureau chief will proceed as usual for cases involving a refusal of entry and will refer the matter to the AG's office for appropriate action.

v. Obtaining Warrants. If it is determined, upon refusal of entry or upon refusal to produce required evidence, that a warrant will be sought, the bureau chief will proceed according to guidelines and procedures established for warrant applications. (See Appendix III-C – Warrant and Subpoena Application Forms)

A. When the employer denies entry, the warrant will normally be limited to the specific working conditions or practices forming the basis of the inspection. However, a broad scope warrant may be sought when information giving rise to the inspection indicates conditions which are pervasive in nature.

1. Even where the walk around is limited by a warrant to specific conditions or practices, a subpoena for records may be served, if necessary. The records specified in the subpoena will be those needed to complete the inspection activity, such as: injury and illness records, exposure records, written programs for standards specific to the assignment, and records relevant to the employer's safety and health management, such as safety and health manuals or minutes from safety meetings.

2. The director, as authorized by NCGS 95-133(b)(11) – Office of Director of OSH; Powers and Duties of the Director, may issue, for each inspection, an administrative subpoena which seeks production of the above specified categories of documents. The subpoena may call for immediate production of the records with the exception of the documents relevant to the safety and health management program, for which a period of five working days normally will be allowed.

3. In appropriate cases, a warrant may be sought based on the review of records or on "plain view" observations of other potential violations during a limited scope walk around.

B. With the approval of the director's office, the bureau chief may initiate the warrant process.

C. Within 24 hours after the determination that a warrant is necessary, the bureau chief will transmit the completed warrant application to the Director's Office, who will then transmit it to the AG's office.

vi. Warrant Process. When a court order or warrant is obtained requiring an employer to allow an inspection, the CSHO is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to the warrant will be referred to the district supervisor.

vii. Action to be Taken upon Receipt of the Warrant. The inspection will normally begin within 24 hours of receipt of the warrant or of the date authorized by the warrant for the initiation of the inspection.

A. The CSHO must carefully review the warrant for accuracy. The CSHO will then sign the warrant application in the presence of a notary public and have the signature notarized. (This may be done in the district office or at a county courthouse.) The CSHO must make several copies of the warrant as noted in the instructions that accompany the warrant from the AG's office.

B. Just prior to returning to the worksite, the CSHO must go to the courthouse of the county having jurisdiction over the employer.

A superior court judge, a district judge, a magistrate, or the clerk of courts for that county must sign the warrant. (These are listed in order of preference.)

C. The on-site activity must be completed within 24 hours of being signed. If additional time is needed, supplemental forms must be signed by the judge each day prior to returning to the work site.

D. The CSHO will serve a copy of the warrant on the employer and make a separate notation as to the time, place, name, and job title of the individual served.

E. The warrant has space for a return-of-service entry by the CSHO in which the exact dates of the inspection resulting from the warrant are to be entered. Upon completion of the inspection, the CSHO will complete the return of service on the original warrant, sign it and personally return it to the individual who signed the warrant authorizing the inspection.

viii. Refused Entry or Interference with a Warrant. When an apparent refusal to permit entry or inspection is encountered upon presenting the warrant, the CSHO will specifically inquire whether the employer is refusing to comply with the warrant.

A. If the employer refuses to comply or if consent is not clearly given (for example, the employer expresses an objection to the inspection), the CSHO will not attempt to conduct the inspection but will leave the premises and contact the district supervisor concerning further action. The CSHO will make notations (including all possible witnesses to the refusal or interference) and fully report all relevant facts.

B. The bureau chief will contact the AG's office concerning the refusal to comply or the interference.

ix. A law enforcement official may accompany a CSHO when the warrant is presented.

e. Forcible Interference with Conduct of Inspection or Other Official Duties. NCGS 95-139 states "whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege."

i. Agency Response. Whenever a division representative encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity will cease.

A. The district supervisor will be advised by the most expeditious means.

B. Upon receiving a report of such forcible interference, the bureau chief will immediately notify the director's office.

ii. Types of Interference. Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the act does not permit forcible conduct against the CSHO. The following illustrates the type of forcible conduct which will be immediately reported to the district supervisor.

A. Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the CSHO's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.

B. Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on the CSHO. This includes the threat of such actions as well as oral abuse which menaces or causes concern for the CSHO's personal safety.

C. Anyone assaulting or threatening the CSHO with a weapon of any kind. The threat or display of weapons in a menacing manner is included.

f. Release for Entry. The CSHO will not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.

i. If the employer requires that a release be signed before entering the establishment, the CSHO will inform the employer of the director's authority under NCGS 95-136. If the employer still insists on the signing of a release, the CSHO will suspend the inspection and report the matter promptly to the district supervisor who will decide if the situation is to be treated as a refusal of entry.

ii. The CSHO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature will not constitute any form of a release or waiver of prosecution or liability under the act.

iii. In case of doubt, the CSHO will consult with the district supervisor before signing any document.

g. Bankrupt or Out of Business. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CSHO will report the facts to the district supervisor and, if applicable, complete an establishment update form to remove the site from the OSH database (see Appendix III-A – Sources of Establishment Information). If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection will proceed. An employer must comply with the act until the day the business actually ceases to operate.

h. Strike or Labor Dispute. Plants or establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes or picketing. If the CSHO identifies an unanticipated labor dispute at a proposed inspection site,

he/she will consult the district supervisor before crossing the picket line or contacting the employer.

i. Programmed Inspections. Programmed inspections may be deferred during a strike or labor dispute, either between a recognized union and the employer, or between two unions competing for bargaining rights in the establishment.

ii. Unprogrammed Inspections. Unprogrammed inspections (complaints, fatalities, etc.) may be performed during strikes or labor disputes. The seriousness and reliability of any complaint will be thoroughly investigated by the district supervisor prior to scheduling an inspection to ensure as far as possible that the complaint reflects a good faith belief that a true hazard exists and is not merely an attempt to harass the employer or to gain a bargaining advantage for labor. If there is a picket line at the establishment, the CSHO will inform the appropriate union official of the reason for the inspection prior to initiating the inspection.

i. No Inspection. If a scheduled inspection cannot be conducted, the CSHO will document the names of persons contacted and the reasons for not conducting the inspection in the inspection narrative.

2. Employee Participation. CSHOs will determine as soon as possible after arrival whether the employees at the worksite to be inspected are represented and, if so, will ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection. If an employer resists or interferes with participation by employee representatives in an inspection and this cannot be resolved by the CSHO, the employer will be informed of the right of the employee representative to participate. Continued resistance by the employer will be construed as a refusal to permit the inspection and the district supervisor will be contacted in accordance with Section D.1.d.i. – Refusal to Permit Inspection.

a. Employee Representative. "Employee representative" refers to the following:

i. A representative of the certified or recognized bargaining agent.

ii. An employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their OSH representative.

iii. An individual employee who has been selected as the walk around representative by the employees of the establishment.

iv. A non-employee representative may be selected to participate in accordance with 29 CFR 1903.8(c) if, in the judgment of the CSHO, their presence is reasonably necessary to conduct an effective and thorough physical inspection of the workplace. The district supervisor will be consulted prior to allowing a non-employee representative to participate in the inspection.

A. For all inspections where the authorized employee representative is a third party, the CSHO shall inquire about how the representative will aid the inspection. An employee

representative who is a third party may accompany the CSHO during the physical inspection of the workplace only when, in the judgment of the CSHO, good cause has been shown why the third party is reasonably necessary to an effective and thorough physical inspection. 29 CFR 1903.8(c).

B. In determining whether good cause has been shown why the third party is reasonably necessary to an effective and thorough physical inspection, the CSHO may consider a variety of factors, including any relevant knowledge, skills, and experience of the representative, including whether they have relevant language or communication skills that would facilitate communication with workers. The knowledge, skills, and experience of the third party may be considered relevant if it pertains to the worksite being inspected or if they pertain to similar workplaces.

C. CSHOs shall note in the casefile the basis for determining whether good cause has been shown why a third-party representative is reasonably necessary to an effective and thorough physical inspection of the workplace.

D. CSHOs should not request documentation from the third party to validate the representative's credentials, qualifications, or skills, unless there is a dispute or objection from the employer concerning the third party's right to accompany the CSHO during the inspection. However, documentation provided voluntarily by a third-party employee representative demonstrating relevant knowledge, skills, or experience of the representative for purposes of aiding the inspection shall be retained in the casefile consistent with established policies, procedures, and the FOM.

3. Opening Conference. The CSHO will inform the employer of the purpose of the inspection and will obtain the employer's consent to include participation of an employee representative, as defined in Section D.2. The opening conference should be kept as brief as possible, normally not to exceed one hour. Conditions of the worksite will be noted upon arrival as well as any changes which may occur during the opening conference. Pursuant to 29 CFR 1903.8 – Representative of Employers and Employees, the employer and the employee representatives will be informed of the opportunity to participate in the physical inspection of the workplace.

Note: *An abbreviated opening conference will be conducted whenever the CSHO believes that the circumstances at the worksite dictate that the walk around begin as promptly as possible. In such cases the opening conference will be limited to the bare essentials; name and identification, purpose of the visit, and a request for employer and employee representatives. The other elements will be fully addressed before the inspection is completed.*

a. Purpose of the Inspection. The employer will be informed as to the reason for the inspection as follows:

i. Imminent Danger Situations. When responding to an alleged imminent danger situation, the CSHO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an expedited opening conference will be conducted by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.

Note: *The CSHO has no authority either to order the closing down of an operation or to direct employees to leave the area of the imminent danger or the workplace.*

A. Potential safety and health hazards that may be encountered during the inspection will be identified and appropriate steps taken to provide for the personal protection of the CSHO.

B. The presence of employer and employee representatives will be requested; however, the inspection will not be unreasonably delayed to await their arrival.

C. The employer will be advised that, because of the abbreviated nature of the opening conference, there will be a more extensive discussion before the inspection is completed.

D. Unreasonable delays will be reported immediately to the district supervisor.

ii. Fatality/Catastrophe Investigations. The employer will be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation will be explained, namely, to determine:

A. The cause of the accident.

B. Whether a violation of occupational safety or health standards related to the accident occurred.

C. What effect the violation of standards had on the occurrence of the accident.

D. If occupational safety and health standards should be revised to address the hazardous working condition that led to the accident.

E. Whether a violation involves injury to an employee under 18 years of age.

iii. Complaint Investigations. For a complaint investigation, the CSHO will provide a copy of the complaint(s) to the employer and the employee representatives at the end of the opening conference just before the walk around begins. All information that identifies the complainant will be removed. The identity of the complainant is not to be revealed.

iv. Referral Investigations. During the opening conference of a referral investigation, the CSHO will inform the employer that the investigation is a result of a referral. A copy of the referral may be provided to the

employer upon request, but the identity of the source of the referral should not be revealed.

v. Programmed Inspections. Participants at the opening conference should be informed that planned programmed inspections are predominantly conducted in industries having a high illness and/or injury rate. Inspection sites within an industry grouping are chosen on a random basis. A copy of the general scheduled assignment may be provided to the employer upon request.

b. General Procedures. The CSHO should normally address the following:

i. Review and obtain copies of process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, the CSHO should sketch a plant layout as necessary during the course of the initial walk around inspection and identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, should also be included on the sketch.

ii. Make a brief examination of all workplace records pertinent to the type of inspection being conducted. (See Chapter IX – Complaints, Referrals and Accidents for scope of complaint and referral inspections.)

A. If a detailed review is necessary, the CSHO should proceed with the initial walk around and return later to examine the records more thoroughly.

B. Many valuable insights can be obtained from an examination of required and other records (e.g., symptoms which may relate to workplace exposure, frequency of injuries or illnesses, dermatitis, usage of personal protective equipment, monitoring data, audiometric test results, ventilation tests, process flow charts and a list of hazardous raw, intermediate, and final product materials) to ensure a more effective inspection. Such an examination will not be omitted if it can be done.

C. Sampling for obvious health hazards should be initiated soon after the opening conference. Details of the walk around can be accomplished while collecting the samples.

c. Attendance at Opening Conference. The CSHO will conduct a joint opening conference or separate conferences with employer and employee representatives as follows:

i. Joint Conference. Whenever practicable, a joint opening conference will be held with the employer and the employee representatives (if there is an employee representative as defined in Section D.2. of this chapter).

ii. Separate Conferences. Where either party chooses not to have a joint conference, separate conferences will be held for the employer and the employee representatives. Where it is determined that separate conferences will unacceptably delay observation or evaluation of the

workplace safety or health hazards, each conference will be brief, and if appropriate, reconvened after the inspection of the alleged hazards.

d. Scope. The CSHO will outline in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s). For a comprehensive inspection, the CSHO will evaluate all potentially hazardous areas of the work environment. This includes the establishment and other locations where one or more employees are working or are present as a condition of their employment (offsite activities). Offsite activities may include delivery, sales, home health care, janitorial and other contract work.

e. Handouts and Additional Items. During the inspection, the CSHO will provide as appropriate:

i. The employer representatives with copies of the OSH poster, blank injury and illness record keeping forms, and other informational materials. The CSHO will also inform them that additional copies and other materials can be obtained through the NCDOL website

ii. The employee representatives with informational materials. The CSHO will also inform them that additional copies and other materials can be obtained through the NCDOL website.

f. Forms Completion. The CSHO will obtain available information for the completion of the inspection report and other appropriate forms during the inspection.

g. Employees of Other Employers. During the opening conference, the CSHO will determine whether the employees of any other employers are working at the establishment.

i. If there are such employees and any questions arise as to whether their employers should be included in the inspection, the CSHO will contact the district supervisor to ascertain whether additional inspections will be conducted and what limitations there may be to such inspection activity.

A. All employers present at any worksite normally will be included within the scope of the inspection, except as indicated in (B) below. Thus, for example, all construction contractors working at a manufacturing establishment scheduled for inspection are to be included in the inspection assignment.

B. When, however, the criteria given in Chapter IX - Complaints, Referrals and Accidents are met, a CSHO referral may be made and an inspection conducted under the guidelines outlined in that chapter.

C. When a construction operation is too large to be efficiently handled during the inspection of the programmed manufacturing establishment, the operation will be treated as a referral for an inspection at a later time, in accordance with Chapter IX.

ii. If additional inspections are authorized, both employer and employee representatives of the other employers will participate in an opening conference. The inspection will be delayed only as long as reasonably necessary for either the employer or employee representatives to arrive.

iii. If the site has multiple employers, such as is common in construction, the CSHO will determine during the opening conference who is responsible for providing common safety and health services to all employees on site; e.g., sanitation, first aid, handrails, etc.

A. It will be emphasized to all contractors that, apart from these preexisting arrangements, each employer remains responsible for his or her own employees.

B. If it cannot be established which contractor is responsible for common services, the CSHO will determine which employer is the exposing, creating, controlling or correcting employer, whenever violations are noted.

h. Exemptions from Compliance Programmed Planned Inspections.

i. Consultation Program Deferrals. Consultation deferrals are available for employers participating in surveys through the safety and health consultation program and participants in the Safety and Health Achievement Recognition Program (SHARP). The CSHO will ascertain in advance, but no later than the opening conference, whether the employer at that specific site has a deferral from programmed planned inspections from the Consultative Services Bureau (CSB).

A. Safety and Health Consultation Survey Program Participants. Employers who are deferred due to requests for full-service safety and health ("both") surveys will be located in the OSH Targeting System. The status of deferment for employers who are partially deferred due to full-service safety, full-service health, or limited scope surveys can be determined by contacting the appropriate CSB district supervisor.

1. Consultation Visit-in-Progress. If an on-site consultation visit is in progress, it will take priority over OSH programmed inspections as outlined below and detailed in 29 CFR 1908.7 – Relationship to Enforcement. An on-site consultation visit will be considered "in progress" in relation to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. If an on-site consultation visit is already in progress, it will terminate when one of the following OSH compliance inspections is about to take place.

a. Imminent danger inspections

b. Fatality/catastrophe inspections

c. Complaint inspections

d. Other critical inspections, as determined by the director's office

"Other critical inspections" may include, but are not limited to, referrals as defined in Chapter IX – Complaints, Referrals and Accidents. See additional information below in paragraph D.3.h.i.A.4. – Self-Referral Inspection.

2. For purposes of efficiency and expediency, an employer's worksite shall not be subject to concurrent consultation and compliance-related visits. The CSP 02-00-004 - Consultation Policies and Procedures Manual, Chapter 7: Relationship to Enforcement, clarifies the interface between compliance and consultation activity at the worksite. It is location on the One Stop Shop, under OSH Division, Consultative Services Bureau.

a. Full-Service "Both" On-site Consultation Survey. If a worksite is undergoing a full safety and health on-site consultation survey, which provides a complete safety and health hazard survey of all working conditions, equipment, processes, and OSH-mandated safety and health programs at the worksite, programmed enforcement activity may not occur until after the end of the worksite's visit-in-progress status.

Employers will be listed on the OSH Targeting System deferral list and will be deferred from programmed inspections beginning the date of the request through the end of the visit-in-process, as defined above.

b. Full-Service Safety, Full-Service Health, and Limited-Service On-site Consultation Visits. An on-site consultation visit-in-progress status is discipline-related. If a worksite is undergoing a full-service safety, full-service health, or a limited service visit, programmed compliance activity may only proceed under the working conditions, equipment, processes not under the visit-in-progress status.

Full-service safety, full-service health, and limited-service surveys will have the related-discipline deferred from programmed

inspections beginning with the opening conference through the end of the visit-in-progress as defined above. The appropriate CSB district supervisor can confirm active deferrals in this category.

3. Construction Inspections. For construction inspections, where the General or Prime Contractor has received a consultation deferral, the CSHO can still conduct an inspection of any non-deferred contractor or subcontractor on the site without opening an inspection with the General or Prime Contractor.

4. Self-Referral Inspections. Where the CSHO views a plain sight serious hazard, the CSHO will not initiate an inspection if a consultant is on site at that time and addressing the observed hazard. If a consultant is not on site, but the CSHO learns that a consultative survey is in progress for the specific employer that has employees exposed to the serious hazard, the CSHO will initiate an inspection to address the hazard and then contact the consultant to determine the consultative status of the hazard. If the hazard is within the scope of the consultative survey, the compliance bureau chief and consultative services bureau chief will determine who has responsibility for ensuring that the hazard is corrected.

   If the hazard is not within the scope of the consultation survey, or involves an employer other than the specific employer involved in the consultation survey, the CSHO will continue with the inspection.

   Construction self-referrals in counties covered by the construction special emphasis program (SEP) are classified as programmed planned inspections and will be treated as such. However, even in counties covered by the construction SEP, if CSHOs observe a plain sight serious hazard, they may address the hazard as outlined in this section.

5. Follow-up and Monitoring Inspections. If a follow-up or monitoring inspection is scheduled while a worksite is undergoing an on-site consultation visit, the inspection shall not be deferred; however, its scope shall be limited to those areas required to be covered by the follow-up or monitoring inspection. In such instances, the consultant must halt the on-site visit until the enforcement inspection is completed. In the event OSH issues a citation(s) because of the follow-up or monitoring inspection, an on-site consultation visit may not proceed until the citation(s) becomes a final order(s).

6. On-site Consultation and 90-Day Deferral. If an establishment has requested an initial full-service comprehensive consultation visit for safety and health from CSB and that visit has been scheduled, a programmed inspection may be deferred for 90 calendar days. No extension of the deferral beyond the 90 calendar days is possible unless the consultation visit is "in progress."

B. Safety and Health Achievement Recognition Programs (SHARP) Participants. The CSHO will ascertain whether the employer is participating in SHARP. The existence of a SHARP deferral can be determined in advance by searching the OSH Targeting System database located on the One Stop Shop under Inspection Guidance, checking the NCDOL website for list of SHARP site, or by contacting CSB staff at the time of inspection to verify the deferral. Specific employer sites participating in SHARP are deferred from programmed planned inspections as follows:

1. Programmed Planned Inspections. General industry, construction, or public sector programmed planned compliance inspections will not be conducted where the employer at the specific site has been deferred by Consultative Services due to participation in the SHARP program in accordance with directive Consultation Policies and Procedures Manual.

   a. Construction self-referrals in counties covered by the construction SEP are classified as programmed planned inspections and will be treated as such. However, even in counties covered by the construction SEP, if CSHOs observe a plain sight serious hazard, they may address the hazard as outlined below.

2. Unprogrammed Inspections. CSB SHARP deferrals do not apply to unprogrammed inspections. Where an employer has a consultation deferral, the scope of an unprogrammed inspection will be partial, limited to the scope necessary to complete the purpose of the inspection as follows:

   a. For imminent danger, fatality/catastrophe, accident, complaint, referral, follow-up or monitoring inspections, the employer will be advised that the compliance inspection will be conducted. The CSHO will notify CSB or the assigned consultant that an inspection has been opened.

   b. Where the CSHO observes a plain sight serious hazard on a construction site, the CSHO will contact CSB or the assigned consultant, who

will address the hazard as a high priority, in accordance with Consultation Policy and Procedure Manual – Chapter 8, SHARP. The CSHO will also notify the general contractor of the hazard and that the appropriate consultant has been contacted.

ii. Carolina Star Programs. The CSHO will ascertain whether the employer is participating in any of the Carolina Star Programs. The existence of a Carolina Star deferral for general industry companies can be determined in advance by searching the OSH Targeting System database, checking the NCDOL website for list of Star sites, or by contacting the Education, Training and Technical Assistance (ETTA) Bureau recognition program staff at time of inspection to verify the deferral. Current Building Star sites are listed on the Building Star Exemption list on the OSH One Stop Shop under Inspection Guidance, Exemptions and Deferrals. Specific employer sites participating in any of the Carolina Star Programs are deferred from programmed planned inspections as follows:

A. When the employer has applied for approval to participate in the Carolina Star Programs, programmed planned inspections will be deferred until a decision on participation in a Program has been made.

B. Programmed Planned Inspections. General industry, construction, or public sector programmed planned compliance inspections will not be conducted where the employer at the specific site has been deferred due to participation in the Carolina Star program.

1. Construction self-referrals in counties covered by the construction SEP are classified as programmed planned inspections and will be treated as such. However, even in counties covered by the construction SEP, if CSHOs observe a plain sight serious hazard, they may address the hazard as outlined below in paragraph C. - Unprogrammed Inspections.

C. Unprogrammed Inspections. Carolina Star deferrals do not apply to unprogrammed inspections. Where an employer has a Carolina Star deferral, the scope of an unprogrammed inspection will be partial, limited to the scope necessary to complete the purpose of the inspection as follows:

1. For imminent danger, fatality/catastrophe, accident, complaint, referral, follow-up or monitoring inspections, the employer will be advised that the compliance inspection will be conducted. The CSHO will notify the Recognition Program Manager or the assigned Carolina Star consultant that an inspection has been opened.

2. Where the CSHO observes a plain sight serious hazard on a construction site, the CSHO will contact the

Recognition Program Manager or assigned Carolina Star consultant, who will address the hazard as a high priority. The CSHO will also notify the General Contractor of the hazard and that the appropriate Star consultant has been contacted.

iii. Partnerships. The CSHO will ascertain whether the general contractor and their subcontractors are in a current Partnership with NCDOL. Partnerships are formed only with general contractors of an active construction site. The existence of a Partnership deferral can be determined in advance by searching the OSH Targeting System database, checking the NCDOL website for list of partnerships, or at the time of inspection, by contacting the Partnership Team Leader to verify deferral. Specific partnership sites are deferred from programmed planned inspections as follows:

A. Once the general contractor and NCDOL have signed the partnership agreement, programmed planned inspections will be deferred for the length of the partnership.

B. Programmed Planned Inspections. Programmed planned compliance inspections will not be conducted where the general contractor at a specific site has been deferred due to participation in the Partnership program.

1. Construction self-referrals in counties covered by the construction SEP are classified as programmed planned inspections and will be treated as such. However, even in counties covered by the construction SEP, if CSHOs observe a plain sight serious hazard, they may address the hazard as outlined below in paragraph C. – Unprogrammed Inspections.

C. Unprogrammed Inspections. Partnership deferrals do not apply to unprogrammed inspections. Where an employer has a partnership deferral, the scope of an unprogrammed inspection will be partial, limited to the scope necessary to complete the purpose of the inspection as follows:

1. For imminent danger, fatality/catastrophe, accident, complaint, referral, follow-up or monitoring inspections, the employer will be advised that the compliance inspection will be conducted. The CSHO will notify the partnership team leader that an inspection has been opened.

2. Where the CSHO observes a plain sight serious hazard on a construction site, the CSHO will contact the assigned partnership team leader, who will address the hazard as a high priority. The CSHO will also notify the general contractor of the hazard and that the partnership team leader has been contacted.

iv. Procedure for Handling NIOSH Health Hazard Evaluations (HHE). A company may also request consultation services from the National Institute for Occupational Safety and Health (NIOSH). It is NIOSH policy to contact the appropriate OSHA office to determine if OSHA has current enforcement activity underway at the particular establishment (reference paragraph I. – NIOSH FACE and FFFIP Program).

A. To avoid the problems associated with multiple agencies at the same site, NIOSH will not generally initiate an investigation until the division has terminated the inspection.

B. The director's office will cooperate fully with NIOSH and will provide them with any requested releasable information.

C. Similarly, the division will not schedule a general schedule inspection at a company where NIOSH is conducting an investigation.

D. If a fatality occurs at the establishment, or if the director's office becomes aware of any imminent danger or serious health or safety conditions, or receives any complaint, the presence of NIOSH in the facility will not prevent the division from initiating an inspection.

E. When the situation necessitates concurrent investigations, division personnel will coordinate efforts as much as possible to minimize inconvenience to the employer.

i. Other Opening Conference Topics. The CSHO will determine at the beginning of the opening conference:

a. Legislative Limitations. The exemptions or limitations noted in the current federal Appropriations Act (See CPL 02-00-051 – Enforcement Exemptions and Limitations under the Appropriations Act located under the FIS on the One Stop Ship) that may apply to the employer.

b. Employer Legal Name. The legal name of the employer, the type of legal entity, and whether it is a subsidiary of any other business entity. This information will be verified through the Secretary of State's office or appropriate local authorities and documented in the case file. When an inspection is opened with a local government or other state facility, the CSHO will verify the legal name with the highest ranking official and use this name for the inspection. If the highest-ranking official does not know the legal name, the CSHO will request to speak to their management to clarify the correct legal name. The CSHO will document in the narrative the name and title of the person who provided this information.

c. Trade Secrets. Whether the employer wishes to identify areas in the establishment which contain or might reveal trade secrets. If trade secrets are identified, the CSHO will explain that the division is required by law to preserve the confidentiality of all information which might revealed a

trade secret in accordance with NCGS 95-152 – Confidentiality of Trade Secrets [See Section D.7.e.(i) – Special Circumstance, Trade Secrets.]

d. Photographs/Videos/Audio Recording. Whether the employer has any objection to taking photographs and/or video and audio recordings as permitted by 29 CFR 1903.7(c) – Conduct of Inspections. CSHOs shall inform the participants that a video camera and/or an audio recorder may be used to provide a visual and/or audio record, and that the video and sound recording may be used in the same manner as handwritten notes and photographs in inspections. If the employer does object, the CSHO will immediately notify the district supervisor in accordance with Section D.1.d.iii. – Employer Interference, to determine if video and/or audio recording is critical to documenting the case. If it is, this may be treated as a denial of entry.

e. Potential Hazards. Whether there are any safety and health hazards to which the walk around party may be exposed during the inspection. The CSHO will ensure that management advises all members of the inspection party as to the appropriate personal protective equipment and/or immunizations that are required based on this information (See paragraph B.8.b. – Immunization and Other Special Entrance Requirements)

4. Walk Around Representatives. Those representatives designated to accompany the CSHO during the walk around are considered walk around representatives. These representatives will not be allowed to hinder the inspection. The CSHO has the right to limit the number of representatives in the inspection party or can have representatives join and leave the party on an "as needed" basis.

***Note**: In 1977, the Chamber of Commerce of the United States of America challenged an OSHA rule requiring that employees be paid while assisting on an inspection (walk around pay). The court determined that because "the act neither prohibits nor compels pay for walk around time," OSHA's rule was invalid. In response to the employer's questions regarding walk around pay, CSHOs should indicate that it is not a requirement at this time.*

a. Employer Representatives. Anyone designated by the employer as their representative is acceptable. In cases of isolated or remote locations, the senior district supervisor, foreman, gang boss or head technician onsite at the time of inspection is the employer representative. Subject to the guidelines given in Section D.5.e. – Special Situations, More Than One Representative, every reasonable effort will be made to afford general walk around rights to every employer representative on a multiple employer worksite.

b. Employee Representatives. Subject to the guidelines in Section D.5.e, one or more employee representatives will be given an opportunity to accompany the CSHO during the walk around phase of the inspection to provide appropriate involvement of employees in the physical inspection of their own places of employment and to give them an opportunity to point out hazardous conditions. 29 CFR 1903.8 – Representative of Employers and Employees, gives the CSHO authority to resolve disputes as to who represents the employees for walk around purposes. The following guidelines will be utilized for determining employee representatives:

i. Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest-ranking union official or union employee representative will designate who will participate in the walk around inspection.

ii. Safety and Health Committee. The employee members of an established plant safety and health committee or the employees at large may have designated an employee representative for inspection purposes or agreed to accept as their representative the employee designated by the committee to accompany the CSHO during an inspection.

iii. No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, when there is no established safety committee, or where employees have not chosen or agreed to an employee representative for inspection purposes whether there is a safety committee, the CSHO will determine if any other employee would suitably represent the interests of employees on the walk around.

A. If selection of such employee representatives is impractical, the inspection will be conducted without an accompanying employee representative; and the CSHO will consult with a reasonable number of employees during the walk around in accordance with the provisions of 29 CFR 1903.10 – Consultation with Employees, and NCGS 95-136 - Inspections.

B. Employees selected for interviewing will include individuals judged knowledgeable about the area or process being inspected.

5. Special Situations.

a. Preemption by another Agency. NCGS 95-128 – Coverage, states that the act does not apply to employees and employees in specific situations. To avoid adverse actions by employers (or agencies), the district supervisor will observe the following guidelines whenever a situation arises involving a possible preemption of jurisdiction question:

i. The district supervisor will be alert to potential conflicts with other agencies at all times. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, the division policy will be reviewed immediately to determine if the issue has been addressed.

ii. If not, the district supervisor will consult with the bureau chief, legal affairs, the AG's office, if necessary, or with the other agencies.

iii. When an inspection has already begun and a question about NCGS 95-128 arises, the CSHO will stop the inspection and contact their district supervisor for guidance.

iv. If, following an inspection, there remains any doubt as to division coverage, the proposed citation and penalty will be reviewed with the director's office, legal affairs and the AG's office if necessary, prior to issuance.

v. If it is determined that the division does not have jurisdiction, the case will be referred to the appropriate agency if there is reason to believe that violations may exist.

vi. Federal OSHA exercises authority over the following:

A. Discrimination complaints filed with federal OSHA.

B. Private sector maritime activity including:

1. Shipyard employment (29 CFR 1915), including boat building establishments in SIC 3732 (NAICS 336612, 811490) located on navigable waters, and all establishments in SIC 3731 (NAICS 336611, 488390).

2. Marine terminals (29 CFR 1917).

3. Longshoring (29 CFR 1918), including all private and federal sector marine cargo handling establishments, or operations in SIC 4491 (NAICS 488310, 488320).

4. Gear certification (29 CFR 1919).

5. All marinas in SIC 4493 (NAICS 713930) located on navigable waters.

6. Marine construction activities on the navigable waters which are not directly accessible by land.

C. Indian reservations, including all employer sites located on reservations.

D. Contractors or subcontractors on any federal establishments where land has been ceded to the federal government.

E. Military bases.

F. The federal government, including its departments, agencies and instrumentalities.

G. U.S. Postal Service (USPS), including USPS employees.

H. The American Red Cross.

vii. There are other federal Acts that provide safety and health protection. If a CSHO is inspecting an establishment that is covered by one of these Acts, the district supervisor will be consulted.

A. Atomic Energy Act of 1954.

B. Federal Coal Mine Health and Safety Act of 1969.

C. Federal Metal and Nonmetallic Mine Safety Act.

D. Federal Railroad Safety Act of 1970.

E. Federal Safety Appliance Act (railroad employees).

viii. The division has no coverage of employees whose employer is within the class and type of employment which does not permit federal funding, on a matching basis, to the state.

ix. Specific jurisdictional issues are addressed in Appendix III-D.

b. Labor Relations Disputes. The CSHO will not become involved in labor relations disputes either between a recognized union and the employer or between two or more unions competing for bargaining rights. However, if there is a recognized union, the highest ranking official available will designate the authorized walk around representative even though another union may be seeking recognition.

c. Expired Collective Bargaining Agreement. When a union contract has expired, the CSHO will assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.

d. Employee Representatives Not Employees of the Employer. Walk around representatives authorized by employees will usually be employees of the employer. If, however, a non-employee (e.g., union official, industrial hygienist, safety engineer, or other experienced safety or health person) is designated by the employees as their representative to accompany the CSHO during the inspection, such a person normally will be given walk around rights consistent with 29 CFR 1903.8(c). Questionable circumstances, including delays of more than one hour, will be referred to the district supervisor. The CSHO will instruct non-employee representative to discuss only the matters pertaining to operations of the employer during the inspection and to keep that information confidential.

e. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid and not interfere with the inspection [See 29 CFR 1903.8(a)].

i. Whenever appropriate to avoid a large group, the CSHO will encourage multiple employers to agree upon and choose a limited number of representatives for walk around accompaniment purposes. If necessary, during the inspection, employer representatives not on the walk around inspection will be contacted to participate in particular phases of the inspection.

ii. As an alternative, the CSHO will divide a multiple employer inspection into separate phases (e.g., excavation, steel erection, mechanical, electrical) and encourage different employer representatives to participate in different phases, as appropriate.

iii. The same principles will govern the selection of employee representatives when several are involved.

f. Disruptive Conduct. The CSHO may deny the right of accompaniment to any person whose conduct interferes with a complete and orderly inspection [29 CFR 1903.8(c)]. If disruption or interference occurs, the CSHO will use professional judgment as to whether to suspend the walk around or take other action. The district supervisor will be consulted if the walk around inspection is suspended. The employee representative will be advised that, during the inspection, matters unrelated to the inspection will not be discussed with employees.

g. Trade Secrets. If the employer advises the CSHO that the employee representative is not authorized to enter any trade secret area(s), the CSHO will consult with a reasonable number of employees who work in the area [29 CFR 1903.9].

h. Classified Areas. In areas containing information classified by an agency of the U. S. government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO [29 CFR 1903.8]. The CSHO must also have the proper security clearances to enter these areas.

i. Apparent Violations Observed Prior to the Walk Around. When an apparent violation is observed by the CSHO prior to the walk around, it will be noted. All such apparent violations will be rechecked during the walk around and cited if appropriate. When possible, serious violations will be rechecked and documented immediately at the commencement of the walk around.

j. Use of Audio and Video Recordings. The use of recording equipment during the required conferences may inhibit the free exchange of information, and care will be exercised in their use.

i. The use of recording equipment is authorized whenever circumstances justify it, such as where there is conflicting evidence indicating that the preservation of statements is advisable or where securing signed statements from affected employees will delay the expeditious completion of the investigation.

ii. Recording equipment will not be used in locations where it may be hazardous.

iii. If the employer, employer representative, affected employees, or any other witnesses object to recording their statements during any part of the investigation, the inspection will be continued without the recording equipment.

iv. Video recording of work operations under ergonomic analysis is recommended.

6. Inspection of Records and Posting. Every inspection of an employer required to keep injury and illness records, will include an examination and verification of such records. Examination of other records and of the posting requirements will be performed as appropriate in accordance with current procedures. Coverage of OSHA's injury and illness recordkeeping rule (29 CFR Part 1904) is defined by NAICS codes in 1904.2 - Partial Exemption for Establishments in Certain Industries. Employers with NAICS codes listed in Appendix A to Subpart B – Partially Exempt Industries of 29 CFR 1904 or with 10 or fewer employees are exempt from maintaining OSHA-300 logs. In

accordance with NCGS 95-148(4) - Safety and Health Programs of State Agencies and Local Governments, all public sector (state, county, local) employers under the jurisdiction of the OSH division, regardless of NAICS code or size, are required to maintain injury and illness logs.

a. Records. The CSHO will comply with the records review procedures for all inspections, programmed or unprogrammed, of employers required to keep the records in question. Findings will be documented in the case file.

i. Injury and Illness Records. CSHOs will review the current and the three most recent calendar years of the employer's injury and illness records. Data from this review will be recorded on the appropriate OSHA Express (OE) screen. The Days Away, Restricted or Transferred (DART) rate is calculated automatically; however, the average number of employees and number of employee hours worked are required to facilitate the rate calculation. First aid logs may also be reviewed if the CSHO finds the information helpful.

Note: *The CSHO will not request access to the Bureau of Labor Statistics survey questionnaire (OSHA Work-Related Injury and Illness Data Collection Form) or even ask if the employer has participated in the survey program.*

ii. Employee Exposure and Medical Records. During all comprehensive health inspections, and safety inspections when designated by the district supervisor, the CSHO will review employee exposure and medical records. The CSHO may also need to review medical records during other inspections. The CSHO may review these records to determine compliance with the recordkeeping requirements of a specific OSHA standard, or of 29 CFR 1910.1020 - Access to Employee Exposure and Medical Records, or to determine whether the employer complied with the medical surveillance or monitoring portions of a specific standard.

A. Requesting and Reviewing Medical Records. CSHOs have the right to access and review without consent medical records that are required to be maintained per a specific OSHA standard. As defined in 13 NCAC 7A .0902 – Responsible Persons, only the principal OSH investigator (lead CSHO) may request, receive, review or use medical records unless authorized by the OSH director or his designee.

For large inspections with multiple sets of medical records, the OSH director or designee may allow additional CSHOs to **review** medical records. However, all requests for medical records will be made by the lead CSHO and the lead CSHO will receive the records and conduct the initial records review. The number of additional CSHOs assigned to review medical records during large inspections should be kept to a minimum.

The lead CSHO will only request medical information from the employee or their next of kin, the employer, a medical facility, physician, nurse, technician or other medical personnel in

writing. The lead CSHO will review medical records on site and the records will not normally be copied or removed from the site. When copies of the records are necessary for the investigation, the lead CSHO will photocopy and take personal possession of them on site.

B. Receiving Medical Records. When a CSHO requests medical records after leaving the site, the CSHO will request that all medical records be delivered by hand or sent certified U.S. Mail or the equivalent (e.g. UPS or FedEx). The CSHO will not request medical records via fax or email. However, if the party producing medical records wants to transmit them by fax, the CSHO will request that the party inform the CSHO when the records will be faxed to prevent the information from being left unsecure at the receiving fax machine.

If medical records are sent directly to a field office from an external source (such as a member of the public), the OSH supervisor will secure the medical records by locking them up in their office until an inspection or investigation number is created then transfer the records to the assigned CSHO. If no inspection or investigation is conducted, the medical records will be shredded immediately.

Medical records received in a field office from an external source (such as a member of the public) that are not within the district boundaries of a supervisor in that office will be transferred to the complaint desk supervisor by hand delivery or certified U.S. Mail or the equivalent (e.g., UPS or FedEx). The records may be faxed only if the complaint desk supervisor is available to stand by the fax machine to receive the documents.

However, all medical records received by the Raleigh field office that are not related to an assigned inspection or investigation will be transferred to the complaint desk supervisor.

When a district supervisor receives medical records from the OSH complaint desk or any other internal source prior to an inspection or investigation being assigned to a CSHO, the supervisor will confirm receipt of the records by email to the complaint desk supervisor or the individual forwarding the medical records. The district supervisor will secure the medical records by locking them up in their office until forwarded to the CSHO for inspection or investigation.

C. Using, Maintaining and Securing Medical Records. Medical Records will be used only for the purpose intended. If copies of medical records necessary for the investigation are transported from the employer's site, a medical facility, etc., the CSHO will immediately separate the medical records from the remaining case file documents and place them in their medical records folder. Medical records will be placed either in the locked trunk

of the vehicle or out of sight. When a CSHO is away from the field office (including working from home), the medical records will be removed from the vehicle each night and kept in a secure location. Medical records will not be left in hotel rooms during the day.

If the CSHO receives medical records in the office that were not requested and/or are determined after immediate review not to be germane to the investigation, these files will be immediately shredded. Medical records which will not be reviewed immediately must be secured.

The CSHO will separate each employee's medical records that are still under review and/or already determined to be necessary to the investigation and stamp each page of all medical records "Medical Records – Confidential." Each employee's medical record will be enclosed in a separate Kraft envelope and each envelope labeled "Medical Records - Confidential" with the medical record identifier and the CSHO's first initial and last name. This will occur prior to transferring the files to the medical records administrator **and will apply to all open inspection and investigation files.**

D. Medical Record Identifier. The medical record identifier will be created by the CSHO as follows:

1. For any file with an inspection form:

   Use the inspection number, the employee's initials (include first, middle and last initial), and the company name.

   Ex: An inspection numbered 313852458 with medical records for Jane E. Smith for ACME Inc. will be listed as: **313852458-JES-ACME**

2. For complaints with no inspection (no inspection form):

   Use the complaint form number, the employee's initials, and the company name.

   Ex: A complaint numbered 207496956 with medical records for Jane E. Smith for ACME Inc. will be listed as: **207496956-JES-ACME**

3. For Fat/Cats with no inspection (no inspection form):

   Use the accident/event form number, the employee's initials and the company name. (See examples above.)

4. For referrals with no inspection (no inspection form):

Use the referral form number, the employee's initials and the company name. (See examples above.)

5. In any case, when employees from the same company have the same initials, the CSHO will add a number after the employees' initials such as:

   207496956-JES1-ACME
   207496956-JES2-ACME

E. Cross-referencing medical records on multi-employer inspections. On multi-employer inspections, medical records received for one inspection (primary case file) may be necessary to support citations for an associated inspection(s) (secondary case file). When this occurs, the CSHO(s) must cross-reference all relevant medical records to all associated inspections. After **all** secondary case files are closed, the primary case file and medical records will be purged per FOM Chapter XVI – Administrative File Activities. The Multi-Employer Inspection Medical Records Retention Request Form located under Forms in the FIS will be used to document this information in the associated case files.

1. When **one** CSHO conducts an investigation and opens an inspection(s) with multiple employers, the CSHO will fill out the Multi-Employer Inspection Medical Records Retention Request Form for each secondary inspection (if medical records from the primary inspection need to be retained for that secondary inspection). The CSHO will place a copy of each form in the primary and secondary case file per FOM Chapter XVI - Appendix A – Case File Assembly, and will maintain and mark the necessary medical records per E.3. below.

2. When more than one CSHO is involved in a multi-employer inspection, such as an inspection of a catastrophic event, the lead CSHO for each inspection/employer will request, receive and review the medical records per paragraph D.6.a.ii.A. – Requesting and Reviewing Medical Records. If any lead CSHO needs medical records from another case file, the lead CSHO will fill out the Multi-Employer Inspection Medical Records Retention Request Form. A copy of this form will be maintained in the lead CSHO's secondary case file per FOM Chapter XVI -Appendix A. The lead CSHO will provide the CSHO for the primary inspection who is responsible for the medical records a copy of the form. The CSHO responsible for the medical records will maintain the form in the primary case file and mark the necessary medical records per E.3. below.

3. Responsibility for marking and maintaining cross-referenced medical records:

The CSHO who originally requested the medical records will retain responsibility for the medical records. The medical records will remain in the medical records cabinet in their original Kraft envelope with unique identifiers and will **not** be copied and placed into a second set of Kraft envelopes with new identifiers. The CSHO will mark the outside of each Kraft envelope beneath the medical records identifier containing medical records that must be maintained as follows (this information will come from the Multi-Employer Medical Records Retention Request Form):

"Retain medical records until the following associated inspections are closed: [List all secondary inspection employer names, inspection numbers, and CSHO name and CSHO IDs (if different CSHO)]."

F. Medical Records Chain of Custody Form. After the medical records are placed in the Kraft envelope and labeled as stated in paragraphs C. and D. above, the CSHO will complete a Medical Records Chain of Custody Form, for each record/medical record identifier (located under Forms in the FIS). This form will be maintained as part of the inspection file and will be initialed by the medical records administrator each time medical records are transferred to or removed from the locked file cabinet.

G. Transferring Medical Records to the Medical Records Cabinet. Medical records will be separated, stamped, labeled and transferred to the medical records cabinet on the day they are received whenever possible. CSHOs who are out of town for extended periods conducting inspections, are working late shifts, or are returning to the field office after normal working hours will transfer the medical records to the medical records cabinet on the day they return to the office. Teleworkers will secure medical records at home and transfer them to the medical records cabinet on the next day they go to the field office, but in no case will teleworkers maintain medical records in their home more than five working days.

Medical records will be maintained in a locked cabinet in the field office. For information about transferring medical records to the medical records cabinet, see FOM Chapter XVI, paragraph E.6. – Medical Records Management. When a case file is closed, the CSHO will purge the medical records and other case file documents per FOM Chapter XVI, paragraphs E.6., E.7., E.8. and Appendix XVI-B: Case File Retention/Disposition Guide for Closed Files.

iii. Receipt of Public Agency Records. (**This section does not apply to medical records.)** Occasionally, the NCDOL OSH division conducts an investigation or an inspection at a workplace where an investigation or response by another federal, state or local agency has occurred. These agencies include, but are not limited to: the U.S. Department of Justice (USDOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); the USDOJ, Federal Bureau of Investigation (FBI); the N.C. Department of Justice, State Bureau of Investigation (SBI); the North Carolina Department of Public Safety, State Highway Patrol; the U.S. Environmental Protection Agency (EPA); the N.C. Department of Health and Human Services (NCDHHS); the N.C. Department of Environmental Quality (NCDEQ); and any city or county law enforcement agency, fire and rescue or emergency medical services.

As part of an inspection or investigation process, the CSHO may need to review records from these agencies. Additionally, these agencies may provide unrequested records to the CSHO assuming that they are germane to the investigation. An agency may provide the CSHO with records that are not considered public records, not realizing that those records may be placed in an OSH case file and disclosed by the NCDOL at a later time.

Whenever possible, the CSHO should conduct a review of the records, leave them on site, and reference them in the narrative or violation worksheets (OSHA 1Bs) as necessary. However, at times the CSHO may need the records to include in the case file to support the OSH report. When the CSHO receives any report, record, photo, video, etc. from a public sector agency during an investigation that may need to be included in our case file, the CSHO must inform the agency that the records provided to the NCDOL may be placed into our case file and will then be subject to disclosure pursuant to NCGS 95-136 - Inspections, when the investigation and any legal proceedings associated with the issuance of citations are no longer pending. The CSHO will also inform the agency that an employer cited under the provisions of the act is entitled to receive a copy of the official inspection report following the issuance of citations, which may include their agency's records.

When the CSHO concludes that the records from another public agency must be included in the case file and receives these records from the public agency, the CSHO will complete the "Receipt of Public Agency Records Form" (located in the Forms folder in the FIS). A copy of this completed, signed form will be given to the agency providing the records, and the original form will be maintained in our case file. These records and the completed release form must be incorporated into the case file in the documents section. The records must not be stamped confidential and included in the case file in lieu of the completed release form. Even if any such records (documents, photos, videos, etc.) are designated or stamped by the providing agency as a "public release report or record", the release form must be completed in order to include it in our case file. All records (documents, photos, videos, etc.) that are covered by a completed release form must be stamped, marked, or

designated in some obvious way for anyone reviewing the file to know which records in the case file are covered by the release.

iv. Tax Identification Numbers. Governmental agencies, including NCDOL, that issued penalties in excess of $50,00.00, are required to report penalties along with specific employer identification information to the IRS on an annual basis effective in 2022 (using IRS Tax form 1098-F). Among other items, form 1098-F requires the legal name of the employer, address, tax identification number (TIN) or social security number (SS#), and amount of penalty required to be paid (Final Order).

A. CSHOs will continue to collect TINs (aka employer identification numbers – EINs or EIDs) or SS#s (sole owners) for all inspection-related activities. Effective January 1, 2022, CSHOs will also request a completed and signed IRS W-9 form. If employers do not have a copy of a completed and signed W-9 form, they can download a blank form from the IRS website or be provided with a fillable W-9 form (located under FORMS on the OSH One Stop Shop). The primary reason OSH obtains the employer provided W-9 form is because the IRS can assess a penalty to governmental agencies for each 1098-F containing incorrect information such as employer name, TIN, SS#, etc.

1. The completed IRS W-9 forms can be scanned into OE and then the hard copy forms should be shredded and destroyed to prevent potential security issues. In OE, the IRS W-9 form is named INSP Signed IRS W-9 and it has been assigned to form: OS0329.

2. In addition, the social security number or TIN should be entered in the "FEIN" field in OE under the "Establishment" tab (the UI # will continue to go in the "Employer ID" field).

3. If CSHOs receive questions from employers, especially sole owners without TINs who are asked for their social security numbers, the CSHO can explain that the employer is required to provide this information as NCDOL must collect it to comply with new IRS reporting requirements. The CSHO can also explain that it will be placed in an approved, secure electronic database and hard copies will be destroyed. The information will be redacted by Planning Statistics and Information Management (PSIM), if there is a disclosure request. CSHOs who continue to have issues getting the information, can contact the NCDOL Legal Affairs Division after discussing the situation with their supervisor.

v. Other Records. Any other records which fall within the scope of the inspection and which are related directly to the purpose of the inspection will be examined. These may include, but are not limited to:

A. Required certification records properly completed and any available equipment inspection and maintenance records.

B. Safety committee minutes; checklists; records of inspections conducted by plant safety and health committees, insurance companies, or consultants; if voluntarily supplied by the employer.

C. Variance documentation. The employer's requirement to comply with a standard may be modified through the granting of a variance by the NCDOL (or federal OSHA in the case of a multistate variance). The NCDOL Variance Log is maintained on the FIS on the OSH One Stop Shop. This log includes federal multistate variances that are in effect in North Carolina.

1. An employer will not be subject to citation if the observed condition is in compliance with an existing variance issued to that employer.

2. In the event that an employer is not in compliance with the terms of the variance, a violation of the applicable standard will be cited with a reference in the citation to the variance provision that has not been met.

D. N.C. Industrial Commission Records. The CSHO will stamp any records of accidents, injuries, illnesses or settlements obtained **directly from** the North Carolina Industrial Commission, "CONFIDENTIAL." (**Exception:** If the records were obtained from any other source, they will not be stamped.)

b. Posting. The CSHO will determine if posting requirements are met in accordance with 29 CFR 1903 and 1904. These include, but are not limited to:

i. OSH poster informing employees of their rights and obligation under the OSH act.

ii. OSHA Form 300A: Summary of Occupational Injuries and Illnesses posted from February 1 through April 30.

iii. Current citations, if any.

iv. Requests for Extension of Abatement Date (Petition for Modification of Abatement).

v. Abatement activity notice (Confirmation of Abatement form).

7. Walk Around Inspection. The main purpose of the walk around inspection is to identify potential safety and/or health hazards in the workplace. The CSHO will conduct the inspection in such a manner as to eliminate unnecessary personal exposure to hazards and to minimize unavoidable personal exposure to the extent possible.

a. General Procedures. It is essential during the walk around portion of every inspection for the CSHO to:

i. Become familiar with plant processes, collect information on hazards, observe employees' activities and interview them as appropriate.

A. For health inspections, a preliminary tour of the establishment normally will be accomplished before any decision to conduct an in-depth industrial hygiene investigation.

B. Such a preliminary walk around inspection will survey existing engineering controls and collect screening samples, when appropriate, to determine the need for full-scale sampling.

1. If screening reveals potentially high exposure levels, a comprehensive health inspection will be conducted.

2. If screening samples must be sent to the laboratory for analysis, the employer will be informed.

a. If the laboratory results show that potentially high employee exposure levels exist, full-scale sampling of the potentially hazardous areas will be conducted.

b. If the results are negative, the file will be closed.

ii. Evaluate the employer's safety and health program (whether written or not) as follows:

A. By ascertaining the degree to which the employer is aware of potential hazards present in the workplace and the methods in use to control them;

1. What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls?

2. What is the employer's work practices program?

B. By determining employee knowledge of any hazards which exist in the establishment; the extent to which the employer's program covers the precautions to be taken by employees actually or potentially exposed to plant hazards; emergency procedures and inspection schedules for emergency personal protective equipment; the program for the selection, use and maintenance of routine personal protective equipment; and the overall quality and extent of the educational and training program and the degree of employee participation in it.

1. Compliance with the training requirements of any applicable safety and/or health standard will be determined.

2. The following specific elements of the establishment safety and health program will be evaluated in the detail appropriate to the circumstances of the inspection:

a. Comprehensiveness. Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operations. This is an overall evaluation and will take into account the evaluations of the remaining categories. Indicate whether the program is written.

b. Communication. Evaluate the employees' awareness of and access to the safety and health program, taking into account the principal means by which the program is communicated to them (e.g., oral instructions, booklets memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foremen, intermediate level district supervisors, safety director, etc.). The effectiveness of these means will be considered in the evaluation.

c. Enforcement. Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety or health responsibilities, and if so, and consider the effectiveness of the staff's performance.

d. Safety/Health Training Program. Evaluate separately any employer safety and health training programs. Factors to be considered include the need for special training in view of the hazards likely to be encountered as well as specific requirements for such training, and the need for ongoing, or periodic training, or retraining of employees.

e. Investigations. Evaluate the employer's efforts to make accident/injury/illness investigations and indicate whether adequate corrective and preventive actions are taken as a result.

iii. Determine compliance with specific performance standards that require emphasis such as hazard communication and lockout/tagout.

iv. Identify locations and conditions that received citations during a previous inspection and include follow-up or monitoring activities as part of the walk around inspection to ensure proper abatement or to determine abatement progress, if the citations are a final order. Follow-up and monitoring activities do not constitute a separate inspection when they

are conducted as part of another investigation, thus no separate inspection report should be entered for the follow-up activity. (For exceptions to this, see Chapter IX - Complaints, Referrals and Accidents.)

A. Record all facts pertinent to an apparent failure to abate, repeated or willful violations per instructions in the documentation and OE manuals.

B. Determine if a letter of abatement previously received from the employer accurately described the correction of a previously cited violation.

v. Record all facts pertinent to an apparent violation on the violation worksheet. Apparent violations should be brought to the attention of employer and employee representatives at the time they are documented.

A. All notes, observations, analyses, and other information will be either recorded on the violation worksheet, have its location noted on the worksheet or be attached to it.

B. The CSHO will gather as much detailed information as practical to establish the specific characteristics of each violation as follows:

1. Describe the observed hazardous conditions or practices (such as the facts which constitute a hazardous condition, operation or practice and the essential facts as to how and/or why a standard is allegedly violated).

2. Specifically identify the hazards to which employees have been, or could be exposed.

3. Describe the type of accident which the violated standard was designed to prevent in this situation or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed.

4. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness.

5. For the type of accident described, include:

a. All factors about the violative condition which could significantly affect the nature and severity of the resulting injuries (e.g., "fall of 20 feet onto protruding rebar"; "fall into water-filled excavation").

b. Other factors which could affect the probability that an accident or incident would occur, such as:

- Proximity of the workers to the point of danger of the operation.

- Stress producing characteristics of the operation (e.g., speed, heat, repetitiveness, noise, position of employee).

c. For contaminants and physical agents, any additional facts which clarify the nature of employee exposure.

d. The identification of the equipment and process which pose the hazards; i.e., serial numbers, equipment types, trade names, manufacturers, etc. Include a sketch when appropriate.

e. The specific location of the violation, for example:

- Building No. 3, second floor, column no. 6.

- Machine shop, NE corner, department 12.

- Foundry, NW corner, shake-out area.

f. State the nature of the more serious types of injury or illness which are reasonably predictable and could result from the accident or health exposure.

- Thus, the entry for the "fall from 20 feet onto protruding rebar" might read "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."

- Broad categories of injuries and health effects (such as "burns," or "lacerations") will be worded so as to indicate whether the injuries or health effects are major or minor. Wording such as "electric shock" should not be used since they identify events and not injuries or health effects.

- In identifying the health effects which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it will usually be necessary to

consider not only the level of exposure but also the frequency and duration of exposure to the contaminant or agent.

g. Evaluate the probability of an injury or health effect and explain the selection of probability and severity factors.

h. Any specific measurements taken during the inspection (e.g., "20 feet distance from top of scaffold platform to ground level"; "employee standing two feet from unguarded floor edge"; "employee seated two feet from source of metal fumes") which will further document the nature of the hazardous conditions and operations.

- Describe how measurements were taken during the inspection.
- Identify the measuring techniques and equipment used and those who witnessed the process, such as, employee or employer representative who observed the measurements being taken.
- Include calibration dates and description of calibration procedures used, if appropriate.

i. Details of the exposure so as to present a picture of employee exposure to the hazard for each particular occupation, including:

- The occupation and the employer of he exposed employees if the employer is different from the one on the corresponding inspection report.
- The number of exposed employees in that occupation.
- The length of time that the alleged violation has existed.
- The duration and frequency that the employees are exposed (e.g., two hours /week).
- The name, address and telephone number of at least one exposed employee. If necessary, signed and

dated witness statements will be obtained and added to the case file.

Example: A radial arm saw has been on a construction site for three months and has never been guarded during that time. All of the employer's 14 carpenters on the job use the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately four hours.

j. Any facts which establish that the employer knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence. Enter any facts which show that:

- The employer actually knew of the hazardous condition which constitutes the violation. In this regard, a supervisor represents the employer and supervisory knowledge amounts to employer knowledge.
- The employer could have known of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed. As a general rule, the CSHO can presume that the employer could have discovered the condition through the exercise of reasonable diligence.

k. If the CSHO has reason to believe that the violation may be a willful violation, facts will be included to show that the employer knew that the condition existed and, in addition, knew that, by law, he had to do something to abate the hazard. For example:

- The employer was previously cited for the same condition.
- A CSHO had already told the employer about the requirement.
- Knowledge of the requirement was brought to the employer's attention by an employee safety committee, etc. Also include facts showing that, even if he was not consciously violating the act, the employer was aware that the

violative condition existed and made no reasonable effort to eliminate it.

l. Pertinent employer or employee remarks made during the walk around inspection and/or the closing conference, especially comments directly related to the instance described.

- Include employer comments which may be characterized as admissions of the specific violations described.
- Include any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
- Include any additional comments (by the CSHO), particularly any explanation of abatement of dates when necessary (e.g., when an abatement period exceeding 30 days is recommended for an item).

6. If employee exposure (either to safety or health hazards) is not observed, state facts on which the determination is made that an employee has been or could be exposed. In appropriate cases, state what the employer could have or should have done to be in compliance.

7. When violations are grouped, describe the reason for grouping. If a specific type of hazard exposure is caused by the combination of violations, describe it in sufficient detail.

8. If the exposing employer neither created nor controlled the violative condition, state the name and relationship of the responsible party; e.g., prime contractor, electrical sub- contractor, building owner or equipment lesser. Describe any steps taken by the exposing employer to have the condition corrected as described under Chapter V - Citations, paragraph F.3 - Multi-Employer Worksites, Legitimate Defense.

b. Health Inspections. There are special documentation requirements for health inspections. During such inspections, the CSHO will:

i. Record all relevant information concerning potential exposure to chemical substances or physical hazards such as symptoms, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective

devices including respirators, ear and eye protection, clothing, etc.; and collect Safety Data Sheets where available and appropriate.

ii. Observe employee activities throughout the establishment, concentrating particularly on potentially hazardous areas, and

A. Estimate the number of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.

B. Interview employees.

C. Record the duration and frequency of cyclic work processes, describing potential exposures during each phase of the cycle.

iii. Request and evaluate information on the following aspects of the employer's occupational safety and health program (Findings will be discussed in detail at the closing conference.):

A. Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The CSHO will discuss the employer's maintenance schedules and inspection records. Additional information will be obtained concerning such employer activities as sampling and calibration procedures, ventilation measurements, preventive maintenance programs for engineering controls, laboratory services, use of industrial hygienists and accredited laboratories. Compliance with the monitoring requirement of any applicable standard will be determined.

B. Medical. The CSHO will determine whether the employer provides the employees with pre-placement and periodic medical examinations. The medical examination protocol will be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.

C. Record keeping. The CSHO will determine the extent of the employer's record keeping program. This is not to be limited to OSHA - required records, but will be extended to information pertinent to the inspection such as:

1. If records pertaining to employee exposure and medical records are being preserved in accordance with 29 CFR 1910.1020; and,

2. Where a specific standard has provisions for employee access to the records, whether the results of environmental measurements and medical examinations are accessible to the affected employees.

D. Compliance. The employer's compliance program may include engineering, work practice and administrative controls and the

use of personal protective equipment. The CSHO will identify as follows:

1. Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.

2. Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices and rotation of employees.

    a. There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the CSHO will obtain a detailed description of such controls.

    b. The CSHO will evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposures.

    c. Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.

3. Personal Protective Equipment. An effective personal protective equipment program should exist in the plant. A detailed evaluation of the program will be made to determine compliance with the specific standards which require a hazard assessment and the use of protective equipment (e.g., 29 CFR 1910.95 – Occupational Noise Exposure, 1910.132 – PPE, General Requirements, 1910.134 – Respiratory Protection).

E. Regulated Areas. The CSHO will investigate compliance with the requirements for regulated areas as specified by certain standards.

1. Regulated areas must be clearly identified and known to all appropriate employees.

2. The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.

F. Emergency Procedures. The CSHO will evaluate the employer's emergency program.

1. When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation will determine if:

    a. Potential emergency conditions are included in the written plan.

b. Emergency conditions have been explained to employees.

c. There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.

2. When a review of specific emergency procedures is not required for a particular standard or due to a limited scope inspection, these procedures can be reviewed to determine overall good faith. If deficiencies are found, they will not be cited, however, recommendations for improvements will be made.

iv. Collecting Samples. The CSHO will determine as soon as possible after the start of the inspection whether sampling is required by utilizing the information collected during the walk around inspection and from the preinspection review.

A. If sampling is necessary, the CSHO will develop a sampling strategy considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.

1. There will be no undue delay between development of the sampling strategy and the actual sampling or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate its necessity. (See Section C.1.d. – Advance Notice of Inspection)

B. When work schedules other than the usual 8-hour day are encountered; e.g., four 10-hour days per week, the following procedures will be used when the standard itself does not cover such exposures:

1. Sampling for 8-hour exposure levels will be performed as usual; separate sampling will be conducted to determine any additional exposure beyond the 8 hours.

2. The results from the 8-hour sampling will be compared to the permissible exposure level to determine whether or not an overexposure exists.

3. If it appears that the 8-hour exposure limits do not provide adequate protection from health hazards when longer workday schedules are used, the CSHO will contact the district supervisor for additional instructions on further sampling that may be indicated as well as for guidance on evaluation of sampling data.

C. A copy of the Workplace Summary Sheet with industrial hygiene sampling results (for noise, air, wipe and bulk samples) is sent to the employer whenever sampling is conducted. It can

be mailed with an "in compliance" letter or with citations. The employer is required to maintain this data in order to meet the requirements of 29 CFR 1910.1020.

D. If the employee representative requests sampling results, summaries of the results will be provided as soon as practicable after consultation with the district supervisor.

c. Taking Photographs/Video Recording. Photographs or videos will be taken whenever the CSHO judges there is a need. Developed photographs, CDs or video recordings will be properly labeled with company name, inspection number, and source of photos or videos, then placed in the case file (reference FOM Chapter XVI, E.5.c. – Inspection Case File Assembly and Management). For more information regarding guidelines for case file documentation with video, audio and digital media, see OSHA Instruction CPL 02-00-098, *Guidelines for Case File Documentation for Use with Videotapes and Audiotapes*, October 12, 1993, [and any other directives related to photograph and videotape retention.]

***Note**: The CSHO will ensure that using flash or spark-producing equipment will not be hazardous and that employees are not unexpectedly startled by the use of flash equipment. Any individual whose words may be recorded will be advised of the fact that videotape recordings also capture sound.*

d. Employee Interviews. A free and open exchange of information between the CSHO and employees is essential to an effective inspection. Interviews provide an opportunity for employees, or other individuals, to point out hazardous conditions and, in general, to provide assistance as to what violations of the act may exist and what abatement action should be taken.

i. Purpose. NCGS 95-136 authorizes the CSHO to question any employee privately during regular working hours in the course of an OSH inspection. The purpose of such interviews is to obtain whatever information the CSHO deems necessary or useful in carrying out the inspection effectively. Such interviews, however, will be conducted within reasonable limits and in a reasonable manner and will be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.

ii. Employee Right of Complaint. Even when employees are represented on the walk around, the CSHO may consult with any employee who desires to discuss a possible violation. Upon receipt of such information, the CSHO will investigate the alleged violation, where possible, and record the findings.

A. NCGS 95-136 affords any employee an opportunity to bring any condition believed to violate a standard or NCGS 95-129(1) to the attention of the CSHO during an inspection.

B. In certain instances, the employer and/or the employee walk around representative may not be able to provide all the necessary information regarding an accident or possible violation. The CSHO will consult with employees while conducting the walk around inspection and will arrange for

interviews, where these are considered useful, with employees who may have knowledge of pertinent facts.

iii. Time and Location. Interviews normally will be conducted during the walk around; however, they may be conducted at any time during an inspection.

A. Workplace. If requested by the employee and considered useful by the CSHO, additional consultation should be scheduled at a mutually convenient time. In retail or service establishments or in continuous production operations (e.g., assembly line), interviews should be scheduled to afford minimum interference with the employee's duties and the employer's business operations.

B. Other than Workplace. Interviews may be held at the employee's home, the District Office, or at any other suitable place in the community where privacy can be maintained. To provide for the CSHO's personal safety and/or to avoid compromising situations, using public facilities or involving a coworker as a witness is recommended.

iv. Privacy. Pursuant to NCGS 95-136(a)(2) - Inspections, CSHOs have the right "to question privately any such employer, owner, operator, agent or employee" during an inspection. It is division policy to exercise that right.

A. If requested, management officials may have legal counsel present when being questioned as long as the inspection is not unduly delayed while the lawyer is being summoned.

B. Employees may also have their personal counsel or an employee representative when being interviewed if they request it, provided that the inspection is not unduly delayed.

C. Requests for the presence of a representative by an employee must be made personally by the employee in a private conversation and not by a third party.

v. Interviews shall normally be in writing and written in the first person. Recording employees and others for interview statements may inhibit the free flow of information from those being interviewed. Recording devices can intimidate witnesses and produce an atmosphere that could limit the information they are willing to share. Therefore, using a recording device to gather interview statements under most investigation/inspection circumstances is not a recommended practice. However, if it is determined by the CSHO, supervisor and bureau chief that a recording will be useful, the following procedures must be followed:

A. A specific notification of voice recordings shall be given to those employees within the audio range of the video camera. Examples of a specific notation would be: "This camera has

video capability that records sound. I will be video recording your work and it will be recording any sounds and/or conversations that occur during the video recording of your work activities. I will notify you when the video recording is being conducted."

B. Interview statements may be video and/or audio recorded, with the consent of the person being interviewed. The video and audio recorded statement shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate and other significant cases so that it may be signed. CSHOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber.

C. Interview statements will open with the interviewee identifying him/herself on the audio/video recording, followed by a statement that the interviewee has read and signed the Video and Sound Recording Release.

D. Interview statements shall not be recorded with a cell phone. A video or audio recorded statement may only be obtained by use of a video camera with audio capabilities.

vi. Witness Statements. Witness statements will be obtained whenever the CSHO determines that such statements would be useful in documenting adequately an apparent violation.

A. Witness statements will normally be written, and the employee will be encouraged to sign and date the statement. The CSHO will assure the employee that the statement will be held confidential to the extent allowed by law. However, witness statements must be released to the employer upon specific request ten days prior to a scheduled contested case hearing. The following are some examples of situations where the CSHO will normally obtain written statements:

1. When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation.

2. When there is a conflict or difference among statements as to the facts.

3. When there is a potential willful or repeated violation.

4. In an accident investigation, when attempting to determine if apparent violation(s) existed at the time of the accident.

5. When identified violation occurred prior to the inspection.

B. Witness statements will normally be written in the first person and in the language of the individual. The wording of the

statement will be understandable to the individual and reflect only what has been brought out in the interview.

1. The employee will initial any changes or corrections; otherwise, the statement will not be changed, added to or altered in any way.

2. The statements will end with wording such as: "I have read the above, and it is true to the best of my knowledge." The statement will also include the following: "I request that my statement be held confidential to the extent allowed by law." The individual, however, may waive confidentiality. The individual will sign and date the statement and the CSHO will then sign it as a witness.

3. If the individual refuses to sign the statement, the CSHO will note such refusal on the statement. The statement will, nevertheless, be read to the employee and an attempt made to obtain agreement. A note that this was done will be entered into the case file.

C. The employee may have a copy of their witness statement if they request one.

D. A transcription of a recorded statement shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate and other significant cases so that it may be signed. CSHOs are encouraged to produce a written statement for correction and signature as soon as possible, identifying the transcriber.

e. Special Circumstances.

i. Trade Secrets. Trade secrets are matters that are not of public or general knowledge. A trade secret is any confidential formula, pattern, process, equipment, list, blueprint, device or compilation of information used in the employer's business which gives an advantage over competitors who do not know or use it.

A. Policy. It is essential to the effective enforcement of the act that the CSHO and all division personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

B. Restrictions and Controls. When the employer identifies an operation or condition as a trade secret, it will be treated as such. Information obtained in such areas, including all negatives, photographs, video recordings, and OSH documentation forms will be labeled: "TRADE SECRET"

1. Under NCGS 95-152 – Confidentiality of Trade Secrets, all information reported to or obtained by a CSHO in connection with any inspection or other activity which

contains or which might reveal a trade secret will be kept confidential. Such information will not be disclosed except to other division officials concerned with the enforcement of the act or during the course of a contestment or appeal to prove the state's case.

2. NCGS 95-152 and Title 18 of the United States Code, Section 1905, provide criminal penalties for employees who disclose such information. These penalties include fines or imprisonment of up to one year, or both, and removal from office or employment.

3. Trade secret materials will not be labeled as "Top Secret," "Secret," or "Confidential," nor will these security classification designations be used in conjunction with other words unless the trade secrets are also classified by an agency of the U. S. government in the interest of national security.

C. Photographs/Video Recordings. If the employer objects to the taking of photographs or video recordings because trade secrets would or may be disclosed, the CSHO should advise the employer of the protection against such disclosure afforded by 29 CFR 1903.9 and NCGS 95-152. If the employer still objects, the CSHO will contact the district supervisor.

ii. Areas Requiring Immunization. If, during an inspection, a non-immunized CSHO encounters an area requiring immunization, the CSHO will not enter that area but will note a description of the area, immunization required, employees exposed, location and other pertinent information in the case file.

A. Non-immunized CSHO. The CSHO will consult with the district supervisor about scheduling a properly immunized CSHO for an immediate or later inspection, as applicable. The CSHO will then complete the inspection of all other areas of the establishment.

B. Non-immunized Walk Around Representative. If, during an inspection, a properly immunized CSHO finds that walk around representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, a reasonable number of employees and the supervisor of that area will be consulted concerning workplace health and safety. (See Section B.8. – Immunization and Other Special Entrance Requirements, for additional information.)

iii. Violations of Other Laws. If a CSHO observes apparent violations of laws enforced by other government agencies, such cases will be referred to the appropriate agency. Referrals will be made using appropriate division procedures.

A. One such regulation is that prohibiting under age workers. Instances of this will be referred to the department's Wage and Hour Bureau.

8. Closing Conference. At the conclusion of an inspection, the CSHO will conduct a closing conference with the employer and the employee representatives. The CSHO should explain to the affected parties the results of the inspection and answer any questions about inspection activity. (On multiple employer worksites, the CSHO will decide whether separate closing conferences will be held with each employer representative.) A joint closing conference should be held with the employer and the employee representatives whenever practicable. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences will be held.

a. General. The CSHO will describe the apparent violations found during the inspection and indicate the applicable sections of the standards which may have been violated. Copies of the standards will be given to both the employer and the employee representatives when available (if not already given during the opening conference). During the closing conference, both the employer and the employee representatives will be advised of their rights to participate in any subsequent conferences, meetings or discussions.

i. Since the CSHO may not have sample results prior to the first closing conference, a second closing conference will be held by telephone or in person to inform the employer and the employee representatives whether the establishment is in compliance.

A. If the results indicate noncompliance, apparent violations, correction procedures, and interim methods of control will be discussed.

B. Even if the employer is in compliance, sample results which equal or exceed 50 percent of the permissible exposure limit and any recommendations of the CSHO on good safety and health practices will be discussed with the employer and the employee representatives.

ii. When closing conferences are delayed pending receipt of sampling data or for any other reason, the employee representative will be afforded an opportunity to participate in such delayed conferences.

iii. The strengths and weaknesses of the employer's occupational safety and health program will be discussed at the closing conference.

iv. During the discussion of apparent violations, the CSHO will note any comments and obtain input for establishing correction dates.

v. The CSHO will advise the employee representatives that:

A. Under NCGS 95-135(e) – North Carolina Occupational Safety and Health Review Commission, of the Occupational Safety and Health Act of North Carolina, if the employer contests, the employees have a right to elect "party status" before the OSH Review Commission.

B. The employer must notify them if a notice of contest is filed.

C. They have discrimination rights under NCGS 95-241 – Discrimination Prohibited.

D. They have a right to contest the abatement date. Such contest must be in writing and must be filed within 15 working days after receipt of the citation.

E. CSHOs will verify that employees observed and/or interviewed on site do, in fact, work for the employer they have indicated.

Note: *When employees work away from their main office, often the information provided to the employer about the inspection activity is inaccurate and inadequate. In such cases where a corporate officer, owner or partner is not involved in the closing conferences, the CSHO will contact the employer's main office and reiterate information provided onsite. They should discuss the scope of the inspection conducted, review the observed hazards and confirm the location where citations and other correspondence should be mailed. These actions should be documented in the case file.*

b. Specific. During the closing conference the CSHO will give the employer a copy of the publication, "Employer Rights and Responsibilities - OSHA 59," which explains the responsibilities and courses of action available to the employer if a citation is received. The CSHO will then briefly discuss the information on the form and answer any questions. The CSHO will present the Employer Rights and Responsibilities form to the highest ranking management official in attendance during the closing conference and request that they sign the form. If the management official does not sign the form, for any reason, the CSHO will document this in the narrative. When closing conferences are done remotely, such as by telephones, the CSHO will document this in the narrative and either mail or fax the Employer Rights and Responsibilities form to the management official(s) in attendance and request that they sign the form and return it to the CSHO to include in the case file. If a returned signed Employer Rights and Responsibilities form is not received from employer, this will be documented in the case file. All matters discussed during the closing conference will be documented in the case file, including a note describing printed materials provided to the company.

i. No citations issued. The CSHO will inform the employer and employee representatives when no violations were observed and no citations will be issued as a result of an inspection. The CSHO will also inform the employer that, when approved by the district supervisor, a letter along with an In-Compliance Certificate will be mailed to the employer.

When no citations are issued by the CSHO during a fatality or accident investigation, an in-compliance letter (or modified letter) may be sent at the discretion of the district supervisor. In-compliance letters should be issued on a limited basis and are reserved for comprehensive inspections where no violative conditions were observed.

All letters and certificates issued for in compliance inspections will be placed in the case file and maintained per Chapter XVI – Administrative File Activities, Appendices A – Case File Assembly and B – Case File Retention/Disposition Guide.

ii. Citations Issued. If citations are issued, the original will be sent to the employer representative at the establishment. In the case of a non-fixed worksite, the original normally will be sent to the worksite and a copy sent to the employer's headquarters. If it is clear that the employer representative at the worksite does not receive mail deliveries or will not be at the site at the time of delivery, the circumstances will be documented in the case file; and the original will be sent to the location designated as most appropriate by the employer representative at the site. In addition, copies will be sent to any other employer representatives as requested by the attending employer representative. Other mailing addresses should be included in OSHA Express in the Contacts tab under Additional Citation Mailings.

Note: *The original citation will be sent by certified mail, return-receipt requested, except in situations requiring hand delivery. See Chapter V – Citations, for procedures to deliver citations by a county sheriff's department.*

A. The employer will be urged to read the citations carefully. If the employer has any questions regarding a citation, the employer may contact the district supervisor at the address on the citation.

B. Information concerning the right to an informal conference and of the requirement that any "Notice of Intent to Contest" must be in writing will be sent with each copy of the citation.

C. Notification of additional charges for nonpayment and administrative costs will be included with each copy of the citation whenever there is an associated proposed penalty.

iii. Citation Posting. The citation or a copy of it must be posted at or near the place where each violation occurred to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the citation at or near the place where each violation occurred, the citation must be posted in a prominent place where it will be readily observed by all affected employees. The citation must remain posted for three working days or until the violation is corrected, whichever is longer.

A. If the citation is amended as a result of an informal conference or other procedure, a copy of the amended citation must be posted along with a copy of the original citation.

B. Even if contested, a copy of the citation still must be posted.

C. If there is an authorized employee representative at the establishment, copies of the original citation and any subsequent citation amendments will be sent to that representative as soon as

possible after receipt of these documents by the employer. The appropriate informal conference letter will be sent with each copy of the citation.

iv. Complying with Citation and Notification of Penalty. If the employer does not contest the citation and the penalty and it becomes a final order, then:

A. The cited conditions must be abated by the dates set in the citation; and,

B. The penalty must be paid if one was proposed.

v. Contesting Citation and Notification of Penalty. The CSHO will advise the employer that the citation, the penalty and/or the abatement date may be contested if, in good faith, the employer does NOT agree to the citation, penalty or abatement date.

A. Notice of Contest. The CSHO will tell the employer that, in order to contest, the director must be notified in writing within 15 working days after receipt of the citation and notification of penalty. Working days are Monday through Friday, excluding holidays. The CSHO will emphasize that a notice of intent to contest given orally will not satisfy this requirement to give written notification.

Note: *The written notification must be postmarked no later than the 15 working days after receipt of the citation.*

1. Employer Contest. This written notification, called a "Notice of Intent to Contest," must clearly state what is being contested -- which item of the citation, the penalty, the correction date, or any combination. The CSHO will ask the employer to read the information accompanying the citation for additional details.

2. If the employer contests only the penalty or only some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.

3. Employee Contest. The CSHO will indicate that the act provides that employees, or their authorized representative(s), have the right to contest in writing any or all of the abatement dates set for a violation if they believe the date(s) to be unreasonable.

B. Contest Process. The CSHO will explain that, when the "Notice of Intent to Contest" is filed, the OSH director is required to forward the case to an independent agency, the OSH Review Commission at which time the case is officially in litigation.

1. Upon receipt of the "Notice of Intent to Contest," the OSH Review Commission will assign the case to an administrative law judge, who will schedule a hearing in a public place close to the workplace.

2. The OSH Review Commission will inform the employer or employee of the procedural requirements which must be observed throughout the proceedings.

3. The administrative law judge may uphold, modify or eliminate any item of the citation or the penalty which the employer has challenged.

vi. Informal Conference. The CSHO will advise those attending the closing conference:

A. That an informal conference with the district supervisor may be requested within 15 working days of receipt of the citations and must be completed within 20 working days of citation receipt.

B. That, if a citation is issued, an informal conference request will place on hold the 15-working-day period in which the employer or the employee representative may contest, until the employer is notified of the informal conference results.

C. That an oral statement of disagreement with or intent to contest a citation, penalty or abatement date during an informal conference does not take the place of the required written notice of intent to contest.

D. That the employer representative(s) have the right to participate in an informal conference or negotiations between the supervisor and the employees.

E. That the employee representative(s) have the right to participate in an informal conferences or negotiations between the supervisor and the employer.

F. Upon receipt of a proposed Informal Settlement Agreement, amended citations, or a "no change" letter, the employer has a 15 working day period in which to contest.

vii. Penalties. The CSHO will explain that penalties must be paid within 15 working days after the employer receives the citation and notification of penalty. If, however, the employer requests an informal conference or contests the citation and/or the penalty in good faith, the penalties need not be paid for those items until there is an Informal Settlement Agreement or a Final Order.

viii. Abatement Action. The CSHO will explain the following:

A. For violations the employer does not contest, the employer is expected to notify the CSHO promptly by returning the Confirmation of Abatement form indicating that the cited

conditions have been corrected by the abatement date set in the citation. Failure to do so may trigger a follow up inspection and additional citations. The notification must explain the specific action taken with regard to each citation and the approximate date the corrective action was completed. (See Section E.4. – Verification of Abatement) The employer must also inform affected employees of abatement activities by posting the Confirmation of Abatement form.

B. When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. The employer may be requested to send periodic progress reports on actions to correct these violations.

ix. Request for Extension of Abatement Date. The CSHO will advise the employer that abatement dates are established on the basis of the information available at the time the citations are issued. When uncontrollable events or other circumstances prevent the employer from meeting an abatement date and the 15-working-day contest period has expired, a request may be submitted in writing for extension of the abatement date. Further information on requests for extensions of abatement dates is included in the information accompanying any citation that is received. Details may be obtained from the district supervisor.

x. Follow-up Inspection.

A. If the employer receives a citation, the CSHO will explain that a follow-up inspection may be conducted to verify that the employer has:

1. Posted the citation as required.

2. Corrected all violations as required in the citation and indicated on the returned and posted Confirmation of Abatement form.

3. Adequately protected the employees during multi-step or lengthy abatement periods.

4. Taken appropriate administrative or engineering abatement steps in a timely manner.

B. The CSHO will also explain that failure to abate and/or repeat citations may be issued as well as that any new violations discovered during a follow up inspection will be cited.

xi. Failure to Abate. The CSHO will explain that to achieve abatement by the date set forth in the citation, it is important that corrective efforts be promptly initiated. The employer will be reminded that, under the act, additional penalties may be proposed if the employer is found during a

follow up inspection to have failed to abate by the time required on the Confirmation of Abatement form any violations which have not been contested.

xii. False Information. The CSHO will explain that if the employer knowingly provides false information relating to efforts to correct cited conditions or in records required to be maintained or in any other matter related to the act, criminal penalties may be assessed as specified in the act.

xiii. Employee Discrimination. The CSHO will emphasize that the act prohibits employers from discharging or discriminating in any way against an employee who has exercised any right under the act, including the right to make safety or health complaints or to request an OSH inspection. Complaints from employees who believe they have been discriminated against will be evaluated by the Retaliatory Employment Discrimination Bureau (REDB). If the investigation discloses a probable violation of employee rights, the REDB may initiate legal action on behalf of employees whose rights have been violated.

xiv. Variances. The CSHO will explain that the act permits the employer to apply to the commissioner for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date because of the unavailability of materials, equipment, or technical personnel. The employer may also apply for a permanent variance from a standard if the employer believes that the facilities or methods of operation at the establishments under consideration are at least as safe and healthful as would be ensured by the OSH standard. All variance applications must be submitted in writing and must include all applicable items specified in NCGS 95-132 - Variances. More complete information on variance protocol is contained in OPN 118 - Administration of Variance Requests and Related Records. Employers should be directed to ETTA for variance requests.

xv. Small Business Administration Loans. If asked by the employer, the CSHO will explain that the Small Business Administration does not currently provide either direct or guaranteed loans for compliance with occupational safety and health standards.

Referral Inspection.

A. The CSHO will explain other related sites may be subject to referral for inspection when there is evidence that compliance problems identified in an initial inspection at one site may be present at other sites controlled by the employer. The CSHO will consult with their supervisor and bureau chief before initiating an inspection at other sites controlled by the employer, and depending on the locations of the other sites, this may require coordination among supervisors. These types of inspections will be coded as referrals, but otherwise coded and conducted the same as the initial inspection.

xvii. Consultative Services. The CSHO will explain thoroughly the consultative services available to the employer, including confidentiality provisions, safety and health program assistance, training and education service and the programmed planned inspection deferral program.

xviii. Other Services and Programs. The CSHO will briefly explain the various other services and programs currently in effect in the agency and will provide copies of program descriptions to any interested employer. Examples include the following:

A. Employer Abatement Assistance. The employer will be made aware of the division's commitment to aid, as much as practicable, in the process of correcting workplace hazards. Any questions regarding abatement can be discussed with the employer during the closing conference with more complete information provided as necessary as soon as possible after the completion of the inspection. (See Section F – Employer Abatement Assistance for more details.)

B. Carolina Star Programs. These programs are designed for those employers who want to cooperate with the division to demonstrate the importance of functioning internal safety and health systems for the prevention of injuries and illnesses. The division encourages program participants to set realistic goals for the elimination or reduction of workplace hazards and for improved safety and health planning and programming. Participation in these programs will not in any way diminish existing employer or employee rights or responsibilities under the act.

C. Internet Access. The department maintains a website at http://labor.nc.gov. OSHA information and publications can be accessed from this home page.

E. **Abatement.**

1. Period. The abatement period will be the shortest interval within which the employer can reasonably be expected to correct the violation. The default abatement period shall be zero (0) working days for serious site violations (i.e. physical hazards) and 15 or 30 working days for all program violations (e.g. written programs and training), based on the extent of abatement action required. Any deviation from these abatement periods must be justified in block B5 of the OE violation worksheet, though at no time shall the initial abatement period exceed 30 working days. The CSHO shall not add any mailing time to the abatement period. When abatement is witnessed by the CSHO while on-site or when evidence of abatement (e.g. photos, training records) is received prior to citation issuance, the CSHO will mark the citation in OSHA Express with an "I" for "Corrected Before Citation Issuance." The corresponding abatement period will be designated as "Corrected During Inspection" on the citation.

2. Reasonable Abatement Date. The establishment of an abatement date requires the exercise of maximum professional judgment on the part of the CSHO.

a. The exercise of this judgment will generally be based on data found during the inspection and/or whatever subsequent information gathering is deemed necessary. In all cases, the employer will be asked for any available information relative to the time required to accomplish abatement and/or any factors medical record to the employer's operation which may have an effect on the time needed for abatement.

b. All pertinent factors will be considered in determining a reasonable period. The following considerations may be useful in arriving at a decision.

i. The gravity of the alleged violation.

ii. The availability of needed equipment, material, and/or personnel.

iii. The time required for delivery, installation, modification or construction.

iv. Training of personnel.

3. Abatement Periods Exceeding Thirty Working Days. Abatement periods exceeding 30 working days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where additional time is required. For example, a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 working days. When an initial abatement date is granted that is in excess of 30 working days, the reason will be documented in the case file. Initial abatement dates will not be in excess of one year from the citation issuance date.

4. Verification of Abatement. The CSHO is responsible for determining if abatement has been accomplished. When abatement is not accomplished at the time of the inspection or the employer does not notify the CSHO by submittal of the confirmation of abatement form, verification will be determined by follow-up inspection or other appropriate action. Any contact by the district supervisor or other bureau employees to determine if abatement has been accomplished will be documented on the case file summary. The date of abatement verification will be documented by the CSHO in field 22 of the OE violation worksheet. Abatements observed by the CSHO on the job site shall be documented in block B5 of the violation worksheet, with a reference to the applicable photo number showing the abatement. Abatement documentation received and approved following the last day onsite but before citation issuance shall be stamped as an "Abatement" and placed in the case file immediately above the citation packet.

5. Effect of Contest upon Abatement Period. In situations where an employer contests either (1) the period set for abatement or (2) the citation itself, the abatement period generally will be considered not to have begun until there has been an affirmation of the citation and abatement period. In accordance with the act, in the case of appeal, the abatement period begins when a final order of the OSH Review Commission is issued, and this abatement period is not delayed while an appeal is ongoing unless the employer has been granted a stay by the court. In situations where there is an employee contest of the abatement date, the abatement requirements of the citation remain unchanged until the OSH Review Commission renders a decision. If both the employer and employee contest, the abatement dates are determined following a Final Order of the OSH Review Commission. The employee must contest within 20 working days of the date the citation is posted. This notice should be forwarded to the OSH Review Commission when received.

a. Where the OSH Review Commission or a court alters the abatement period, the abatement period as altered will be the applicable abatement period.

b. Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.

c. Where the employer does not contest, he must abide by the date set forth in the citation even if such date is within the 15 working day notice of contest period. Therefore, when the abatement period designated in the citation is 15 working days or less and a Notice of Contest has not been filed, a follow-up inspection of the worksite may be conducted for purposes of determining whether abatement has been achieved within the time period set forth in the citation. A Failure-to-Abate notice may be issued on the basis of the CSHO's findings.

d. Where the employer has filed a Notice of Contest to the initial citation within the proper contest period, the abatement period does not begin to run until the entry of a final OSH Review Commission order. Under these circumstances, any follow-up inspection within the contest period will be discontinued and a Failure-to-Abate notice will not be issued.

Note: *There is one exception to the above rule. If an early abatement date has been designated in the initial citation and it is the opinion of the CSHO and/or the bureau chief that a situation classified as imminent danger is presented by the cited condition, appropriate imminent danger proceedings may be initiated notwithstanding the filing of a Notice of Contest by the employer.*

e. Where the employer has requested an informal conference and an employee has sent notice of contest on the original abatement dates, the employee should be invited to the informal conference. An attempt can then be made to resolve abatement issues in an informal setting prior to submitting the employee notice of contest to the OSH Review Commission.

6. Feasible Administrative, Work Practice and Engineering Controls. Where applicable (generally, during health inspections), the CSHO will discuss control methodology with the employer during the closing conference.

a. Engineering Controls. Engineering controls consist of substitution, isolation, ventilation and equipment modification.

i. Substitution may involve process change, equipment replacement or material substitution.

ii. Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.

iii. Ventilation controls are more fully discussed in the OSHA Technical Manual.

iv. Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.

b. Administrative Controls. Any procedure which significantly limits daily exposure by control or manipulation of the work schedule or manner in which

work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.

c. Work Practice Controls. Work practice controls are a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

d. Feasibility. Abatement measures required to correct a citation item are feasible when they can be accomplished by the employer. The CSHO, following current directions and guidelines, will inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.

i. Types of Feasibility. In general, there are two types of feasibility determinations that the division must make with regard to potential abatement methods. Each will be discussed separately.

ii. Technical Feasibility. Technical feasibility is the existence of technical know-how as to materials and methods available or adaptable to specific circumstances. In addition, they must be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced.

A. Sources which can provide information useful in making this determination are the following:

1. Similar situations observed elsewhere where adequate engineering controls do, in fact, reduce employee exposure.

2. Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations.

3. Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible.

4. Studies and materials collected and prepared by other state or federal occupational safety and health technical support personnel.

5. Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.

6. Information provided by other government agencies when their regulations apply to the operations involved and which may affect or limit the design or type of controls that may be used for abatement.

B. The division's experience indicates that feasible engineering or administrative controls exist for most hazardous exposures.

C. The director is responsible for making determinations that engineering or administrative controls are not feasible.

iii. Economic Feasibility. Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received. The CSHO will inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it may be considered during an informal conference or during settlement negotiations.

A. If the cost of implementing effective engineering, administrative, or work practice controls or some combination of such controls, would seriously jeopardize the employer's financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended abatement date will be set when postponement of the capital expenditures would have a beneficial effect on the financial performance of the employer.

B. If the employer raises the issue that the company has other establishments or other locations within the same establishment with equipment or processes which, although not cited as a result of the present inspection, nevertheless would require the same abatement measures as those under citation, the economic feasibility determination will not be limited to the cited items alone. In such cases, although the employer will be required to abate the cited items within the time allowed for abatement, the opportunity to include both the cited and the additional items in a long-range abatement plan will be offered.

C. When additional time cannot be expected to solve the employer's financial infeasibility problem, the bureau chief will consult with the director's office.

iv. Reducing Employee Exposure. Wherever feasible engineering, administrative or work practice controls can be instituted even though they are not sufficient to reduce exposure to or below the permissible exposure limit, nonetheless, they will be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

7. Multi-step Abatement. Citations with multistep abatement periods normally will be issued only in those situations in which ultimate abatement will require the implementation of feasible engineering controls, as distinguished from feasible administrative controls or the use of personal protective equipment. This might occur with noise, air contaminant or process safety management hazards. Multistep abatements will be based on the conditions cited and related feasibility considerations.

a. General. A step-by-step program for abatement provides a tool for the CSHO to monitor abatement progress after a citation has been issued, for the employer to

make abatement decisions and to set up schedules efficiently, and for the employees to understand the changes being made to the working environment.

i. Although abatement of an air contaminant citation normally requires the implementation of feasible engineering and/or administrative controls, abatement may be accomplished in rare cases through the use of personal protective equipment, even when engineering or administrative controls are feasible. In such cases the director's office must review final abatement through the use of personal protective equipment.

b. Interim and Long-range Abatement. When the cited employer is found to have no effective personal protection program, in addition to long-term abatement through the use of feasible administrative or engineering controls, proper abatement will include a short-term requirement that appropriate personal protective equipment be provided.

i. The district supervisor, in issuing the citation, will set a short-range abatement date for prompt temporary protection to employees pending formulation and implementation of long-range feasible engineering and/or administrative controls. Short-range administrative controls and personal protective equipment will be specified in the citation as the interim protection. (See Chapter V – Citations.)

ii. If it has been determined that the employer will use engineering controls to achieve abatement, a specific date will be set by which the employer can reasonably be expected to implement engineering controls, including enough time for the development of engineering plans and designs for such controls, as well as necessary construction or installation time.

c. Considerations. In providing for multistep abatement the following factors will be taken into consideration:

i. In general, engineering controls afford the best protection to employees, and the employer will be required to utilize such controls in all instances to the extent feasible. Engineering and work practice controls are to be used in preference to respirators and other personal protective equipment. In certain circumstances, administrative controls can be successful in controlling employee exposure to contaminants; e.g., maintenance operations involving toxic substances can sometimes be performed at night in the absence of the usual production staff.

Note: Employee rotation is an administrative control that the division prohibits as a method of complying with the permissible exposure limits of carcinogens.

ii. In those limited situations where there are no feasible engineering or administrative controls, full abatement can be allowed by use of personal protective equipment. These cases must be reviewed by the director's office.

F. **Employer Abatement Assistance.**

1. Policy. CSHOs will offer appropriate abatement assistance during the walk around as to how workplace hazards might be eliminated. The information will provide guidance to

the employer in developing acceptable abatement methods or in seeking appropriate professional assistance. All abatement assistance provided during open inspections will be managed by the CSHO or their supervisor.

2. Type of Assistance. The type of abatement assistance provided will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods, such as guarding of belts and pulleys, the CSHO will, at a minimum, ensure that the employer is aware of the specifications. For more complex problems, the CSHO will offer general information on types of controls or procedures commonly used to abate the hazard. Alternative methods will be provided whenever possible. (See Section E.6 for more specific requirements.)

3. Disclaimers. The employer will be informed that:

   a. The employer is not limited to the abatement methods suggested by the division;

   b. The methods explained are general and may not be effective in all cases; and,

   c. The employer is responsible for selecting and carrying out an effective abatement method.

4. Procedures. Information provided by the division to assist the employer in identifying possible methods of abatement for alleged violations will be provided to the employer as it becomes available or necessary. The issuance of citations will not be delayed.

   a. Assistance Provided During an Inspection. CSHOs will utilize their knowledge and professional experience in providing the employer with abatement assistance during the inspection.

      i. Before leaving an inspection site and, preferably, during the walk around when an apparent violation is noted, CSHOs will determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.

      ii. CSHOs will briefly document abatement information provided to the employer or the employer's negative response to the offer of assistance.

      iii. If the employer needs additional assistance or interpretive technical guidance from ETTA for any issues that may be cited, the CSHO should contact ETTA directly to discuss the issue instead of referring the employer to ETTA.

   b. Assistance Provided After an Inspection. If a CSHO cannot provide assistance during an inspection or if the employer has abatement questions after the inspection, the district supervisor will ensure that additional information, if available, is obtained and provided as soon as possible to the employer. Any communications with the employer will be documented in the case file.

5. Services Available to Employers. Employers requesting abatement assistance will be informed that the division is willing to work with them even after citations have been issued. In addition, the employer will be made aware of the availability, free of charge, of onsite consultation services and technical guidance and training from ETTA.

G. **Follow-up Inspections.**

1. Inspection Procedures. The scope of the follow-up inspection will not be expanded unless, in the judgment of the CSHO, there have been significant changes in the workplace which warrant further investigation activity. In such a case, the district supervisor will be consulted. This does not preclude the CSHO from recommending citations as in Chapter IX.A.9.d - Items Brought to the Attention of the CSHO.

2. Failure-to-Abate. A failure-to-abate exists when the employer has not corrected a violation for which a citation has been issued or has not complied with interim measures involved in a multistep abatement within the time given.

   a. Initial Follow-up. The initial follow-up is the first follow up inspection after issuance of the citation.

      i. If a violation is found not to have been abated, the CSHO will inform the employer that the employer is subject to a "Notification of Failure-to-Abate Alleged Violation" and proposed additional daily penalties while such failure or violation continues.

      ii. Failure to comply with enforceable interim abatement dates involving multistep abatement will be subject to a "Notification of Failure-to-Abate Alleged Violation."

      iii. Where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the regulatory requirements, a "Notification of Failure-to-Abate Alleged Violation" normally will be issued. If the employer has exhibited good faith, a late extension request for extenuating circumstances may be considered.

      iv. Where an apparent failure-to-abate by means of engineering controls is found to be due to technical infeasibility, no failure-to-abate notice will be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a "Notification of Failure-to-Abate Alleged Violation" will be issued.

      v. There may be times during the initial follow-up when, because of an employer's flagrant disregard of a citation or an item on a citation, or other factors, it will be apparent that additional administrative enforcement actions will be futile. In such cases, the company may be cited for contempt. Any such actions, such as cease and desist orders or contempt citations, will be initiated under NCGS 95-133. The director's office will notify the AG's office, in writing, of all the particular circumstances of the case.

   b. Second Follow-up. Any subsequent follow-up after the initial follow-up dealing with the same violations is a second follow-up.

      i. After the "Notification of Failure-to-Abate Alleged Violation" has been issued, the director will allow a reasonable time for abatement of the violation before conducting a second follow-up. If the employer contests the proposed additional daily penalties, a follow-up inspection may still be scheduled to ensure correction of the original violation.

ii. If a second follow-up inspection reveals the employer still has not corrected the original violations, a second "Notification of Failure-to-Abate Alleged Violation" with additional daily penalties will be issued if the director deems it is appropriate. If a "Notification of Failure-to-Abate Alleged Violation" and additional daily penalties are not to be proposed, the director's office will contact the AG's office, in writing, detailing the circumstances for possible contempt citations under NCGS 95-133.

3. Sampling. If an employer receives a citation for an overexposure, the CSHO will conduct a follow-up inspection to verify and document that the employer properly abated the overexposures. The CSHO will document abatement for an overexposure in the case file by conducting additional sampling or establishing that an equivalent level of protection is provided, such as chemical substitution, process elimination, etc. The CSHO conducting a follow-up inspection to determine compliance with violations of air contaminants and noise standards will decide whether sampling is necessary, and if so, what kind; e.g., spot sampling, short-term sampling or full-shift sampling. If there is reasonable probability of an issuance of a "Notification of Failure-to-Abate Alleged Violation," full-shift sampling is required.

4. Reports. The abatement of violations observed by the CSHO will be noted in the narrative. When appropriate, this written description will be supplemented by a photograph to illustrate abatement measures. The CSHO will include in the narrative the findings pursuant to the inspection, along with recommendations for action to be taken by the department. In the event that any item has not been abated, complete documentation will be included in the citation worksheet.

H. **Conduct of Monitoring Inspection.**

1. General. An inspection will be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:

a. To determine the progress an employer is making toward final correction.

b. To ensure that the target dates of a multistep abatement plan are being met.

c. To ensure that an employer's petition for the modification of abatement dates is made in true and good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.

d. To ensure that the employees are being properly protected until final controls are implemented.

e. To ensure that the terms of a variance, ergonomics CAP, or settlement agreement are being carried out.

f. To provide abatement assistance for items under citation.

2. Procedures. Monitoring inspections will be conducted in the same manner as follow-up inspections as described in Section G.

I. **NIOSH Fatality Assessment and Control Evaluation (FACE) Program and Fire Fighter Fatality Investigation and Prevention (FFFIP) Program.**

1. Purpose. The goal of these NIOSH programs is to prevent occupational fatalities by identifying and investigating work situations at high risk for injury and then formulating and disseminating prevention strategies. The NCDOL OSH division supports the goal of the FACE and FFFIP Programs.

2. Areas of Emphasis.

   a. The FACE program has identified the following areas of emphasis.

      i. Fatalities involving Hispanic workers.

      ii. Fatalities involving youth younger than 18 years of age.

      iii. Construction work zone fatalities.

      iv. Machine related deaths.

   b. The FFFIP Program investigates line-of-duty firefighter fatalities.

3. NIOSH Program Investigations.

   a. The FACE Program receives notice of North Carolina fatalities within their areas of emphasis from the state plan coordinator.

   b. If a determination is made by either NIOSH Program to conduct an investigation, NIOSH may contact the appropriate district supervisor or CSHO.

      i. The NIOSH investigator should not in any way interfere with the OSH division inspection.

      ii. The amount of contact time committed to the NIOSH investigator will be left to the discretion of the CSHO or appropriate district supervisor depending on the time restraints of division personnel.

      iii. The NIOSH Programs are conducted for research purposes. Investigators do not enforce compliance with state or federal safety and health standards.

      iv. NIOSH investigators conduct an independent investigation and should not ordinarily need copies of the OSH division inspection case files. NIOSH requests for any part of an inspection case file must be made in writing to the Planning, Statistics, and Information Management Bureau consistent with the requirements in Chapter XIII - – Informal Conferences, Contested Cases and Disclosures.

4. Contact with NIOSH. NIOSH was created by Section 22 of the OSHAct to conduct safety and health research. Because of this mandate, NIOSH has a team of professionals knowledgeable in varied safety and health fields. NIOSH personnel are available to provide assistance to the OSH division as the need for technical expertise dictates.

APPENDIX III-A: Sources of Establishment Information

There are several different sources for securing adequate and correct employer information. For reasons of legal adequacy, it is very important that the correct name of an employer be on the citation. It is the responsibility of the CSHO to determine the correct legal name of the controlling and exposing employer. An ongoing difficulty has existed in connection with obtaining the correct listing of an inspected employer's business name. Often there is difficulty determining which entity is the actual employer of an individual working at a particular location. Businesses may be operating under one name, while employees are paid by a different business entity. Obtaining the correct name of an employer is also very important in subsequent citation matters. Failure to correctly name the employer could possibly result in the inability to collect penalties, enforce FTAs (failure to abate) or issue repeat citations. Any changes or corrections to company information must be made on the OSH Targeting System by using the Site Info. Change Request Form.

It is also necessary and important to verify and ensure that an employer's correct and valid **Unemployment Insurance (UI) account number is entered on each inspection report in the employer ID field under the establishment tab**. Correct UI numbers ensure the integrity of the OSH Inspection Targeting System and the OSH Establishment Database. UI numbers contain 12 total digits (7 digits – 5 digits). The 7 digits are referred to as the primary number for the employer. The 5 digits are referred to as the secondary number or the specific establishment or site number for that employer. All permanent sites or establishments will have a primary and a secondary number entered on the inspection report.

For temporary construction sites, the first 7 digits of the UI number will be the primary number for the employer. The secondary number (or site-specific number) for a temporary site may be on the OSH Establishment Database, but that is rare. If not, the 5-digit secondary number will be either 5 zeros or the letter V and 4 zeros. Temporary sites will not be assigned secondary numbers PSIM. For example, if a brick mason at a residential home construction site is inspected, and the primary UI number is verified in a search of the OSH Establishment Database within the OSH Targeting System and no secondary number is found, the UI number entered on the inspection report will be: 1234567-00000. Or if, for example, a UI number is not found at all in the database for an employer at a temporary site, and a number is generated for that employer by the PSIM Bureau, the UI number entered on the inspection report will be: V123456-V0000.

The UI number for a programmed planned assignment generated through the OSH Targeting System will have the UI number listed on the actual assignment sheet, which should be the number entered on the inspection report. However, if through research and/or the investigation process the CSHO determines that there is a difference in the number, the CSHO must contact the PSIM Bureau for assistance and/or complete a site information change request form. For UI number entries for public sector inspections, please also refer to FOM Chapter II. paragraph F.3.f.iii.C.

Any questions related to UI numbers, the OSH Establishment Database, the OSH Targeting System, or the site information change request form will be directed to the PSIM Bureau (dol.psim@labor.nc.gov or 919-707-7836).

The following are suggested means of obtaining documentation to accurately determine a correct legal name of an establishment. The method, by which the correct legal name was verified, should be documented in each case file.

1. The CSHO should attempt to obtain business cards and/or letterhead of top management officials. A telephone book entry, an advertisement or any other publication, which includes the employer's name, may also help to determine the correct company name.

2. Always make attempts to verify or obtain the employer's "unemployment number" or corporate federal employee identification number (EID) number. Verify the location of the home office of the company. Paycheck stubs for employees can confirm the paying employer's name. CSHOs will contact the Business Registration Division of the North Carolina Secretary of State or call (919) 814-5400 and request the **exact** corporate name. Also, the CSHO should ascertain whether the corporation is active and in good standing. In addition to the exact corporate name, obtain the name of top management official(s) of the company. For either a North Carolina or foreign (out of state) corporation, request the name and address of the registered agent. A registered agent is the person or entity authorized to accept service for a corporation.

3. If you are unsure whether a company is a closely held corporation or is actually a partnership, you may contact the appropriate county Register of Deeds office. State law requires any person or partnership engaged in business under an assumed name in any county, to file a certificate with the county Register of Deeds. This certificate must list the name under which business is conducted and the name and address of the owner(s). The Register of Deeds office, located in each county seat, is required to maintain an alphabetical list of all such filed certificates, including withdrawals and transfers. Contact them to obtain the information on such certificates if other suggested methods of research fail. Also, make a note of the name of the clerk who assists you.

4. If a company is a sole proprietorship, list your source of information; the name of the individual owner; his/her address; telephone number; driver's license and/or social security number; the name of management person(s) and their phone numbers. If applicable, follow instructions related to identity theft as referenced in section B.10. of this FOM chapter.

5. Multi-employer worksites obviously require a somewhat different tactic. Ascertain the name of the general contractor and the names of all the subcontractors. When possible, note vehicle license plate numbers; ask for copies of invoices or contracts; try to call directory assistance or look for company advertisements in the business or yellow pages. Contact the individual North Carolina licensing boards: General Contractors (919-571-4183); Plumbing, Heating and Fire Sprinkler Contractors (919-875-3612); Electrical Contractors (919-733-9042). Inquire by telephone or in person at the county courthouse about civil dockets, including bankruptcy and small claim. Telephone the company and inquire about home office location, correct spelling of the company name, and the mailing address. Always ask for the name of any "parent" company.

6. If an employer has changed names, use the current company name and list "f/k/a" (formerly known as) followed by the former name. If an employer is known by two separate names, use the acronym "a/k/a" (also known as) with the alternative company name.

Additional sources of information regarding companies are:

1. OSHA Extranet. You must enter a user name and a password. (If you do not have a user name and password, contact your district supervisor). From this website, click on the IMIS Database Access, then click on Establishment Search and follow the instructions.

2. OSH division Targeting System - to verify inspection activity and company information linked by Unemployment Insurance account number. Access to this resource is through the OSH One Stop Shop, Inspection Resources Tab, OSH division Targeting System link. Only OSH personnel with approval have access to the first three features under the Targeting System, which are as follows:

    a. N. C. Site Lookup – this site can be used to research confidential employer/company site information from NC Dept of Commerce, Division of Employment Security.

b. Site Info. Change Request – to submit to the PSIM Bureau changes or corrections to the current employer/company information, add new sites, make sites inactive, etc.

c. Possible Incorrect UI Number in OE System – reference list of possible incorrect UI numbers which have been entered on inspection reports.

Note: Access to other files on the OSH Targeting System requires a username and password and is limited to compliance supervisors and CSHO II's.

3. Closed inspection files.

4. N.C. Business Directory.

5. Directory of NC Manufacturing Firms.

6. NC Industrial Commission - main phone number: 919-807-2501.

7. NC Department of Commerce, Division of Employment Security (DES) - for Unemployment Insurance (UI) account verification. Director of public information: des.pio@nccommerce.com. Tax information phone number: 919-707-1150. However, a CSHO's initial contact for UI account information questions will be the PSIM Bureau (dol.psim@labor.nc.gov or 919-707-7838), and if necessary, the PSIM Bureau will contact the DES.

8. Internet Yellow Pages.

9. U.S. Postal Service - to verify addresses and ZIP codes.

10. Reference U.S.A.

APPENDIX III-B: Archived File Retrieval Request Procedure

The PSIM bureau adheres to the bureau's record retention schedule and maintains closed and archived OSH inspection and investigation files accordingly. This procedure applies to closed compliance and agricultural safety and health inspection files (located in the PSIM office) and referral and complaint investigation files in hardcopy format, microfilm, microfiche, or imaged format. Older "000" files are also archived at the PSIM Bureau office in microfiche, microfilm, or imaged format.

To access imaged inspection files on the NCDOL Electronic Content Management (ECM) System contact your respective field office administrative staff or supervisor for assistance. If a file cannot be located in hardcopy format in the field office or on the ECM System, please follow the steps below.

Inspection or investigation file requests (from NCDOL staff) will adhere to the following steps:

1. Requests for closed files not on the ECM System will be emailed to PSIM Bureau staff, at dol.psim@labor.nc.gov.

2. When closed files are retrieved by PSIM (if under PSIM Bureau control), PSIM staff will notify the requester by email that the file has been located or will provide information to the requester of the location of the file if not under PSIM Bureau control.

3. Original OSH files will not be sent through regular U.S. mail. Original files must be picked up or reviewed in person at the PSIM Bureau office. Under urgent circumstances, original files may be sent to any field office via Federal Express, UPS or the equivalent. Please call PSIM staff at 919-707-7838 to schedule pickup or to review on-site.

4. Original files may also be sent by interoffice mail only to the Raleigh field office; however, the outside of the envelope must have a "Confidential OSH Inspection File" label.

Comments, questions and suggestions related to this procedure may be directed to the PSIM Bureau 919-707-7838.

APPENDIX III-C: Warrant and Subpoena Application Forms

Warrant and subpoena application forms have been created in conjunction with the AG's office. Additionally, a warrant and subpoena tracking form has been created. These individual forms/applications are located on the One Stop Shop, in the FIS under Forms.

A subpoena is used to obtain records and documentation from an employer. A warrant is used to gain entry to a specific employment location. The warrant application includes a basic application with addenda forms for specialized situations including formal and non-formal complaints, fatalities and accidents, programmed inspections, referrals, follow-ups, imminent danger, and monitoring. All applicable questions presented on the forms should be answered as completely as possible. Contact the AG's office with any questions you have about completing the forms.

Forward the completed request, along with a copy of the tracking sheet, to your district supervisor for signature. Then deliver it to your bureau chief, along with any additional documentation relating to the situation that supports your application.

APPENDIX III-D: Special Jurisdictional Issues

1. Airline facilities: Airports and other airline facilities are covered by the OSH division. This includes maintenance and ground support personnel. The OSH division regulations do not apply to working conditions of employees on aircrafts in operation.

2. Churches and Religious Organizations: Employees who participate in religious services such as clergyman, organists, ushers, etc. are not covered by the OSH division. These organizations are considered employers when they employ one or more persons in secular activities, such as operating schools, or maintaining facilities. Contractors performing work at church facilities are also covered.

3. Energy Department Sites: Private sector employers on Department of Energy sites not covered by the Atomic Energy Act are included under jurisdiction of the OSH division. This does not include, however, sites on military bases or other exclusive federal jurisdiction lands and properties. (Federal Register/Volume 65, No. 129/July 5, 2000)

4. Federal Reserve Banks: Federal Reserve Banks are covered by the OSH division. These banks are privately owned, and workers are not federal employees.

5. Indian Reservations: The North Carolina State Plan specifically excludes all facilities on Indian Reservations from coverage. However, the OSH division can respond to requests for training and consultation.

6. Job Corps Sites: These sites are not covered by the OSH division. Job Corps trainees are U.S. Department of Labor employees, and the centers are federal property.

7. Military Bases: The North Carolina State Plan specifically excludes all facilities on military bases, as well as contractors and subcontractors on any military bases or other federal establishments. Teachers at military schools on the base are civilian Department of Defense Education Agency employees.

8. Mines: Safety and health standards for mines and milling operations are enforced under authority contained in the federal Mine Safety and Health Act of 1977. In North Carolina, mining and milling operations are covered by the Mine Safety and Health Administration (MSHA), up to the point of the production stockpile. From the point that production stockpile material is further processed or turned into products, the OSH division has jurisdiction. An interagency agreement between MSHA and OSHA serves as a guide for delineating areas of authority, and defines mining and milling operations. This agreement is highlighted in OSHA CPL 02-00-042 – Interagency Agreement Between the Mine Safety and Health Administration and OSHA-USDOL, which was adopted by NCDOL.

9. Brick Operations: M&Q has jurisdiction up to the plant stockpile of raw materials. The OSH division has jurisdiction from that point onward (including crushing and grinding rooms, the pug mill, etc.).

10. Nuclear Facilities: The OSH division covers plant conditions that result in occupational hazards, but do not affect the safety of the licensed radioactive materials. A Memorandum of Understanding which describes the general areas of responsibility between OSHA and the Nuclear Regulatory Commission can be found on OSHA's website. The original MOU was found in CPL 02-00-086 – Memorandum of Understanding Between the OSHA and the U.S. Nuclear Regulatory Commission and was updated on September 6, 2013. Facilities that are covered by the Atomic Energy Act are not within the jurisdiction of the OSH division.

11. Railroads: NCGS 95-128 specifically exempts railroad employees and employees of contractors working on railroad tracks and bridges from coverage by the OSH division even when the Federal Railroad Administration (FRA) does not exercise authority. According to an opinion from the attorney general's office, federal OSHA has jurisdiction of safety and health issues not covered by the FRA. However, the OSH division has jurisdiction over railroad tracks and equipment located on private property (e.g. rail spurs).

12. Light Rail Systems: The light rail system operated by the City of Charlotte falls under the joint jurisdiction of the OSH division, and the North Carolina Department of Transportation Rail Division (NCDOT). Light Rail is covered by the Federal Transportation Act (FTA) through 49 CFR 659.1 and it has been determined by the Labor Section of the AG's Office that OSH has concurrent jurisdiction with NCDOT. Those employed are City of Charlotte employees and not railroad employees whose safety and health are subject to protection under Subpart V of Title 49 of the United States Code as referenced at NCGS 95-128, of the OSH Act of North Carolina. CSHOs should consult with OSH management if assigned compliance activity is associated with the Charlotte light rail system.

13. Contract Employees to the Federal Government: The North Carolina State Plan specifically excludes contractors or subcontractors on any federal establishments where land has been ceded to the federal government. Federal contractors on private land are under the OSH division's jurisdiction. This has been the case previously in situations relating to defense contracts, and private contractors working at post office facilities in which the building was not on federal land.

14. Professional Sports: Neither NCGS 95-128 nor the OSHAct excludes professional teams or sports activity from the OSH division's jurisdiction. The OSH division has conducted inspections related to the sports industry, including non-game related ballpark activity (concessions, programming, etc.) and auto racing shops. The OSH division's jurisdiction depends upon whether the sporting participants are independent contractors (e.g. many auto racing drivers) or employees of teams.

15. US Department of Veteran's Affairs (VA) Hospitals: If exposed employees are federal employees, or if private sector employees are on VA or Department of Defense sites, federal OSHA had jurisdiction. The OSH division has jurisdiction of federal contractors on private land.

16. Volunteer Service Organizations: (including volunteer firefighters, emergency medical services (EMS) technicians, etc.) Volunteers are not covered by the OSH division. However, whether or not exposed persons are determined to be volunteers, self-employed contractors or employees of an employer depends on several factors (see FOM Chapter IV, paragraph C – Employee Exposure).The OSH division's coverage may exist, if it is determined that a "volunteer" receives a stipend, bonus or other compensation and an element of control exists. To determine if there is an employer-employee relationship between the municipality and the volunteer organization or the volunteer organization and its members, the CSHO should evaluate the "elements of control" (see discussion on "elements of control" in the FAQ for Volunteer Service Organizations located in the FIS under Memos). If the employee-employer relationship is not clear following this evaluation, the CSHO should consult with the AG's office.

17. National Forests: The NCGS 104-5 states that the OSH division retains concurrent jurisdiction over national forests with federal OSHA. However, in consideration of North Carolina's final state plan approval determination, federal OSHA deferred all jurisdictions over contractors and subcontractors in national forests to the state. This jurisdictional determination does not include the U.S. Forest Service, other federal agencies, or federal employees.

Appendix III-E: Video and Sound Recording Release

NORTH CAROLINA DEPARTMENT OF LABOR - OCCUPATIONAL SAFETY AND HEALTH DIVISION

VIDEO AND SOUND RECORDING RELEASE

This video and/or sound recording is being taken pursuant to **Occupational Safety and Health Act of North Carolina** (the Act) inspection or investigation. By signing this **Video and Sound Recording Release and Consent Form**, you are irrevocably giving permission to the North Carolina Department of Labor's (NCDOL) Occupational Safety and Health Division and NCDOL's officers, agents, employees, successors, licensees, and assigns to take and use video or sound recordings of you during their performance of the inspections or investigations pursuant the Act. On this date, _____ [*name of the specific employer*] is being inspected and investigated.

Your participation is completely voluntary. You will not receive any compensation or other remuneration for your participation now or in the future.

Your consent to the use of the video and sound recordings and your image, likeness, appearance, and voice is for forever. The video and sound recordings will not be used for any purpose except in relation to enforcement of the Occupational Safety and Health Act of North Carolina. NCDOL may use the video and/or sound recordings containing your image, likeness, appearance and voice in any necessary manner or media, to include court proceedings that may result if an employer is issued citations and such citations are contested by the employer. The video and sound recordings may be used in whole or in part, alone or with other recordings. Except as provided in the the Act, NCDOL will not release to any employer or third party the name or other identifying information regarding a witness. Witness names and other identifying information shall be redacted prior to providing a copy of the file or transcript of a video recording to any party, except that NCDOL may provide an unredacted copy of the entire file to the employer 10 days prior to a scheduled enforcement hearing, in accordance with N.C. Gen. Stat. § 95-136(e1). All rights, title, and interest in the video and sound recordings belong solely to NCDOL as an agency of the State of North Carolina.

You further give permission to NCDOL to use your name, occupation, address and telephone number in connection with any such uses of the video and sound recordings.

I understand and agree to the conditions outlined in this video and sound recording release and consent form. I irrevocably give consent to NCDOL and NCDOL's officers, agents, employees, successors, licensees, and assigns forever to make use of my image, likeness, appearance, and voice in video and sound recordings as described above. I acknowledge that I am fully aware of the contents of this release and am under no disability, duress, or undue influence at the time of my signing of this instrument.

_____

Printed Name of Participant

_____ _____

Signature of Participant Date

ADDENDUM – NOT A PART OF THE RELEASE

Relevant Portions of the Occupational Safety & Health Act of North Carolina, Article 16 of Chapter 95 of the North Carolina General Statutes:

§ 95-136. Inspections.

(a) In order to carry out the purposes of this Article, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(1) To enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and

(2) To inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(3) The Commissioner or Director, or their duly authorized agents, shall reinspect any place of employment where a willful serious violation was found to exist during the previous inspection and a final Order has been entered.

(b) In making his inspections and investigations under this Article, the Commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel regulations of the State. In case of a failure or refusal of any person to obey a subpoena under this section, the district judge or superior court judge of the county in which the inspection or investigation is conducted shall have jurisdiction upon the application of the Commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(c) Subject to regulations issued by the Commissioner a representative of the employer and an employee authorized by the employees shall be given an opportunity to consult with or to accompany the Commissioner, Director, or their authorized agents, during the physical inspection of any work place described under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner, Director, or their authorized agents, shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

(d) (1) Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director determines there are not reasonable grounds to believe that a violation or danger exists he shall notify the employees or representatives of the employees, in writing, of such determination.

(2) Prior to, during and after any inspection of a work place, any employees or representative of employees employed in such work place may notify the inspecting Commissioner, Director, or their agents, in writing, of any violation of this Article which they have reason to believe exists in such work place. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner or Director to issue a citation with respect to any such alleged violation and shall furnish the employees or representatives of

employees requesting such review a written statement of the reason for the Commissioner's or Director's final disposition of the case.

(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations.

(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the Commissioner intends to use at the enforcement hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer; provided a written request for the statement or statements is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties.

(f) (1) Inspections conducted under this section shall be accomplished without advance notice, subject to the exception in subdivision (2) below this subsection.

(2) The Commissioner or Director may authorize the giving to any employer or employee advance notice of an inspection only when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with regulations issued by the Commissioner.

(g) The Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Article, including rules and regulations dealing with the inspection of an employer's establishment. (1973, c. 295, s. 11; 1993, c. 317, ss. 1, 2; 1999-364, ss. 1, 2; 2003-174, s. 1.)

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter IV - Violations



Chapter Effective: February 2000
Revision 8: 11/22/2019

Table of Contents

A. Basis of Violations

1. Standards and Regulations

B. General Duty Requirements

1. Evaluation of Potential NCGS 95-129(1) Situations
2. Discussion of NCGS 95-129(1) Elements
3. Use of the General Duty Clause
4. Limitations on the use of the General Duty Clause
5. Classification of Violations Cited under the General Duty Clause
6. Procedures for Implementation of NCGS 95-129(1) Enforcement
7. Reporting Hazards Not Covered by a Standard
8. Using General Duty

C. Employee Exposure

1. Definition of Employee
2. Observed Exposure
3. Unobserved Exposure
4. Documenting Employee Exposure

D. Regulatory Requirements

1. Posting
2. Incentive/Disincentive Programs
3. Migrant Housing Act Violations

E. Hazard Communication

F. Types of Violations

1. Serious Violations
2. Nonserious Violations
3. Willful Violations
4. Criminal/Willful Violations
5. Repeat Violations

Appendix IV-A: "Willful Violations under OSHA - No Knowledge of Act Required"

Chapter IV

Violations

A. **Basis of Violations**.

1. Standards and Regulations. North Carolina General Statutes (NCGS) 95-129(2) of the Act states that each employer has a responsibility to comply with the occupational safety and health standards promulgated under the Act. The specific standards and regulations are found in Title 29 Code of Federal Regulations (CFR) Part 1900. The standards are subdivided and the most specific subdivision of the standard will be used for citing violations.

   a. Definition and Application of Horizontal and Vertical Standards. Vertical standards are those standards that apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment or installations. Examples include 29 CFR 1910.262 - Textiles and 29 CFR 1910.264 – Laundry Machinery and Operations. Horizontal standards are those standards that apply across several industries. Examples include 29 CFR 1910.110 – Storage and Handling of Liquified Petroleum Gases and 29 CFR 1910.1200 - Hazard communication. Within both horizontal and vertical standards there are general standards and specification standards.

      i. General standards are those that address a category of hazards and whose coverage is not limited to a special set of circumstances; e.g., 29 CFR 1910.132 – Personal Protective Equipment (PPE), General Requirements; 29 CFR 1910.212(a)(1) or (a)(3)(ii) – Machinery and Machine Guarding, General Requirements for all Machines; 29 CFR 1910.307 – Electrical, Hazardous Locations; and North Carolina Administrative Code (NCAC) - 13 NCAC 07F .0202, General Safety and Health Provisions, PPE in construction.

      ii. Specification standards are those designed to regulate a specific hazard that set forth the measures the employer must take to protect employees from that particular hazard. Examples include 29 CFR 1910.28(b)(7) - Duty to Have Fall Protection (Openings); and 29 CFR 1926.451(g)(1) – Scaffolds, General Requirements (Fall Protection).

      iii. There are two types of vertical standards:

         A. Standards that apply to particular industries (Maritime, Construction, etc.) and standards that apply to particular sub-industries as contained in 29 CFR Part 1910, Subpart R – Special Industries, for sawmills, wood pulping, laundries, etc., *and*

         B. Standards that state more detailed requirements for certain types of operations, equipment, or equipment usage than are stated in another (more general) standard in the same part; e.g., requirements in 29 CFR 1910.213 - Woodworking Machinery Requirements.

iv. If a compliance safety and health officer (CSHO) is uncertain whether to cite under a horizontal or a vertical standard when both apply, the supervisor should be consulted. The following general guidelines apply:

A. When a hazard in a particular industry is covered by both a vertical standard and a horizontal standard, the vertical standard will take precedence. This is true even if the horizontal standard is more protective. An example of this is in 29 CFR 124(g)(2) and (3)– Dipping and Coating Operations. It allows the use of a water hose that is at least 4 feet (1.22 m) long and at least 3/4 of an inch (18 mm) thick with a quick-opening valve and carrying a pressure of 25 pounds per square inch (1.62 k/cm2) or less; and at least one basin with a hot-water faucet for every 10 employees who work with such liquids, instead of the deluge shower and eye wash required by 29 CFR 1910.151(c) – Medical Services and First Aid. An exception to this rule is in 29 CFR 1910.120 - Hazardous Waste Operations and Emergency Response (HAZWOPER) for hazardous waste operations where the most protective standard applies, be it horizontal or vertical.

B. If the particular industry does not have a vertical standard that covers the hazard, then the CSHO will use the horizontal (general industry) standard.

C. When a hazard within general industry (29 CFR Part 1910) is covered by both a horizontal (more general) standard and a vertical (more specific) standard, the vertical standard takes precedence. For example, in 29 CFR 1910.213 – Woodworking Machinery Requirements, the requirement for point of operation guarding for swing saws is more specific than the general machine guarding requirements contained in 29 CFR 1910.212 – General Requirements for all Machines. However, if the swing saw is used only to cut material other than wood, 29 CFR 1910.212 is applicable.

D. In addition, industry vertical standards take precedence over equipment vertical standards. Thus, if the swing saw is in a saw mill, the more specific standard is 29 CFR 1910.265 – Sawmills, rather than 29 CFR 1910.213.

E. In situations covered by both a horizontal (general) and a vertical (specific) standard where the horizontal standard appears to offer greater protection to the employee, the horizontal (general) standard may be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical (specific) standard. To determine whether there is a conflict or inconsistency between the standards, a careful analysis of the two standards must be performed in regard to the specific conditions.

EXAMPLE: 29 CFR 1926.501(b)(1) – Duty to Have Fall Protection, which requires fall protection at six feet, cannot be

cited for scaffolds since 29 CFR 1926.451(g)(1) – Scaffolds, General Requirements, requires fall protection on scaffolds at ten feet.

F. When determining whether a horizontal or a vertical standard is applicable to a work situation, the CSHO will focus attention on the activity in which the employer is engaged at the establishment being inspected rather than the nature of the employer's general business.

G. Hazards found in construction work that are not covered by a specific 29 CFR Part 1926 standard (Construction) will not normally be cited under a 29 CFR Part 1910 standard (General Industry) unless that standard has been identified as being applicable to construction. (For example, 29 CFR 1910.1020 – Access to Employee Exposure and Medical Records, and 29 CFR 1910.1200 – Hazard Communication, have been identified as applicable to construction.)

1. "Construction work" means work for construction, alteration and/or repair, including painting and decorating, and includes both contract and non-contract work. (See 29 CFR 1910.12(b) – Construction Work and 29 CFR 1926.13 – Interpretation of Statutory Terms.) Replacement in kind is general industry. Improvements or upgrades are construction.

2. If any question arises as to whether an activity is deemed to be construction for purposes of the act, the supervisor will be consulted.

3. For hazards found in construction, the supervisor will obtain the approval of the bureau chief before citing violations of 29 CFR 1910 standards that have not been identified as applicable to construction. (See Field Operations Manual (FOM) Chapter XII – Construction for additional guidelines.)

b. Violation of Variances. The employer's requirement to comply with a standard may be modified through granting of a variance, as outlined in NCGS 95-132 – Variances, and discussed in Operational Procedure Notice (OPN) 118 – Variance Requests.

i. An employer will not be subject to citation if the observed condition is in compliance with either the granted variance or the controlling standard. In the event that the employer is not in compliance with the requirements of the variance, a violation of the controlling standard will be cited with a reference in the citation to the variance provision that has not been met.

ii. If, during a compliance inspection, the CSHO discovers that the employer has filed an application for variance regarding a condition that is determined to be an apparent violation of the standard, this fact will be

reported to the supervisor who will obtain information concerning the status of the variance request.

B. **General Duty Requirement**. NCGS 95-129(1) requires that "Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

1. Evaluation of Potential NCGS 95-129(1) Situations. In general, Occupational Safety and Health Review Commission and court precedent have established that the following elements are necessary to prove a violation of the general duty clause:

   a. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;

   b. The hazard was recognized in the industry;

   c. The hazard was causing or was likely to cause death or serious physical harm; and

   d. There was a feasible and useful method to correct the hazard.

2. Discussion of NCGS 95-129(1) Elements. The above four elements of a NCGS 95-129(1) violation are discussed in greater detail as follows:

   a. A Hazard to Which Employees Were Exposed. A general duty citation must involve both a serious hazard and exposure of employees.

      i. Hazard. A hazard is a danger that threatens physical harm to employees.

         A. Not the Lack of a Particular Abatement Method. In the past some NCGS 95-129(1) citations have incorrectly alleged that the violation is the failure to implement certain precautions, corrective measures or other abatement steps, rather than the failure to prevent or remove the particular hazard. It must be emphasized that NCGS 95-129(1) does not mandate a particular abatement measure but only requires an employer to render the workplace free of certain hazards by any feasible and effective means that the employer wishes to utilize.

            1. In situations where it is difficult to distinguish between a dangerous condition and the lack of an abatement method, the supervisor will consult with the bureau chief for assistance in articulating the hazard properly.

               EXAMPLE 1. Employees doing sanding operations may be exposed to the hazard of fire caused by sparking in the presence of magnesium dust. One of the abatement methods may be training and supervision. The "hazard" is the exposure to the potential of a fire; it is not the lack of training and supervision.

EXAMPLE 2. In another situation, a danger of explosion due to the presence of certain gases could be remedied by the use of non-sparking tools. The hazard is the explosion hazard due to the presence of the gases; it is not the lack of non-sparking tools.

EXAMPLE 3. In a hazardous situation involving high pressure gas where the employer has failed to train employees properly, has not installed the proper high pressure equipment, and has installed the equipment improperly, there are three abatement measures which the employer failed to take; there is only one hazard (viz., exposure to the hazard of explosion due to the presence of high pressure gas) and therefore only one general duty clause citation.

2. Where necessary, the supervisor should consult with the Attorney General's (AG's) office.

B. The Hazard is Not a Particular Accident. The occurrence of an accident does not necessarily mean that the employer has violated NCGS 95-129(1) although the accident may be evidence of a hazard. In some cases, a NCGS 95-129(1) violation may be unrelated to the accident. Although accident facts may be relevant and will be gathered, the citation will address the hazard in the workplace, not the particular facts of the accident.

EXAMPLE: A fire occurred in a workplace where flammable materials were present. The fire itself injured no employee, but an employee, disregarding the clear instructions of his supervisor to use an available exit, jumped out of a window and broke a leg. The danger of fire due to the presence of flammable materials may be a recognized hazard causing or likely to cause death or serious physical harm, but the action of the employee may be an instance of unpreventable employee misconduct. The citation must deal with the fire hazard, not with the accident involving the employee who broke his leg.

C. The Hazard Must be Reasonably Predictable. The hazard for which a citation is issued must be reasonably predictable.

1. All the factors that could cause a hazard need not be present in the same place at the same time in order to prove the hazard; e.g., an explosion need not be imminent.

EXAMPLE: If combustible gas and oxygen are present in sufficient quantities in a confined area to cause an explosion if ignited but no ignition source is present or could be present, no NCGS 95-129(1) violation would exist. If an ignition source is available at the workplace and the employer has not taken sufficient safety

precautions to preclude its use in the confined area, then a foreseeable hazard may exist.

2. It is necessary to establish that the hazard is reasonably foreseeable (or predictable), rather than the hazard that led to the accident.

EXAMPLE: A titanium dust fire may have spread from one room to another only because an open can of gasoline was in the second room. An employee who usually worked in both rooms was burned in the second room from the gasoline. The presence of gasoline in the second room may be a rare occurrence. It is not necessary to prove that a fire in both rooms was reasonably foreseeable. It is necessary only to prove that the fire hazard, in this case due to the presence of titanium dust, was reasonably foreseeable.

ii. The Hazard Must Affect the Cited Employer's Employees. The employees affected by the NCGS 95-129(1) hazard must be the employees of the cited employer.

A. An employer who may have created, contributed to, and/or controlled the hazard should not be cited for a NCGS 95-129(1) violation if his own employees are not exposed to the hazard. (See FOM Chapter V - Citations).

B. In complex situations, such as multi-employer worksites, where it may be difficult to identify the precise employment relationship between the employer to be cited and the exposed employees, the supervisor will consult with the bureau chief and AG's office to determine the sufficiency of the evidence regarding the employment relationship.

C. The fact that an employer denies that exposed employees are his/her employee's does not necessarily decide the legal issue involved. Whether or not exposed persons are employees of an employer depends on several factors, the most important of which is who controls the manner in which the employees perform their assigned work. The question of who pays these employees may not be the determining factor.

b. The Hazard Must be Recognized. Recognition of a hazard can be established on the basis of industry recognition, employer recognition, or "common-sense" recognition. The use of common-sense as the basis for establishing recognition will be limited to special circumstances. Recognition of the hazard must be supported by satisfactory evidence and adequate documentation in the file as follows:

i. Industry Recognition. A hazard is recognized if the employer's industry recognizes it. Recognition by an industry other than the industry to which the employer belongs is generally insufficient to prove this element of a

NCGS 95-129(1) violation. Although evidence of recognition by the employer's specific branch within an industry is preferred, evidence that the employer's industry recognizes the hazard may be sufficient. The bureau chief should consult with the director's office on this issue. Industry recognition of a particular hazard can be established in several ways:

A. Statements by industry safety or health experts that is relevant to the hazard.

B. Evidence of implementation of abatement methods to deal with the particular hazard by other members of the industry.

C. Manufacturer's warnings on equipment that is relevant to the hazard.

D. Statistical or empirical studies conducted by the employer's industry which demonstrate awareness of the hazard. Evidence, such as studies conducted by the employee representatives, the union or other employees should also be considered if the employer or the industry has been made aware of them.

E. Government and insurance industry studies, if the employer or the employer's industry is familiar with the studies and recognizes their validity.

F. Laws or regulations that apply in the jurisdiction where the violation is alleged to have occurred and which currently are enforced against the industry in question. In such cases, however, corroborating evidence of recognition is recommended.

    1. Regulations of other federal agencies generally should not be used. They raise substantial difficulties under NCGS 95-128, which provides that the division is preempted when such an agency has statutory authority to deal with the working condition in question.

    2. In cases where state and local government agencies not falling under the preemption provisions of NCGS 95-128 have codes or regulations covering hazards not addressed by OSH standards, the bureau chief, upon consultation with the director's office, will determine whether the hazard is to be cited under NCGS 95-129(1) or referred to the appropriate agency for enforcement.

G. Standards issued by the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations, if the relevant industry participated on the committee drafting the standards. Otherwise, such private standards should be used only as corroborating evidence of recognition. Preambles to these standards that discuss the hazards involved may show hazard

recognition as much as, or more than, the actual standards. It must be emphasized, however, that these private standards cannot be enforced like OSH standards. They are simply evidence of industry recognition, seriousness of the hazard or feasibility of abatement methods.

H. National Institute for Occupational Safety and Health (NIOSH) criteria documents; the publications of Environmental Protection Agency (EPA), the National Cancer Institute, and other agencies; OSHA hazard alerts; the OSHA Technical Manual; and articles in medical or scientific journals by persons other than those in the industry, if used only to supplement other evidence which more clearly establishes recognition. Such publications can be relied upon only if it is established that they have been widely distributed in general, or in the relevant industry.

ii. Employer Recognition. A recognized hazard can be established by evidence of actual employer knowledge. Evidence of such recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before the compliance inspection.

A. Company memorandums, safety rules, operating manuals or operating procedures and collective bargaining agreements may reveal the employer's awareness of the hazard. In addition, accident, injury and illness reports prepared for the division, worker's compensation, or other purposes may show this knowledge.

B. Employee complaints or grievances to supervisory personnel may establish recognition of the hazard, but the evidence should show that the complaints were not merely infrequent, off-hand comments.

C. The employer's own corrective action may serve as the basis for establishing employer recognition of the hazard if the employer did not adequately continue or maintain the corrective action or if the corrective action did not afford any significant protection to the employees.

iii. Common-Sense Recognition. If industry or employer recognition of the hazard cannot be established in accordance with (a) and (b), recognition can still be established if it is concluded that any reasonable person would have recognized the hazard. This theory of recognition should be used only in flagrant cases.

EXAMPLE: In a general industry situation, a court has held that any reasonable person would recognize that it is hazardous to dump bricks from an unenclosed chute into an alleyway between buildings that is 26 feet below and in which unwarned employees work. (In construction, NCGS 95-129(1) could not be cited in this situation because 29 CFR

l926.252 - Materials Handling, Storage, Use, and Disposal, Disposal of Waste Materials, or 1926.852 – Demolition, Chutes, will apply.)

c. The Hazard Was Causing or Was Likely to Cause Death or Serious Physical Harm. This element of a NCGS 95-129(1) violation is virtually identical to the substantial probability element of a "serious violation" under NCGS 95-127(19) - Definitions. "Serious physical harm" is defined later in this chapter in section F.1. – Serious Violations. This element of a NCGS 95-129(1) violation can be established by showing that:

i. An actual death or serious injury resulted from the recognized hazard, whether immediately prior to the inspection or at other times and places; *or*

ii. If an accident occurred, the most reasonably predictable result would be death or serious physical harm. For example, an employee is standing at the edge of a work platform, 25 feet above the ground. Under these circumstances, if the falling incident occurs, death or serious physical harm (e.g., broken bones) is the most reasonably predictable result.

iii. In a health context, establishing serious physical harm at the cited levels may be particularly difficult if the illness will require the passage of a substantial period of time to occur. Expert testimony is crucial to establish that serious physical harm will occur for such illnesses. It will generally be easier to establish this element for acute illnesses, since the immediacy of the effects will make the causal relationship clearer. In general, the following must be shown to establish that the hazard causes or is likely to cause death or serious physical harm when such illness or death will occur only after the passage of a substantial period of time:

A. Regular and continuing employee exposure at the workplace to the toxic substance at the measured levels reasonably could occur;

B. Illness that is most reasonably predictable to result from such regular and continuing employee exposure; and

C. If illness does occur, its likely result is death or serious physical harm.

d. The Hazard may be Corrected by a Feasible and Useful Method. To establish a NCGS 95-129(1) violation, the agency must identify a method that is feasible, available and likely to correct the hazard. The information will indicate that the recognized hazard, rather than a particular accident, is preventable.

i. If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a NCGS 95-129(1) citation may be issued. A citation will not be issued merely because the agency knows of an abatement method different from that of the employer, if the agency's method would not reduce the hazard significantly more than the employer's method. It must also be noted that in some cases only a series of abatement methods will

alleviate a hazard. In such a case, all the abatement methods will be mentioned.

ii. Feasible and useful abatement methods can be established by reference to:

A. The employer's own abatement method that existed prior to the inspection but was not implemented;

B. The implementation of feasible abatement measures by the employer after the accident or inspection;

C. The implementation of abatement measures by other companies;

D. The recommendations by the manufacturer of the hazardous equipment involved in the case; and

E. Suggested abatement methods contained in trade journals, private standards and individual employer standards. Private standards will not be relied on in a NCGS 95-129(1) citation as mandating specific abatement methods.

1. For example, if an ANSI standard deals with the hazard of exposure to hydrogen sulfide gas and refers to various abatement methods, such as the prevention of the build-up of materials which create the gas and the provision of ventilation, the ANSI standard may be used as evidence of the existence of feasible abatement measures.

2. The citation for the example given will state that the recognized hazard of exposure to hydrogen sulfide gas was present in the workplace and that a feasible and useful abatement method existed; e.g., preventing the build-up of gas by providing an adequate ventilation system. It would not be correct to issue a citation alleging that the employer failed to prevent the build-up of materials which could create the gas, and failed to provide a ventilation system, as both of these are abatement methods, not hazards.

F. Evidence provided by expert witnesses that demonstrates the feasibility of the abatement methods. Although it is not necessary to establish that the industry recognizes a particular abatement method, such evidence will be used if available.

3. Use of the General Duty Clause. The general duty provisions will be used only where there is no standard that applies to the particular hazard involved, as outlined in 29 CFR 1910.5(f) – Applicability of Standards.

a. The general duty clause may be applied in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard. For example, ergonomic hazards, heat stress, and workplace violence are not covered by any standards and are cited as general duty.

b. The general duty clause may be applicable to some types of employment that are inherently dangerous (fire brigades, emergency rescue operations, etc.). Employers involved in such occupations must take the necessary steps to eliminate or minimize employee exposure to all recognized hazards that are likely to cause death or serious physical harm. These steps include anticipation of hazards that may be encountered, provision of appropriate protective equipment, and prior provision of training, instruction, and necessary equipment. An employer who has failed to take appropriate steps on any of these or similar items and has allowed the hazard to continue to exist may be cited under the general duty clause (if not covered under a standard).

4. Limitations on Use of the General Duty Clause. NCGS 95-129(1) is to be used only within the guidelines given in B.2.a. of this chapter.

a. NCGS 95-129(1) Will Not Be Used When a Standard Applies to a Hazard. Both 29 CFR 1910.5(f) and legal precedent establish that NCGS 95-129(1) may not be used if an OSH standard applies to the hazardous working condition.

i. Prior to issuing a NCGS 95-129(1) citation, the standards must be reviewed carefully to determine whether a standard applies to the hazard. If a standard applies, the standard will be cited rather than NCGS 95-129(1). Prior to the issuance of a NCGS 95-129(1) citation, a notation will be made in the file to indicate that the standards were reviewed and no standard applies.

ii. If there is a question as to whether a standard applies, the supervisor will consult with the bureau chief. The AG's office may assist the bureau chief in determining the applicability of the standard.

iii. NCGS 95-129(1) may be cited "in the alternative" when a standard is also cited to cover a situation where there is doubt as to whether the standard applies to the hazard.

A. If the issue of the applicability of a specific standard is raised in a subsequent informal conference or notice of contest proceeding, the supervisor will consult with the bureau chief, who may refer the matter to the AG's office for appropriate legal advice.

B. If, on the other hand, the issue of the preemption of the general duty clause by a standard is raised in a subsequent informal conference or notice of contest proceeding, the supervisor will consult with the bureau chief, who may refer the matter to the AG's office for appropriate legal advice.

b. NCGS 95-129(1) Will Not Normally be Used to Impose a Stricter Requirement Than That Required by the Standard. When an existing standard is inadequate to protect worker safety and health, a NCGS 95-129(1) citation may be considered. All of the NCGS 95-129(1) elements discussed above must be satisfied, AND there must be actual employer knowledge that the standard was inadequate to protect employees from death or serious physical harm. See Int'l Union UAW v.

Gen. Dynamics Land Sys. Div., 815 F.2d 1570 (D.C. Cir. 1987). CSHOs shall contact the bureau chief early in the investigation of these types of cases.

EXAMPLE: An OSHA standard provides for a permissible exposure limit (PEL) of 5 ppm, and a recognized Occupational Exposure limit (OEL)—such as an American Conference of Governmental Industrial Hygienists (ACGIH) ® Threshold Limit Value (TLV®) or NIOSH Recommended Exposure Limit (REL)—is 3 ppm. A NCGS 95-129(1) citation may only be considered for exposures between the OEL and the PEL if the data establishes that exposures at the measured level are likely to cause death or serious physical harm and the employer has actual knowledge that the PEL is inadequate to protect its employees.

c. NCGS 95-129(1) Will Normally Not Be Used to Require an Abatement Method Not Set Forth in a Specific Standard. A specific standard is one that refers to a particular toxic substance or deals with a specific operation, such as welding. If a toxic substance standard covers engineering control requirements but not requirements for medical surveillance, NCGS 95-129(1) will not be cited to require medical surveillance.

d. NCGS 95-129(1) Will Not Be Used to Enforce "Should" Standards. If a NCGS 95-131 standard or its predecessor, such as an ANSI standard, uses the word "should," neither the standard nor NCGS 95-129(1) will ordinarily be cited with respect to the hazard addressed by the "should" portion of the standard.

e. NCGS 95-129(1) Will Not Normally Be Used to Cover Categories of Hazards Exempted by a Standard. Although no hard and fast general rule can be stated concerning the use of NCGS 95-129(1) to cover specific categories of hazards, types of machines, operations, or industries exempted from coverage by a standard, NCGS 95-129(1) will normally not be cited if the reason for the exemption is the lack of a hazard.

   i. If, on the other hand, the reason for the exemption is that the drafters of the standard (or source document) declined to deal with the exempt category for reasons other than the lack of a hazard, the general duty clause may be cited if all the necessary elements for such a citation are present.

   ii. The supervisor will evaluate the circumstances of special situations in accord with guidelines stated herein and consult with the bureau chief to determine whether a NCGS 95-129(1) citation can be issued in those special cases.

f. Alternative Standards. There are a number of general standards that will be considered for citation rather than NCGS 95-129(1) in certain situations that initially may not appear to be governed by a standard.

   i. If a hazard not covered by a specific standard can be substantially corrected by compliance with a PPE standard, the PPE standard will be cited. In general industry, 29 CFR 1910.132(a) – PPE, General Requirements, may be appropriate where exposure to a hazard may be prevented by the wearing of PPE. In construction, 13 NCAC 07F .0202 –

General Safety and Health Provisions, may be appropriate under similar circumstances.

ii. For a health hazard, the particular toxic substance standards, such as asbestos and coke oven emission, will be cited where appropriate. If those particular standards do not apply, however, other standards may be applicable; e.g., the air contaminant levels contained in 29 CFR 1910.1000 – Toxic and Hazardous Substances, may apply in general industry and those contained in 29 CFR 1926.55 - Gases, Vapors, Fumes, Dusts, and Mists, may apply in construction.

iii. The Respiratory Protection standard, 29 CFR 1910.134(a), may possibly be cited as it deals with the hazards of breathing harmful air contaminants not covered under 29 CFR 1910.1000 - Toxic and Hazardous Substances, or another specific standard and requires the use of feasible engineering controls and the use of respirators where engineering controls are not feasible.

iv. In addition, the Sanitation standard, 29 CFR 1910.141(g)(2), may be cited when employees are allowed to consume food or beverages in an area exposed to a toxic material, and the PPE standard, 29 CFR 1910.132(a), may be cited when toxic materials are absorbed through the skin.

v. The foregoing standards as well as others which may be applicable should be considered carefully before issuing a NCGS 95-129(1) citation for a health hazard.

5. Classification of Violations Cited Under the General Duty Clause. Only those hazards alleging serious violations may be cited under the general duty clause (including willful and/or repeat violations which would otherwise qualify as serious violations, except for their willful or repeat nature). Nonserious citations will not be issued for violations based on the general duty clause.

6. Procedures for Implementation of Section NCGS 95-129(1) Enforcement. To ensure that all citations of the general duty clause are fully justified, the following procedures will be carefully adhered to.

a. Gathering Evidence and Preparing the File. The evidence necessary to establish each element of a NCGS 95-129(1) violation will be documented in the file. This includes all photographs, videos, sampling data, witness statements and other documentary and physical evidence necessary to establish the violation. Additional documentation includes why it was common knowledge, why it was detectable, why it was recognized practice and supporting statements or reference materials.

i. If copies of documents relied on to establish the various NCGS 95-129(1) elements cannot be obtained before issuing the citation, these documents will be accurately quoted and identified in the file so they can be obtained later, if necessary.

ii. If experts are needed to establish any elements of the violation, the experts will be consulted before the citation is issued and their opinions noted in the file. The file will also contain their addresses and telephone numbers.

iii. The file will contain a statement that a search has been made of the standards and that no standard applies to the cited condition.

b. Pre-Citation Review. The supervisor will ensure that all proposed NCGS 95-129(1) citations undergo pre-citation review as follows:

i. The bureau chief will be consulted prior to the issuance of all NCGS 95-129(1) citations where such consultation is required by the procedures in the paragraphs under B.2. or where complex issues or exceptions to those procedures are involved. The bureau chief will ensure that such NCGS 95-129(1) citations are issued only in appropriate circumstances after consultation with the AG's office, as conditions require.

ii. If a standard does not apply and all criteria for issuing a NCGS 95-129(1) citation are not met but the supervisor determines that the hazard warrants some type of notification, a letter will be sent to the employer and the employee representative describing the hazard and suggesting corrective action.

7. Reporting Hazards Not Covered by a Standard. The supervisor should evaluate all alleged general duty clause violations to determine whether they should be referred to the Education, Training and Technical Assistance (ETTA) Bureau, Standards Section for the development of new or revised standards. Those violations considered candidates for development or revision of a standard should be forwarded by the supervisor to the bureau chief, who should include appropriate comments, recommendations and supporting documentation with the transmittal to ETTA.

8. Using General Duty. A hazardous condition that apparently violates the general duty clause will be cited only when exposure to an employee of the employer can be documented and substantiated. Exposure must have occurred within the six months immediately preceding the issuance of the citation in order to serve as a basis for the violation.

C. **Employee Exposure**. It is important to establish that an employer-employee relationship exists as the OSH Act of North Carolina is only applicable to employers that have at least one employee. Employee exposure is one of the necessary elements to support issuing a citation for a violation of a standard.

1. Definition of Employee. NCGS 95-127 defines the term "employee" to mean an employee of an employer who is engaged in a business of other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer.

Whether or not exposed persons are volunteers, self-employed contractors or employees of an employer depends on several factors. The most important questions to answer are who pays the employee and who controls the manner in which the employee performs the assigned work. Determining the employer of an exposed person may be a very complex

question, in which case, the bureau chief may seek the advice of the AG's office. The following questions will help determine if an individual is an employee of an employer:

a. General.

i. Is the 'individual' in business (e.g., incorporated, sole owner, etc.)?

ii. Does the 'individual' own a place of business?

iii. Is the 'individual' engaged in making services available to the general public?

iv. Is the 'hiring party' in business (e.g., incorporated, sole owner, etc.)?

v. Is the work performed by the 'individual' for an indefinite period of time?

vi. Is the work being performed by the 'individual' part of the 'hiring party's' regular business or operations?

vii. Are the 'individual's' services crucial to the success of the 'hiring party's' business?

viii. What is the duration of the job?

b. Contracts/Relationships.

i. Is there a written, expressed or implied contract between 'employer' and 'individual'?

ii. Who do the 'individual(s)' consider to be their 'employer'?

iii. Does the 'individual' work for more than one person, business or firm?

iv. What did the parties intend their relationship to be?

v. Does the 'individual' have a continuing relationship/employed by the 'hiring party' or 'contracting party'? (does not need to be on a regular basis)

vi. How long has a relationship existed between the 'individual' and the 'hiring party'?

vii. What is the relationship like in practice?

c. Training/Skills.

i. Does the job require particular skills or qualifications?

ii. Who screens the 'individual' to determine whether they have the required skill set to perform the job?

iii. Does the 'hiring party' specify minimum qualification requirements?

iv. Does the 'hiring party' provide training on the job?

d. Insurance.

i. Whose workers compensation insurance covers the 'individual'?

ii. Are any benefits provided by the 'hiring party' such as sick pay, vacation pay, severance pay, retirement, worker compensation, disability insurance, or death benefits?

e. Property/Tools/Investment.

i. Does the 'hiring party' pay for tools, equipment, supplies, advertising, overhead, or administrative workers?

ii. Does the 'individual' have a substantial investment in any of the equipment or tools required to perform the work?

iii. Who claims depreciation on the equipment or tools?

iv. Who owns the land and/or building used by the 'individual'?

v. Does the 'individual' purchase PPE and/or pay for transportation to work or traveling expenses?

vi. Does the 'individual' make or is required to make an investment to perform the work? (e.g., rental of a facility/equipment)

f. Location.

i. Where does the 'individual' perform their work?

ii. Is the work conducted on the 'hiring party's' premises?

g. Pay.

i. Is the 'individual' paid in intervals (e.g., wages, salary) based on time worked or is there a lump sum payment for work and expenses at the completion of the job?

ii. Who proposes or decides how much the 'individual' gets paid?

iii. How are the 'individual's' wages established?

iv. Who pays the 'individual's' wages/salary? Where does the money come from?

v. Does the 'individual' receive pay through a commission?

vi. Are business expense vouchers filed and by whom?

vii. Does the 'individual's' ability to increase their income depend on efficiency rather than initiative, judgment and foresight?

viii. Does the 'individual' have an opportunity for profit or loss upon completion of the job or on supplies?

h. Taxes.

i. How are taxes handled?

ii. Does the 'hiring party' withhold taxes or Social Security?

iii. Who deducts money from the 'individual's' wages/salary for taxes, etc.?

i. Hiring/Firing.

i. Who initially hires the 'individual' to perform the work?

ii. Does the 'individual' have unilateral right to terminate their services?

iii. Does the 'hiring party' have unilateral right to fire, hire or modify the employment condition of the 'individual'?

iv. Is the 'individual' free to hire assistants or substitute the work to someone else as they see fit?

v. If the 'individual' can hire assistants, who pays the assistants and how?

vi. Does the 'individual' have full control over hired assistants?

vii. Who has authority/responsibility to control/discipline the workers?

j. Control.

i. Does the 'hiring party' have the power to control the 'individual'?

ii. How much supervision is the 'hiring party' authorized to exercise, or actually exercises, over the 'individual'?

iii. Can the 'hiring party' assign the 'individual' additional work?

iv. Does the 'hiring party' consider the 'individual' working full-time?

v. Who assigns the tasks to be performed by the 'individual'?

vi. How much control does the 'individual' have over the 'hiring party'?

vii. Is the work schedule and working hours subject to customer requirements?

viii. Does the 'individual' select their work schedule and working hours?

ix. Is the 'individual' free to select the means, manner, order, and sequence of conducting the work?

x. Who decides what work is to be done, and when?

xi. Does the 'individual' have to report on activities conducted or produce a written report?

xii. Is the 'individual' required to perform the work himself?

Note: The presence of one or more of these factors does not constitute, nor is the presence of all the factors required to determine, whether an individual is or is not an independent contractor. Questions used in the development of this section were taken from the IRS 20-Factor Test, the "economics realities test" and the OSH Legal Aspects (141) course.

2. Observed Exposure. Employee exposure is established if the CSHO witnesses, observes, or monitors exposure of an employee to the hazardous or suspected hazardous condition.

3. Unobserved Exposure. Where employee exposure is not observed, witnessed, or monitored by the CSHO, employee exposure is established if it is determined through witness statements, employee interviews or other evidence that exposure to a hazardous condition has occurred or continues to occur.

a. Past Exposure. In fatality/catastrophe (or other "accident") investigations, employee exposure is established if the CSHO determines, through written statements, employee interviews or other evidence, that exposure to a hazardous condition occurred at the time of the accident. In other circumstances where the CSHO determines that exposure to hazardous conditions has occurred in the past, such exposure may serve as the basis for a violation when:

i. The hazardous condition continues to exist, or it is reasonably predictable that the same or similar condition could recur.

ii. It is reasonably predictable that employee exposure to a hazardous condition could recur when:

A. Employee exposure has occurred in the previous six months;

B. The hazardous condition is an integral part of an employer's recurring operations; *and*

C. The employer has not established a policy or program to ensure that exposure to the hazardous condition will not recur.

b. Potential Exposure. The possibility that an employee could be exposed to a hazardous condition may be cited when the employee can be shown to have potential exposure to the hazard. Potential employee exposure could include one or more of the following:

i. When a hazard has existed and could recur because of work patterns, circumstances, or anticipated work requirements and it is reasonably predictable that employee exposure could occur.

ii. When a safety or health hazard would pose a danger to employees simply by employee presence in the area and it is reasonably predictable that an employee could come into the area during the course of the work, to rest or to eat at the jobsite, or to enter or to exit from the assigned workplace.

iii. When a safety or health hazard is associated with the use of unsafe machinery or equipment or arises from the presence of hazardous materials and it is reasonably predictable that an employee could use the equipment or be exposed to the hazardous materials in the course of work.

iv. If the investigation reveals an adequately enforced employer policy or program which would prevent employee exposure--including accidental exposure--to the hazardous condition, the CSHO would not ordinarily find it reasonably predictable that employee exposure could occur and would, therefore, not recommend issuing a citation in relation to the particular condition.

4. Documenting Employee Exposure. The CSHO will fully document exposure for every apparent violation. This includes such items as:

a. Comments by the exposed employees, the employer (particularly the immediate supervisor of the exposed employee), other witnesses (especially other employees or members of the exposed employee's family);

b. Signed statements;

c. Photographs; *and*

d. Documents, which may include autopsy reports, police reports, job specifications, audit reports from safety and health consultants or insurance loss control specialists.

D. **Regulatory Requirements**.

1. Posting, Recordkeeping and Reporting Requirements. Violations of 29 CFR 1903 and 29 CFR 1904 will be documented and cited when the employer does not comply with the posting requirements, the recordkeeping requirements, and the reporting requirements of the regulations contained in these subparts. (See FOM Chapter VI – Penalties.)

Note: If a Department employee becomes aware of an incident required to be reported under 29 CFR 1904.39 (reporting of fatality or multiple hospitalization incidents) through some means other than an employer report prior to the elapse of the 8-hour reporting period and an inspection of the incident is made within the 8-hour period, a violation for failure to report does not exist.

2. Incentive/Disincentive Programs. There are several types of workplace policies and practices that could discourage employees from reporting injuries or illnesses. These policies and practices, otherwise known as employer safety incentive and/or disincentive policies and practices, may also violate OSHA's recordkeeping regulations. CSHOs should evaluate any employer safety incentive policy or practice as part of their inspection activity. If a CSHO determines an incentive program has (or could) result in discouraging an employee to report injuries or illnesses, it must be appropriately addressed with the employer. The CSHO shall consult with their supervisor in such instances to determine if associated citation items may be warranted.

3. Migrant Housing Act Violations. Violations of the Migrant Housing Act of North Carolina (NCGS 95-222, et seq.) will be documented and cited when the owner/operator

of the housing either fails to register the migrant housing or occupies the migrant housing without a certificate (see FOM Chapter XI – Agricultural Safety and Health Inspections).

E. **Hazard Communication**. 29 CFR 1910.1200 – Hazard Communication, applies to manufacturers and importers of hazardous chemicals even though they themselves may not have employees exposed. Consequently, any violations of that standard by manufacturers or importers will be documented and cited, irrespective of employee exposure at the manufacturing or importing location. (Refer to CPL 02-02-079 – Inspection Procedures for the Hazard Communication Standard (HCS 2012).)

F. **Types of Violations**.

1. Serious Violations. NCGS 95-127(19) provides that "a serious violation will be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

   a. The CSHO will take four steps to make the determination that a violation is serious. The first three steps determine whether there is a substantial probability that death or serious physical harm could result from an accident or exposure relating to the violative condition. (The probability that an accident or illness will occur is not to be considered in determining whether a violation is serious.) The fourth step determines whether the employer knew or could have known of the violation.

      i. The violation classification need not be completed for each instance, only once for each full item.

      ii. If the full item consists of multiple instances or grouped items, the classification will be based on the most serious instance.

   b. The four-step analysis as outlined below is necessary to make the determination that an apparent violation is serious. Apparent violations of the general duty clause will also be evaluated on the basis of these steps to ensure that they represent serious violations. The four elements the CSHO will consider are as follows: the type of accident or health hazard exposure that the violated standard or the general duty clause is designed to prevent; the type of injury or illness that could reasonably be expected to result from the type of accident or health hazard exposure identified; whether the injury or illness identified is one that results in death or serious physical harm; and whether the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.

      i. Step 1. The type of accident or health hazard exposure that the violated standard or the general duty clause is designed to prevent.

         A. The CSHO need not establish the exact way in which an accident, or health hazard exposure would occur. The exposure or potential exposure of an employee is sufficient to establish that an accident or health hazard exposure could occur.

However, the CSHO will note the facts that could affect the severity of the injury or illness resulting from the accident or health hazard exposure.

B. If more than one type of accident or health hazard exposure exists which the standard is designed to prevent, the CSHO will determine which type could reasonably be predicted to result in the most severe injury or illness, and will base the classification of the violation on that determination.

C. The following are examples of a determination of the type of accident or health hazard exposure that a violated standard is designed to prevent:

1. Employees are observed working at the unguarded edge of an open-sided floor 30 feet above the ground in apparent violation of 29 CFR 1926.501(b)(1) – Duty to Have Fall Protection. This regulation requires that the edge of the open-sided floor be guarded by guardrail systems, safety net systems, or personal fall arrest systems. The type of accident that the violated standard is designed to prevent involves an employee falling from the edge of the floor, 30 feet to the ground below.

2. Employees are observed working in an area in which debris is located in apparent violation of 29 CFR 1926.252(c) – Disposal of Waste Materials. The type of accident that the violated standard is designed to prevent involves an employee tripping on debris.

3. A 15-minute time-weighted average sample reveals employee overexposure to chlorine at 2 ppm in apparent violation of 29 CFR 1910.1000 – Toxic and Hazardous Materials. This is 1 ppm above the ceiling concentration of health hazard exposure which the violated standard is designed to prevent.

4. An 8-hour time-weighted average sample reveals employee overexposure to lead at 100 ug/m^3 in violation of 29 CFR 1910.1025 - Lead. This is 50 ug/m^3 above the PEL of health hazard exposure that the violated standard is designed to prevent.

ii. Step 2. The type of injury or illness that could reasonably be expected to result from the type of accident or health hazard exposure identified in Step 1.

A. In making this determination, the CSHO will consider all factors which would affect the severity of the injury or illness which could reasonably be predicted to result from an accident or health hazard exposure. The CSHO will not give consideration at this point to factors that relate to the probability that an accident

or health hazard exposure will occur. The following are examples of a determination of the types of injuries that could reasonably be predicted to result from an accident:

1. If an employee falls from the edge of an open-sided floor 30 feet to the ground below, that employee could break bones, suffer a concussion, incur internal injuries or die.

2. If an employee trips on debris, that employee could experience abrasions or bruises, but it is only marginally predictable that the employee could suffer a substantial impairment of a bodily function. If, however, the area were littered with broken glass or other sharp objects, it would be reasonable to predict that an employee who tripped on debris could suffer a deep cut which could require suturing.

B. In order to support a preliminary classification of a serious violation, the CSHO must establish a direct link between exposure at the sampled level, if representative of conditions to which employees are normally exposed, and the expected illness. Thus, the CSHO must make every reasonable attempt to show that the sampled exposure is in fact representative of employee exposure under normal working conditions. The CSHO will, therefore, identify and record all available evidence that indicates the frequency and duration of employee exposure. Such evidence would include:

1. The nature of the operation from which the exposure results.

2. Whether the exposure is regular and on-going or of limited frequency and duration.

3. How long employees have worked at the operation in the past.

4. Whether employees are performing functions that can be expected to continue.

5. Whether work practices, engineering controls, production levels and other operating parameters are typical of normal operations.

C. Where such evidence is difficult to obtain or where it is inconclusive, the CSHO will estimate the frequency and duration from the evidence available. In general, if the evidence tends to indicate that it is reasonable to predict that regular and ongoing exposure could occur, the CSHO will presume such exposure in determining the types of illness that could result from the violative condition. The following are examples of determination

of types of illnesses that could reasonably result from a health hazard exposure:

1. If an employee had an exposure to chlorine greater than the ceiling concentration of 1 ppm, it is reasonable to predict that the illness which could result would be irritation to nose, eyes, and throat and would not involve serious physical harm.

2. If an employee is exposed regularly and continually to lead above the PEL of 50 ug/m^3, it is reasonable to predict that central nervous system damage could occur.

iii. Step 3. Whether the injury or illness identified in Step 2 is one that results in death or serious physical harm.

A. In making this determination, the CSHO will utilize the following definition of "serious physical harm":

1. Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor. Examples of injuries that constitute such harm include:

a. Amputation (as defined in 29 CFR 1904.39(b)(11) - Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye as a Result of Work-related Incidents to OSHA.)

b. Concussion.

c. Crushing (internal, even though skin surface may be intact).

d. Fracture, simple or compound.

e. Burn or scald, other than first degree, including electrical and chemical burns.

f. Cut, laceration, or puncture involving significant bleeding and/or requiring suturing.

2. Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body. The illness may be acute or chronic in nature. Examples of illnesses that constitute serious physical harm include:

a. Cancer.

b. Poisoning (resulting from the inhalation, ingestion or skin absorption of a toxic substance which adversely affects a bodily system).

c. Lung diseases, such as asbestosis, silicosis, byssinosis.

d. Hearing loss.

e. Central nervous system impairment.

B. The following are examples of determinations of whether the types of injury or illness that could reasonably result from an accident or health hazard exposure could include death or serious physical harm:

1. If an employee, upon falling 30 feet to the ground, suffers broken bones or a concussion, that employee would experience substantial impairment of the usefulness of a part of the body and would require treatment by a medical doctor. This injury would constitute serious physical harm.

2. If an employee, tripping on debris, suffers a bruise or abrasion, that employee would not experience substantial reduction of the usefulness of a part of the body nor would that employee require treatment by a medical doctor. This injury would not be serious. However, if it is reasonably predictable that the employee would suffer a deep cut of the hand, the cut would require suturing by a medical doctor and the use of the hand would be substantially reduced. This injury would then be serious.

3. If an employee has an exposure to chlorine at 2 ppm, the irritation that would result from this exposure would not normally be considered to constitute serious physical harm.

4. If an employee, following exposure to lead at 100 ug/m^3, develops permanent central nervous system effects, the illness would constitute serious physical harm.

iv. Step 4. Whether the employer knew, or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.

A. The knowledge requirement is met if it is determined that the employer actually knew of the hazardous condition that constituted the apparent violation.

1. In this regard, a supervisor represents the employer and a supervisor's knowledge of the hazardous condition amounts to actual employer knowledge. The CSHO will

record on each violation worksheet the evidence that establishes how the employer knew of the hazardous condition.

2. Examples of actual knowledge of the employer are: the employer saw the condition, an employee was previously injured by the condition, or an employee or employee representative reported the condition.

B. If, after reasonable attempts to do so, it cannot be determined that the employer has actual knowledge of the hazardous condition, the knowledge requirement is met if the CSHO determines that the employer had constructive knowledge through the exercise of reasonable diligence.

1. As a general rule, if the CSHO was able to readily observe a hazardous condition, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence. The CSHO will record on each violation worksheet the evidence that establishes *how* the employer could have known of the hazardous condition with the exercise of reasonable diligence.

2. Examples of constructive knowledge of the employer are: the condition was in plain view and obvious, the duration of the condition was not brief, the employer failed to regularly inspect the workplace for hazards, the employer failed to train and supervise employees regarding the condition.

C. In cases where the employer may contend that their supervisor's own conduct constituted an isolated event of misconduct, the CSHO will determine whether the supervisor violated an established work rule and the extent to which this supervisor was trained and supervised so as to prevent such conduct. The employer must show that the supervisor's actions were beyond or out of the scope of their usual job duties.

2. Nonserious Violations. This type of violation will be cited in situations where the accident or illness that would be most likely to result from a hazardous condition would probably not cause death or serious physical harm but would have a direct and immediate relationship to the safety and health of employees. Serious violations where there is no employer knowledge cannot be cited as nonserious. Employer knowledge is required to cite nonserious items.

3. Willful Violations. The following definitions and procedures apply whenever the CSHO suspects that a willful violation may exist:

a. A willful violation exists under the Act where the evidence shows either an intentional violation of the Act or plain indifference to its requirements - not necessarily with knowledge of the standard itself.

i. The employer committed an intentional and knowing violation if:

A. An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements.

B. An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement.

ii. The employer committed a violation with plain indifference to the law where:

A. Higher management officials were aware of an OSH requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees.

B. Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.

EXAMPLE: Repeated issuance of citations addressing the same or similar conditions.

C. An employer representative was not aware of any legal requirement, but was aware that a condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, media coverage, or, in some cases, complaints of employees or their representatives.

D. Finally, in particularly flagrant situations, willfulness can be found despite lack of knowledge of either a legal requirement or the existence of a hazard if the circumstances show that the employer would have placed no importance on such knowledge even if he or she had it. The employer makes a "deliberate purpose not to discharge some duty necessary to the safety of the person or the property of another." (See Appendix IV-A - "Willful Violations Under OSHA: No Knowledge of the Act Required", H. Alan Pell, 1997.)

b. It is not necessary that the violation be committed with a bad purpose or an evil intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent, accidental or ordinarily negligent.

c. The CSHO will carefully develop and record all evidence available that indicates employer awareness of the disregard for statutory obligations or of the hazardous conditions. Willfulness could exist if an employer is advised by employees or employee representatives regarding an alleged hazardous condition and the employer does not make a reasonable effort to verify and correct the condition. Additional factors that can influence a decision as to whether violations are willful include:

i. The nature of the employer's business and the knowledge regarding safety and health matters that could reasonably be expected in the industry.

ii. The precautions taken by the employer to limit the hazardous conditions.

iii. The employer's awareness of the Act and of the responsibility to provide safe and healthful working conditions.

iv. Whether similar violations and/or hazardous conditions have been brought to the attention of the employer.

v. Whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility under the Act.

d. The determination of whether to issue a citation for a willful or repeat violation will frequently raise difficult issues of law and policy and will require the evaluation of complex factual situations. Accordingly, a citation for a willful violation will be discussed with the bureau chief and AG's office, as appropriate.

4. Criminal/Willful Violations. NCGS 95-139 – Criminal Penalties, outlines the penalties for any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of the Act, and the violation causes the death of any employee.

a. The bureau chief, in coordination with the director and the AG's office, should carefully evaluate all cases involving workers' deaths to determine whether they should be referred to an appropriate criminal law enforcement agency for possible criminal prosecution.

b. In cases where an employee fatality may have been caused by a willful violation of an OSH requirement, the supervisor will be consulted prior to the completion of the investigation to determine whether investigative assistance from the State Bureau of Investigation or other criminal law enforcement agency should be requested. The supervisor will consult with the bureau chief and, if appropriate, the AG's office in making this determination.

c. The following criteria will be considered in investigating possible criminal/willful violations:

i. Establishment of Criminal/Willful. In order to establish a criminal/willful violation OSHA must prove that:

A. The employer violated an OSHA standard. A criminal/willful violation cannot be based on violation of the general duty clause.

B. The violation was willful in nature; i.e.,

1. The employer committed an intentional and knowing violation if:

a. An employer representative was aware of the requirements of the act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements.

b. An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., State or local law) and was also aware of a condition or practice in violation of that requirement.

2. The employer committed a violation with plain indifference to the law where:

a. Higher management officials were aware of an OSHA requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees.

b. Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.

EXAMPLE: Repeated issuance of citations addressing the same or similar conditions.

c. An employer representative was not aware of any legal requirement, but was aware that condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee or other internal reports, the occurrence of illnesses or injuries, media coverage, or, in some cases, complaints of employees or their representatives.

d. In flagrant situations, willfulness can be found despite lack of knowledge of either a legal requirement or the existence of a hazard if the circumstances show that the employer would

have placed no importance on such knowledge even if he or she had possessed it.

C. The employer took positive action that contributed to the employee exposure (e.g., the employer installed locks on the exit doors, the employer told employees to continue working without proper fall protection.) The district attorney needs to have a "smoking gun" before proceeding with a criminal willful. Unlike OSH cases where the division must prove the case with the "preponderance of evidence," criminal cases must be proved "beyond a reasonable doubt."

D. The violation of the standard caused the death of an employee. In order to prove that the violation of the standard caused the death of an employee, there must be evidence in the file that clearly demonstrates that the violation of the standard was the cause of or a contributing factor to an employee's death.

ii. Bureau Chief Responsibilities.

A. If the bureau chief determines that expert assistance is needed to prove the causal connection between an apparent violation of the standard and the death of an employee, such assistance will be obtained in accordance with instructions in FOM Chapter III – Inspection Procedures, B.7 – Expert Assistance.

B. Following the investigation, if the bureau chief decides to recommend criminal prosecution, a memorandum containing that recommendation will be forwarded promptly to the director. It will include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof that requires that the government's case be proven beyond a reasonable doubt. In addition, if the correction of the hazardous condition appears to be an issue, this will be noted in the transmittal memorandum because in most cases the prosecution of a criminal/willful case delays the affirming of the civil citation and its correction requirements.

C. The bureau chief will normally issue a civil citation in accordance with current procedures even if the citation involves allegations under consideration for criminal prosecution. The director's office and the commissioner will be notified of such cases. They will determine if the department recommends criminal prosecution. Such cases will be forwarded to the AG's office as soon as practicable. If warranted, the AG's office will go to the local district attorney for potential prosecution.

D. When a willful violation is related to a fatality, the bureau chief will ensure that the case file contains documentation regarding the decision not to make a criminal referral.

5. Repeat Violations. An employer may be cited for a repeat violation if that employer has been cited previously for the same or a substantially similar condition and the citation has become a final order.

   a. Identical Standard. Generally, similar conditions can be demonstrated by showing that in both situations the identical standard was violated.

      EXCEPTION: Previously a citation was issued for a violation of 29 CFR 1910.132(a) – PPE, General Requirements, for not requiring the use of high-visibility/reflective clothing for employees. A recent inspection of the same establishment revealed a violation of 29 CFR 1910.132(a) for not requiring the use of chaps while employees were operating chainsaws. Although the same standard was involved, the hazardous conditions found were not substantially similar and therefore a repeat violation would not be appropriate.

   b. Different Standards. In some circumstances, similar conditions can be demonstrated when different standards are violated.

      EXAMPLE: A citation was previously issued for a violation of 29 CFR 1926.501(b)(11) – Duty to Have Fall Protection, for lack of fall protection on a steep roof. A recent inspection of the same establishment reveals a violation of 29 CFR 1926.501(b)(13) - Duty to Have Fall Protection, or no fall protection on a steep roof in residential construction. Although there are different standards involved, the hazardous conditions found were substantially similar and therefore a repeat violation would be appropriate. The only difference may be in the type of construction – commercial vs. residential.

   c. Multi-facility Employers. A multi-facility employer will be cited for a repeated violation if the violation recurred at any worksite within the state.

   d. Time Limitations. NCGS 95-138(b) – Civil Penalties, establishes the length of time that a citation may serve as a basis for a repeat violation. The following policy will be used in order to ensure uniformity in enforcing the statutory requirement.

      i. A citation will be issued as a first instance repeat violation, with the gravity-based penalty (GBP) multiplied by two, if:

         A. A substantially similar condition exists; and

         B. The violative condition is observed within three years of the final order of the previous citation or of the final abatement date of that citation, whichever is later. The final abatement date is:

            1. The abatement due date on the issued citation if the employer has not contested the citation or proposed assessment of penalty; or requested an informal conference;

            2. The final closing date for citations marked "immediately abated" during an inspection; or,

            3. The abatement due date on amended citations.

ii. When a violation is found during an inspection and a first instance repeat citation has been previously issued for a substantially similar condition which meets the above time limitations, the violation may be classified as a second instance repeat violation and the GBP will be multiplied by five. Note that this second instance must be observed within three years of the original citation, not just the first instance repeat. Otherwise, this is also a first instance repeat.

EXAMPLE: An inspection is conducted in an establishment and a violation of 29 CFR 1910.217(c)(1)(i) – Mechanical Power Presses, on point of operation guards is found. One year earlier a repeat violation of the same standard was issued. The violation found during the current inspection may be treated as a second instance repeat violation and the GBP will be multiplied by five.

iii. If a condition that has been cited as a second instance repeat violation is found again within the three-year time limitations described above, a third instance repeat violation may be issued and the GBP will be multiplied by ten.

iv. The GBP will also be multiplied by ten if the violation has previously been cited more than three times, although consideration may also be given to citing this violation as willful.

e. Repeat vs. Willful. Repeat violations differ from willful violations in that repeat violations may result from an inadvertent, accidental or ordinarily negligent act. Where a repeat violation may also meet some of the criteria for willful, a citation for a repeat violation will normally be issued with the penalty calculated as indicated in FOM Chapter VI - Penalties.

f. Repeat vs. Failure-to-abate. A failure-to-abate situation exists when an item of equipment or condition previously cited has never been brought into compliance and is noted at a later inspection. If, however, the violation was not continuous; i.e., if it had been corrected and then reoccurred, the subsequent reoccurrence is a repeat violation.

g. Supervisor Responsibilities. After the CSHO makes the initial recommendation that the violation is cited as "repeat," the supervisor will:

i. Ensure that the violation meets the criteria outlined in the preceding subparagraphs of this section.

ii. Ensure that the case file includes a copy of the prior violation citation, that serves as the basis for the repeat citation, as well as the complete violation worksheet. The previous citation must be a final order. When determining the final order date, the following guidelines shall be adhered to:

A. When an employer does not contest or request an informal conference.

1. Fifteen working days after the original citation(s) are

issued or amended citations are issued. The date on the signed Domestic Return Receipt (PS Form 3811) "Green" card establishes when the citations were issued to the company. If a certified mailing receipt is not received in the office within 15 working days of the "No Change" mailing date, the CSHO will attempt to contact the employer via telephone or email to ascertain if the employer received the citations. If the employer verifies they received the citations, the CSHO shall document who they spoke with along with the date and time of the conversation in OSHA Express (OE) Notes and on the case file summary sheet. The citations will become final order 15 working days from the employer's confirmation of receipt (unless a contestment is received within that same 15-working day period).

B. When an informal conference is requested.

1. Fifteen working days after a "No Change" letter is issued. The date on the signed Domestic Return Receipt (PS Form 3811) "Green" card establishes when the "No Change" letter was mailed to the employer. If a certified mailing receipt is not received in the office within 15 working days of the "No Change" mailing date, the supervisor will attempt to contact the employer via telephone or email to ascertain if the employer received the "No Change" letter. If the employer verifies they received it, the citations will become final order 15 working days from the employer's confirmation of receipt, unless a contestment is received within that same 15 working day period. The supervisor shall document who they spoke with along with the date and time of the conversation in OE Notes and on the case file summary sheet.

2. The date on a signed "Settlement Agreement".

3. If a settlement agreement is mailed to the employer and the employer does not sign the settlement agreement and no other actions are taken, the citations become final 15 working days from when the received the settlement agreement by mail. The date on the signed domestic return receipt (PS Form 3811) "green" card establishes when the settlement agreement was sent to the employer.

4. If neither a signed settlement agreement nor a certified mailing receipt is received in the office within six working days of the settlement agreement mailing date, the supervisor will attempt to contact the employer via telephone or email to ascertain if the employer received the agreement and whether or not that have signed sent the agreement back to the field office. If the employer

verifies they received it, the settlement agreement will become final order 15 working days from confirmation of receipt, unless a contestment is received within that same 15 working day period. Attempts should be made to obtain written confirmation of delivery. If the supervisor is able to confirm delivery of the settlement agreement, the citations will become final order 15 working days from the verbal confirmation of receipt of the settlement agreement. The supervisor should document who they spoke with along with the date and time of the conversation in OE Notes and on casefile summary sheet.

5. If the settlement agreement containing amended citation(s) or notice of no change is returned to the field office as "undeliverable" the supervisor should follow the instructions for Undelivered Citations in FOM Chapter V – Citations. If the supervisor has exhausted all efforts to deliver the settlement agreement and/or notice of no change letter per the procedures for Undeliverable Citations in Chapter V – Citations of the FOM the citations will become final order 15 working days after the informal conference.

6. If settlement agreement containing amended citation(s) or notice of notice change is delivered by the sheriff or the Secretary of State, the citations will become final order 15 working days after the date of delivery.

C. When the case file is contested.

1. Thirty days from the filing of the consent order signed by the hearing examiner. The date on the Certificate of Service signed by the administrative assistant to the Occupational Safety and Health Review Commission is the date on which the consent order is considered filed.

2. Thirty days from the filing of the hearing examiner's order after a hearing on the citations. The date on the Certificate of Service signed by the administrative assistant to the Occupational Safety and Health Review Commission is the date on which the hearing examiner's order is considered filed.

3. Thirty days from the filing of the Occupational Safety and Health Review Commission's order upon an appeal from the hearing examiner's order. The date on the Certificate of Service signed by the administrative assistant to the Occupational Safety and Health Review Commission is the date on which the review commission's order is considered filed.

iii. In questionable circumstances when it is not clear that the violation meets the criteria outlined in this section, the supervisor should consult with the bureau chief before issuing a repeat citation.

iv. If a repeat citation is issued, ensure that the cited employer is fully informed of the previous violations serving as a basis for the repeat by notation in the Alleged Violation Description (AVD) portion of the citation, using the following language:

THE (COMPANY NAME) WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD (NAME PREVIOUSLY CITED STANDARD) WHICH WAS CONTAINED IN OSH INSPECTION NUMBER, CITATION NUMBER__, ITEM NUMBER__, ISSUED ON (DATE), *WITH A FINAL ORDER DATE OF (DATE).*

APPENDIX IV-A: **"Willful Violations under OSHA: No Knowledge of the Act Required", H. Alan Pell, NC Dept of Justice, Attorney General's Office, Labor Section, 1997.**

The Commissioner of Labor is authorized by the North Carolina Occupational Safety and Health Act [OSH Act][1] to issue citations to employers alleging "willful" violations of the Act. The term "willful", however, is not defined by the Act. Case law had provided some guidance, but one important issue had been left unanswered in North Carolina: Whether an employer could be found in "willful" violation of the Act where it was without knowledge of the specific requirement or regulation upon which the citation was based. Two decisions this year, one by the North Carolina Supreme Court, *Associated Mechanical Contractors, Inc., v. Payne*,[2] and one by the Safety and Health Review Board, *Commissioner v. City of Mt. Airy*[3] have answered this question in the affirmative.

In the spring of 1990, Associated Mechanical Contractors [AMC] was engaged in constructing a wastewater treatment plant in Albemarle, North Carolina. It dug a trench on the site for the installation of pipe. The trench, which had been dug through a shale formation called ardulite--which is layered and unstable when lying at an angle-- was approximately twelve to thirteen feet deep, five feet wide at the bottom, nine feet wide at the top, and eighty feet long.[4]

Based upon the depth of the trench and its soil composition, OSHA regulations required sloping of the sides at thirty-five to forty-five degree angles. The sides of the excavation, however, had not been intentionally sloped; any angling of the side walls was due to natural and inadvertent sloping of the sides during excavation.

On April 24, 1990, AMC's employee, Eddie Lemmons, was working in the trench. The bottom portion of the east wall caved-in, pinning Mr. Lemmons against the west wall. The top of the east wall then fell, "covering Lemmons with approximately a dump truck load of soil and rock."[5] It took eleven minutes to uncover Mr. Lemmons; he was pronounced dead at the scene by medical personnel.

The Department of Labor, Occupational Safety and Health Division, cited AMC for two willful violations of the Occupational Safety and Health Act: (1) a willful violation of the regulation which requires employers to instruct employees in the recognition and avoidance of unsafe conditions and the regulations applicable to the work environment, and (2) a willful violation of the standard which requires proper sloping, shoring, bracing, or other support, of the side walls of excavations. AMC objected to the safety/training violation, and to the "willful" categorization of the shoring/sloping violation.

A hearing was held before the Safety and Health Review Board of North Carolina, the State agency charged with hearing appeals of OSHA citations.[6] The Hearing Examiner upheld the safety/training violation as a "serious" violation, and affirmed the trenching violation as it had been issued-- "willful-serious." On appeal, the Review Board affirmed.

The Superior Court, sitting as an appellate court, reviewed the case and affirmed the final agency decision. On review, the N.C. Court of Appeals ordered that (1) the matter be remanded to the Review Board; (2) the safety/training violation be reclassified as "nonserious"; and (3) that the trenching violation be reclassified as "serious." The N.C. Supreme Court granted the Commissioner's petition for writ of certiorari.

After addressing the appropriate standards for appellate review, the N.C. Supreme Court considered whether the Superior Court Judge was correct in concluding that the Review Board had used the proper definition of willfulness when evaluating the trenching violation. The Court began by citing its previous holding in a civil case: "A violation is deemed to be willful when there is shown "a deliberate purpose not

to discharge some duty necessary to the safety of the person or property of another."[7] The Court then quoted language from an OSHA case decided by the N.C. Court of Appeals:

> *A violation of an OSHA standard is willful if the employer deliberately violates the standard. A deliberate violation is one done voluntarily with either an intentional disregard of or plain indifference to the requirements of the standard. . . . An employer's knowledge of the standard and its violation, although not alone sufficient to establish willfulness, is one of the most effective methods of showing the employer's intentional disregard of or plain indifference to the standards.*[8]

The Court then noted that the Review Board had stated that a violation was willful if "there is shown a deliberate purpose not to discharge some duty necessary to the safety of persons or property of another."[9] The foregoing "definition" is the same one which the N.C. Court of Appeals had set forth in *Brewer v. Harris* and which the N.C. Supreme Court had cited earlier in the opinion.

The Court also wrote that the Review Board had applied a four-part test for a finding of willfulness: (1) employer knowledge of a violative condition, (2) employer knowledge of the standard, (3) a subsequent violation of the standard, and (4) the violation being committed voluntarily or with intentional disregard of the standard or with demonstrated plain indifference to the Occupational Safety and Health Act. The Court stated its approval of the Review Board's four part test, but held that it was not the only way to prove "willfulness": "The definition and elements used by the Review Board *are consistent with the definitions of willfulness expounded by this Court and quoted above* [in its opinion]."[10]

In one sentence, the Court was able to provide a *non-exclusive* "bright-line" definition [the "four-part" test], *and* also adopt that body of case law which applies to those employers who may be completely unknowledgeable concerning the Occupational Safety and Health Act-- yet fail to take precautions which a reasonable person should have known were necessary in light of known hazards. The significance of this "broadening" of the definition of willfulness cannot be overstated.

The primary difference between the four-part test and the "disregard of duty" test is that, in the latter test a finding of willfulness *does not* require the Commissioner to prove that the employer had actual knowledge of the OSHA regulation that it allegedly *willfully* violated. Knowledge of the standard is an element of the "four-part" definition-- it is not an element of the other "definitions" which the Court had "expounded" upon in its decision. Federal case law in this area is consistent with the N.C. Supreme Court's holding that actual knowledge of a standard is not a prerequisite for a finding of willfulness under the OSH Act.

In James Tull Excavating and Construction Company,[11] the federal Safety and Health Review Commission held that even though an employer had never been previously cited for trenching violations, it could still be held in willful violation of OSHA standards. In Tull, the Review Commission held that the employer's

> *conscious and deliberate act* of placing an employee into a nine-foot deep unshored trench of little slope, *knowing* of hazardous soil conditions, constituted a reckless disregard of consequences equivalent to the deliberate flouting of the Act needed to establish a willful violation.[12]

In a later case, the federal Review Commission held that willful violations can be shown by proving that the employer committed the violation with intentional, knowing or voluntary disregard for the requirements of the [federal] Act, or with plain indifference the employee safety. The Review - Commission stated, in regard to one cited employer's actions, that

> *evidence of such reckless disregard for employee safety or the requirements of the law... [were such] that one can infer that if the employer had known of the standard or provision, the employer would not have cared that the conduct or conditions violated it.*[13]

There would appear to be no difference, in regard to what constitutes willfulness, between the federal view of "reckless disregard for employee safety" and the State view of "deliberate disregard of a duty necessary to the safety" of an employee. In either case, the employer's actions must be shown to have been done "voluntarily" with an intentional disregard or with plain indifference to the *requirements* of the standard-- not necessarily with knowledge of the standard itself.

For example, an employer who normally does minor excavation work-- nothing greater than three to four feet in depth-- is suddenly required to excavate to a depth of eighteen feet. The employer digs the three foot wide excavation with vertical sidewalls.[14] Cracks subsequently appear in the excavation's side walls; soil begins sloughing off the sides and into the trench and water begins to accumulate in the bottom. An employee voices his concern about working in the excavation. If the employer required his employees to work in the bottom of such an excavation, he would be deliberately placing them into a dangerous situation. Because the employer would be intentionally placing his employees into the trench, he would be violating his duty to ensure their "safety"-- a "requirement" of the standard. Thus, he would be in willful violation of the excavation standard-- despite the fact that he had no specific knowledge of the excavation standard.[15]

The Safety and Health Review Board's decision in *Commissioner v. City of Mt Airy* illustrates the foregoing principle i.e., an employer may be in violation of the OSH Act without reference to any specific standard. In *City of Mt. Airy*, the Review Board considered whether the Hearing Examiner had correctly determined that the City of Mt. Airy, North Carolina, had willfully committed a violation of N.C.G.S. 95-129(l), the General Duty Clause. The General Duty Clause is that portion of the Occupational Safety and Health Act which provides that:

> *Each employer will furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees.*

The General Duty Clause is a "catch-all" regulation; the drafters of the Act wanted to provide some method of regulating hazardous conditions for which there were no specific standards. The employer may not be held strictly liable-- the Commissioner must, prove either actual or constructive knowledge of the hazardous condition.

On June 9, 1991, two workers at the Mount Airy Waste Water Treatment Plant were overcome by toxic gases while tying to unclog a pipe at the bottom of a sludge well pit containing raw sewerage. One worker died from exposure to the toxic gases.

An investigation by OSHA compliance officers resulted in a willful-serious citation of the General Duty Clause, and 13 other serious violations. The Department of Labor alleged, and the Review Board found, that the City had standard operating procedures concerning entry into confined spaces; that the City had been reminded on an annual basis that a confined space entry program was required; that the City had previously verified that (1) it had such a program; (2) it had appropriate equipment to test for flammable or toxic gases and the amount of oxygen; (3) the standard procedure was used; and (4) that its employees were trained in the use of the testing equipment.

In fact, the City-- contrary to its other verifications-- had only a written standard procedure. It did not have appropriate testing equipment; the employees were not trained; and although the superintendent and the supervisor of the Plant knew what a confined space program was, they did not follow-up to make sure

it was implemented. Employees were regularly allowed to enter confined spaces without following procedures necessary to ensure their safety. The Commissioner produced additional evidence which reflected that the City had previously been made aware of the necessary safety precautions by outside agencies.

The Review Board began its analysis of the willful violation with a reference to the penalty provisions of the Act. The Act provides a civil penalty of not more than seventy thousand dollars ($70,000), and not less than five thousand dollars ($5,000) for any employer who "willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to [the] Article…"[16]

The Review Board found that (1) the General Duty Clause is one of the "requirements" of the Article [the OSH Act], *i.e.,* the employer is required to provide a workplace free of recognized hazards; (2) a violation of the general duty clause involves a disregard for recognized serious safety and health hazards and not the violation of a particular standard; and, consequently, (3) employer knowledge of a particular standard or regulation cannot be a prerequisite for a finding of a willful violation of the General Duty Clause.[17]

In a lengthy discussion, the Review Board cited to federal law,[18] State law, and authoritative commentary.[19] The Review Board, for the first time, formally adopts the view that "a willful violation can be proven by conduct marked by intentional disregard of or plain indifference to employee safety and health..."[20]

In summary, the "definition" of willful conduct, for the purposes of the OSH Act, actually springs from the common [tort] law. In *Brewer v. Harris,* a case involving an automobile accident, the N.C. Supreme Court stated that a violation is deemed to be willful when there is a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another. In *Associated Mechanical,* the Court applied its holding in *Brewer* in an OSHA context.

The N.C. Supreme Court has, therefore, established a common law duty in the employment relationship: an employer has a duty to his employee not to purposefully place him in danger. If the evidence supports such a finding, then the employer may be sanctioned with the most severe penalties provided by law--regardless of the employer's knowledge of a specific regulation which prohibited such conduct.

References:

1. *Cf.* N.C.G.S. 95-127(19) [a "serious" violation exists where there is a possibility of an accident with death or serious bodily injury as the substantially probable result].

2. 342 N.C. 825, 467 S.E.2d 398 (1996).

3. Docket No. OSHANC 91-2077 (RB March 25, 1996).

4. 467 S.E.2d at 399.

5. *Id*.

6. N.C.G.S. 95-135(b).

7. *Id,* citing *Brewer v. Harris*, 279 N.C. 288, 297, 182 S.E.2d 345, 350 (1971), quoting *Foster v. Hyman,* 197 N.C. 189, 191, 148 S.E. 36, 37 (1929).

8. Associated Mechanical, 467 S.E.2d. at 402, quoting *Brooks v. Ansco & Assoc*., 114 N.C. App. 711, 717, 443 S.E.2d 89, 92 (citations and quotes omitted).

9. *Id.*

10. *Id.* (Emphasis added). As noted below, the Review Board has adopted a definition of a willful violation which does not require knowledge of a standard. The Supreme Court decision in *Associated Mechanical*, however, was issued on March 8, 1996; the decision by the Review Board in *Mt. Airy* was issued on March 25, 1996. Thus, although neither the Supreme Court nor the Review Board had knowledge of the analysis which would be applied by the other, the decisions are entirely consistent.

11. 78 CCH OSHD P22,602 (Wienman, J. 1978).

12. *James Tull Excavating and Construction Company*, 1978 CCH OSHD P22,602 (Wienman, J. 1978) (emphasis added).

13. *Williams Enterprises, Inc*., 1986-87 CCH OSHD P27,893, at page 36,589 (RC 1987) (emphasis added).

14. The OSH Act provides that sides of excavations must be shored or sloped, or a trench box used by employees. The extent (angle) of the sloping depends upon the type of soil and other factors.

15. The above facts are taken from an actual OSHA case. Employees who complained about the danger were told to get in the excavation or they would be fired. The subsequent cave-in killed one and seriously injured three others.

16. N.C.G.S. 95-138(a).

17. *City of Mt. Airy*, Docket No. OSHANC 91-2077 (RB March 25, 1996), slip op. at 14.

18. The Review Board notes that although it is not bound by federal law, it will look to federal law interpreting like provisions of the federal OSH Act as guidance in interpreting similar provision of the State Act.

19. *Eg*., Rothstein, OCCUPATIONAL SAFETY AND HEALTH LAW (3d ed. 1990), and Bokat & Thompson, OCCUPATIONAL SAFETY AND HEALTH LAW.

20. *City of Mt. Airy*, slip op. at 20. The holding is, in large measure, an adoption of the Fourth Circuit Court of Appeals decision in *Intercounty Construction Co. v. OSHRC*, 522 f.2d 777 (4th Cir. 1975), *cert. denied*, 423 U.S. 1072, 96 S.Ct. 854, 47 L.ed.2d 82 (1976), and is consistent with the view adopted by the First, Second, Fifth, Sixth, Eighth, Ninth, and Tenth Circuit Courts of Appeal.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter V - Citations



Chapter Effective: February 2000
Revision 9: 8/23/2017

Table of Contents

A. Pre Citation Consultation

B. Writing Citations

1. General
2. Specific Instructions

C. Grouping and Combining Citations

D. Employer/Employee Responsibilities

1. NCGS 95-103(1)
2. Employee Refusal to Comply

E. Affirmative Defenses

1. Definition
2. Burden of Proof
3. Explanations

F. Issuing Citations - Special Circumstances

1. Follow-up Inspections
2. Multi-employer Worksites
3. Legitimate Defense
4. Citing Non-exposing Employer
5. General Duty Clause Violations
6. Willful, FTA and Repeat Citations
7. State-wide Settlement Agreements

G. Abatement Verification

1. Definitions
2. Abatement of Citations
3. Citation Issuance Procedures
4. Enforcement for Construction
5. Case File Management
6. Employer Education

H. Undelivered Citations

1. General
2. Responsibility
3. Procedures
4. Reasons to Redeliver or Reprocess and Reissue Citations
5. Redelivery to the Company/Successors
6. Delivery by Local Sheriff
7. Delivery to Location Other than the Establishment
8. Unsuccessful Deliver of Citations

Appendix A – Secretary of State Letter

Appendix B - Secretary of State Response Letter

Chapter V

Citations

A. **Pre-Citation Consultation.**

1. General. In order to ensure uniformity, consistency, and the legal adequacy of a limited category of citation items, there should be appropriate consultation between the CSHO, supervisor, bureau chief, and the Attorney General's (AG's) Office.

   a. Pre-citation consultation will be conducted at the earliest stage possible of an investigation in order to assist in developing an investigation strategy, particularly in cases involving fatalities, catastrophes and cases of significant public concern.

   b. All citations from an inspection are normally issued at the same time; however, the director's office may modify this procedure as the situation dictates.

   c. Where required as a result of pre-citation consultation, the supervisor will undertake additional investigation, which may involve obtaining expert assistance.

   d. Nothing in the above procedures will affect the division's responsibility and final authority to issue citations.

B. **Writing Citations.**

1. General. NCGS 95-137(a) of the act controls the writing of citations.

   a. NCGS 95-137(a). ". . . the Director or his authorized representative . . . will with reasonable promptness issue a citation to the employer." The time that has elapsed from the completion of the inspection or investigation until the issuance of citation(s) will be closely monitored and kept as short as possible by the director.

   b. NCGS 95-137(b)(3). "No citation may be issued . . . after the expiration of six months following the occurrence of any violation." Accordingly, a citation will not be issued where any violation alleged therein last occurred six months or more prior to the date on which the citation is actually signed and dated. Where the employer fails to report a fatality, accident, or punch press injury, the time limitation begins at such time that the division learns or could have learned of the incident. The AG's office will be consulted.

2. Specific Instructions. The proper writing of citations is an essential part of the enforcement process. Information regarding the completion of information necessary to issue a citation is found on-line in OSHA Express system.

   a. Standards and Regulations. After identifying a hazardous condition, the CSHO will review existing standards and regulations to ensure that the hazardous condition noted is covered within the scope and application of the standard. Citations will not be issued unless the citation is based on mandatory language in OSH standards (e.g., no "should" standards) and, when applicable, in referenced

standards. Standards legally incorporated by reference have the same force and effect as OSH standards. (See 29 CFR 1910.6.)

b. SAVEs. The Standard Alleged Violation Elements (SAVEs) are incorporated into an automated citation processing system. The SAVE is a tool to assist in report preparation and is not to be used without ensuring that the standard or regulation is applicable.

c. SAVEs Already on OSHA Express. When applying SAVEs that are already on OSHA Express. the CSHO will:

i. Determine which specific and applicable standard or regulation is to be cited.

ii. Search the SAVEs on OSHA Express for one that corresponds to the specific standard or regulation. If one is listed, **compare the SAVE to the standard or regulation to ensure that it is appropriate for the alleged violation**.

iii. Enter the SAVE on the OSHA 1-B in the appropriate field in accordance with the on-line instructions.

d. SAVEs not on OSHA Express. If there is not an appropriate SAVE on OSHA Express, the CSHO will be required to compose one in a format similar to existing SAVEs, and as follows:

iv. Wording will not be added or deleted so that the standard is changed. The CSHO will notify their supervisor that they have composed a SAVE for a violative condition.

ii. It is preferable to use the entire standard for the SAVE. However, if only a portion of the standard is needed to adequately describe the violative condition, the CSHO may use only the entire applicable sentence of clause.

iii. The wording of the SAVE should make it clear to the employer what condition they are alleged to be violating. It may be necessary to include some wording from a previous clause, sentence or standard to clarify the wording of the SAVE that is being composed (e.g. The second sentence of 1910.215(b)(1)(iii) reads, "they shall be made of steel or other material with adequate strength and shall enclose the wheel sides upward from the back for one-third of the wheel thickness." To clarify the condition to the employer, the word "They" needs to be replaced with "Revolving cup guards" from the first sentence.

iv. Change all the verbs in the new SAVE to the past tense to reflect the specific condition the CSHO observed at the facility (e.g. 'shall be' changed to 'were not', 'did not', 'was not'). Using the example above, the SAVE composed by the CSHO would read, "Revolving cup guards were not made of steel or other material with adequate strength and did not enclose the wheel sides upward from the back for one-third of the wheel thickness".

v. Insert the necessary information when the SAVE ends with a blank. The blank implies that the CSHO is to substitute applicable wording from the standard.

e. AVDs. The Alleged Violation Description (AVD) is used to provide the employer with information about an alleged violative condition that is specific to their establishment. The AVD needs to be written such that anyone at the establishment could take the AVD wording and know the exact location and violative condition. The appearance of the AVD should look substantially similar to the employer, regardless of which district issues the citation. Since many employers have facilities located throughout the state, the following standardized format will be followed in writing AVDs:

i. Where there are more than one location of alleged violations of the same standard (SAVE), letters, beginning with 'a', will be used to identify the different locations. [E.g. three separate locations will each be designated as a), b), c)] The CSHO should not confuse this type of combining with the instructions for grouping.

ii. The CSHO's notes should enable them to give a specific location of each violative condition. The description of each location needs to go from general to specific. [E.g. a) Building A, welding department, north wall, resistance welding station].

iii. Following the description of the location, the CSHO needs to give the details of the equipment and/or condition that they are alleging to be in violation of the standard. The CSHO's notes should enable them to give these details, such as brand names, serial numbers, id numbers, colors, etc. To enable the employer to more easily separate the location from the equipment/condition, use a dash (-) to delineate the separation. [e.g. a) Building A, welding department, north wall, resistance welding station - DeWalt right angle grinder, S.N. 1234567890, was not provided with a revolving cup guard.]

iv. The CSHO can add notes to the end of the AVD to provide useful information, such as abatement information, to the employer. When General Duty (NCGS 95-129(1)) citations are alleged, the following note is mandatory: "Among others, one feasible and acceptable method of abating this violation is to..."

v. If any alleged violation refers to an exposure that occurred outside of the dates of the inspection (e.g. the violation is related to an accident that occurred prior to the opening conference, or any documented one-time exposure occurred prior to the opening conference), the AVD will begin with, "On or about MM/DD/YYYY the following conditions occurred:".

vi. For multi-step abatements, the information must include a description of each step together with the date by which each step must be completed. This information will appear on the citation.

f. Alternative Standards. In rare cases, the same factual situation may present a possible violation of more than one standard. For example, the facts that support

a violation of 29 CFR 1910.28(a)(1) may also support a violation of 1910.132(a) if no scaffolding is provided when it should be and the employer does not require the use of seat belts.

i. Where it appears that more than one standard is applicable to a given factual situation and that compliance with any of the applicable standards would effectively eliminate the hazard, it is permissible to cite alternative standards using the words "or in the alternative" after the AVD for the first standard and before the SAVE wording for the second standard on the citation. A reference in the citation to each of the standards involved will be accompanied by a separate AVD which clearly alleges all of the necessary elements of a violation of that standard.

ii. Where alleged violations are "in the alternative", only one penalty, not one penalty for each standard cited, will be proposed for the violative condition.

Note: NCGS 95-129(1) may be cited "in the alternative" when the specific standard cited to cover the hazardous condition may not apply. (See Chapter IV on violations)

g. Ordering of Violations on the Citation. Violations will normally be in numerical order by standard number, within each classification in which they appear. Grouped violations should also be in numerical order within the grouping. However, when several violations are written relating to the same hazard, it is preferable to place the most serious violations first. For example, a violation written for an unsupported or unsloped trench would be placed in order before the violation for not providing a means of egress from the same trench. If penalties are to be proposed for grouped violations, the penalty should appear across from the first violation item appearing on the OSHA-2.

h. Ordering Citations in the Citation Package. Citations are ordered as follows: Willful Serious, Willful Nonserious, Repeat Serious, Repeat Nonserious, Serious, and Nonserious. If each type existed in a file, they would be numbered as Citations 1 through 6 in the stated order. If only Serious and Nonserious exist, they are Citations 1 and 2 respectively. Notices of Failure to Abate are separate from other citations. They have the same classification, citation number, and item number that they had in the original inspection citation package.

C. **Grouping and Combining of Violations.**

1. Definitions. For the purpose of this section the following definitions apply:

a. Combining. The gathering of all instances of violations of a specific standard into one citation item during the inspection/investigation of a single establishment or worksite.

b. Grouping. The joining of violations of two or more specific standards under an individual citation item during the inspection/investigation of a single establishment or worksite.

2. Combining. Violations of a single standard having the same classification found during the inspection of an establishment or worksite generally will be combined into one

alleged violation. Different options of the same standard may also be combined. Each instance of the violation will be separately set out within that item of the citation. Nonserious violations of a standard may be combined with serious violations of the same standard when appropriate.

a. Except for standards that deal with many unrelated hazards [e.g., Table Z-1 at 29 CFR 1910.1000], the same standard may not be cited more than once on a single citation. The same standard should be cited on different citations on the same inspection, however (e.g., as Serious and Nonserious).

b. For the purpose of applying these guidelines in the construction industry, an establishment is normally the site of the construction job; e.g., the building site, the dam site, etc. Where the construction site extends over a large geographical area; e.g., road building, the entire site will be considered a single establishment; and all instances of the same violation with the same classification discovered during a single inspection will constitute one alleged violation.

- EXAMPLE 1. The CSHO documents five instances of unguarded open-sided platforms in five different locations throughout the facility in serious violation of 29 CFR 1910.23 (c) (1). These five instances of the violation are combined into one serious citation item containing five subparts (a, b, c, d, e).

- EXAMPLE 2. The CSHO documents three instances of unguarded open-sided platforms and two instances of platforms without required toe-boards in different locations throughout the facility in serious violation of 29 CFR 1910.23 (c) (1). These five instances of the violation are combined into one serious citation with two items using the two SAVE options of 29 CFR 1910.23 (c) (1), with instances a, b, and c, on the one and instances a. and b. on the other.

- EXAMPLE 3. The CSHO documents five instances of unguarded open-sided platforms in five different locations throughout the facility. Three instances are classified as serious and two as nonserious. The three serious instances are combined into one serious item. The two nonserious instances may be combined with them or issued as a separate nonserious item.

c. In special circumstances, as deemed appropriate by the commissioner of labor, each violation of the same standard may be cited as a separate citation item. Each violation (citation item) may be assessed a separate penalty in accordance with NCGS 95-138.

3. Grouping. When a source of a hazard is identified which involves interrelated violations of different standards, the violations may be grouped into a single item.

a. When to Group. The following situations normally call for grouping violations:

i. Grouping Abatement Related Violations. When the CSHO believes that violations classified either as serious or as nonserious are so closely related as to constitute a single hazardous condition and to have a single method of abatement, the violations may be grouped into one citation item.

EXAMPLE: 29 CFR 1910.219 (d) (1) for an unguarded pulley and 29 CFR 1910.219 (e) (1) (i) for and unguarded belt on a mechanical power transmission system can both be abated with the same guard.

ii. Grouping Condition Related Violations. When the CSHO believes that violations classified either as serious or as nonserious are closely related, the violations may be grouped into one citation item.

EXAMPLE: 29 CFR 1910.215 (a)(2), (a)(4), and (b)(9) for the work rest, tongue guard and spindle end cover on an abrasive grinding wheel, may be grouped into one citation item.

iii. Grouping Nonserious Violations Where Grouping Results in a Serious Violation. When two or more individual violations are found which, if considered individually represent nonserious violations, but if grouped create a substantial probability of death or serious physical harm, the violations may be grouped and alleged as a single serious violation.

iv. Where Grouping Results in Higher Probability Nonserious Violation. Where the CSHO finds during the course of the inspection that a number of nonserious violations are present for the same condition which, considered in relation to each other affect the overall probability of possible injury resulting from an accident involving the combined violations, then they may be grouped. The violations may be grouped in a manner similar to that indicated in the preceding paragraph, although the resulting citation will be for a nonserious violation of higher probability.

v. Violations of Posting and Recordkeeping Requirements. Violations of the posting and recordkeeping requirements which involve the same document; e.g., OSHA-300 Form was not posted or maintained, will be grouped. (See Chapter VI for penalty amounts.)

b. When Not to Group. There are times when grouping is normally inappropriate.

i. Single Inspection. Only violations discovered in a single inspection of a single establishment or worksite may be grouped. An inspection in the same establishment or at the same worksite will be considered a single inspection even if it continues for a period of more than one day or is discontinued with the intention of resuming it after a short period of time if only one OSHA-1 is completed.

ii. Separate Inspections of the Same Establishment.

A. Where inspections of the same establishment of an employer are conducted on two different occasions resulting in completion of two OSHA-1 forms (e.g. safety and health inspections) and instances of the same violation are disclosed during each inspection, the second instance of such violation should be grouped with the first instance if a citation for the first has not yet been issued.

B. When the citations are final order and abatements were verified, and if the same hazards were found during the second inspection, such second instances may constitute grounds for a repeated or a willful violation.

C. Where a follow up inspection is conducted to determine whether a violation has been abated, it may be appropriate to issue a notice of failure to abate where one instance or more of the cited violations remains uncorrected.

iii. Separate Establishments of the Same Employer. Where inspections are conducted, either at the same time or different times, at two establishments of the same employer and instances of the same violation are discovered during each inspection, the employer will be issued separate citations for each establishment.

iv. General Duty Clause Violations. Because NCGS 95-129(1) of the act is cited so as to cover all aspects of a serious hazard for which no standard exists, no grouping of separate NCGS 95-129(1) violations is permitted except as provided in C.3.a(1) and (2). This provision, however, does not prohibit grouping a NCGS 95-129(1) violation with a related violation of a specific standard.

v. Serious Violations. As noted in C.3.a.i, a serious violation may be grouped or cited separately as conditions warrant. Serious violations that are not so closely related as to constitute a single violative condition will not be grouped.

EXAMPLE: 29 CFR 1910.304(f)(1) for an incomplete path to ground will not be grouped with 29 CFR 1910.213(c)(1) for an unguarded ripsaw blade just because both conditions exist on the same piece of equipment.

vi. Repeat Violations. If the repeated items were not grouped in the original inspection, they will not be grouped in the current inspection. If these items had been grouped in a prior inspection, they may be grouped again. Newly observed hazards will not be grouped with repeated items

vii. Failure to Abate. Notices of Failure to Abate (FTA) will not be grouped, even if grouped in the original inspection. Each FTA will carry its own penalty.

D. **Employer/Employee Responsibilities.**

1. NCGS 95-130(1). "Employees will comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Article which are applicable to their own actions and conduct."

a. The act does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the standards.

b. Although the employer is not the absolute guarantor or insurer of all employee actions, reasonable steps must be taken by the employer to protect employees from hazards that may result from failure to comply with the standards; e.g., informing employees of hazards and how to protect themselves, enforcing safety and health rules, and the like.

2. Employee Refusal to Comply. In cases where the CSHO determines that employees are systematically refusing to comply with a standard applicable to their own actions and conduct, the matter will be referred to the supervisor who will consult with the bureau chief. Under no circumstances is the CSHO to become involved in an onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements. The CSHO is expected to obtain enough information to understand whether the employer is using all appropriate authority to ensure compliance with the act. Concerted refusals to comply will not bar the issuance of an appropriate citation where the employer has failed to exercise full authority to the maximum extent reasonable, including discipline and discharge, to ensure compliance with the act.

E. **Affirmative Defenses.**

1. Definition. An affirmative defense is any matter that, if established by the employer, will excuse the employer from a violation which has otherwise been proved by the CSHO.

2. Burden of Proof. Although affirmative defenses must be proved by the employer at the time of the hearing, the division must be prepared to respond whenever the employer is likely to raise or actually does raise an argument supporting such a defense. The CSHO, therefore, will keep in mind the potential affirmative defenses that the employer may make and, when appropriate, attempt to gather contrary evidence.

3. Explanations. The following are explanations of the more common affirmative defenses with which the CSHO should become familiar. There are other affirmative defenses besides these, but they are less frequently raised or are such that the facts that can be gathered during the inspection are minimal.

a. Documentation Requirements. Where it becomes evident, either from statements made during the inspection by the employer or other persons or from the circumstances surrounding the apparent violation(s) that one or more of the affirmative defenses may be an issue, the CSHO will make reasonable efforts to gather and record facts relevant to the defense. The CSHO will bring the documentation of the hazards and facts related to possible affirmative defenses to the attention of the supervisor. Where it appears that each and every element of an affirmative defense is present, the supervisor may decide, after consultation with the bureau chief and the AG's Office, that a citation will not be issued.

b. Isolated Employee Misconduct (Unforeseeable Actions).

i. The violation resulted exclusively from employee misconduct; and

ii. The violation was not participated in, observed by, or performed with the knowledge and/or consent of any supervisory personnel; and

iii. The employee conduct was in conflict with a well established company policy or work-rule which was in effect at the time, and was actively enforced through disciplinary action or other appropriate procedures. In,

addition, in determining whether the employer has a pertinent and effective company policy or work-rule, the CSHO must find that the employer has a specific program for instructing employees in safe work practices.

EXAMPLE: While driving down the highway, a CSHO observes an employee working on a billboard without proper fall protection. If this is the only employee, the necessary fall protection is on the truck, the company has rules, training and disciplinary procedures set up, and the employee states, "I'm going to be fired," there is a strong likelihood that this affirmative defense applies.

c. Impossibility. Compliance with the requirements of a standard is:

i. Functionally impossible or would prevent performances of required work; and

ii. There are no alternative means of employee protection.

EXAMPLE: During the course of the inspection an unguarded table saw is observed. The employer states that the nature of its work makes a guard unworkable. Facts which the CSHO will document may include:

- Would a guard make performance of the work impossible or merely more difficult?
- Could a guard be used part of the time?
- Has the employer attempted to use guards?
- Has the employer considered alternative means or methods of avoiding or reducing the hazard?

d. Greater Hazard.

i. Compliance with a standard would result in greater hazards to employees than noncompliance; and

ii. There are no alternative means of employee protection; and

iii. An application of a variance would not be appropriate.

EXAMPLE: The CSHO observes an employee working on a bridge over water with the proper fall protection. However, the employee is not wearing a personal floatation device (PFD). The company's position is that the employee cannot wear the PFD as it would interfere with the proper functioning of the fall protection equipment. In this case, the greater hazard could be determined to be the fall.

F. **Issuing Citations - Special Circumstances.**

1. Follow up Inspections. Follow up inspections may be conducted during the 15-day working period for requesting an informal conference or contesting citations provided the employer has not actually made a request. Normally, however, only those serious

violations considered high probability, high severity serious will be subject to being scheduled for follow up during the contest period. If such a follow up inspection reveals a failure to abate, and the time specified for abatement was passed, a Notification of Failure to Abate Alleged Violation (OSHA-2B) may be issued immediately without regard to the contest period of the initial citation.

2. Multi-Employer Worksites. On multi-employer worksites, both construction and non-construction citations will be issued to employers whose employees are exposed to hazards (the exposing employer).

   a. Additionally, the following employers will be cited, whether or not their own employees are exposed:

      i. The employer who actually creates the hazard (the creating employer);

      ii. The employer who is responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who has the authority for ensuring that the hazardous condition is corrected (the controlling employer);

      iii. The employer who has the responsibility for actually correcting the hazard (the correcting employer).

   b. It must be shown that each employer to be cited has knowledge of the hazardous condition or could have had such knowledge with the exercise of reasonable diligence.

3. Legitimate Defense. Prior to issuing citations to an exposing employer, it must first be determined whether that employer has a legitimate defense to the citation. An exposing employer will not be cited if they meet all the conditions listed below. All these items must be documented in the case file.

   a. The employer did not create the hazard;

   b. The employer did not have the responsibility or the authority to have the hazard corrected;

   c. The employer did not have the ability to correct or remove the hazard;

   d. The employer can demonstrate that the creating, the controlling and/or the correcting employers, as appropriate, have been specifically notified of the hazards to which his/her employees are exposed;

   e. The employer has instructed his/her employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it when the hazard was known or with the exercise of reasonable diligence could have been known.

      i. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard.

         EXAMPLE: An employer may require his employees to walk around a construction site and climb a hill to enter the second floor from the back of the building rather than use unguarded stairs.

ii. When extreme circumstances justify it, the exposing employer will have removed his/her employees from the job to avoid the hazard.

4. Citing Non-exposing Employer. If all employers on a worksite with employees exposed to a hazard meet the conditions in F.3, then the citation will be issued to only the employers who are responsible for creating the hazard and/or who are in the best position to correct the hazard or to ensure its correction. In such circumstances the controlling employer and/or the hazard-creating employer will be cited even though no employees of those employers are exposed to the violative condition. (See, however, F.2.) Penalties for such citations will be calculated as indicated in Chapter VI on violations, using the exposed employees of all employers as the basis for the probability assessment.

5. General Duty Clause Violations. In the case of general duty clause violations, only employer(s) whose own employees are exposed to the violation may be cited.

6. Willful, FTA and Repeat Citations. For all employers who have been issued willful, failure to abate, or repeat citations, a copy of the citations will be mailed to the employer's national headquarters (if the employer has more than one fixed establishment). If a determination is made that an establishment's safety and health issues should be addressed at the corporate level, contact may be made between the CSHO or compliance supervisor and the employer's national headquarters.

7. State-wide Settlement Agreements. State-wide Settlement Agreements may be entered into under special circumstances to obtain formal recognition by the employer of cited hazards and formal acceptance of the obligation to seek out and abate those hazards throughout all workplaces under its control in the state. The state's decision on whether to honor federal corporate-wide settlement agreements, potentially affecting sites in North Carolina, will be made based on a case by case review of such agreements.

G. **Abatement Verification.** Abatement of violations will be conducted in accordance with 29 CFR 1903.19.

1. Definitions.

a. Abatement verification includes abatement certificates, abatement documents, abatement plans, progress report, and photographs.

b. Affected employee means those employees who are exposed to the hazards(s) identified as violations(s) in a citation.

c. Movable equipment means a hand-held or non-hand-held machine or device, powered or not powered, that is used to do work and is moved within or between worksites.

d. Hand-held equipment is equipment that can be picked up and operated with one or two hands, such as a hand grinder, skill saw, portable electric drill, nail gun, etc.

e. Worksite, for the purpose of enforcing this regulation, is the physical location specified in the citation; if no location is specified, the worksite will be the inspection site where the cited violation occurred.

2. Abatement of Citations.

a. Except for the application of tags on movable equipment, [see 1903.19(I), which requires attachment of the tag or citation immediately after receiving the citation], the abatement verification regulation does not impose any requirements on the employer until a citation item has become a final order of the Review Board.

b. All "final order" citation items, no matter what the characterization, require abatement certification within 10 calendar days of the abatement. Where there has been a contest of a violation or abatement date (not penalty), the abatement date is calculated by adding the original amount of time for abatement to the final order date.

c. Employers are not required to certify abatement for violations which they promptly abate during the on-site portion of the inspection and whose abatement the CSHO observes. Observed abatement will be documented on the OSHA-1B for each violation, as well as on the citation.

d. By regulation [paragraph (d)(1)], all willful and repeat citations require abatement documentation, such as written, video graphic or photographic evidence of abatement.

e. Also the employer must provide abatement documentation for any serious violation for which the supervisor indicates on the citation that such abatement documentation is required.

i. OSH Division policy is that all high gravity serious citations will require abatement documentation. Where, in the opinion of the supervisor, abatement documentation is not required for a high severity, high probability serious violation, the reasoning will be noted in the case file.

ii. Normally, medium or low gravity serious citations will not require abatement documentation. The exceptions are:

A. If the establishment had been issued a citation for a willful violation or a failure-to-abate notice for any standard which had become final order in the previous 3 years; OR

B. If the employer has any history of a violation that resulted in a fatality or an OSHA 300 log entry indicating serious physical harm to an employee in the past 3 years. The standard being cited MUST be similar to the standard cited in connection with the fatality or serious injury or illness.

f. For abatement periods greater than 90 calendar days, the regulation allows flexibility in requiring monitoring information. For abatement periods less than 91 days or for nonserious citations, progress reports may not be required unless abatement plans are specifically required.

i. The requirement for abatement plans and progress reports must be indicated for the citation item to which they relate.

ii. The regulation requires employers, where necessary, to identify how employees are to be protected from exposure to the violative condition during the abatement period. The need for interim protection should be noted on the citation.

iii. There are no limitations to progress reports that may be specified in a settlement agreement.

iv. Only equipment which is moved within the worksite or between work sites is required to be tagged until the hazards associated with it are abated. The tag is intended to provide an interim form of protection to employees through notification for those who may not have knowledge of the citation or the inherent hazardous condition. CSHOs should make every effort to be as detailed as possible when documenting the initial location where the violation occurred. This documentation is critical to the enforcement of the tagging requirement because the tagging provision is triggered upon movement of the equipment.

g. Tag-related citations must be observed by a CSHO before a citation can be issued for failure to initially tag cited movable equipment. Where there is insufficient evidence to support a violation of the employer's initial failure to tag or post the citation on the cited movable equipment, a citation may be issued for failure to maintain the tag or copy of the citation.

h. A minor non-substantive omission in an abatement certificate (e.g., lack of a definitive statement stating that the information being submitted is accurate) should not be cited as a violation of the regulation. If there are minor deficiencies such as omitting the signature or date, the employer should be contacted by telephone to verify that the documents received were the ones they intended to submit. If so, the date stamp of the district office can serve as the date on the document. A certification with an omitted signature should be returned to the employer to be signed.

i. Evidence of an employer's failure to notify employees by posting must be obtained at the worksite. Where an employer claims that posting at the location where the violation occurred would ineffectively inform employees, the employer may post the document or a summary of the document in a location where it will be readily observable by affected employees and their representatives or may otherwise communicate fully with affected employees and their representatives about abatement activities. The CSHO must determine not only whether the documents or summaries were appropriately posted but also whether, as an alternative, other communication methods, such as meetings or employee publications, were used.

j. The receipt of a Petition for Modification of Abatement Date (PMA) will suspend the ten day time period for the abatement certification for the item in the PMA request. If the PMA is denied, the ten day time period for submission begins on the abatement date or the day the employer receives notice of the denial, whichever is later.

3. Citation Issuance Procedures. Citations for failure to certify can be issued without formal follow-up activities by following the procedures below.

   a. If abatement certification and any required documentation are not received within thirteen calendar days after the abatement date, the CSHO will telephone the employer, determine the status of the items, request the employer submit the abatement material and tell the employer that a citation may be issued.

   b. If abatement verification documents are not received within seven calendar days after the telephone call, the CSHO will issue a dunning letter to the employer.

      i. During the time between the reminder letters and citation issuance, efforts should be made to speak with the employer and determine why he/she has not complied. All communication efforts will be documented in the case file.

      ii. In the event the reminder letter is returned as undeliverable and telephone contact efforts fail, the supervisor has the discretion to assign a follow up inspection or close the file based on available information. Appropriate information will be put in the case file.

   c. If the certification and/or documentation are not received within the next seven calendar days, a single nonserious citation will be issued combining all the individual instances where the employer has not submitted abatement certification and/or abatement documentation. This nonserious citation will be issued under the same inspection number that contained the original violations cited. The abatement date for this citation will be set seven calendar days from the date of issuance.

      Note: Each violation of 1903.19(c), (d), (e), or (f) with respect to each original citation item is a separate item.

   d. For those situations where the abatement date falls within the fifteen day informal conference time period, and an informal conference request is likely, enforcement activities should be delayed for these citations until it is known if the citation characterization or abatement period is to be modified.

4. Enforcement for Construction.

   a. Construction site closure or hazard removal due to completion of the structure or project will only be accepted as abatement without certification where a CSHO directly verifies the site closure. Without CSHO observed verification, the employer must certify to OSHA that the hazards have been abated by the submission of an abatement certificate. Site closure is an acceptable method of abatement.

   b. Site closure or project completion is not an acceptable abatement method for equipment related or program related violations. These violations (e.g., crane inspection, HAZCOM, respiratory protection, training, competent person, qualified persons. etc.) will require employer certification of abatement.

5. Case File Management.

a. The closing of a case file without abatement certificate(s) must be justified through a statement in the file by the supervisor or CSHO, addressing the reason for accepting each uncertified violation as an abated citation.

b. The CSHOs are encouraged to review employer-submitted abatement verification materials as soon as possible but no later than thirty calendar days after receipt.

6. Employer Education.

a. Opening conference. During the opening conference the CSHO should explain to the employer the advantages of immediate abatement and that there are no certification requirements for violations quickly corrected during the inspection.

b. Closing conference. During the closing conference the CSHO should thoroughly explain to the employer the abatement verification requirements.

i. Abatement certification is required for all citation item(s) that the employer receives except for those citation items that are identified as "Corrected during Inspection."

ii. Abatement documentation is required to be submitted along with each willful, repeat and designated serious violation. To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed during the closing conference.

iii. Where abatement periods for citations are expected to exceed ninety calendar days, the submission and requirements of abatement plans and progress reports are to be explained.

iv. The required placement of tags or the citation must also be discussed at the closing conference, if it has not been discussed during the walk around portion of the inspection.

H. **Undelivered Citations.**

1. General.

The commissioner of labor has the authority to issue notices and citations pursuant to NCGS 95-133 (b) (9). These notices and citations may be undeliverable or returned to the district office for various reasons. This section will ensure proper handling of undelivered citations, by the field office.

When a citation has been returned to the field office as undelivered, the citation case file will be given to the CSHO who conducted the inspection or to the appropriate district supervisor. It is the responsibility of the CSHO to ensure the subsequent delivery of the citation, including recommending the best delivery method.

The commissioner has the authority under NCGS 95-133 (b) (11) to require "papers and documents necessary for any hearing or other proceeding...to be served by the process officers in the state." Process officers are county sheriffs and their deputies. Therefore, the local sheriff may be the best choice for redelivery. Other options are to deliver the citation to the corporation's registered agent, service on the North Carolina Secretary of State under NCGS 55D-33(b), or hand delivery.

The CSHO often determines that the most expeditious means to redeliver the citation is hand delivery. The undelivered citation will be processed in at least one of the methods delineated in Section H. Once the citation has been processed according to Section H., it will be considered to have been served on the employer and the violation(s) will be used by the CSHO to determine if the employer has subsequent repeat violations.

2. Responsibility.

The appropriate CSHO and district supervisor will share the responsibility for processing the undelivered citation. Once the CSHO determines the way to handle the undelivered citation, the admin staff will assist with redelivery of the citation.

3. General Procedures.

a. The field office will ensure that undelivered citation is processed as follows:

i. The undelivered citation will be evaluated to determine whether any apparent errors (e.g. incorrect address) could have affected the delivery.

ii. The district supervisor and CSHO should ensure that all citations issued for each week have been delivered.

iii. The "green card" (certified mail receipt) is not always returned to the field office in a timely manner. However, the mail (e.g. citation package, settlement agreement, no change letter) can be traced on the United States Postal Service web site.

iv. The district supervisor should utilize OSHA Express reports to identify unabated violations that may be the result of undelivered citation packages.

b. The district office admin staff will forward the case file and the undelivered citation to the CSHO to initiate the redelivery process.

c. The CSHO evaluates the undelivered citation and determines the appropriate plan of action, including method of redelivery.

d. The CSHO follows appropriate steps to ensure redelivery.

4. Reasons to Redeliver or Reissue Citations.

a. The original citation will be redelivered when any of the following apply:

i. The employer is at a fixed location and there is an incorrect address.

ii. Contact with the employer reveals that a subsequent delivery will be accepted.

iii. Contact with the employer reveals that they have moved to a new location and a subsequent delivery will be accepted.

Note: Any address or company name, etc., changes must be made on the OSHA Express and NCOSH databases. (Access through the Targeting System to complete and submit the Site Info Change Request Form.)

b. Citations will normally not be reissued. However, the district supervisor will request that the district office admin staff reprocess the citations for reissuance when either of the following apply:

i. The establishment name or place of business is listed incorrectly in the inspection file.

ii. The inspected establishment is under new ownership with a new name.

Note: Any address or company name, etc., changes must be made on the OSHA Express and NCOSH data bases. (Access through the Targeting System to complete and submit the Site Info Change Request Form)

5. Redelivery via regular mail to the Employer or their Successors.

a. The CSHO will confirm that the mailing address for the inspected establishment is correct and current.

Note: Options for confirming the address include: calling the company, the owner, directory assistance, the Secretary of State, the Register of Deeds (county office) and/or the county tax office.

b. The CSHO will make the necessary address corrections to update the OSHA Express system and the Targeting System Database. (Access through the Targeting System to complete and submit the Site Info Change Request Form.)

c. The CSHO selects the delivery method and forwards the file to the admin staff for delivery to the employer (original or reissued citation) unless otherwise noted in these procedures.

d. The CSHO obtains proof of delivery of the citation.

6. Delivery by Local Sheriff.

For difficult service situations, contact the county Sheriff's department where the employer is physically located. This includes sheriff's departments in other states for employers with an office or residence outside of North Carolina. Provide the sheriff's department, either by mail or in person, the service package containing a cover letter requesting delivery, the citation, and a Return of Service Form (located in the Forms folder of the FIS) as follows:

a. Service of Process.

i. If personal delivery of notices, citations, cease and desist orders, or any other document necessary to enforce compliance will require excessive travel time or if it is likely that the employer will avoid delivery, Sheriff's service is a cost-effective option.

ii. The commissioner of labor has the authority to issue notices and citations pursuant to NCGS 95-133(b) (9). The commissioner is given authority under NCGS 95-133(b) (11) to require "papers and documents necessary for any hearing or other proceeding...to be served by the process officers of the State." Process officers are county sheriffs and their deputies.

iii. Pursuant to NCGS 7A-311(a) a fee will be assessed for every item of civil process. When two or more items of civil process are served simultaneously on one party, a single fee is assessed; however, a separate service charge is imposed for each separate entity served. The county retains that fee whether process is served or only attempted.

For example, the county sheriff's department may deliver OSH notices and citations within county lines for a fee per person or per company served. The total fee must be paid when the citations or other document are delivered to the sheriff's department. The CSHO may pay this fee and request reimbursement through an expense statement or, when there is sufficient time, a request for a check may be sent through the department budget office in advance.

The Return of Service Form should be fixed to the document so the serving deputy can certify the date of service, location/address, and the person with whom the documents were left. CSHOs can search for the address and phone number of the each county sheriff's department by clicking on the following link: NC County Government Officials. **Note**: At this website, scroll to the bottom of the page and click on one of the four alphabetized county sections. Next, scroll down the screen until you find the county information.

b. When the sheriff is the best form of delivery, the office procedures for preparing the citation package for delivery are as follows:

i. If the citations are reissued, any original abatement dates that have passed are changed to "immediate." All future abatement dates remain as originally issued. The CSHO notes any compelling reason to change abatement dates and documents in the Case File Summary.

ii. The CSHO forwards additional information and recommendations to the office admin staff. This information must include the federal ID number, address and telephone number of the employer.

iii. The admin staff prints a standard letter to the county sheriff's office, obtains a check for the amount of the service from the NCDOL Budget Division (standard memorandum), prints a return envelope for the sheriff, and prints a "Return of Service" form to be affixed to the document. The serving deputy can certify the date of service, location/address, and actual person with whom the documents were left.

iv. The admin staff forwards the entire package, along with the citation, to the appropriate supervisor for signature.

v. The admin staff mails the package to the Sheriff in the county the employer is located.

7. Delivery to a Location Other than the Establishment.

a. Service to the registered business agent when the corporation is in bankruptcy.

i. The CSHO forwards the information obtained from the Secretary of State's Office (name and address), to the admin staff for delivery to the registered agent.

ii. The admin staff prints a cover letter and attaches it to the original citation for the district supervisor's signature.

iii. The admin staff mails the citation to the registered business agent.

iv. The admin staff mails a copy of the registered agent's cover letter and the citation to the Budget Division along with a standard letter of explanation.

b. Service to the Secretary of State under NCGS 55D-33(b).

Note: This should be the last option for citation delivery and should only be used when no other methods are appropriate.

i. The CSHO will forward the file to the admin staff with recommendations for delivery to the Secretary of State.

ii. The district supervisor will prepare the letter [located on OSHA Express (See example letter in Appendix A)] for the Secretary of State, service of process agent, and attach it to the citations.

iii. The admin staff will mail the letter and citation package to the Secretary of State's Office.

iv. The admin staff will mail a copy of the response letter from the Secretary of State, service of process agent (see example response letter in Appendix B) and the citations to the Budget Division along with a standard letter of explanation.

8. Unsuccessful Delivery of Citations - After exhausting all efforts to deliver citations which contain penalties, the CSHO and supervisor will follow the steps outlined in Chapter XV I-Administrative File Activities, Appendix XVI-D, Item F- Penalty Payment/Collection Process to write-off the penalty and to close the file.

Appendix A: Example Letter to the Secretary of State, Service of Process Agent.

[DATE]

North Carolina Department of the Secretary of State
Attn: Service of Process Agent
PO Box 29622
Raleigh, NC 27626-0622

Dear Sir or Madam:

On [INSERT DATE] the North Carolina Department of Labor – OSH Division attempted to issue citations via certified mail to [INSERT COMPANY NAME] . On [INSERT DATE], the certified mailing was returned to our office unclaimed. Since then, our Agency has unsuccessfully attempted to have the citations delivered by the [INSERT NAME OF SHERRIFFS's OFFICE] to the Registered Agent/President, [INSERT REGISTERED AGENT's NAME] which lists his office address on the Secretary of State Corporations page as [INSERT ADDRESS]. According to the [INSERT NAME OF SHERRIFFS's OFFICE] the [INSERT COMPANY NAME] is no longer at this location and its current location is unknown. We have also contacted the [INSERT COUNTY OF BUSINESS LOCATION] Tax Office and Register of Deeds office to see if they could provide a mailing address and/or contact information for this employer.

North Carolina Department of Labor is forwarding a copy of the citations that were issued to [INSERT COMPANY NAME]. to the North Carolina Department of the Secretary of State per North Carolina General Statute §55-D-33(b). We are requesting your assistance in the delivery of these citations to [INSERT COMPANY NAME], Attn: [INSERT NAME], president/registered agent. If you have any information that would assist us in this matter please forward to my attention immediately. Thank you for your consideration and assistance.

Respectfully,

[SUPERVISORS NAME]
Compliance Safety and Health Supervisor

Appendix B: Example of Response Letter from the Secretary of State's Office

RECEIVED
APR 09 2012

State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

April 4, 2012

[redacted]
NC Department of Labor
1101 Mail Service Center
Raleigh, NC 27699-1101

Re: [redacted]
SOS File Number: [redacted]
Docket Number:

Dear [redacted]

Enclosed please find our certified mailing, which contains the documents forwarded from our office to the above referenced company as required by North Carolina General Statute 55D-33(b).

This item was returned to us by the United States Postal Service and was not deliverable at the address that we have on file for that entity and the United States Post Office was not able to forward the item. Pursuant to N.C.G.S. §55-D-33, "Service on an entity under this subsection is effective for all purposes from and after the date of the service on the Secretary of State."

If you have any questions, please feel free to call this office at (919) 807-2201.

Sincerely yours,

[redacted]
Service of Process Agent

Enclosure

TWO SOUTH SALISBURY STREET
PO BOX 29622, RALEIGH, NC 27626-0622
919.807.2201 - FAX 807.2215
WWW.SOSNC.COM

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter VI - Penalties



Chapter Effective: February 2000
Revision 25: 06/01/26

Table of Contents

A. General Policy

1. Penalty Structure
2. Penalty Adjustments

B. Civil Penalties

1. Statutory Authority
2. Minimum Penalties
3. Penalty Factors
4. Gravity of Violation
5. Severity Assessment
6. Probability Assessment
7. Gravity-Based Penalty
8. Gravity Calculations for Combined or Grouped Violations
9. Penalty Adjustment Factors
10. Failure to Abate
11. Repeat Violations
12. Willful Violations
13. Violation of Regulatory Requirements
    a. Posting Requirements
    b. Reporting and Recordkeeping Requirements
    c. Migrant Housing Act Violations
    d. Grouping
    e. Penalties for Abatement Verification
    f. Access to Records
    g. Notification Requirements

C. Criminal Penalties

Appendix VI-A: Guidelines for Rating Severity and Probability Factors

Appendix VI-B: Procedures for Recommending Reductions to FTA Penalties

Appendix VI-C: Severity Quotients for Falls Applicable to General Industry and Construction

Appendix VI-D: Penalty Calculation Table

Chapter VI

Penalties

A. **General Policy**.

1. Penalty Structure. The division has always taken the position that the penalty structure implemented under the Act was not designed as a punishment for violations nor as a source of income for the division or the department. Penalties paid for cited violations are not expended by the division or department, but instead are paid to Civil Penalty and Forfeiture Fund in accordance with North Carolina General Statute (NCGS) §115C-457.2 – Remittance of Monies to the Fund. Penalties are designed primarily to provide an incentive toward correcting violations voluntarily prior to an enforcement inspection. The incentive is directed not only to the offending employer but, more especially, to other employers. All employers need to be aware of the standards and regulations in order to create a safe and healthful workplace for employees in North Carolina.

    a. The General Assembly of North Carolina has made clear its intent that penalty amounts should be sufficient to serve as an effective deterrent to violations.

    b. Further, the General Assembly recognized that large, proposed penalties serve the public purpose intended under the Act; and criteria guiding approval of such penalties by the commissioner are based on meeting this public purpose.

The penalty structure described in this chapter is part of the general enforcement policy and shall normally be applied as set forth below. The OSH director can exercise discretion to depart from the penalty policy in cases where penalty adjustments do not advance the deterrent goal of the Act. The application of penalty adjustments can therefore result in the issuance of citations with all or zero adjustments. An inspection should maintain consistent penalty adjustments throughout all recommended citations, unless otherwise specified.

2. Penalty Adjustment. A decision not to apply the penalty adjustments should normally be based on consideration of one or more of the factors listed below. However, this list is not intended to be exhaustive. If the decision not to apply the penalty adjustments is based on a consideration other than the factors listed below, the decision must be fully explained in the case file and approved by the OSH director or his/her designee. The factors to be considered include:

    a. The proposed citations are related to a fatality/catastrophe;

    b. The employer has received a willful or repeat violation within the past five years related to a fatality;

    c. The employer has failed to report a fatality, inpatient hospitalization, amputation, or loss of an eye pursuant to the requirements of 29 CFR 1904.39 – Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye as a Result of Work-Related Incidents to OSHA;

d. The proposed citations are being considered for an egregious case.

e. The employer has numerous recordkeeping violations related to a large number or rate of injuries and illnesses at the establishment;

f. The proposed failure to abate notification is based on a previous citation for which the employer failed to submit abatement verification;

g. The employer has been referred to debt collection for past unpaid penalties; or

h. The employer has not complied with the provisions of a previous informal or formal settlement agreement.

B. **Civil Penalties**.

1. Statutory Authority. NCGS §95-138 – Civil Penalties, provides the commissioner with the authority to propose civil penalties for violations of the Act. Per NCGS §95-138(a1), the minimum and maximum civil penalties will be adjusted annually. This will be done in accordance with the requirements set forth in the United States Consumer Price Index (CPI) for All Urban Consumers published by the United States Department of Labor, as necessary to comply with federal law. The OSH division shall have a period of 60 calendar days from the date a final rule is published in the Federal Register to publish the civil penalties in the North Carolina Register under the North Carolina Administrative Code (NCAC), 13 NCAC 07A .0301 – Incorporation by Reference, or any related or subsequent regulations setting penalty standards in compliance with Part 1903 – Inspections, Citations and Proposed Penalties of Title 29 of the Code of Federal Regulations (CFR).

a. A violation determined to be serious in nature will be assessed a penalty of up to $16,550, except that a penalty of up to $29,000 will be assessed for each serious violation that involves injury to an employee under 18 years of age.

b. A non-serious violation may be assessed a penalty of up to $16,550.

c. In the case of willful or repeat violations, a civil penalty of up to $165,514 may be proposed.

d. For other specific violations of the Act, civil penalties of up to $16,550 may be proposed.

e. Penalties for failure to correct a violation may be not more than $16,550 for each calendar day that the violation continues beyond the final abatement date.

2. Minimum Penalties. The following guidelines apply:

   a. The adjusted proposed penalty for any willful violation will not be less than $11,823. This is a statutory minimum and not subject to administrative discretion.

   b. If a penalty is assessed, it will not be less than $1,250.

3. Penalty Factors. NCGS §95-138(b) of the Act provides that penalties will be assessed on the basis of the following factors:

   a. The gravity of the violation;

   b. The size of the business;

   c. The good faith of the employer, which is evaluated on the basis of safety and health programs;

   d. The employer's history of previous violations; and

   e. Whether the violation involves injury to an employee less than 18 years of age.

4. Gravity of Violation. The gravity of a violation is primarily determined by the severity and probability of the violation and will be the basis for calculating the gravity-based penalty (GBP) for both serious and non-serious violations.

   a. To determine the gravity of a violation, the following two assessments will be made:

      i. The severity of the injury or illness that could result from the alleged violation, following guidelines in the North Carolina Field Operations Manual (FOM) Chapter IV – Violations.

      ii. The probability that an accident or health hazard exposure will occur as a result of an alleged violation.

   b. The size of the business, the good faith of the employer and the history of previous violations will be taken into account in deciding whether and the extent to which the GBP will be reduced.

5. Severity Assessment. The classification of the alleged violation as serious or non-serious, according to instructions in FOM Chapter IV – Violations, is based on the severity of the injury or illness that could result from the violation. This classification is the first step in determining the gravity of the violation. A severity assessment will be assigned to a hazard according to the most serious injury or illness which could reasonably be predicted to result from an employee's exposure as follows:

   a. High Severity: Death from injury or illness; injuries involving permanent

disability; or chronic, irreversible illnesses.

b. Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited disability.

c. Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.

d. Non-serious Violations. Although such violations reflect conditions that have a direct and immediate relationship to the safety and health of employees, the resulting injury or illness would probably not cause death or serious physical harm.

Note: NCGS §97-2.9 – Definitions section of the Workers' Compensation Act, defines disability as "the… incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment". Additionally, under the statutes of Worker's Compensation permanent disability is divided into three periods of time as follows: "**1) Temporary Total Disability** is that period in which the injured person is totally unable to work. During this time, he receives medical treatment; **2) Temporary Partial Disability** is that period when recovery has reached the stage of improvement so that the person may begin some kinds of gainful employment; and **3) Permanent Disability** applies to permanent damage or to loss of use of some part of the body after the stage of maximum improvement from medical treatment has been reached and the condition is stationary".

For purposes of OSH Compliance, we will use the information above to determine if a violation should be classified as "high" severity. If an injury is nonreversible, and results in permanent damage or loss to any body part, the item should be classified as "high" severity. In addition to medical treatment and wages, the North Carolina Industrial Commission (NCIC) compensates employees for any injury considered to be a permanent disability. It is the belief of OSH management that if an injury is severe enough to cause permanent damage or loss and it is severe enough for the NCIC to provide compensation, then OSH should consider it severe enough to be classified as a "high" severity. The NCIC does not have a definition for "limited" disability, however we will consider all disabilities that do not fall under the guise of "permanent" disabilities as "limited" disabilities. If the most serious injury or illness which could reasonably be predicted to result from an employee's exposure to a violation would be reversible and would not result in "permanent loss or damage" to a body part, the item may be classified as "low" severity.

6. Probability Assessment. The probability that an accident or health hazard exposure will result from a hazard has no role in determining the classification of a violation but does affect the amount of the penalty to be proposed.

a. Factors Affecting Probability. The following circumstances will be considered and will be documented in the case file: (See Appendix VI-A – Guidelines for Rating Severity and Probability Factors).

i. Number of workers exposed to the hazardous conditions.

ii. Frequency and duration of exposure, including one-time, short exposures, through more frequent exposures (i.e., once a week, more than once a week), up to continuous daily exposure.

iii. Employee proximity to the hazardous conditions likely to lead to an accident, anywhere from the fringe of the danger zone up to the point of actually coming in contact with the hazard. The proximity may also be affected by the following:

A. Use of appropriate personal protective equipment (PPE); whether, for example, such equipment is utilized by all exposed employees and the employer has an effective PPE program in effect, down to whether such equipment is not utilized by any of the exposed employees and the employer has no program in effect.

B. Whether a medical surveillance program is in place that appropriately and effectively protects the employees, versus a defective program which only partially and inadequately protects employees, or whether no medical surveillance program is in effect.

iv. Other Factors. Other factors may significantly affect the probability that the hazard will produce an accident or health hazard exposure, and they may also be considered and documented as appropriate. Other factors should not be frequently used by the Compliance Safety and Health Officer (CSHO) and should never be used solely to raise or lower an employer's penalty.

A. Mitigating circumstances, such as specific safety or health instructions, effective training programs, a comprehensive safety and health program, evidence of correction underway, warning signs and labels or special procedures, or mandatory administrative controls providing some, though not complete, protection will be documented and considered in the final evaluation of probability. If the CSHO can document that significant mitigating circumstances are applicable, other factors will be assigned a value of "one" in the guidelines that appear in Appendix VI-A.

B. Contributing circumstances, such as inappropriate or inadequate safety or health instructions, inadequate or no training, a poor or nonexistent safety and health program, or widespread hazardous conditions or faulty equipment, with little or no attempt to control

them, will be documented and considered in the final evaluation of probability.

Also, working conditions including environmental and other factors (e.g., speed of operations, lighting, temperature, weather conditions, noise, housekeeping) may cause employee stress and increase the likelihood of an accident. If the CSHO can document that significant contributing circumstances are applicable, other factors will be assigned a value of "eight" in the guidelines that appear in Appendix VI-A.

C. If the hazardous violative condition for a particular citation is determined to be a proximate cause of an accident, then the default probability should be "greater," regardless of the calculated probability rating. It is not appropriate to say there is a "lesser" probability that an accident or health hazard exposure will result from a hazard if that accident has already occurred.

b. Categorization. Probability will be categorized as greater or lesser based upon the likelihood that an accident or health hazard exposure will occur.

i. Greater probability results when there is a greater likelihood that an injury or illness will occur as evidenced by an overall value of 4.6 or higher in the guidelines that appear in Appendix VI-A.

EXAMPLE: Electrical hazard with exposed live parts, wet or damp location, one or more employees at the point of danger frequently throughout the workday, and no ground fault circuit interrupter (GFCI) protection.

EXAMPLE: Continuous noise exposure at 100 decibels on the A scale (dBA) level, employees exposed daily on a continuous basis, no hearing conservation program, and no PPE.

ii. Lesser probability results when there is a less than greater likelihood that injury or illness will occur as evidenced by an overall value of 4.5 or less in the guidelines that appear in Appendix VI-A.

EXAMPLE: Electrical hazard with exposed live parts; dry location; wood floor; employees not normally exposed, but may come in close proximity to the hazard on an infrequent, irregular basis; non-GFCI protection.

EXAMPLE: Continuous noise exposure; above 92 dBA level; employees exposed more than once a week for about four hours per day; deficient hearing conservation program; PPE available and used appropriately.

c. Final Probability Assessment. All of the factors outlined above will be considered together in arriving at a final probability assessment.

i. A factor will not materially affect the final probability assessment if, based on the professional judgment of the CSHO as documented in the case file, it:

A. Does not significantly influence the probability of an accident or health hazard exposure-causing condition; or

B. Would tend to dilute the penalty excessively.

EXAMPLE: In a particularly dangerous trenching situation or in a confined space where there is insufficient oxygen to support life, even when only one or two employees are exposed, it may be appropriate to reduce the weight that otherwise might be given to the number of employees exposed.

ii. When strict adherence to the probability assessment procedures would result in an unreasonably high or low gravity the CSHO may use professional judgment to recommend to the district supervisor additional adjustment to the probability. Such recommendations will be documented in the case file.

7. Gravity-Based Penalty. The GBP is an unadjusted penalty and is calculated in accordance with the following procedures:

a. The GBP for each violation will be determined based on appropriate and balanced professional judgment combining the severity assessment and the final probability assessment.

b. For serious violations, the GBP will be assigned on the basis of the following scale:

Severity	Probability	GBP
High	Greater	$16,550
High	Lesser	$10,000
Medium	Greater	$10,000
Medium	Lesser	$6,500
Low	Greater	$6,500

Severity	Probability	GBP
Low	Lesser	$3,000
Non-serious	Greater	$3,000
Non-serious	Lesser	$0

c. For non-serious safety and health violations, there is no severity assessment. The director or assistant director may authorize a penalty of not more than $16,550 for a non-serious violation if it is determined to be appropriate to achieve the necessary deterrent effect. The reasons for such a determination will be documented in the case file.

d. Penalties to be proposed for non-serious regulatory violations (29 CFR 1903/1904) are discussed at Section B.13. – Violation of Regulatory Requirements.

e. A GBP may be assigned by the director or assistant director without using the severity and the probability assessments outlined in B.6. – Probability Assessment, when these procedures cannot appropriately be applied.

f. The Penalty Calculation Table, in Appendix VI-D, can be used for determining appropriate adjusted penalties for serious and non-serious violations after appropriate reductions have been determined. All penalty calculation amounts are to be rounded up to the nearest whole dollar.

8. Gravity Calculations for Combined or Grouped Violations. The following procedures apply to the calculation of penalties for combined and grouped violations:

a. The severity and the probability assessments for combined violations will be based on the instance(s) with the highest gravity.

b. For grouped violations, the following guidelines will be used:

i. Severity Assessment. There are two considerations for calculating the severity of grouped violations:

A. The severity assigned to the grouped violation will be no less than the severity that would be assigned to the most serious individual violation if grouping did not occur.

EXAMPLE: Two violations are grouped. Individually, one violation is assessed a medium severity and the other a low severity. Item 1a will have the higher penalty and Item 1b will have the lower penalty, regardless of the numerical ordering of the cited standard numbers.

B. If the most serious reasonably predictable injury or illness from the grouped items is more serious than would result from any single violation item, the more serious injury or illness will serve as the basis for the calculation of the severity factor of the grouped violation.

EXAMPLE: Three violations are grouped. Individually, each violation would normally be assessed a low severity, but due to grouping, the severity rises to medium. In this case, Items 1a, 1b, and 1c will be assessed a medium severity and the items will be arranged in ascending numerical order according to the cited standard numbers.

ii. Probability Assessment. There are three considerations to be kept in mind in calculating the probability of grouped violations:

A. The probability assigned to the grouped violation will be no less than the probability of the item which is most likely to result in an accident or health hazard exposure.

EXAMPLE: Two violations are grouped. Individually, one violation is assessed a greater probability and the other a lesser probability. Item 1a will be the item with the higher penalty and Item 1b will be the item with the lower penalty, regardless of the numerical ordering of the cited standard numbers.

B. If the overall probability of accident or health hazard exposure is higher with the grouped violation than with any single violation item, the higher probability of accident or health hazard exposure will serve as the basis for the calculation of the probability assessment of the grouped violation.

EXAMPLE: Two violations are grouped. Individually, each violation would be assessed a lesser probability, but due to grouping, the probability rises to greater. In this case, Items 1a and 1b will be assessed a greater probability, and the items will be arranged in ascending numerical order according to the cited standard numbers.

C. Some individual probability factors may be increased by grouping and others may not. For example, the number of employees exposed may be increased while the proximity factor may not. The increased values will be used in the probability calculation.

iii. Grouped violations will be considered as one for penalty purposes. Gravity based factors will be individually calculated and completed for each grouped item. A proposed adjusted penalty will appear only on the first (highest severity/probability or highest penalty) of the grouped items.

9. Penalty Adjustment Factors. The GBP may be reduced depending upon the employer's "good faith" (based on safety and health programs), "size of business," and "history of previous violations."

a. Reduction Factors. The amount of penalty reduction for size of business, employer's good faith, and employer's history of previous violations will be determined on the basis of the criteria described in the following paragraphs:

i. Size. "Size of business" will be measured on the basis of the maximum number of employees of an employer at all workplaces nationwide at any one time during the previous 12 months. The rates of reduction to be applied are as follows:

Employees	% Reduction
1-10	70
11-25	60
26-55	50
56-90	40
91-130	30
131-175	20
176-250	10
251 or more	None

ii. Good Faith. A penalty reduction of up to 40 percent is permitted in recognition of an employer's demonstration of good faith. The factor being evaluated here is the existence of an overall safety and health program. To give an employer a good faith reduction, the safety and health program must be evaluated during an inspection. However, deficiencies in programs not related to partial inspections will not be cited. Instead, recommendations for improvements will be made and noted in the case file.

A. Safety and Health Program. Good faith may be applied when the employer has shown a management commitment to employees' safety and health in the workplace as demonstrated by the presence of an effective safety and health program. A penalty reduction of 10%, 25% or 40% may be applied based upon the

employer's overall safety and health program. If the employer does not have enough elements to meet the developmental program, no reduction will be given for good faith.

The following criteria may be considered in evaluating the employer's safety and health program. The CSHO will document in the case file the reasoning for giving an employer a good faith reduction. It is not necessary for the program to contain all the elements in each category for the employer to receive the reduction for that category.

1. Developmental: A ten percent (10%) reduction is allowed for an employer with a safety and health program determined to be developmental. Developmental programs are normally evidenced by the following:

   - Safety and health policies are communicated (either verbally or in writing) to employees;
   - Employees are allowed to participate in programs;
   - A management individual on site has authority to abate hazards;
   - Accidents and complaints are investigated;
   - Supervisors have basic oversight for safety and health practices;
   - Maintenance is performed;
   - Some emergency planning exists;
   - First aid or nearby community aid is available;
   - Orientation training is conducted;
   - Employer has a low injury or illness rate; and
   - Consultation has been requested.

2. Basic: A 25 percent (25%) reduction is allowed for an employer with a safety and health program determined to be basic. Basic programs are normally evidenced by the following:

   - Management compliance with and enforcement of safety and health rules;
   - All required standard specific safety and health programs are in existence with only minor deviations;
   - Employees are involved in safety and health programs and inspections;
   - Contractors' safety and health plans are monitored;
   - Hazard analyses are conducted;
   - Safety and health inspections are conducted;
   - A hazard reporting system is maintained;
   - Recordkeeping is maintained (e.g. Injury and illness logs);
   - Hazard controls are implemented for significant hazards;
   - Preventive maintenance is performed;
   - Employer has a low injury/illness rate; and
   - Consultation has been requested.

3. Superior: A 40 percent (40%) reduction is allowed for an employer with a safety and health program determined to be superior. Superior programs are normally evidenced by the following:

   - Full management participation/leadership in safety and health activities;
   - A comprehensive, integrated written safety and health program, which exceeds all required programs, is maintained;

- Trained employees actively participate in safety and health activities;
- Employer's injury/illness rates are below industry average;
- Safety and health meetings are frequently held;
- Safety and health programs receive periodic review;
- Accident or near-miss investigations are always conducted;
- Onsite medical aid is available for all shifts, or a plan exists to ensure that prompt first-aid is available;
- Emergency preparedness programs and drills are held;
- A competent/qualified safety and health coordinator is designated;
- All required training with competency tests is performed;
- Hazard controls are fully in place;
- Frequent safety and health inspections are held with documentation and abatement; and
- Outside consultation has been performed in the past two years.

iii. History/Record of Previous Violations. A reduction of 10 percent will be given to employers who have not had a final order entered against them for any serious, willful, or repeated violation(s) cited by the division at any location in North Carolina in the three calendar years prior to the opening conference. [See NCGS §95-138(a)]

b. Exceptions. Penalty adjustment factors will generally be calculated only once and applied to all violations, subject to the following exceptions:

i. Penalties assessed for violations that are classified as high severity and greater probability will be adjusted only for size and history, where appropriate. All other violations found during the inspection may be adjusted for size, good faith, and history, unless prohibited by other exceptions.

ii. Penalties assessed for violations that are classified as repeated will be adjusted only for size, as appropriate. All other violations found during the inspection may be adjusted for size, good faith and history unless prohibited by other exceptions.

iii. Penalties assessed for violations that are a proximate cause of a fatality will not be adjusted. All other violations found during the inspection may be adjusted for size, good faith, and history, unless prohibited by other exceptions.

iv. Penalties assessed for violations that are a proximate cause of a serious injury will be adjusted only for size, as appropriate. All other violations found during the inspection may be adjusted for size, good faith and history, unless prohibited by other exceptions.

v. If one violation is classified as willful, or if a Failure to Abate (FTA) notice is issued with the citations, only the size reduction can be applied to <u>any</u> of the violations found during the same inspection. The employer cannot willfully be in violation of the Act and, at the same time, be acting in good faith with OSH.

vi. Penalties assessed for certain administrative violations will be adjusted only for size and history, where appropriate. Good faith reductions have been turned off in OSHA Express (OE) for affected administrative violations. (See the Forms section in the Field Information System (FIS) on the OSH One Stop Shop for a list of the affected standards.) All other violations found during the inspection may be adjusted for size, good faith, and history, unless prohibited by other exceptions.

c. If joint health and safety inspections are performed at one location, the same penalty reduction factors will be applied to both inspections.

10. <u>Failure to Abate</u>. An FTA notice (OSHA-2B Form) will be issued in cases where violations have not been corrected as required.

a. <u>Failure to Abate</u>. FTA penalties will be applied when an employer has not corrected a previously cited violation which had become a final order and that was not appealed or a final order affirmed and/or modified upon appeal.

b. <u>Employer Contest</u>. If an employer contests one or more of the alleged violations, the period for abatement does not begin to run, as to those items contested, until the day following the entry of the final order by the OSH Review Commission affirming the citation.

i. If the employer contests only the amount of the proposed penalty, the employer must correct the alleged violation within the prescribed abatement period.

ii. If an employer contests an abatement date in good faith, an FTA notice will not be issued for the item contested until a final order affirming a date is entered, the new abatement period (if any) has been completed, and the employer has still failed to abate.

c. Calculation of Additional Penalties. A GBP is to be calculated for each failure to abate violation on the basis severity and probability documented by the facts noted upon reinspection. This recalculated GBP, however, will not be less than that proposed for the item when originally cited, except as provided in B.10.e. – Good Faith Effort to Abate.

i. The daily proposed penalty will be multiplied by the number of calendar days that the violation has continued unabated, except as provided below:

A. The number of days unabated will be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between that date and the day before the date of reinspection.

B. Normally the maximum total proposed penalty for failure to abate a particular violation will not exceed 30 times the amount of the daily proposed penalty.

C. At the discretion of the director or assistant director, a lesser penalty may be proposed with the reasons for doing so (e.g., achievement of an appropriate deterrent effect) documented in the case file (See Appendix VI-B – Procedures for Recommending Reduction to FTA Penalties).

ii. Only the adjustment factor for size, based on the total number of employees noted during the reinspection, will be applied to arrive at the daily proposed penalty. The reductions for good faith and history will not be given.

iii. In those instances where no original penalty was proposed, an appropriate penalty will be determined after consulting with the district supervisor. In no case will the penalty be less than $1250 per day.

iv. In unusual circumstances, such as where the gravity of the violation is at the highest level (high severity and greater probability), or the employer has willfully failed to abate the violation, or has failed to abate a second time, higher penalties will be proposed. In such situations, the proposed penalty will be approved by the director or assistant director.

d. Partial Abatement. When the original citation has been partially abated, the district supervisor may authorize a reduction of 25 to 75 percent to the amount of the proposed FTA penalty calculated as outlined in Section B.10.c. – Calculation of Additional Penalties. The reason for this action will be documented in the case file.

i. When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty should take into consideration the extent that the violation has been abated.

EXAMPLE: Where three out of five instances have been corrected, the daily proposed penalty (calculated as outlined in Section B.10.c. without regard to any partial abatement) may be reduced by 60 percent.

ii. In multi-step correction items, only the failure to comply with substantive (rather than procedural) requirements will generally incur a full failure to abate penalty.

iii. On those occasions when the district supervisor decides to issue a notice for failure to comply with procedural requirements, the calculation of the daily proposed penalty will consider the extent to which a violation has been substantially abated, with the daily proposed penalty (calculated as outlined in Section B.10.c. without regard to any partial abatement) reduced accordingly.

e. Good Faith Effort to Abate. When the CSHO finds an FTA and their documentation in the case file supports that the employer has made good faith efforts to correct the violation and had good reason to believe that it was fully abated, the district supervisor and bureau chief will be consulted. The district supervisor and bureau chief may prepare a Citation Authorization Form to recommend an elimination of the FTA notice or a reduction of the daily proposed penalty that would otherwise be justified. The employer would still be responsible for ensuring that the final abatement is attained.

EXAMPLE: The employer may in good faith hire an outside contractor to complete necessary changes, relying on the contractor's expertise. Therefore, the inferior work is the responsibility of the contractor, not the employer. This may justify the elimination of the FTA notice or a reduction of the daily proposed penalty.

11. Repeat Violations.

a. Gravity-Based Penalty Factors. Each violation will be classified as serious or non-serious and the GBP will be calculated for each repeat violation based on facts noted during the current inspection. Only the adjustment factor for size appropriate to the facts at the time of the reinspection, will be applied to the repeat violations.

b. Penalty Increase Factors. NCGS §95-138(a) of the Act provides that an employer who repeatedly violates the Act may be assessed a civil penalty of up to $165,514, for each violation. In accordance with FOM Chapter IV – Violations, Section F.5. – Repeat Violations, a multiplier of the amount of the

penalty assessed for each repeat violation will be as follows: The GBP will be doubled for the first repeat violation, multiplied by five if the violation has been cited twice before, and multiplied by ten if the violation has previously been cited three or more times.

c. Non-serious, No Initial Penalty. For a repeat non-serious violation that had no initial penalty, a $1,250 GBP will be assessed. This GBP will be reduced by the appropriate size factors. It will then be doubled for the first repeat violation, multiplied by five if the violation has been cited twice before, and multiplied by ten if the violation has previously been cited three or more times. In no case will the final penalty be less than $1,250.

12. Willful Violations. NCGS §95-138(a) of the Act provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than $165,514, but not less than $11,823 for each violation.

a. Gravity Based Penalty Factors. Each willful violation will be classified as serious or non-serious. After determining the gravity of a violation, a GBP will be determined based on the facts noted during the inspection. The adjustment factor for size will be applied. The district supervisor and bureau chief will prepare a Citation Authorization Form for case files involving willful violations.

i. Serious Violations. For willful serious violations, the adjusted GBP will be multiplied by ten.

A. In no case will the penalty be less than $11,823.

B. The director or assistant director may assess a higher penalty (up to the statutory maximum of $165,514) or a lower penalty, upon consideration of such factors as the degree of willfulness involved in the violation and the achievement of an appropriate deterrent effect. The reasons for such action will be documented in the case file.

ii. Non-serious Violations. For willful non-serious violations, a minimum penalty of $11,823, after adjustment for size, will be assessed.

b. Regulatory Violations. In the case of regulatory violations that are determined to be willful, the unadjusted initial penalty will be multiplied by ten. In no event will the penalty, after adjustment for size, be less than $11,823.

13. Violation of Regulatory Requirements. Except as provided in the Appropriations Act, NCGS §95-138(a) of the Act, provides that an employer who violates any of the posting requirements will be assessed a civil penalty of not more than $16,550 for each violation or may be assessed a like penalty for recordkeeping violations. In each case, appropriate penalty adjustment factors will be applied to the unadjusted penalty according to Section B.9. – Penalty Adjustment Factors. Unless specifically approved by the director or assistant director, violations of regulatory requirements will be classified as non-serious. Also reference compliance

Directive (CPL) 02-00-170 – Enforcement Exemptions and Limitations Under the Appropriations Act.

a. Posting Requirements.

i. Poster. Citations and/or penalties will not be issued for lack of displaying an OSH Notice to Employee poster (Required by 29 CFR 1902.9 – Requirements for Approval of State Posters), unless approved by the director or assistant director. If a complaint item associated with the lack of poster display is substantiated, the employer should be furnished a copy of the OSH poster and advised of the legal requirement to display it for employees. In this case, a citation or penalty will not be issued.

In the event the employer refuses to comply with the posting requirement, the employer will be informed of the consequences of failure to display the OSH poster. These actions will be noted in the case file. Citations and/or penalties for failure to post the OSH poster shall only be recommended by the CSHO if the employer demonstrates a consistent disregard for their responsibilities under the Act, and interviews show that employees are unaware of their rights under the Act, or the employer has been previously cited or advised by the OSH division of the posting requirement. The unadjusted penalty for this alleged violation will be $2,000. Citation issuance regarding posters must be approved by the director or assistant director.

ii. Annual Summary. A citation will normally be issued if an employer fails to properly create, certify, or post the OSHA 300A, Annual Summary, no later than February 1 of the year following the year covered by the records, as required by 29 CFR 1904.32 – Annual Summary. Citations will be issued as follows:

A. The failure to create the OSHA 300A will be cited under 29 CFR 1904.32(a)(2). If there are inaccuracies on the OSHA 300A or the evidence supports the OSHA 300 log entries were not reviewed extensively enough when creating the annual summary, 29 CFR 1904.32(a)(1) shall be cited.

B. The failure to certify the OSHA 300A will be cited under 29 CFR 1904.32(a)(3). If the OSHA 300A is certified by someone other than a company executive, then 1904.32(b)(3) shall be cited.

C. The failure to post the OSHA 300A will be cited under 29 CFR 1904.32(a)(4). If the OSHA 300A was not posted properly, such as in an inconspicuous location, 29 CFR 1904.32(b)(5) shall be cited. If it was posted, but not during the appropriate time-period, then 29 CFR 1904.32(b)(6) shall be cited.

The unadjusted penalty for each of these violations will be $2,000.

Where no injuries or illnesses actually occurred, a citation will not be issued if the summary is not created, certified, or posted. The CSHO will verify that there were no recordable injuries or illnesses through employee interviews and by review of workers' compensation or other records, including medical records.

iii. Citation. If an employer has not posted a citation as required in 29 CFR 1903.16 – Posting of Citations, a citation will be issued. The unadjusted penalty will be $6,000.

b. Reporting and Recordkeeping Requirements. NCGS §95-138(a) provides that violations of the recordkeeping and reporting requirements may be assessed civil penalties of not more than $16,550 for each violation.

i. Injury and Illness Log and Supplemental Forms. The employer must record cases on the OSHA 300 – Log of Work-Related Injuries and Illnesses, and on the OSHA 301 – Incident Report (or equivalent form such as the NCIC's Worker's Compensation Form 19), as prescribed in Subpart C – Recordkeeping Forms and Recording Criteria, of 29 CFR Part 1904 – Recordkeeping. Where no records are kept **and** there have been injuries or illnesses which meet the requirements for recording, as determined by a review of other records or by employee interviews, a citation for failure to keep records will normally be issued.

When the required records are kept **but** no entry is made for a specific injury or illness which meets the requirements for recording, a citation for failure to record the case will normally be issued.

Where no records are kept **and** there have been no injuries or illnesses, as determined by employee interviews, a citation will normally not be issued. See Section 13.a.ii. – Posting Requirements, regarding OSHA 300A – Annual Summary.

When the required records are kept **but** have not been completed with the detail required by the regulation, or the records contain minor inaccuracies, the records will be reviewed to determine if there are deficiencies that materially impair the understandability of the nature of hazards, injuries and illnesses in the workplace. If the defects in the records materially impair the understandability of the nature of the hazards, injuries and/or illnesses at the workplace, a citation will normally be issued.

A. Cases Incorrectly Recorded on the OSHA 300 or OSHA 301. If the deficiencies on the OSHA 300 or OSHA 301 do not affect the CSHOs ability to understand the information, normally no citation

will be issued. For example, an employer should not be cited solely for misclassifying an injury as an illness, or vice versa. The employer will be provided information on keeping the records for the employer's analysis of workplace injury trends and on the means to keep the records accurately. The employer's actions to correct the deficiencies will be recorded and no citation will be issued.

B. One Citation Item per Form. Recordkeeping citations for improper recording of a case will be limited to a maximum of one citation item per form. This applies to both the OSHA 300 and the OSHA 301. Where the conditions for citation are met, an employer's failure to accurately complete the OSHA 300 for a given year would normally result in one citation item. Similarly, an employer's failure to accurately complete the OSHA 301, or equivalent, would normally result in one citation item. Multiple cases which are unrecorded or inaccurately recorded on the OSHA 300 or 301 will normally be reflected as instances of the violation under that citation item.

EXAMPLE: A single citation item for an OSHA 300 violation would result from a case where the employer did not properly count the days away, checked the wrong column, and did not adequately describe the injury or illness, or where the employer in several cases checked the wrong columns and/or did not adequately describe the injury or illness, and these errors materially impair the understandability of the nature of the hazards, injuries and/or illnesses at the workplace. **Note:** As stated above, an employer should not be cited solely for misclassifying injuries as illnesses, or vice versa.

EXAMPLE: A single citation item for an OSHA 301 violation would result when an OSHA 301 had not been completed, or where so little information had been put on the OSHA 301 for multiple cases as to make the OSHA 301 materially deficient.

C. Penalties. If the employer does not maintain the required records (OSHA 300 or OSHA 301), the instances will be combined/grouped, and will be assessed an unadjusted penalty of $2,000 for each OSHA-1B (Citation Form).

ii. Reporting requirements.

A. Reporting of Fatalities, Amputations, Hospitalizations, and Loss of Eye Injuries. In accordance with 29 CFR1904.39 – Recordkeeping, paragraph (a)(1) – Reporting Fatalities, Hospitalizations, Amputations, and Losses of an Eye as a Result

of Work-related Incidents to OSHA, an employer is required to report the death of any employee to the OSH division within eight hours of the employer's knowledge of the death. Additionally, in accordance with 29 CFR 1904.39(a)(2), the employer must report the in-patient hospitalization of one or more employees, a work-related amputation or a work-related loss of an eye to the OSH division within 24 hours of the employer's knowledge of these events. Per 1904.39(b)(5), the employer must report all fatal heart attacks that occur at work regardless of whether it is known that the work-environment was the cause of the heart attack. Per 1904.39 (b)(3) and (b)(4), certain work-related motor vehicles accidents and certain commercial and public transportation accidents do not have to be reported.

A non-serious citation will normally be issued for failure to report such incidents. The unadjusted penalty will be $10,000 for failure to report: a work-related fatality, more than one in- patient hospitalization, an amputation of more than one digit or the loss of an eye. The unadjusted penalty will be $5,000 for failure to report any other non-fatal reportable incident. If the bureau chief determines that it is appropriate to achieve the necessary deterrent effect, the unadjusted penalty may be $16,550 for failure to report fatalities or serious injuries.

If an employer does not report an incident required to be reported per 29 CFR 1904.39, but the OSH division is notified before the end of the required reporting period through other means (i.e., media, family member, fire department, police, insurance company), a citation for failure to report will normally not be issued. If an employer fails to report a fatal heart attack that occurs in the work environment and an investigation or inspection determines that the heart attack was not work-related (natural causes), the employer will not be cited. However, the CSHO will remind the employer, either orally or in writing, of the reporting requirement. The CSHO will document the means by which the employer was reminded in the case file.

If the OSH division becomes aware of a fatality by the complaint desk receiving a "Report of Investigation by Medical Examiner" or other means, the complaint desk will attempt to contact the employer to gather information and to inform the employer of the requirement to report the fatality. The complaint desk will document the contact with the employer on the Fatality/Catastrophe Report.

B. Annual Electronic Submission of Injury and Illness Records. In accordance with 29 CFR 1904.41 – Electronic submission of

Employer Identification Number (EIN) and injury and illness records to OSHA, employers are required to electronically submit injury and illness data and information from the preceding calendar year via the OSHA Industry Tracking Application (ITA) by March 2 of each year. Per 29 CFR 1904.41(a)(1), employers with 250 or more employees must submit their OSHA Form 300A, and employers with 20-249 employees must submit their OSHA Form 300A if their establishment is classified in an industry listed in appendix A to subpart E of 29 CFR 1904. Additionally, in accordance with 29 CFR 1904.41(a)(2), establishments with 100 or more employees must electronically submit information from OSHA Forms 300 and 301 if their establishment is classified in an industry listed in appendix B to subpart E of 29 CFR 1904.

When collecting and evaluating injury and illness records on all inspections (per FOM chapter III – Inspection Procedures), the CSHO will confirm whether the employer's size and industry classification (NAICS code) requires the electronic reporting of OSHA Form 300A data and OSHA Forms 300/301 information. For employers subject to 29 CFR 1904.41(a)(1) and/or (a)(2), the CSHO shall confirm the data was submitted through the ITA as required. For the OSHA Form 300A data, this can be done by reviewing the "Federal Injury/Illness Reporting" table under the "Reports" heading in OSHA Express. The OSHA 300/301 case information can be found on the Federal OSHA website under the "Current ITA Data" section and the "Case Detail Data" Excel spreadsheet for the most recent year. The CSHO will need to sort the table in OSHA Express and the Federal OSHA case detail spreadsheet alphabetically by establishment name and then scroll through the rows to determine if the employer's injury and illness data and information has been submitted. If no data or information is found, the CSHO shall contact the employer to inquire if the data was submitted and re-confirm the employer's NAICS code and number of employees. The CSHO may need to explain that the electronic injury and illness reporting requirements of 29 CFR 1904.41 are separate from those of 29 CFR 1904.42, which is the Survey of Occupational Injuries and Illnesses from the Bureau of Labor Statistics.

A non-serious citation will normally be issued if the employer is subject to 29 CFR 1904.41(a)(1) and/or (a)(2) but failed to electronically submit the injury and illness data or information through the ITA. The unadjusted penalty will be $2,500 for the failure to submit. If the bureau chief determines that it is appropriate to achieve the necessary deterrent effect, the unadjusted penalty may be increased to $16,550. When the employer has failed to submit both the OSHA Form 300A data and the OSHA Form 300/301 information, the citations for violations

of 29 CFR 1904.41(a)(1) and (a)(2) will normally be grouped. Since the electronic submissions are due by March 2, the six-month date to issue a citation for non-compliance will be September 2. A citation will not be issued for public sector establishments who have submitted injury and illness data to the public sector survey conducted by the OSH Division's Planning, Statistics, and Information Management (PSIM) bureau.

C. Mechanical Power Presses. 29 CFR 1910.217 – Mechanical Power Presses, paragraph (g)(1) – Reports of Injuries to Employees Operating Mechanical Power Presses, requires the employer to report, within 30 days of the occurrence, all point-of-operation injuries to operators or other employees to the OSH division. This may be done by calling 1-800-NCLABOR during normal business hours. This may also be done in writing. A citation will normally be issued for failure to report such an occurrence. The unadjusted penalty will be $5,000.

If the OSH division becomes aware of an incident required to be reported per 29 CFR 1910.217(g)(1) through means other than an employer report, a citation for failure to report will normally not be issued if an investigation/inspection is opened prior to the end of the required reporting period. However, mechanical power press accidents that result in an employee fatality, in- patient hospitalization, amputation or loss of an eye must follow the reporting requirements in 29 CFR 1904; therefore, citations will be issued in accordance with the reporting guidance for 29 CFR 1904 in Section 13.ii.A. – Recordkeeping and Reporting.

c. Migrant Housing Act Violations.

i. Violations of the Migrant Housing Act of North Carolina (NCGS §95-222, et seq.) will be documented and citations issued in accordance with FOM Chapter XI – Agricultural Safety and Health Inspections.

ii. Violations of NCGS §95-226(a) – Application for Inspection, for failing to register migrant housing, and NCGS §95-226(d) for occupying migrant housing without a certificate, will be documented and citations issued (see FOM Chapter XI). The unadjusted penalty for NCGS §95-226(a) will be $10,000. The unadjusted penalty for NCGS §95-226(d) will be $6,000. For both citations, adjustment factors shall be given in accordance with Section B.9. – Penalty Adjustment Factors, for size and good faith.

d. Grouping. Violations of the posting and recordkeeping requirements which involve the same document (e.g., if the summary portion of the Injury and Illness Log was neither posted nor maintained) will be grouped for penalty purposes. The

unadjusted penalty for the grouped violations would then take on the highest dollar value of the individual items.

e. Penalties for Abatement Verification.

i. The penalty provisions of the Act apply to all citations issued under 29 CFR 1903.19 – Abatement Verification. The adjustment factors for size and history will apply. No "good faith" reduction will be given to employers cited for failure to abate.

ii. The unadjusted penalty for failing to submit abatement certification documents will be $2,000. However, the penalty for failure to submit abatement verification documents will not exceed the penalty for the original citation.

iii. The unadjusted penalty for failure to notify affected employees of the abatement or placing the warning tag (copy of citation) on the equipment will be $6,000 and will follow the same penalty structure applied for failure to post citations.

f. Access to Records.

i. Recordkeeping. If the employer fails upon request to provide copies of records required in 29 CFR 1904.29(a) – Forms, to any employee, former employee, personal representative, or authorized employee representative by the end of the next business day, a citation for violation of 29 CFR 1904.35(b)(2) – Employee Involvement, will normally be issued. The unadjusted penalty will be $2,000 for each form not made available.

EXAMPLE: If the OSHA 300 or the OSHA 300A for the current year and the three preceding years is not made available, the unadjusted penalty will be $8,000.

EXAMPLE: If the employer does not make the OSHA 301 available, the unadjusted penalty will be $2,000 for each OSHA 301 not provided, up to a maximum of $16,550.

When the employer is cited for failure to keep records (OSHA 300, OSHA 300A, or OSHA 301) under 29 CFR 1904.4 – Recordkeeping Criteria, no citation for failure to give access under 29 CFR 1904.35(b)(2) will be issued.

ii. Exposure and Medical Records. If the employer is cited for failing to provide records as required under 29 CFR 1910.1020 – Access to Exposure and Medical Records, for inspection and copying by any employee, former employee, or authorized representative of an employee, the unadjusted penalty will be $2,000.

EXAMPLE: If all the necessary evidence is established where an authorized employee representative requested exposure and medical records for three employees and the request was denied by the employer, a citation would be issued for one violation of 29 CFR 1910.1020, with an unadjusted penalty of $2,000.

g. Notification Requirements. When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by 29 CFR 1903.6 – Advance Notice of Inspections, a citation will be issued with an unadjusted penalty of $4,000.

C. **Criminal Penalties.**

1. The Act provides for criminal penalties in the following cases:

   a. Willful violations causing death.
   b. Giving unauthorized advance notice.
   c. Giving false information.
   d. Killing, assaulting or hampering the work of a CSHO.

2. Criminal penalties are imposed by the courts after trials and not by the NC Department of Labor or the OSH Review Commission.

APPENDIX VI-A: **Guidelines for Rating Severity and Probability Factors**

Severity:

The CSHO must first determine the incident the violated standard is designed to prevent. Then, using all the variables involved with the observed hazard, the CSHO must determine the most serious of all likely injuries or illnesses that might result.

High:	Death, permanent disability, cancer, chronic illness.
Medium:	Injury or illness requiring hospitalization, temporary disability, or anything that prevents the employee from doing their normal job.
Low:	Injury or illness requiring medical treatment, but not requiring hospitalization.

Probability:

Probability that an accident or incident will occur is evaluated on several factors: the number of employees involved, their frequency of exposure to the hazard, their proximity to the hazard, and other conditions that may contribute to or mitigate the hazard. The importance of each factor in determining the degree of probability that an injury would occur may vary with each violation. For example, although only one employee may be in a trench that is not shored, there is a high probability of injury since 100% of all trenches collapse given enough time.

Rating:	1	2	3	4	5	6	7	8
# of Employees:	1	2	3	4	5	6	7	8 or more
Frequency:	< 1/wk	1/wk	2-6/wk	< 2h/dy	2-3h/dy	4-5h/dy	6-7h/dy	8+h/dy
Proximity:	6+ ft	5-6 ft	4-5 ft	3-4 ft	2-3 ft	1-2 ft	< 1 ft	Point of danger
Other Factors:	1							8

Add the rating for each factor used; divide the sum by the number of factors used, and round the result to the nearest tenth. (e.g., 5+4+5=14; 14/3=4.67; rounded to 4.7)

Lesser:	1.0 – 4.5
Greater:	4.6 – 8.0

Proximity may be affected by proper use of PPE or effective safety and health program.

Mitigating factors may include an effective hearing conservation program; effective training; comprehensive safety and health program; evidence of correction underway; warning signs, labels, or special procedures; mandatory administrative controls that provide some protection; or medical surveillance programs. Mitigating factors must be a specific recommendation documented by the CSHO in the case file for each OSHA-1B where the mitigating factors are recommended.

Contributing factors may include high speed of operation; poor lighting; extreme temperatures; adverse weather conditions; noise; housekeeping problems; inadequate or inappropriate safety and health training and/or programs; widespread hazardous conditions with little attempt to control them; or factors inherent to the hazard (e.g., given enough time, trenches will collapse 100% of the time due to the Law of Gravity.) Contributing factors must be a specific recommendation documented by the CSHO in the case file for each OSHA-1B where the contributing factors are recommended.

APPENDIX VI-B: Procedures for Recommending Additional Reductions to FTA Penalties

Bureau chiefs and district supervisors may recommend additional reductions in FTA penalties pursuant to Chapter VI, paragraph B.10.c. – Calculation of Additional Penalties. The director or assistant director may authorize reducing proposed FTA penalties. Factors to be considered in recommended reductions of FTA penalties are as follows:

Size:	Small businesses may be given additional reductions. Large employers receive no reduction for size.
Effort:	Demonstrated efforts by the employer to abate the hazard (beyond credit given for partial abatement), inadvertent oversight of abatement or other material factors which indicate that the employer was in good faith trying to abate all violations.
Ability to pay:	Limited financial resources which prohibit the employer from absorbing the cost of the penalty.
Severity:	Conditions which do not represent significant danger to employees (some types of unsanitary conditions, some non-serious violations, etc.)
Documentation:	Case files are to be developed according to the FOM. The OSHA-2B (Failure to Abate) form is to be used to document the FTA. The instance description will be written in the same format as that of the OSHA-1B, completed to identify the current conditions. Original FTA penalties are calculated and also entered in the instance description. Each FTA for which the district supervisor recommends penalty reductions will be annotated with an evaluation using the factors described above. For each factor, select an adjustment credit between 0 and 100% (in 10% increments). Tabulate the reduction percentages and total. Adjust the FTA penalty accordingly. Each OSHA-2B instance description must contain both the original and the proposed penalties. Since all FTAs require approval, the district supervisor and bureau chief must complete and submit a Citation Authorization Form and indicate that additional penalty adjustments are being recommended.

APPENDIX VI-C: **Severity Quotients for Falls Applicable to General Industry and Construction**

The following scenario should be classified non-serious:			
FALL DISTANCE (in feet)		**CONDITIONS**	
= 4 but < 8		1. Fall to soft surface; **and**, 2. No items or equipment that could cause injury would be struck.	
The following scenarios should be classified as serious:			
FALL DISTANCE (in feet)	**HIGH SEVERITY**	**MEDIUM SEVERITY**	**LOW SEVERITY**
= 4 but < 8	1. Fall into or upon dangerous equipment (e.g., augers, mixers, protruding rebar); **or**, 2. Fall into vats, pits, etc. where dangerous chemicals, moltens, etc. are found.	Not applicable.	If the standard is applicable and employee(s) are working above a hard surface and/or items or equipment that could be struck, then evaluate for potential serious violation. If serious, classify as LOW severity.
= 8 but < 10	1. Fall into or upon dangerous equipment (e.g., augers, mixers, protruding rebar); **or**, 2. Fall into vats, pits, etc. where dangerous chemicals, moltens, etc. are found.	Fall to hard, solid surface.	Fall to normal (grass covered) earth, soft earth, or sand.
= 10 but < 15	1. Fall into or upon dangerous equipment (e.g., augers, mixers, protruding rebar); **or**, 2. Fall into vats, pits, etc. where dangerous chemicals, moltens, etc. are found; **or**, 3. Fall upon items which could impale, severely lacerate, etc.; **or**, 4. Fall to hard, solid surface.	Fall to normal (grass covered) earth, soft earth, or sand.	To be determined on a case-by-case basis, discuss with district supervisor.
≥ 15	Always High Severity		

APPENDIX VI-D: Penalty Calculation Table

Total % Reduction	Admin See Note	Admin See Note	Admin See Note	Non-serious Greater (NG)	Low Lesser (LL)	Low Greater (LG)	Medium Lesser (ML)	Medium Greater (MG)	High Lesser (HL)	High Greater (HG)
0	2,000	6,000	10,000	3,000	3,000	6,500	6,500	10,000	10,000	16,550
5	1,900	5,700	9,500	2,850	2,850	6,175	6,175	9,500	9,500	15,723
10	1,800	5,400	9,000	2,700	2,700	5,850	5,850	9,000	9,000	14,895
15	1,700	5,100	8,500	2,550	2,550	5,525	5,525	8,500	8,500	14,068
20	1,600	4,800	8,000	2,400	2,400	5,200	5,200	8,000	8,000	13,240
25	1,500	4,500	7,500	2,250	2,250	4,875	4,875	7,500	7,500	12,413
30	1,400	4,200	7,000	2,100	2,100	4,550	4,550	7,000	7,000	11,585
35	1,300	3,900	6,500	1,950	1,950	4,225	4,225	6,500	6,500	10,758
40	1,250	3,600	6,000	1,800	1,800	3,900	3,900	6,000	6,000	9,930
45	1,250	3,300	5,500	1,650	1,650	3,575	3,575	5,500	5,500	9,103
50	1,250	3,000	5,000	1,500	1,500	3,250	3,250	5,000	5,000	8,275
55	1,250	2,700	4,500	1,350	1,350	2,925	2,925	4,500	4,500	7,448
60	1,250	2,400	4,000	1,250	1,250	2,600	2,600	4,000	4,000	6,620
65	1,250	2,100	3,500	1,250	1,250	2,275	2,275	3,500	3,500	5,793
70	1,250	1,800	3,000	1,250	1,250	1,950	1,950	3,000	3,000	4,965
75	1,250	1,500	2500	1,250	1,250	1,625	1,625	2,500	2,500	4,138
80	1,250	1,250	2,000	1,250	1,250	1,300	1,300	2,000	2,000	3,310
85	1,250	1,250	1,500	1,250	1,250	1,250	1,250	1,500	1,500	2,483
90	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,655
95	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250
≥100	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250

***NOTE:** The administrative columns should be used for penalties in Section B.13. – Violation of Regulatory Requirements. Use the column corresponding to the appropriate unadjusted penalty. Non-serious Lesser (NL) has $0 penalty attached so it is not listed in the table above (Reference the table in Section B.7. – Gravity-Based Penalty).

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter VII – Imminent Danger



Chapter Effective: February 2000
Revision 1: 11/01/2013

Table of Contents

A. General

B. Preinspection Procedures for Imminent Danger Situations

C. Inspection

1. Scope
2. Procedures
3. Elimination of the Imminent Danger
4. Issuing Notice of the Alleged Imminent Danger

D. Citations and Proposed Penalties

E. Follow-up Inspection

F. Removal of Imminent Danger Notice

Chapter VII

Imminent Danger

A. **General**.

1. Definition. NCGS 95-127 (14) defines imminent danger as "any conditions or practices in any place of employment which are such that a danger exists 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 this Article."

2. Requirements. The following conditions must be met before a hazard becomes an imminent danger:

   a. Death or serious physical harm must be threatened. Serious physical harm is impairment of the body such as to render the part of the body affected functionally useless or substantially reduced in efficiency. (See FOM Chapter IV, Violations, for definitions and examples.)

   b. For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will cause harm to such a degree as to shorten life or cause substantial reduction in physical or mental efficiency even though the resulting harm may not manifest itself immediately.

   c. The threat must be immediate or imminent. The required immanency would be present where it is reasonable to believe that death or serious physical harm could occur within a short time; i.e., before OSH could respond through complaint, referral or programmed inspection procedures.

B. **Preinspection Procedures for Handling Imminent Danger Situations**.

1. When an Imminent Danger Report Is Received. Any allegation of imminent danger received by the district office will be handled in accordance with the following procedures:

   a. The bureau chief will immediately determine whether there is a reasonable basis for the allegation and alert the director’s office, and the AG's office to the situation.

   b. If the imminent danger allegation appears to have merit, the bureau chief and supervisor will make an evaluation of the inspection requirements and select a CSHO to conduct the inspection.

   c. Imminent danger investigations will be scheduled the same day that the report is received, if possible, but not later than the employer's next working day after receipt of the report.

d. The inspection of a workplace believed to contain an imminent danger will be thoroughly planned and expeditiously accomplished in accordance with the procedures given in this chapter.

e. When an immediate inspection cannot be made, the bureau chief or supervisor will contact the employer immediately; obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. A record of what steps, if any, the employer intends to initiate in order to eliminate the danger will be attached to the case file. Such notification will be considered advance notice and will be handled in accordance with the procedures given in C.2.a. of this chapter and in FOM Chapter III, Inspection Procedures.

2. Technical Considerations. The supervisor and the CSHO selected to perform the inspection will review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.

a. In highly complex situations, consideration will be given to use of specialists from other bureaus of the division, the staff of the National Institute of Occupational Safety and Health (NIOSH) and other governmental agencies, or, if the situation warrants their use, specialists from outside government. Should the decision be made to use experts, the procedures given in FOM Chapter VIII, Fatality Investigations will be followed.

b. Calibration and testing of equipment to be used will be currently valid.

c. If samples are required to determine whether there is an imminent danger situation, rapid analysis is essential.

i. The bureau chief will make prior arrangements with local reputable laboratories for priority analysis of samples from suspected imminent danger situations that require immediate action.

3. Scheduling. Any allegation of imminent danger received by the district office or complaint desk, whether written or oral, will be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations cannot interfere with the expedited and thorough handling of these cases.

a. As previously indicated the imminent danger allegation will be evaluated immediately and, if appropriate, scheduled for investigation as soon as possible. Except in extraordinary circumstances, the inspection will be conducted no later than the employer's next workday after receipt of the report of imminent danger.

b. When the time necessary to obtain special equipment or technical personnel for inspection would unduly delay the inspection, it may nevertheless be advisable to schedule and conduct a preliminary inspection within the time limits given in the

preceding subparagraph. The required equipment and/or personnel can be brought in later.

C. **Inspection**.

1. Scope. Any alleged imminent danger situation brought to the attention of or discovered by the CSHO will be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation. After the imminent danger situation has been resolved, a complete inspection of the establishment will be conducted in accordance with the following guidelines:

   a. Construction. In the construction industries, if a substantially complete inspection of the site has been conducted within the last quarter, the procedures given in c. of this section will be followed.

   b. General Industry. In an industry listed on a current assignment list, the inspection will cover all areas of the establishment. Otherwise, the procedures given in c. of this section will be followed.

   c. Low Hazard. An imminent danger inspection in a low hazard industry will generally be limited to working conditions identified in the imminent danger report. If, however, the CSHO believes that the scope of the inspection should be expanded because of information indicating the likelihood of serious hazards in other portions of the plant (e.g., because the CSHO has observed them prior to the opening conference or during the investigation of the imminent danger situation or because the records review shows that an unusual number or type of injuries has occurred in one time period, area or operation) or because of a formal complaint alleging serious hazards received while conducting the imminent danger investigation, the Supervisor will be contacted. A decision will be made on the basis of information available whether the inspection should be expanded.

   d. Any establishment covered under any exemption program (e.g. consultation or congressional appropriations) will not receive a comprehensive inspection unless the Director for good reason decides otherwise.

2. Procedures. Any inspection that involves an imminent danger situation will be conducted as expeditiously as possible. The opportunity to accompany the CSHO will be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay inspection in order to afford any or all such representatives time to reach the area of the alleged imminent danger.

   a. Advance Notice. NCGS 95-136 (f) (2) authorizes advance notice of an inspection when the giving of such notice is "essential to the effectiveness of such inspection." Such advance notice might enable the employer to eliminate the dangerous condition sooner than an inspection could accomplish this goal.

i. When an immediate inspection cannot be made, the CSHO will give notice of the impending inspection to the employer after the known facts have been reviewed with the director and it has been concluded that advance notice would speed the elimination of the hazard.

ii. If advance notice is given to the employer, it will also be given to the authorized employee representative. If the inspection is in response to a NCGS 95-136 (d) complaint, information concerning the advance notice will also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.

b. Refusal to Permit Inspection. If a CSHO is refused entry while attempting to investigate an alleged imminent danger complaint, a warrant will be obtained as quickly as possible.

c. Preemption Question. If the report of imminent danger involves a potential NCGS 95-128 dispute with another agency, inspection procedures found in FOM Chapter III will be followed.

3. Elimination of the Imminent Danger. As soon as it is concluded that conditions or practices exist which constitute an imminent danger, the employer will be so advised and requested to notify his employees of the danger and remove them from the area of imminent danger. It is the duty of the CSHO at the site of an imminent danger situation to encourage the employer to do whatever is possible to eliminate the danger.

a. Voluntary Elimination of the Imminent Danger. The employer may voluntarily and permanently eliminate the imminent danger as soon as it is pointed out. In such cases, no imminent danger proceeding will be instituted; and, therefore, the OSHA-8, "Notice of Alleged Imminent Danger" will not be completed. Appropriate citations will be issued, however.

i. What Constitutes Voluntary Elimination. Although there may be instances in which the employer will not be able to eliminate the danger permanently as soon as it is pointed out, the CSHO will nevertheless consider that voluntary elimination of the danger has been accomplished when the employer:

A. Has removed employees from the danger area; and

B. Has given satisfactory assurance that the dangerous condition will be eliminated before permitting employees to work in the area as evidenced by one of the following:

1. After removal of employees immediate corrective action is initiated which is designed to bring the dangerous condition, practice, means or method of operation or

process into compliance, which, when completed, would permanently eliminate the dangerous condition; or

2. The acceptable promise of the employer that:

   a. Permanent corrective action will be taken as soon as possible; and

   b. Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; or

3. The acceptable promise of the employer that:

   a. Permanent corrective action will be taken as soon as possible, and;

   b. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use enforced until the condition is permanently corrected.

Note: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the CSHO's professional judgment.

ii.. Action Where Voluntary Elimination Is Accomplished. If the employer agrees and proceeds to eliminate the imminent danger immediately and permanently as outlined in C.3.a.i, the CSHO and any other technical support staff present will advise the employer to the maximum extent possible. However, the employer is ultimately responsible for determining the manner in which the hazardous condition is to be eliminated.

A. If elimination of the imminent danger is achieved voluntarily, the CSHO will make the appropriate notation on the OSHA-1. Appropriate citations will be issued regarding the hazard.

B. The CSHO will inform the affected employees or their authorized representative(s) that, although an imminent danger existed, the CSHO has determined that such danger no longer exists. The employees will also be informed of the steps to be taken by the employer to eliminate the dangerous condition.

C. When voluntary elimination of the imminent danger is accomplished as outlined in C.3.a.i, the CSHO will not prepare

an OSHA-8 and no imminent danger proceedings will be instituted.

b. Action Where Voluntary Elimination Is Not Accomplished. If the employer either cannot or does not voluntarily eliminate the hazard as discussed in C.3.a, the following procedures will be observed:

i. The CSHO will call the supervisor, who will discuss with the bureau chief and director's office to decide:

A. whether to contact the AG's office to obtain a Temporary Restraining Order; and,

B. whether to post the OSHA-8.

Note: The CSHO has no authority to order the closing down of the operation or to direct employees to leave the area of the imminent danger or the workplace.

ii. If it is not possible to contact the bureau chief or the director's office, the CSHO will contact the AG's office and contact the bureau chief and director's office as soon as possible thereafter.

iii. The AG's office will make immediate arrangements for the initiation of court action.

iv. The CSHO will give first priority in scheduling activities to preparing for litigation in imminent danger matters.

4. Issuing Notice of Alleged Imminent Danger. If the employer does not immediately eliminate the imminent danger or give satisfactory assurance that the danger will be voluntarily eliminated before any employee exposure occurs, the CSHO will contact the director's office for approval to complete and post the OSHA-8 immediately. The OSHA-8 does not constitute a citation of alleged violation or a notice of proposed penalty. It is only a notice that an imminent danger is believed to exist and that the commissioner will be seeking a court order to restrain the employer from permitting employees to work in the area of the danger until it is eliminated. *The appropriate bureau chief will inform the AG's office when an OSHA-8 is posted in case legal proceedings must be initiated*.

a. The original OSHA-8 will be signed and posted at or near the area in which the exposed employees are working. A copy will be signed and attached to the inspection report.

b. Where there is not a suitable place for posting the OSHA-8, the employer(s) will be requested to provide a means for posting.

c. If there is reason to believe that the employees may not see the OSHA-8, the CSHO will orally inform the affected employees of its location, after taking adequate precautions not to be exposed to the danger.

d. The employer will be advised that NCGS 95-140 gives the North Carolina Superior Courts jurisdiction to restrain any condition or practice which is an imminent danger to employees.

D. **Citations and Proposed Penalties**.

1. Citations and Penalties. After an imminent danger has been found, appropriate citations and penalties will be completed in accordance with the procedures contained in Chapters IV and VI on violations and penalties. All violations discovered during the inspection (e.g., "plain view") will be cited and penalties proposed, whether or not they relate to the imminent danger situation.

2. Effect of Court Action. No citation will be issued when court action is being or will be pursued relative to the issuance of the OSHA-8 without prior clearance from the bureau chief.

E. **Follow-up Inspection**.

1. Court Action. Where a court has issued an injunction in an imminent danger situation, the follow-up inspection will take place immediately after the court order has been issued to determine if the employer is complying with the terms of the order. (Other guidelines pertaining to follow-up inspections are set forth in FOM Chapter III on inspection procedures.)

2. No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated in accordance with the provisions of C.3.a.i but permanent correction of the condition has not been achieved at the time of the inspection, appropriate citations will be issued promptly and a follow-up inspection conducted on the date set for abatement.

3. Immediate Correction. Where the dangerous condition has been permanently corrected at the time of the inspection, the bureau chief will determine whether a follow-up inspection is necessary in accordance with division guidelines.

F. **Removal of Imminent Danger Notice**. If the OSHA-8 has been posted at the worksite in accordance with the procedures given in C.4, the CSHO will remove the notice as soon as the imminent danger situation has been eliminated or it is determined that a temporary restraining order will not be sought.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter VIII – Fatality and Catastrophe Investigations



Chapter Effective: February 2000
Revision 17: 03/12/2020

Table of Contents

A. General

B. Action

1. Pre-investigation Activities
2. Investigation Procedures

C. Reports

1. Notification of Division Management

D. Special Situations

1. Preemption
2. Use of Expert Assistance
3. Rescue Operations
4. Public Information Policy
5. Additional Media Policy Regarding Significant Events
6. Terrorist/Criminal Activity
7. Natural/Manmade Disaster Recovery Operations

Chapter VIII

Fatality and Catastrophe Investigations

A. **General**.

1. Policy. Job-related fatalities, catastrophes, and significant events, however reported, will be investigated as a high priority as defined in Chapter II.E.1- Inspection Priorities. All fatalities, catastrophes and significant event inspections shall be opened within one (1) working day of the Occupational Safety and Health (OSH) Division's notification (or awareness of an incident).The division has also established a goal for the issuance of citations to be issued within 90 calendar days from the opening conference date.

2. Definitions. The following definitions apply for purposes of this chapter:

   a. Fatality. An employee death resulting from an employment accident or illness; in general, from an accident or illness caused by or related to a workplace hazard.

   b. Catastrophe. The hospitalization of three or more employees, but no deaths, resulting from an employment accident or illness; in general, from an accident or illness caused by a workplace hazard.

   c. Hospitalization. Formal admission to the in-patient service of a hospital or clinic for care or treatment. It excludes admission for diagnostic testing or observation only. Treatment in an Emergency Room only is not reportable.

   d. Significant Event. An occupationally related incident involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one which presents potential workers injury and generates widespread media interest.

   e. Natural/Man-made Disaster. An event resulting in disruption of the infrastructure of an area of the state. These may be the result of severe weather conditions, such as, but not limited to, hurricanes, floods, and tornadoes, or any event resulting from criminal or terrorist activities, causing disruption of things such as but not limited to electrical power distribution, highway transportation, or water supply. During the recovery operations following a disaster, OSH Division personnel may be mobilized as "state safety and Health advisors" if the Governor or the State Emergency Response Commission requests assistance from NCDOL.

   f. "Non-Work" Related Fatality. An employee death attributed to natural causes that occur during on-the-job work hours. The death is determined to have not been as a result of exposure to any workplace hazard(s).

3. Nonfatality/Noncatastrophe Incidents. The division does not limit its investigation of accidents to only those that result in a fatality or catastrophe. Employers are required to report within 24 hours any work related accident or illness that results in the formal admission of one or more employees to the inpatient service of a hospital or clinic for care or treatment. Additionally, all employers are required to report any work related amputations or loss of an eye within 24 hrs. These non-fatal incident reports will be tracked and reviewed upon intake and some of these could result in inspections and/or

investigations. Also, incidents involving significant publicity may also be investigated and/or inspected. Non-fatality/non-catastrophe incidents reported to OSH involving an employee injury that is assigned for investigation or inspections will be designated as an accident investigation. These reports will be processed as a complaint or referral depending on the source of notification. The OSH Division will not create an OSHA-170 or OSHA-36 for accidents not resulting in a fatality. Any incident/accident inspected by means other than a complaint that does not involve an employee injury, should be classified as a referral. This requires the completion of an OSHA-90 that lists the referral source (the OSH Division, the media, another state, or a federal or local agency, etc.).

4. Fatality/Catastrophe/Significant Event Investigations. Upon initial contact the employer will be informed by the CSHO that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation will be explained; namely, to determine:

   a. The cause of the accident.

   b. Whether a violation of OSH safety or health standards related to the accident occurred.

   c. What effect the standard violation had on the occurrence of the accident.

   d. If OSH standards should be revised to correct the hazardous working condition that led to the accident.

B. **Action**.

1. Preinvestigation Activities. It is essential to the proper conduct of a fatality, catastrophe, or significant event investigation that preparations are carefully made. The division is often the subject of public scrutiny during the course of such investigations, and it is imperative that the inspection be complete and professionally conducted.

   a. Supervisor Responsibilities.

      i. If the initial notification of a fatality, catastrophe, or significant event comes into a field office and appears to require an investigation, the supervisor will ensure the CSHO completes the required Microsoft WORD accident or fatality notification form and forwards the form electronically to the OSH complaint desk (for coordination) within 24 hours. The WORD notification forms are located on the One Stop Shop in the Forms section. The complaint desk will enter the applicable form (i.e. OSHA-36, OSHA-7, OSHA-90 and serious injury/fatality report) in OSHA Express and forward the information via email to the fatality group. In the event of a catastrophe or significant event, the supervisor will also report to the bureau chief.

      ii. If a fatality is determined to be "non-work" related and it appears on the Planning, Statistics and Information Management (PSIM) Bureau's OFIR report, the supervisor should immediately notify the appropriate

bureau chief. The bureau chief should contact PSIM to ensure the "non-work" related fatality has been removed from the OFIR report.

iii. If the 90-day inspection goal is not accomplished for each investigation, the supervisor must provide a written explanation to the bureau chief when the report is submitted. The district supervisor will meet weekly with the bureau chief for inspections that take longer than 90 days to complete.

iv. Communication between supervisor and CSHO is essential, and an effort will be made by the supervisor to give fatality investigations a top priority. The CSHO will meet with the supervisor at least weekly to track the status of the investigation. The weekly meeting will keep both the CSHO and supervisor current on what needs to be done for the investigation. The supervisor will verify that all required contact with the family of victims/NOK has been completed and documented on the case file summary sheet. The weekly meeting also will help to keep those CSHOs who are less experienced on track and provide them with guidance on how to proceed.

v. Field offices will run the OPEN inspection report weekly, and the supervisor will review the report to track the status of fatality investigations. Top priority is obviously important when an initial response is required at the accident site within one working day; however, the top priority status must continue throughout the entire investigation process. Review of the open inspection report should also alert the supervisor as to how work is distributed in the district. If personnel are unavailable, assistance should be requested from other districts.

vi. Supervisors and bureau chiefs will thoroughly review a case before sending it to citation review. Supervisors have the responsibility to make sure all necessary documentation is included in the file. The citation review process will not be a complete review of the casefile, but a time to consider questions of law including making sure the correct citations are written to the correct company and that employer knowledge is established.

b. <u>Compliance Safety and Health Officer (CSHO) Responsibilities</u>.

i. After opening an inspection within one working day, the CSHO will determine as quickly as possible following the initiation of a fatality investigation whether or not the incident was work related. If the CSHO determines that fatality is "non-work" related, the investigation should be discontinued and should be entered as a "000" and classified as a no-inspection (even if an opening conference has been held). The "000" file should contain a brief explanation that indicates why the fatality is considered "non-work" related (e.g., no hazards, medical examiner determined natural causes, etc.)

ii. The case file summary sheet maintained by the CSHO will reflect certain milestones and represent a complete and thorough description of investigation activity. This will include the date of initial contact and all other activity and issues related to the investigation. All delays in securing information, witnesses, etc. should be documented on the case file summary sheet.

iii. Whenever a case file is turned over to the attorney assigned by the section head at the Attorney General's (AG) office or the director's office, the status of the file will be tracked by the CSHO. The transfer of the case file to another person does not eliminate the processing responsibilities assigned to the CSHO or supervisor.

iv. Initial involvement from the AG's office with fatality investigations should reduce the review time by the citation review committee. CSHOs will contact the attorney assigned by the section head at the AG's office soon after opening an investigation and prior to citation review. The purpose of early contact is to begin the process of developing an effective investigation strategy including proper documentation.

v. The CSHO and other OSH personnel will work with the same attorney throughout the inspection process to eliminate the need for duplicate discussion.

vi. The sixth-month statute of limitations in the act must be used when responding to fatality investigations but should be used as a goal. N.C.G.S 95-137 states that the director should "with reasonable promptness issue a citation to the employer." The CSHO should be diligent in following this statutory guidance when responding to all fatality investigations.

c. Preliminary Investigation. The OSH complaint desk or district office, upon notification of an accident involving a fatality, catastrophe, or significant event, will gather as much information as is available prior to notifying the appropriate Supervisor. If possible, this will be done immediately through discussion with the person reporting the accident. If knowledge of the accident is received through the media or sources other than a representative of the employer, and insufficient information is available to conduct an inspection, the employer will be contacted as soon as possible to obtain additional information whenever the director's office believes that such contact will result in a more effective inspection. Such contact will be considered advance notice and the procedures for advance notice will be followed.

d. Investigation Team. An investigation team may be assembled and assigned to complete an investigation. If an investigation team composed of experts in specific disciplines is required, the supervisor will advise the bureau chief. An investigative team leader (ITL) will be designated by the supervisor to coordinate all the investigation activities for the team. The ITL will normally be a supervisor or CSHO II. If resources beyond those available within the district office will be required to compose the team, the bureau chief will designate the

ITL. North Carolina Occupational Safety and Health (OSH) Division personnel will be the first choice as team members. Any available personnel within other bureaus in the division will be called upon as team members when necessary. The team will proceed promptly to the scene and will function as a unit in all phases of the investigation until officially directed to return to normal functions. If a potential criminal violation becomes apparent during the inspection, arrangements should also be made to initiate the criminal investigation process per the guidelines in Chapter III on inspection procedures. If the employer refuses OSH access to the site, an expedited warrant will be obtained in accordance with the FOM. While the warrant is being prepared, the investigation team will continue offsite activities, including gathering information from other agencies, taking photographs, making videos, and interviewing witnesses. If the denial occurs during a weekend or holiday, the director will determine if a warrant is needed prior to the next business day and contact the attorney general's office to obtain the warrant.

e. Investigative Team Leader (ITL) Responsibilities.

i. The ITL will inform the Incident Command System (ICS) that NCDOL is present on-site upon arrival.

ii. The ITL will confer with the Communications Division about establishing a communications officer early in the investigative process. The designated communications officer will maintain contact with the NCDOL Communications Division and other media during the course of the investigation. The ICS public information officer will be utilized whenever possible.

iii. Prior to entering a potentially hazardous area at the incident site, the ITL/CSHO will determine if any hazards may be encountered.

iv. No compliance officer will enter any area where level A (as defined in Appendix B of 1910.120) protection is required without the specific approval of the director.

v. The ITL is responsible for coordinating and directing the investigation. The ITL or designee will report findings to the director on a daily basis or more often if critical information is obtained.

vi. The ITL must be aware of the direction and findings of other investigators as well as those of the team. Thus, the ITL's direct investigative work must necessarily be limited since much time and effort must be spent in effectively managing these coordinating functions.

vii. The ITL must assimilate information from all sources and make prompt decisions regarding the utilization of resources, which are at the leader's disposal and must promptly communicate needs and findings.

viii. The ITL will maintain a concise chronology to include not only events

related directly to the incident but also brief notes on meetings, telephone conversations, video and audio recordings, and decision process, including dates and times.

ix. The ITL should conduct daily planning sessions with the team and other agencies as necessary in order to be apprised of findings as well as to plan strategy and clearly communicate future investigative activities.

x. The ITL or their designee will be the OSH site safety officer; however, the incident commander at the site determines who the safety officer for the site will be.

xi. The ITL will decide, even in the presence of police security, whether it is necessary to obtain a restraining order to place the site under 24 hour a day observation. Assistance of the on scene incident commander will be obtained if possible. Such observations must continue until all necessary physical evidence is obtained. In no case will the ITL/CSHO attempt to exert authority without such an order.

xii. The ITL may need to negotiate a written agreement with the employer and any other controlling authority to ensure that evidence involved with the accident site is not disturbed without the consent of the ITL.

xiii. The ITL will designate the format for the daily journals that are to be maintained by all the CSHOs on the team.

xiv. If the employer at the site will not or cannot provide adequate office space for the team to work, the ITL will secure an office, mobile office, or motel room to serve as the division's site location.

xv. The ITL will submit a written weekly update to NCDOL management (e.g. district supervisor, bureau chief, assistant director, director, and communications director). The update will summarize the team's accomplishments for the week and the plans for the upcoming week.

xvi. The ITL will designate the CSHO(s) responsible for writing and assembling the final case file. Although each team member develops parts of the case file, all the parts must be assembled into a complete product.

xvii. After receiving authorization from the director, the ITL will conduct closing conference(s). The ITL will determine whether separate conferences for employee representatives and other agencies are necessary. The ITL will approve all closing conference attendees.

f. Selection of CSHO. If the supervisor determines that an investigation team effort is not necessary, a CSHO will be selected and sent to the site as soon as possible. The designated CSHO will assume the ITL responsibilities described at B.1.e where applicable.

g. Equipment. Prior to leaving for the accident scene, the ITL or CSHO, as applicable, should select the test equipment and the personal protective equipment necessary to support the investigation.

h. Other Agencies. If other federal, state, or local agencies are responsible for or participating in the investigation, the director will ensure that the CSHO/ITL is fully instructed in the division's relationship with each agency and each agency's area of responsibility.

2. Investigation Procedures. Every reasonable effort will be made to determine the cause of the accident. Otherwise, the same general division policies and inspection procedures, as outlined in Chapter III – Inspection Procedures, are applicable for the investigation of fatalities, catastrophes, and significant events, except as otherwise provided in this chapter. No investigation activity is so important as to place the life or health of the CSHO in danger. During fatality investigations that involve potential for criminal violations, emphasis must be placed on the "willfulness" of the violation.

a. Scope of Inspection. Accident investigations will normally be partial scope inspections of the establishment, focusing on the accident. However, the scope may be expanded in certain circumstances as outlined below.

i. Appropriations Act. Prior to conducting the inspection or considering expanding the inspection scope, CSHOs and supervisors must reference CPL 02-00-051 - Enforcement Exemptions and Limitations under the Appropriations Act and the CPL's current Appendix A to determine any potential limitations to inspection activity per the Appropriations Act.

ii. Programmed Assignment/Targeting Schedules. The supervisor will check the various targeting schedules to ascertain if the employer's site has also been selected for a comprehensive programmed inspection. If the site appears on a targeting schedule, a comprehensive inspection has not been conducted in the past three years, and the employer has not been deferred from programmed planned inspections by CSB or ETTA (Star), a comprehensive inspection should be conducted. The unprogrammed and programmed assignments will both be noted in the narrative.

iii. Records Review. The CSHO will review all injury and illness records required by the OSH Act. Programs associated with the unprogrammed activity will be evaluated fully. A review of the employer's general safety and health program will be conducted as support for penalty reductions as outlined in FOM Chapter VI - Penalties, but programs unrelated to the original assignment will not be evaluated unless the scope of the inspection is expanded to cover those areas.

iv. Items Brought to the Attention of the CSHO. The CSHO has the authority to evaluate the following, without it being considered an expansion of the scope:

A. Any item brought to their attention by any employee or representative of an employee during the course of the inspection. CSHOs will document the details of the alleged hazards and how that information was presented to the CSHO.

B. Any "plain view" hazards, meaning hazards noted by any of the senses (e.g., sight, sound, smell, touch or taste). CSHOs must document in the case file how the hazard was identified. Examples may include the following:

1. Details on the circumstances in which the hazard was observed.

2. Information supplied during an employee interview that alleges a violation.

3. An explanation of how review of the related programs suggests a more widespread problem.

4. How the nature of the unprogrammed activity suggests a more widespread problem.

b. Expanding the Inspection Scope. The courts have ruled that it violates the employer's Fourth Amendment right against unreasonable searches and seizures to conduct a comprehensive inspection without evidence of hazards throughout the workplace. The district supervisor will determine, in conjunction with the CSHO, as to whether the inspection's scope will be further expanded. Where it is not clear that probable cause can be established, the district supervisor will consult with the bureau chief for guidance and for securing a warrant (if necessary). The results of the discussion and reasoning for the final decision should be documented in the inspection narrative. The district supervisor and CSHO should evaluate the following when considering expansion:

i. Observation of Serious "Plain View" Hazards. CSHOs should notify the district supervisor when serious hazards outside the scope of the inspection are observed. Situations where supervisors may consider expanding the scope include, but are not limited to, inspections with more than five serious hazards outside the original inspection scope, inspections with hazards that fall within the top four hazards categories (i.e., falls, struck –by, caught-in/between and electrocutions), or exposures to highly hazardous chemicals.

NOTE: Ordinarily, injury and illness data from the OSHA 300 logs alone will not be sufficient to support a broader inspection. However, OSHA 300 data in conjunction with other specific evidence, including incident report information from OSHA 301 forms, employee statements, or plain view observations, can be used to support an expanded inspection when the particular injuries or illnesses found in the OSHA 300 logs can be tied to a specific violative condition in the workplace.

ii. The Industry is Covered by an Operational Procedure Notice (OPN) or Special Emphasis Program (SEP). In the event that OSHNC has an OPN and/or an SEP that covers an employer or one of the employer's processes for which an accident investigation is being assigned, the CSHO should initially obtain the employer's consent to conduct the inspection related to the accident. After employer consent to conduct the initial inspection is obtained and if the employer has not had a comprehensive inspection in the previous three years, the CSHO should

notify the employer that their work site or process is currently also covered under an OPN or SEP.

The OPN inspection requirements shall be discussed during the opening conference and the CSHO shall attempt to obtain consent from the employer's management representative to expand the scope of the inspection in accordance with the applicable OPN or SEP. The employer's consent to conduct the accident inspection and separately the consent or denial to expand the inspection scope to include areas covered by an OPN or SEP shall be documented in the narrative. If an employer only consents to the accident related inspection, the CSHO should only proceed with the accident related inspection, unless there is also an assignment for a comprehensive programmed inspection.

c. Advising Participants of Extended Scope. Whenever the scope of the inspection will be extended, the CSHO will advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.

d. Abbreviated Opening Conference. In most cases, investigations of fatalities, catastrophes, and significant events require that the CSHO get to the location of the alleged hazard as promptly as possible. Therefore, the CSHO will reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit and the request for an escort by employee and employer representatives. The CSHO will inform the employer that a records review will be conducted as soon as practicable after inspection of the accident. In addition, a more extensive discussion of other opening conference topics will be conducted before the inspection is closed.

e. Physical Evidence. For many accidents, there is often physical evidence that, with the proper testing and study, gives information about the cause of the incident. This might include soil samples, fasteners, ropes, electrical cords, damaged equipment, etc. If at all possible, the CSHO should claim the evidence for the investigation file.

i. It is very important that chain of custody be established. Using the Receipt of Evidence/Property Form, the CSHO will provide the owner with a receipt in exchange for the item. A copy of this form will be included in the case file. The evidence must be properly secured (e.g., locked in a limited access area) during the entire time it is within the possession of the division.

ii. The supervisor and bureau chief will be involved with any contracting of destructive and non-destructive testing. If other concerned parties (e.g. insurance companies) are interested in test results, effort will be made to coordinate testing and study.

iii. Physical evidence can be disposed of when a case is closed, the final order entered and the time to file an appeal has expired per the NCDOL Compliance Bureau, Safety and Health, East and West and ASH Bureau

records Retention and Disposition Schedule agreement with the NC Department of Cultural Resources, Office of Archives and History, Division of Archives and Records. The proper method of disposal is to either return all pieces of physical evidence to the original owner or, in the case of soil samples, discard the items in a proper manner. Information on disposal will be entered on the Receipt of Evidence/Property Form and Case File Summary.

f. Tracking. CSHOs have the responsibility to track case files using the Case File Summary to reflect certain milestones and represent a complete and thorough description of investigation activity. This should include the date of the initial contact and all other activity and issues related to the investigation. Also, all delays in securing information, witnesses, etc. could be documented on the case file summary sheet. The CSHOs will meet with the supervisors at least weekly to track the status of the investigation.

g. Review Process. For all significant cases the CSHO will follow the procedures outlined in APN 16. Contact will be made with the attorney assigned by the section head at the AG's office as early as possible, and at least before citation review to discuss citations that may require legal interpretation. The supervisor will thoroughly review all significant cases to ensure that all appropriate information is included in the case file before submitting it to the bureau chief for review and approval. Upon review and approval of the case file the bureau chief will forward the draft citations, OSHA-1, narrative, OSHA-1B's and other pertinent documents to the assistant director's office.

h. Medical Examiner's Reports. Medical Examiner's (ME) reports are not needed in all accident investigations, and in most cases, securing a report should not delay the fatality investigation. Typical accident investigations that might require a ME report include, but not limited to, those involving chemical exposures, electrocutions, and heat-related illnesses.

i. Families of Fatality Victims/Next of Kin. Family members of employees involved in fatal occupational accidents or illnesses will be contacted at an early point in the investigation and given an opportunity to discuss the circumstances of the accident or illness. All contact with the victim's family will be documented by the CSHO on the Case File Summary to include the type of contact (telephone, personal interviews, written correspondence via letter or email, etc.). Copies of all letters and correspondence (i.e.; emails) with the victim's family will be included in the case file.

Note: Contact with family members requires special tact and good judgment on the part of the CSHO. In some situations, these procedures should not be followed to the letter; e.g., in some small businesses, the employer, owner, or supervisor may be a relative of the victim. In such circumstances, such steps as issuance of the form letter without some editing may not be appropriate.

i. The CSHO will prepare and send an information letter to the family member or person listed as the emergency contact as indicated on the

victims' employment records within 5 working days of the time their identities have been established. The minimum contents of this initial contact letter will be as follows:

A. The purpose and scope of the division's investigation.

B. A brief outline of the civil enforcement process, including standards, citations, and penalty system.

C. A request for information relevant to the investigation. This request will include an offer to meet personally with appropriate persons to discuss any information they may have to offer.

D. A statement offering OSH's assistance throughout the investigation.

ii. If the family member or contact person does not respond to the information letter, once copies of the citations or results of the inspection have been mailed to them, no further contact need be attempted.

iii. The CSHO, when taking a statement pursuant to this policy, will explain that the interview will be kept confidential to the extent allowed by law. The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.

iv. Follow-up contact will be maintained with a key family member or other contact person, when requested, so that the survivors can be kept up-to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested, by the family member. Within 5 working days of receiving verification that the company received the citations or in compliance letter, the victim's family members will be provided a letter and a copy of all citations issued or an in compliance letter explaining the results of the accident investigation. The district supervisor will issue these letters.

Note: All next-of-kin letters referenced in this section are located on OSHA Express. CSHO's & supervisors will use the appropriate letter provided and will not draft their own versions of these letters except for the required inspection specific information and as noted in B.2.g. Examples of the next-of-kin letters are located in the FORMS folder in the FIS.

v. Subsequent settlement agreements, OSH Review Commission decisions, or any other file documents may be provided by the PSIM Bureau upon written request from the next-of-kin. If the NCDOL Communications Division or PSIM Bureau requests citations from a case file for release to the public or the media and the next of kin has not received the citations or the results of the inspection, the CSHO will immediately attempt to contact the next-of-kin after the citations have been confirmed as

delivered to the employer. If the next-of-kin cannot be contacted, the CSHO will contact the next-of-kin ombudsman to provide information related to the request. See also Paragraph D.4.d. below.

vi. All OSH staff is cautioned, when discussing the release of information with the family, not to mislead them about the speed with which they can obtain a copy of disclosed file information from the Planning, Statistics and Information Management (PSIM) Bureau prior to closing the case file. Staff is further cautioned that the employer's rights must be protected. There will be no premature release of facts or findings during any meeting with non-OSH personnel, before the investigation and subsequent litigation is completed.

vii. If the victim's family members need additional information or assistance, they will be referred to the next-of-kin ombudsman in the director's office. If they would like an expunged copy of the case file, they may request it in writing from the PSIM Bureau. (See B.2.g.iv. above.).

j. Non-fatal Accident Victims/Next of Kin. Upon request, the OSH Division will provide victims of non-fatal accidents or their next-of-kin with an investigation explanation letter and a copy of all citations issued as a result of any related OSH inspection. Also upon request, the CSHO will send a letter explaining the results of the accident investigation if no citations were issued. Standard letters are located within the electronic management system.

Upon written request from the victim or their next-of-kin, the PSIM Bureau will release subsequent inspection related settlement agreements, OSH Review Commission decisions or other requested case file documents per disclosure procedures referenced in FOM Chapter XIII.

k. Criminal Willful. NCGS 95-139 provides criminal penalties for an employer who is convicted of having willfully violated the Act when that violation caused the death of an employee. In an investigation of this type, therefore, the nature of the evidence available is of paramount importance. There will be close liaison between division employees and the attorney assigned by the Section Head at the AG's Office in any finding that might involve a violation of NCGS 95-139. Appropriate staff with criminal investigation training will be assigned at an early stage to assist in developing the case. Note that not all fatalities where the proximate cause conditions receive willful citations will be presented to or pursued by the community district attorney.

l. NC Industrial Commission Fraud Investigations Unit of the Insurance Compliance and Fraud Investigation Section (FIU). N.C. General Statute 95-136(e)(1) permits the commissioner of labor to share the names and statements of witnesses and complainants to other public officials for the performance of their public duties. In cooperation with the N.C. Industrial Commission, a determination has been made for the OSH Division to share some accident/fatality case related information. Fatality and accident witnesses interviewed by CSHOs will be informed that if an FIU criminal investigator

requests their contact information from OSH, it will be provided. If a criminal investigator from FIU contacts a CSHO or supervisor and requests accident or fatality associated witness contact information (phone number, address, etc.), the information may be provided verbally (information will not be transmitted to the FIU investigator via fax, email, mail, etc.). Witness contact information should only be shared verbally with FIU after the CSHO has conducted their initial interviews of all pertinent witnesses. Written case file documentation and/or copies of witness statements will not be provided to the FIU investigator by the CSHO or supervisor. Arrangements may be made to allow the FIU investigator to view case file related materials, but copies will not be provided. The FIU must forward a written request to PSIM to obtain any documents from a case file. The FIU investigator should include any OSH information obtained from PSIM in their criminal investigation files. This information should be protected from disclosure by FIU under the Public Records Act pursuant to N.C. General Statute 95-132.1.4.

C. **Reports.**

1. Notification of Division Management. OSH Division management should be notified of all fatalities, catastrophes, and significant events as soon after the occurrence as possible.

   a. Major Events. Fatalities, catastrophes, and significant events will be reported to the complaint desk by telephone and by email using the procedures set forth in this section. They will compile the information and forward it to the OSH managers and the fatality group.

   b. Pertinent information. It is important that the OSH Division management receive, as soon as possible, all pertinent information that can be obtained from newspapers or other sources. All the pertinent facts may not be available at the time of the initial telephone call. As more facts become available, they should be relayed to the complaint desk in subsequent email messages. Where the initial notification comes into a field office, the district supervisor and CSHO are responsible for contacting the complaint desk within 24 hours to provide pertinent data to facilitate notification to the fatality group.

   c. Fatality Information to be provided to the fatality group. First reports and subsequent follow-up notices should provide as much of the following information as possible:

      i. Employer name and address
      ii. Event address
      iii. Number of employees at establishment
      iv. SIC/NAICS code and type of business (if construction, indicate commercial or residential)
      v. City and county codes
      vi. Date and time of accident
      vii. Number of fatalities
      viii. Name of each deceased
      ix. Gender of each deceased
      x. Race of each deceased

xi. Age of each deceased
xii Date of birth of each deceased
xiii. Type of event (e.g., fire, explosion, building collapse, etc.)
xiv. Event description
xv. Inspection scheduled? Y or N
xvi. Field office assigned
xvii. Supervisor assigned
xviii. Number of persons hospitalized
xix. Number of persons still missing
xx. When the CSHO assigned is expected to arrive at the scene
xxi. Identify who is in charge at scene (if immediately known)
xxii. Name, address and relationship of next of kin when fatality is involved
xxiii Point of contact for further information

d. Accident/Fatality Information to be provided to the FIU. The PSIM Bureau will provide the FIU with a redacted copy of the information provided to the fatality group above. The information provided to FIU will also include an OSH supervisor's name and phone number. The supervisor and/or assigned CSHO are permitted to provide an FIU criminal investigator the information described in Paragraph B.2.i of this chapter.

D. **Special Situations.**

1. Preemption. There may be situations where it is not clear whether division authority to investigate fatalities, catastrophes, or significant events has been preempted. In such cases the division's general inspection procedures will be observed with the following special considerations:

a. General. If it is reasonably certain that division coverage has not been preempted, the director's office will start the investigation at once and not let potential NCGS 95-128 problems interfere with either notification or investigation. Where there is an active incident command structure in place at the event site, DOL personnel will follow the incident command structure. The lead CSHO (or ITL) will report to the incident commander and make every effort to become a part of the unified incident command structure.

i. If there appears to be a preemption problem at the local level, all pertinent information will be relayed to the director's office, along with additional facts as they become available. A clear interpretation will be provided as soon as possible.

ii. Where prior determinations have been made that division authority has been preempted, such as certain mining or maritime accidents, no investigation will be conducted.

iii. If division jurisdiction has been preempted only partially, the investigation will be conducted as usual; and all apparent violations will be noted, including those for which jurisdiction has been preempted. A referral will be made to the local office of the appropriate agency for such violations as soon as practicable.

b. Agency Cooperation. The OSH Division cannot abrogate its responsibility in favor of another agency, but every effort will be made as quickly as possible by the ITL to exchange information and to arrange for control of the accident site. If other agencies will be involved and are on site, the CSHO/ITL will work with the other agencies as closely as possible to:

i. Obtain all available information concerning the fatality, catastrophe, or significant event.

ii. Assist each other in inspection of the accident site.

2. Use of Expert Assistance. The decision as to the need for experts to assist in the conduct of the investigation should be made as soon as possible after the CSHO/ITL has arrived on site. That decision will be made by the bureau chief in consultation with the director's office upon the recommendation of the CSHO/ITL.

a. Choice of Experts. OSH Division personnel will be the first choice as team members. Any available personnel within other bureaus in the division will be called upon as team members when necessary.

i. If an expert from another district office is required, the bureau chief will coordinate with the supervisor to make the necessary arrangements.

ii. Outside experts will generally be selected only when no qualified person is available within the division.

b. Private Consultants. In general, a consultant or "outside expert" is a person from the private sector paid a fee for special expertise. Procedures for identifying and obtaining the services of a consultant will be established by the director's office.

c. Legal Advice. The advice of an attorney may be necessary at a very early stage of the investigation. The director's office will contact the department's general counsel if assistance is required.

3. Rescue Operations. OSH Division personnel do not have the authority to direct rescue operations or serve as the incident commander. Rescue operations are the responsibility of the Incident Commander and/or the employer. The presence of OSH Division personnel should not hinder or complicate rescue or emergency response activities. Changes in the accident scene may be necessary to complete the rescue operations. The CSHO will carefully document changes made during the rescue operations. The division does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.

a. Consultation. The division is available for consultation on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent division personnel at the scene, should be given freely, if requested.

b. Rescue Operations. If the CSHO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the CSHO believes other, less hazardous procedures are more desirable, the employer will be advised of this belief. The employer will be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.

c. Application of Standards. If the employer performs rescue work, OSH standards are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm considering the urgency in a particular rescue operation.

d. Emergency Situations. Emergencies created by fatalities, catastrophes, or significant events generally necessitate immediate rescue work, firefighting, etc.; and any loss of time may increase injuries and/or fatalities. OSH will maintain an advisory role when assistance is requested in the aftermath of any natural disaster. However, any "imminent danger" situations will be addressed immediately in accordance with FOM Chapter VII, Imminent Danger. The OSH Division does not intend to engage in any activities that would have the effect of impeding emergency response. Therefore, when non-standard equipment; e.g., tractors, bulldozers, etc., without rollover protection, is available for use in an emergency situation, the division may permit its use without citing the employer rather than cause a delay waiting for equipment which meets OSH standards. The use of such equipment by private employers will be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work will warrant the issuance of citations when appropriate.

4. Public Information Policy. There are two aspects of media coverage that may be pertinent following a fatality, catastrophe or significant event: 1) providing information to the media and 2) obtaining information from the media.

a. It is reasonable to expect that reporters from radio, TV and newspapers will make every effort to obtain all available information relative to an emergency situation.

b. The NCDOL Communications Division will normally handle responses to media inquiries, including those relating to fatality, catastrophe, and significant event investigations.

c. Although the Communications Division will normally be the media contact, any OSH Division compliance officer or OSH Division management representative may make the following statements to the media:

i. The OSH Division is investigating or is on the way to the scene of the event; and,

ii. The OSH Division's purpose in investigating is to determine the cause of the incident and to determine whether any standards have been violated;

d. If the Communications Division or the PSIM Bureau requests citations from a case file prior to receiving verification that the employer has received the citations, as soon as the report is completed and approved the supervisor needs to immediately contact the employer via phone, either fax or hand deliver copies of the citations, and explain that we have received a request for a copy of the citations. As soon as the citations are confirmed received by the employer, copies may be faxed to the Communications Division or the PSIM Bureau (there should be no delay). If citations were faxed to the employer to expedite delivery, then the supervisor should also ensure that a hard copy is sent through the mail. If the NCDOL Communications Division or the PSIM Bureau requests citations from a case file for release to the public or the media, the CSHO will immediately attempt to contact the next-of-kin after the citations have been delivered to the employer. If the next-of-kin cannot be contacted, the CSHO will contact the next-of-kin ombudsman to provide information related to the request.

e. After citations, if any, have been received by the employer, the NCDOL may provide copies of those citations to third parties, upon request. Any NCDOL management representative may release the citations, after they are received by the employer. The Communications Division should be notified of all third party requests for citations. All other release of case file information must be processed by PSIM in accordance with OSH disclosure policies.

f. Names of members of the investigation team will not be given to the media.

5. Additional Media Policy Regarding Significant Events. To better ensure that only appropriate information is released to the media and that the investigation integrity is not compromised, only the Communications Division, the OSH Division director, OSH Division assistant director or their designee will discuss the situation with reporters, following the occurrence of a significant event. Where there is an active Incident Command structure in place at the event site, NCDOL personnel will follow the Incident Command structure, including coordinating any release of information with the Incident Commander.

a. If reporters call or contact employees within the NCDOL regarding a significant event, they should be directed to the director, assistant director or their designee. No attempt will be made to answer questions related to the investigative findings, or to identify the individual compliance officers involved in the investigation.

b. The director, assistant director or their designee will make attempts to get to the significant event scene in as timely a manner as possible.

c. The director, assistant director or their designee will be available for media inquiries. Depending on the number of inquiries, a press conference may be held at site of the event.

6. Terrorist/Criminal Activity. If terrorist or criminal activity is suspected, the director will make every effort to ensure the security of division personnel. The director will contact the State Bureau of Investigation or local law enforcement officials as soon as possible.

7. Natural/Manmade Disaster Recovery Operations. North Carolina General Statute 166A establishes the authority and responsibilities of the governor, state agencies, and local government for emergency management in North Carolina. The State Emergency Management Plan (SEMP) provides guidance for the organization, preparation and commitment of NCDOL resources in support of the governor's preparation for response and recovery from all significant hazards and disasters affecting North Carolina. In the event of a natural/manmade disaster, a state of emergency may be declared. At the governor's request, the commissioner of labor has the authority to cease all compliance activity in the affected areas. NCDOL may then be called upon to provide assistance to the state emergency response team (SERT) in the form of state safety and health advisors. OSH activities in non-affected counties will continue as normal. Division personnel will assist the state recovery effort in the field or at the State Emergency Operations Center, as needed. Division personnel will refer to the SEMP for responsibilities and assignments. The SEMP is located on the One Stop Shop under NC OSH Resources, Homeland Security.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter IX – Complaints, Referrals and Accidents

NCDOL
NC DEPARTMENT OF LABOR
LUKE FARLEY, COMMISSIONER

Chapter Effective: February 2000
Revision 21: 03/12/2020

Table of Contents

A. Complaints.

1. General.
2. Definitions.
3. Receiving Complaints.
4. Evaluating Complaints.
5. Information Needed for Complaint Evaluation.
6. Responding to Complaints (Imminent Danger).
7. Responding to Formal Complaints.
8. Responding to Non-formal Complaints.
9. Scope of Inspections.
10. Procedures.
11. Transferring Complaints to Another Entity.
12. Handling Discrimination Complaints.
13. Notices of Alleged Safety and Health Hazards from Federal Employees.
14. Dates Required for Complaint Action.
15. Special Complaints.

B. Referrals.

1. General.
2. Definitions.
3. Procedures.

C. Accidents.

D. Medical Records.

Appendix IX-A: Questions for Complaint Evaluations

Appendix IX-B: Second Hand Tobacco Smoke Complaint

Appendix IX-C: Workplace Violence Complaints

Appendix IX-D: Mold and Mildew Complaints

Appendix IX-E : Heat Stress Related Complaints

Chapter IX

Complaints, Referrals and Accidents

A. **Complaints**.

1. General. The discussion of complaints in this chapter primarily deals with receiving and processing complaints prior to an inspection. Some information regarding inspection activity is given, however the majority of the general inspection procedures are contained in FOM Chapter III, Inspection Procedures. Complaints both oral and written normally should be received by a compliance safety and health officer (CSHO) at the complaint desk. The CSHO will process the complaint and will assign it, no later than the next working day after receipt, to the appropriate district supervisor based on the location of the employer and whether the hazards are safety or health.

   a. The Division's Response. The agency's response to a complaint may take a variety of forms, from an onsite inspection to investigation by letter, phone, or fax, depending upon the formality of the complaint, the seriousness of the alleged hazard and the response of the employer to complaint items.

   b. Complainant Identity. The identity of formal and nonformal complainants will be kept confidential, pursuant to NCGS 95-136(d)(1).

2. Definitions. The following definitions apply in this chapter:

   a. Complaint. A complaint is a notice of a safety or health hazard that threatens physical harm to employees or a violation of the act believed to exist in a workplace. The complaint can be filed by an individual who was an employee at the time the complaint was filed, an individual who was a representative of employees at the time the complaint was filed, or any other non-referral source, to the commissioner or his authorized representative. (Referral sources are listed in paragraph B.2.b.)

      i. To constitute a valid complaint the notice must allege that a hazard exists or could recur in the workplace or that the act (meaning a standard, regulation, or general duty clause) is violated.

         A. If the notice is so vague and unsubstantiated that the complaint desk or a CSHO is unable to make a reasonable judgment as to the existence of the alleged workplace hazard that threatens physical harm, there is no valid complaint. In such a case, however, every reasonable attempt should be made to contact the person giving the notice to obtain more specific information.

         B. If, as a result of a recent inspection or on the basis of other knowledge of the worksite, it has been determined that the hazard which is the subject of the notice is not present; e.g., it has already been corrected, such a notice is not a valid complaint.

      ii. The workplace must be one within the division's jurisdiction. For example, a notice may involve mine conditions, a federal worksite, wage and hour, or discrimination issues. These are not

within the jurisdiction of the division. In such a circumstance the notice is not a valid Occupational Safety and Health Division (OSH) complaint. Such written notices will be promptly transferred to the appropriate agency. If this notice is initially received by phone, the complainant will be asked to call the agency having jurisdiction directly especially in a case under federal OSHA's jurisdiction. If the complaint has already been entered into the state system before the jurisdiction issue arises, the complaint will be closed after being transferred to the appropriate agency.

b. Employee. For purposes of submitting a complaint, an employee is identified by using the following:

i. An employee of the employer about whose establishment the complaint is being made.

ii. An employee of another employer if that employee is working at or near some other employer's workplace and is exposed to hazards of that workplace.

Note: Former employees are not usually considered employees for purposes of submitting a formal complaint, unless the employee alleges firing due to exercising rights under the act as described in paragraph A.3.e – Discrimination Complaint.

iii. Prisoners who are not on work release are not employees within the meaning of the act.

iv. Volunteers who receive no monetary or other compensation are not considered to be employees. However, volunteers working at an establishment, such as volunteer firefighters and paramedics, may submit a complaint for hazardous conditions affecting employees of the establishment.

c. Representative of Employees. For purposes of submitting a complaint, a representative of employees is any of the following:

i. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization;

ii. An attorney or physician acting for an employee;

iii. Any other person acting in a bona fide representative capacity such as members of the clergy, social workers and a member of the employee's immediate family (e.g., spouse, parent, or child) or an elected official. In this situation, a complainant purporting to act as a representative of an employee is presumed to be so acting unless the CSHO obtains information that the complaint was not submitted with the knowledge of or on behalf of the employee. The affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

d. Formal Complaint. To meet the formality requirements outlined in NCGS 95-136(d)(1) a complaint will:

i. Be reduced to writing (either on a complaint form or in a letter);

ii. Allege that an imminent danger, a violation of the act, or a violation of an OSHA standard exposing employees to physical

harm (e.g., a hazard covered by a standard or by the general duty clause) exists in the workplace;

iii. Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous and, if uncommon, why it is hazardous; and

iv. Be signed by at least one employee or employee representative.

v. The following are examples of deficiencies that would result in the failure of an apparent formal complaint to meet the requirements of the definition:

A. A thorough evaluation of the complaint does not establish reasonable grounds to believe that the alleged violation can be classified as an imminent danger or that the alleged hazard is covered by a standard or, in the case of an alleged serious condition, by the general duty clause (NCGS 95-129(1)).

B. The complaint concerns a workplace condition that has no direct relationship to safety or health and does not threaten physical harm; e.g., a violation of a recordkeeping or other regulation.

C. The complaint alleges a hazard that violates a standard but describes no actual workplace conditions and gives no particulars that would warrant a proper evaluation of the hazard. In such a case the district supervisor or assigned CSHO should make a reasonable attempt to obtain such information.

e. Non-formal Complaint. Any complaint alleging safety or health violations that does not meet any or all of the formality requirements identified in paragraph A.2.d.v. and does not come from one of the sources identified under referral is a non-formal complaint and is to be handled in accordance with the procedures in paragraph A.8.

i. Examples. Other examples of such complaints include the following:

A. Oral complaints filed by employees.

B. Unsigned written complaints filed by employees.

C. Written and oral complaints filed by non-employees (persons or groups other than employees or their representatives).

D. Complaints of hazards not covered by a standard or by the general duty clause (e.g., secondhand tobacco smoke See Appendix IX-B for more information on this issue.)

E. Complaints of violations of regulations, such as recordkeeping, (rather than standards).

ii. Referrals from Other Agencies. Reports from sources listed in B.2.b, however, are referrals and are to be handled in accordance with the referral procedures in this chapter.

f. Complaint Inspection. A complaint inspection is an inspection that is initiated as a result of a complaint and is conducted by a CSHO at the employer's worksite.

g. Complaint Investigation. A complaint investigation is conducted for other complaints and does not include an onsite inspection of the workplace. An investigation differs from an inspection in that in an investigation, the OSH Division advises the employer of the alleged hazards by telephone, fax, email, or by letter if necessary. The employer is required to provide a written response by fax, email or letter. The OSH Division will subsequently provide a written response of the disposition of the complaint to the complainant.

h. Electronic Complaint. A complaint submitted via federal OSHA's public website, NCDOL's website or direct email to the complaint desk. The complaint desk manages an email inbox and processes electronic complaints according to internal processing procedures. The complaint desk inbox is monitored daily and every incoming complaint is reviewed for jurisdiction.

3. Receiving Complaints. An incoming notice of hazards or alleged violations will first be referred to a designated CSHO at the complaint desk. The CSHO will obtain all available information from the person reporting the hazard or alleged violation. The notice will then be forwarded to the appropriate district supervisor to complete the evaluation. If the complaint is initially received in the district office, the information will be forwarded to the complaint desk for processing. The bureau chief must approve deviation from the procedures in this chapter.

a. Employee Rights. When an oral notice is received from an employee or employee representative, that person making the complaint will be informed of the right to file a formal complaint in writing under NCGS 95-136 and of the right, as a matter of law and division policy, to have the complainant's identity held confidential, regardless of the formality of the complaint.

b. Workplace Inspections. The person giving notice will be informed that formal complaints that allege violations of a safety or health standard that could result in physical harm to employees generally lead to workplace inspections while nonformal complaints usually initially result in letters requesting employers to undertake corrective action. A complaint alleging serious hazards that could immediately cause death or serious physical harm would result in an inspection whether formal or nonformal.

c. Formalizing Oral Complaints. If the employee or employee representative has filed a notice orally and indicates a willingness to formalize the complaint, as reflected on the complaint form, the district supervisor will secure the complainant's signature either by mail or in person. An inspection need not be delayed for a signature if the complaint alleges serious hazards that could cause death or serious physical harm immediately or during the period of time in which attempts are made to secure the signature. The response time on the OS0100 letter to the complainant, who gives them the options of signing the complaint, will be seven (7) working days.

i. If a complainant indicates a willingness to formalize the complaint, the complaint form will be sent out for signature. If

the signed complaint form is not returned within ten working days, the complaint will be treated as nonformal. If a signed complaint is received after ten working days but before the employer has been notified, the complaint is to be considered formal and evaluated.

ii. If a complainant filing orally declines to formalize his complaint, the person receiving the complaint will attempt to obtain the complainant's name, address and telephone number.

d. Electronic Complaints. Where a current employee or an authorized employee representative has provided their name and checked the "This constitutes my electronic signature" box on an electronic complaint, it shall be evaluated to be considered as a formal complaint and processed accordingly. The complainant must provide sufficient contact information (i.e. phone number, email address, mailing address) to allow the OSH Division to verify that they are a current employee or an authorized employee representative for processing a formal complaint. If the complainant is contacted and states that he or she is no longer a current employee or an authorized employee representative, the complaint will be processed as a non-formal complaint. If the complainant does not provide sufficient contact information, or cannot be contacted with the information provided, the complaint shall be processed as a non-formal complaint.

e. Discrimination Complaint. The complainant will be advised of the protection against discrimination afforded by NCGS 95-241 and will be informed of the procedure for filing a discrimination complaint with the Employment Discrimination Bureau (EDB).

i. Safety and/or health complaints filed by former employees who allege that they were fired for exercising their rights under the act will generally be processed as formal complaints. Such complaints will be recorded on a complaint form with a copy referred to the EDB office.

ii. Any discrimination complaint alleging an imminent danger will be handled in accordance with the instructions in paragraph A.6.

4. Evaluating Complaints. A careful exercise of investigatory techniques is necessary for complete evaluation of complaints.

a. Classification. Immediately upon the notification of a hazard or an alleged violation, the complaint desk will make an initial decision as to whether the notice meets the definition of a complaint. The complaint will be classified as non-formal until a signed notice has been received from the complainant.

b. Documentation. The district supervisor will evaluate all complaints, with all evaluation decisions documented in the establishment case file. Complaints will be classified as to their gravity in accordance with procedures contained in FOM Chapter IV, Violations.

c. Both Safety and Health Hazards Alleged. When a complaint alleges safety and/or health hazards, the complaint will be referred to the appropriate district supervisor for evaluation. If the complaint was initiated by letter, an electronic complaint forwarded from OSHA or received from NCDOL's website, or direct email received by the

complaint desk, a copy of the original letter, electronic complaint, or email will be submitted to the district supervisor along with the complaint form. The district supervisor will coordinate the handling of the complaint. District supervisors will maximize the use of cross-trained CSHOs to conduct complaint inspections involving both safety and health issues to assure all hazards included in the complaint are addressed.

d. Response to Person Reporting. Whenever it is determined by the complaint desk intake CSHO that a complaint fails to meet all the requirements indicated in A.2.a, and therefore will not be processed, attempts will be made by the intake CSHO to contact and inform the affected complainant. The person will be informed that they have the right to request further clarification of the decision from a district supervisor or bureau chief and, if still dissatisfied, to appeal this decision to the director's office for an informal review. For complaints alleging unsafe/unhealthful working conditions that do not meet the criteria for a valid complaint, the complaint should be entered into OSHA Express (OE) and marked "No" in line 36 –"Valid?" and a comment entered in the optional information section and/or Notes if needed. For complaints that are not safety or health related or not within the jurisdiction of the OSH Division, or if sufficient information is not available to enter a form into OE (i.e. site address not provided), the intake CSHO will enter a record of the complaint onto the electronic complaint desk "Unprocessed Log" that is maintained on the F: drive. If the complaint desk processes the complaint and the district supervisor subsequently determines that the complaint is not valid, the district supervisor will contact the complainant and explain why the complaint is not considered valid and enter comments in the Notes section of the complaint form.

5. Information Needed for Complaint Evaluation. The complaint form will normally be used to record both formal and non-formal complaints. The complainant should be questioned, when possible, either for additional facts or to verify facts supplied. The evaluator must exercise professional judgment on the basis of the information available to decide whether or not there are reasonable grounds to believe that a violation exists and, if so, how it should be classified.

   a. Taking Complaints. When the complaint desk receives a complaint, by letter, in person, by email or over the telephone, the complaint form will be completed. Particular attention and review should be given to lengthy written complaints to assure that all information relating to workplace hazards is recorded on the complaint form. If the complainant wishes to submit a formal complaint, the person taking the complaint will ask if the complainant is presently an employee or employee representative. If the complaint has been received in writing and has been signed, the complainant should be contacted, if necessary, for response to questions on the complaint form although the form need not be sent for signature.

   b. Additional Information. Additional information is usually needed to improve the quality of the complaints and to aid in determining their priority. Therefore, in completing the complaint form, an attempt will be made to obtain detailed answers to the questions found in Appendix IX-A.

6. Responding to Complaints Alleging Imminent Danger Conditions. Any complaint that constitutes an imminent danger, as defined in FOM Chapter VII

will be inspected regardless of whether or not it meets the formality requirements in paragraph A.2.d. The complaint will be inspected the same day received, where possible, but not later than the employer's next working day after receipt of the complaint.

7. Responding to Formal Complaints. All formal complaints meeting the requirements in paragraph A.2.d. will be scheduled for workplace inspections unless the complainant agrees to allow the complaint to be investigated using nonformal complaint procedures. This method could result in more timely abatement than might be anticipated based on the complaint's likely inspection priority in recognition of the division's limited resources and the severity of the complaint items.

   a. Determination. Upon determination by the district supervisor that a formal complaint will be inspected, the inspection will be scheduled in accordance with the priorities in paragraph A.7.b.

   b. Priorities for Responding by Inspections to Formal Complaints. Inspections resulting from formal complaints will be conducted according to the following priority:

      i. Formal complaints, other than imminent danger, will be given a priority based upon the classification and the gravity of the alleged hazards as defined in FOM Chapter IV, Violations, and FOM Chapter VI, Penalties.

      ii. Formal complaints, where there is an inspection, shall be initiated within 10 working days of the complaint desk receipt of the complaint. Where a complaint makes reference to an accident and/or injury, the accident and/or injury will be investigated as a part of the complaint inspection.

      iii. Formal complaints that are handled through investigation shall be initiated within 4 working days of receipt from the complaint desk. Upon receipt and evaluation of a complaint to be handled through investigation, the district supervisor shall, within 4 working days, prepare a letter to the employer advising them of the complaint. The employer will be asked to investigate the alleged conditions and respond to the division within a specified time no longer than 7 working days. Although the employer must respond within the above-mentioned time frame, the employer may not be able to complete abatement action, but is encouraged to do so. The letter to the employer will be sent by certified mail with return receipt requested or handled via the phone-fix-fax method referenced in paragraph A.8.b. Initiation of investigation includes: phone-fax-fix with accompanying letter, or "OS0175"/Letter to Employer letter mailed to employer/complainant.

      iv. If a complaint inspection is to be conducted after the established priority date, district office personnel should contact the complainant to ensure that the alleged hazards still exist.

8. Responding to Non-formal Complaints. All non-formal complaints will receive a response. The type of response whether letter, telephone call, or inspection may be dictated by the gravity of the specific complaint in question. Prior to responding to the complaint, the district supervisor or the CSHO will contact any

complainant who is an employee or an authorized representative of an employee (as defined in FOM Chapter IX, Section A.2). Information received from a complainant could clarify the complaint items. If the complainant is an employee, contact can also verify that the complainant does not want to sign the complaint form. The district supervisor or CSHO will document contact with the complainant on the Communication Log in OE. If the complainant cannot be reached, the district supervisor or CSHO will include an explanation on the Communication Log. The procedures described below include responses to non-formal complaints designed to ensure correction of hazards identified in the complaint: (A non-formal complaint that has resulted in an inspection will remain non-formal on the complaint form). Names of employees, complainants and/or witnesses will not be used in correspondence or in conversation with the complainant, the employer or their representative. Details of conversations with or witness statements from employees will not be used in correspondence or in conversation with the employer or their representative.

a. Responding by Letter to Non-formal Complaints. Upon receipt and evaluation of a nonformal complaint, the district supervisor, within 4 working days~~,~~ should prepare a letter to the employer advising of the complaint. The employer will be asked to investigate the alleged conditions and respond in writing to the division within a specified time no longer than 7 working days. The employer will also be advised that a copy of their unredacted response will be forwarded to the complainant (as reflected in the OS0175). The employer will be asked to focus on providing documentation on the alleged conditions and not to include any comments or information about the person(s) that the employer believes filed the complaint. Although the employer must respond in writing within the above-mentioned time frame, the employer may not be able to complete abatement action, but is encouraged to do so. The letter to the employer will be sent by certified mail with return receipt requested.

b. Responding by Telephone to Non-formal Complaints. To ensure the timeliest abatement of hazardous conditions, the preferred method is to telephone the employer to notify them that a complaint has been filed. The notification, which should be faxed to the employer, should include the specific allegations contained in the complaint. The employer should be asked to respond in writing to the division within a specified time frame (no longer than 7 working days), and will be informed that action must be taken to address the complaint items. The employer will be advised that a copy of their unredacted response will be forwarded to the complainant (as reflected in the OS0175 letter). The employer will be asked to focus on providing documentation on the alleged conditions and not to include any comments or information about the person(s) that the employer believes filed the complaint. The employer will be encouraged to use the fax machine to respond to the complaint. This "phone, fax, and fix" method could reduce the abatement time in some cases but should be used in consideration of available district resources.

c. Non-formal Complaint Paperwork.

   i. Posting. The employer will be requested to post copies of the division notification referred to in the previous subparagraphs together with all subsequent correspondence dealing with the complaint items, including the employer's response, until such time as the district office closes the case.

ii. Letter to Complainant. Concurrent with the notification to the employer (OS0175 letter*)*, a letter to the complainant *(*OS0120 letter) will be prepared explaining that the employer has been informed of the complaint. It will request the complainant notify the district supervisor if no corrective action has been taken or at least initiated within 7 working days (or less if so indicated in the notification to the employer) or if any adverse or discriminatory action or threats are made against the complainant. A copy of the notification to the employer (OS0175 letter*)* will be included with the letter to the complainant.

iii. Employer Response. All responses received from the employer should be reviewed within 5 working days of receipt and if it appears that appropriate corrective action has been taken or that no hazard is present, the case file will be closed. The complainant will be informed in writing of the investigation results. A copy of the original letter received from the employer will be sent by the district office to the complainant. In circumstances in which providing the actual letter from the employer would be inadvisable, such as inappropriate comment or other information about the complainant in the letter, the district supervisor can contact the employer and ask for an amended response. Otherwise, the district supervisor can prepare a letter with a summary of the employer's response and additional information to send to the complainant. A complainant's request for any other file documents will be processed by the Planning, Statistics, and Information (PSIM) Bureau per the appropriate disclosure procedures. Any written dispute of the employer's response by the complainant must be submitted within 7 working days of the complainant's receipt of the response. It is the responsibility of the complainant to notify the OSH Division of any changes to their address. Disputes received after 7 working days will be discussed with the bureau chief.

iv. Letter to the Employer. For all complaints handled through investigation, a letter should be sent to the employer (OS0165 letter) informing them that the file has been closed.

v. Letter to the Complainant. For all complaints handled through investigation, a letter will be sent to the complainant (OS0130 letter) informing them that the file has been closed, that they can request a copy of the investigation file, and the method of disputing the results of the investigation.

d. Responding by Inspection to Non-formal Complaints. **(A non-formal complaint that has resulted in an inspection will remain non-formal)** When the employer fails to respond or submits an inadequate response within the period specified in the notification or when the complainant informs the division that no corrective action has been taken or the action taken is inadequate, district personnel will contact the employer to determine what further action they plan to take. If no action has been taken and none is planned, or contact cannot be made with the employer, the non-formal complaint will be assigned for inspection pursuant to the priorities in paragraph A.7.b.ii. The district supervisor may also proceed with an inspection of a non-formal complaint if the complaint alleges

serious hazards that could cause immediate death or serious physical harm. Where a complaint makes reference to an accident and/or injury, the accident and/or injury will be investigated as a part of the complaint inspection. If the district supervisor determines that, due to severity, inadequate employer response or other factors, a non-formal complaint will result in an inspection, it should be initiated within 10 working days of the complaint desk's receipt of the complaint (or within 15 working days of past due response date, or within 15 working days of receipt of an inadequate response).

i. Status of Corrective Action. Where an ambiguity exists or where the employer has a correction plan which he has not yet had time to implement fully, district personnel will communicate further, as appropriate, with the employer and/or the complainant to determine what interim protective steps have been taken until the corrective action can be completed and, later, whether the hazard has been adequately corrected. On the basis of information available, the district supervisor will decide whether an inspection is warranted.

ii. Dispute by Complainant. If communication from the complainant disputes the corrective action indicated by the employer, the district supervisor will evaluate the dispute. The employee is not required to put the dispute in writing. The district supervisor may clarify the disputed issues by telephone and discretion is allowed when, in the judgment of the district supervisor, the complaint does not warrant an on-site inspection. In such situations, the OSH Division will notify the complainant that no inspection will be conducted and the reasons for the decision. If the district supervisor decides an inspection is warranted, it should be initiated within 10 working days of receipt of the complaint dispute.

9. Scope of Inspection. Complaint inspections will normally be partial scope inspections, limited to specific hazards listed in the complaint. However, the scope may be expanded in certain circumstances as outlined below.

a. Appropriations Act. Prior to conducting the complaint inspection or considering expanding the inspection scope, CSHOs and supervisors must reference CPL 02-00-051 - Enforcement Exemptions and Limitations under the Appropriations Act and the CPL's current Appendix A to determine any potential limitations to inspection activity per the Appropriations Act.

b. Programmed Assignments/Targeting Schedules. The supervisor will check the various targeting schedules to ascertain if the employer's site has also been selected for a comprehensive programmed inspection. If the site appears on a programmed targeting schedule, a comprehensive inspection has not been conducted in the past three years, and the employer has not been deferred from programmed planned inspections by CSB or ETTA (Star), a comprehensive inspection should be conducted. The unprogrammed and programmed assignments will both be noted in the narrative.

c. Records Review. The CSHO will review all injury and illness records required by the OSH Act. Programs associated with the unprogrammed activity will be evaluated fully. A review of the employer's general

safety and health program will be conducted as support for penalty reductions as outlined in FOM Chapter VI - Penalties, but programs unrelated to the original assignment will not be evaluated unless the scope of the inspection is expanded to cover those areas.

d. Items Brought to the Attention of the CSHO. The CSHO has the authority to evaluate the following, without it being considered an expansion of the scope:

i. Any item brought to their attention by any employee or representative of an employee during the course of the inspection. CSHOs will document the details of the alleged hazards and how that information was presented to the CSHO.

ii. Any "plain view" hazards, meaning hazards noted by any of the senses (e.g., sight, sound, smell, touch or taste). CSHOs must document in the case file how the hazard was identified. Examples may include the following:

A. Details on the circumstances in which the hazard was observed.

B. Information supplied during an employee interview that alleges a violation.

C. An explanation of how review of the related programs suggests a more widespread problem.

D. How the nature of the unprogrammed activity suggests a more widespread problem.

e. Expanding the Inspection Scope. The courts have ruled that it violates the employer's Fourth Amendment right against unreasonable searches and seizures to conduct a comprehensive inspection without evidence of hazards throughout the workplace. The district supervisor will determine, in conjunction with the CSHO, as to whether the inspection's scope will be further expanded. Where it is not clear that probable cause can be established, the district supervisor will consult with the bureau chief for guidance and for securing a warrant (if necessary). The results of the discussion and reasoning for the final decision should be documented in the inspection narrative. The district supervisor and CSHO should evaluate the following when considering expansion:

i. Observation of Serious "Plain View" Hazards. CSHOs should notify the district supervisor when serious hazards outside the scope of the inspection are observed. Situations where supervisors may consider expanding the scope include, but are not limited to, inspections with more than five serious hazards outside the original inspection scope, inspections with hazards that fall within the top four hazards categories (i.e., falls, struck – by, caught-in/between and electrocutions), or exposures to highly hazardous chemicals.

NOTE: Ordinarily, injury and illness data from the OSHA 300 logs alone will not be sufficient to support a broader inspection. However, OSHA 300 data in conjunction with other specific evidence, including incident report information from OSHA 301 forms, employee statements, or plain view observations, can be used to support an expanded inspection when the particular

injuries or illnesses found in the OSHA 300 logs can be tied to a specific violative condition in the workplace.

ii. The Industry is Covered by an Operational Procedure Notice (OPN) or Special Emphasis Program (SEP). In the event that OSHNC has an OPN and/or an SEP that covers an employer or one of the employer's processes for which a complaint inspection is being assigned, the CSHO should initially obtain the employer's consent to conduct the complaint inspection. After employer consent to conduct a complaint inspection is obtained and if the employer has not had a comprehensive inspection in the previous three years, the CSHO should notify the employer that their work site or process is currently also covered under an OPN or SEP.

The OPN inspection requirements shall be discussed during the opening conference and the CSHO shall attempt to obtain consent from the employer's management representative to expand the scope of the complaint inspection in accordance with the applicable OPN or SEP. The employer's consent to conduct the complaint inspection and separately the consent or denial to expand the inspection scope to include areas covered by an OPN or SEP shall be documented in the narrative. If an employer only consents to the complaint related inspection, the CSHO should only proceed with the complaint related inspection, unless there is also an assignment for a comprehensive programmed inspection.

f. Advising Participants of Extended Scope. Whenever the scope of the inspection will be extended, the CSHO will advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.

10. Procedures. Inspection procedures included in Chapter III – Inspection Procedures will be followed in conducting complaint inspections. Particular attention, however, is directed to the following special requirements for complaint investigations:

a. Contact with Complainant. The CSHO will attempt to contact the complainant prior to the inspection. Information from the complainant can enhance the efficiency of the inspection process, and the personal contact can reassure the complainant that appropriate action will result. Where a complaint references an accident and/or injury, the complainant should be asked about the referenced accident and/or injury. If contact is not made with the complainant, an explanation will be included in the case file. Once the complaint has been processed, it can be withdrawn by the complainant with no further action by the division. If the complainant indicates that the complaint items have been abated, this may be confirmed by means other than an inspection.

b. Copy of the Complaint. A copy of the complaint will be given to the employer at the opening conference.

i. In the case of a multi-employer worksite, such as a construction site, a copy of every complaint, including those against subcontractors, will, if possible, be provided to the general

contractor as well as to the employer against whom the complaint has been filed.

ii. A copy of every complaint against the general contractor or against one or more of the subcontractors will be provided, if possible, to each subcontractor whose employees may be exposed to the alleged hazard.

c. Identity of Complainant. NCGS 95-136 requires that names be deleted from the employer's copy of the complaint. If handwritten, the complaint will be typed, and reworded if necessary, so that the identity of the complainant cannot be discerned by the employer. As a matter of general policy, names will be deleted from all complaints.

d. Walk Around Rights. In a complaint inspection, the walk around rights of an employer and an employee representative will be applicable in accordance with the division's general inspection procedures. The employee representative will be chosen according to established division procedures and the complainant will not necessarily be, and probably will not be, the employee representative for walk around purposes.

e. Results of Inspection to Complainant. After the completion of an inspection based on a formal or a non-formal complaint, the complainant will be informed of the results in writing as follows:

i. Each complaint item will be addressed with a reference to a result of the complaint inspection and/or with a sufficiently detailed description of the findings and why they did or did not result in a citation. Following confirmation of delivery of citations to the employer, the complainant will be provided with copies of all citations issued.

ii. The complainant will be told of their right to seek further clarification for the complaint findings from the district supervisor if any questions remain.

iii. Citations may be modified as a result of an informal conference, a settlement agreement, or a decision of the OSH Review Commission or a court. This information is available to the complainant at their request. Any settlement agreement reached as a result of an informal conference is required to be posted by the employer in the workplace for at least 3 days or until all items are abated.

f. Communication to Complainant. Written communications to a complainant will be sent to the home address unless specific instructions have been given that such mail may be sent to the place of employment.

11. Transferring Complaints to Another Entity.

If an entire complaint is transferred to another entity because it does not fall within the jurisdiction of the receiving office, the office transferring the complaint will complete processing as an "Invalid Complaint", complete the transfer action appropriately, and close the complaint.

12. Handling Discrimination Complaints.

Complaints that allege **only** employee discrimination, including those reported by federal employees, should **not** be entered into OE. They should be handled in accordance with paragraph 3.e. Complaints received which, when classified,

allege safety and/or health hazards AND discrimination should be entered in OE with all applicable entries made in "Subject and Severity". All further documentation in OE on the complaint should address both safety and health items. The complaint should then be handled in accordance with FOM procedures. For purposes of reporting, complaints sent to discrimination investigators under these circumstances should not be considered "transferred".

13 Notices of Alleged Safety and Health Hazards from Federal Employees.

Notices of unsafe or unhealthful working conditions filed against federal agencies by federal employees, their representatives, or safety and health committees are to be referred to the appropriate federal area office.

14. Dates Required for Complaint Action.

In order to reconstruct the course of events that occurred and to ensure timely servicing of complaints, it is critical that all complaint action dates are accurately entered into the computer. This allows for reports to be developed listing events in the sequence in which they occurred.

15. Special Complaints.

a. Tuberculosis.

Whenever a complaint form is completed and the complaint alleges the presence of Tuberculosis, complete the complaint form in the normal manner and enter the code "TB" in the "Optional Information" field, using the following format:

Type	ID	Value
N	2	TB

b. Ergonomics.

Whenever a complaint is processed and the applicable case file alleges the presence of an ergonomic hazard, include information in the, "Optional Information" field, regarding the nature of the hazard. Use as many of the codes below as appropriate, separating individual codes by commas with no spaces.

i. Upper Extremity Disorder.

When the complaint alleges a hazard causing upper extremity or cumulative trauma disorder, enter the code **"UED"** using the following format:

Type	ID	Value
N	3	UED

ii. Back Disorder.

When the complaint alleges a hazard causing a back disorder, enter the code **"BACK"** using the following format:

Type	ID	Value
N	3	BACK

iii. Other.

When the complaint alleges an ergonomic hazard not specified above, or when the specific nature of the ergonomic hazards cannot be determined from the narrative of the complaint, enter the code **"OTHER"** using the following format:

Type	ID	Value
N	3	OTHER

c. Silica.

When a complaint alleges silica exposure, enter the code **"SILICA"** in the "Optional Information" field, using the following format:

Type	ID	Value
N	02	SILICA

d. Lead.

When a complaint alleges lead exposure, enter the code **"LEAD"** in the "National Emphasis Program" field, using the following format:

50. National Emphasis Program	
LEAD	Potential Exposure to Lead in All Industries

e. Hexavalent Chromium.

When a complaint alleges hexavalent chromium exposure, enter the code **"CHROME6"** in the "National Emphasis Program" field, using the following format:

50. National Emphasis Program	
CHROME6	Hexavalent Chromium

f. In addition, when a complaint alleges exposures to substances included in the most current revision of Operational Procedure Notice 135, "Special Emphasis for Exposures to Health Hazards", enter the applicable codes in the "Strategic Plan Activity" field. These include exposures to lead, silica, asbestos, isocyanates and hexavalent chromium.

B. **Referrals**. Any incoming or outgoing referrals will be coordinated through the affected district supervisors.

1. General. Referrals will normally be handled in a manner similar to that of complaints, and initially received and processed by the complaint desk, except

for CSHO referrals which should be processed at the district level. The referring CSHO will track the referral to assure that the referred items are satisfied.

2. Definitions. For purposes of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard.

   a. Notices of hazards or alleged violations originated by the sources listed in b. of this section will be considered as referrals except as noted in b.iii. All other notices of hazards will be considered as complaints. Formal and non-formal complaints received by other government agencies and forwarded to the division for action will remain as complaints since they do not originate with the agency or its employees. (See paragraph B.2.b.iv.)

   b. Referrals may originate from the following sources:

      i. CSHO Referrals. Serious hazards will normally be investigated by the CSHO who observes them. On occasion, however, special expertise may be needed to assess the hazard. This may be obtained through the referral process.

         A. Types of Referrals. There are two types of CSHO referrals.

            1. Safety (health to safety or safety to safety).

            2. Health (safety to health or health to health).

         B. Subject of CSHO Referrals. CSHO referrals should be limited to potentially serious hazards observed during an inspection or visible from or in public areas, such as streets, highways or the public areas of business premises. Such observed hazards will be documented on the referral form. Approval to inspect hazards observed in a public area will be secured from the district supervisor. These unprogrammed inspections should be coded as referrals on the inspection form.

         C. Reinspection Referrals. When a serious citation is withdrawn because of incomplete or erroneous inspection information, administrative error that cannot be corrected through an amendment to the citation, or some other legitimate reason, the district supervisor will handle the reinspection of such cases as CSHO referrals whenever there is reason to believe that the violative conditions continue to exist. If a reinspection is not to be conducted, the reasons will be documented in the case file.

         D. Circumstances. There are circumstances when a CSHO referral may be necessary or appropriate, such as the following:

            1. The CSHO lacks the necessary expertise.

            2. The CSHO observing the hazard is already assigned to an inspection of higher priority.

3. The CSHO observes specific evidence of imminent danger or serious hazards at a worksite not programmed for an inspection.

4. Equipment necessary for an inspection is not available at the time.

5. Efficient use of resources requires that a referral be made; e.g., the size of the workplace, the number of employees involved, the length of time likely to be required for an inspection, the extent of hazards observed, etc.

6. The observations occur outside the CSHO's normal working hours.

Note: For inspection classification purposes, if a CSHO lacks the expertise to handle all complaint items, to complete an imminent danger, PSM or fatality/catastrophe investigation or for some other reason requires assistance from another CSHO, such assistance, coordinated through the district supervisor, will be counted as part of the original complaint, imminent danger or fatality/catastrophe and not as a referral. Such assistance will not be counted as a separate inspection unless another discipline is involved (e.g., safety to health or health to safety).

ii. Safety and Health Agency Referrals. This category includes referrals from other department divisions, NIOSH, consultation programs, and discrimination investigators. Referrals from state or local health departments, medical doctors and safety and/or health professionals from other agencies are also included in this category when they involve potentially serious employee exposures directly within the professional expertise of the person making the referral.

Note: For purposes of assigning an inspection priority, referrals from these sources will be considered as equivalent to CSHO referrals, although not counted as such by OIS.

iii. Referrals to and from Other Agencies.

A. Notifications of hazards observed and reported (referred) to the division by other federal, state or local government agencies or their employees; e.g., local building inspectors, fire marshals, etc., are included in this category.

B. Reports by federal employees, their supervisors, or their representatives of unsafe or unhealthful working conditions within their own workplaces and to which they are exposed (as provided for in Executive Order 12196) will be referred to the director who will forward the information to OSHA.

C. The citation review process may identify certain employers who are "found recalcitrant or indifferent to its obligations under the OSH act." The director will refer these employers who have additional worksites outside of the state to the OSHA regional administrator. (See also APN 16).

iv. Media Reports. The designation of the investigation type will be determined by the event, rather than by how the event was reported to the division. Therefore, reports from the media of accidents that have occurred involving serious injury will be investigated using guidelines contained below in paragraph C. ("Reports" will be understood to include news items reported in the media as well as hazards reported directly to the division by media sources. Thus newspaper or magazine articles, photographs or news items reported over radio or television are examples of media reports as well as calls to department offices by reporters).

v. Employer Reports. Similarly, employer reports of accidents, other than fatalities and catastrophes, or incidents, whether required by standard or regulation or not, will be considered for accident investigations as deemed appropriate by the district supervisor. Guidelines contained below in paragraph C will be followed.

c. Referral inspections are unprogrammed inspections and, except for complaints received from discrimination personnel, will be recorded using the referral form.

3. Procedures. Each referral will be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints given in paragraphs A.4. and A.5, to determine whether there are reasonable grounds to believe that a safety or health hazard exists. The hazard will be classified as imminent danger, serious or nonserious. Referrals to be inspected will be assigned a priority by compliance personnel according to the severity of the alleged hazard.

a. When the CSHO observes an imminent danger situation under the circumstances outlined in paragraph B.2.b.i.D.3, a district supervisor or bureau chief should be contacted immediately. If immediate contact is not possible, an inspection will be conducted without delay and the district supervisor informed as soon as possible after the inspection has been initiated.

b. If, after evaluation, compliance personnel determine that a CSHO referral or a referral from a safety and health agency should be classified as nonserious, such a referral will be handled by letter or telephone in accordance with paragraph A.8.

c. Other government agency referrals alleging serious violations should be handled by an inspection. Referrals alleging nonserious violations will be processed according to the instructions for non-formal complaints in paragraph A.8.

d. For all referrals handled by letter or telephone, the following procedures apply:

i. The employer will be notified of the hazards alleged in the referral whenever a name, address, or phone number is given in the referral or is obtainable through reasonable effort. Letters similar to those used for complaints can be used for referrals.

ii. If no employer name, address or phone number is obtainable, the referring party will be notified by telephone of this fact and will be informed that the division can take no action without being supplied with additional information.

iii. The procedures in paragraph A.8. are applicable when a referral is handled by letter or telephone.

e. In the case of media reports, reasonable efforts to corroborate the information contained in the report should be made whenever necessary. Specifically, the complaint desk should attempt to determine if the incident is related to an apparent violation of a standard. This may be done by carefully reviewing the facts as reported by the media, or when indicated by the particular circumstances, by contacting a third party such as the police, the ambulance service, or in rare cases, by calling the employer. After a review of the facts the district supervisor may schedule an inspection.

f. Employer reports of incidents involving chemical spills or other releases to which employees may have been exposed should be scheduled for an inspection within five working days if the potential exposure is determined to have been sufficiently serious to warrant an inspection. Otherwise, such spill incidents will be handled by letter.

g. A letter transmitting the investigation results will be sent to any referring safety and health agency or other government agency whenever a referral investigation is conducted. Results will also be communicated to a referring CSHO.

h. The scope of referral inspections will be decided in accordance with the guidelines for complaints in paragraph A.9. At a minimum, the scope of referral inspections will include a complete investigation of the circumstances of the referral.

i. A file will be set up for each referral as it is received. This file will contain a copy of the completed referral form, all documentation supporting the evaluation and classification of the referral and subsequent action documents. If an inspection is eventually performed, all of the material will be absorbed into the inspection case file.

C. **Accidents**.

1. For accidents involving fatality/catastrophe investigations or for guidance associated with processing requests from the NC Industrial Commission's Fraud Investigations Unit of the Insurance Compliance and Fraud Investigation Section (FIU) for information pertaining to accidents, see FOM Chapter VIII, Fatality and Catastrophe Investigations.

a. Scope of Inspection. Accident investigations will normally be partial scope inspections of the establishment, focusing on the accident. However, the scope may be expanded in certain circumstances as outlined below.

i. Appropriations Act. Prior to conducting the inspection or considering expanding the inspection scope, CSHOs and supervisors must reference CPL 02-00-051 - Enforcement Exemptions and Limitations under the Appropriations Act and the CPL's current Appendix A to determine any potential limitations to inspection activity per the Appropriations Act.

ii. Programmed Assignment Lists. The supervisor will check the programmed assignment lists to ascertain if the employer's site has also been selected for a comprehensive programmed inspection. If the site appears on a programmed inspection list, a comprehensive inspection has not been conducted in the past three years, and the employer has not been deferred from programmed planned inspections by CSB or ETTA (Star), a comprehensive inspection should be conducted. The unprogrammed and programmed assignments will both be noted in the narrative.

iii. Records Review. The CSHO will review all injury and illness records required by the OSH Act. Programs associated with the unprogrammed activity will be evaluated fully. A review of the employer's general safety and health program will be conducted as support for penalty reductions as outlined in FOM Chapter VI - Penalties, but programs unrelated to the original assignment will not be evaluated unless the scope of the inspection is expanded to cover those areas.

iv. Items Brought to the Attention of the CSHO. The CSHO has the authority to evaluate the following, without it being considered an expansion of the scope:

A. Any item brought to their attention by any employee or representative of an employee during the course of the inspection. CSHOs will document the details of the alleged hazards and how that information was presented to the CSHO.

B. Any "plain view" hazards, meaning hazards noted by any of the senses (e.g., sight, sound, smell, touch or taste). CSHOs must document in the case file how the hazard was identified. Examples may include the following:

1. Details on the circumstances in which the hazard was observed.

2. Information supplied during an employee interview that alleges a violation.

3. An explanation of how review of the related programs suggests a more widespread problem.

4. How the nature of the unprogrammed activity suggests a more widespread problem.

b. Expanding the Inspection Scope. The courts have ruled that it violates the employer's Fourth Amendment right against unreasonable searches and seizures to conduct a comprehensive inspection without evidence of hazards throughout the workplace. The district supervisor will determine,

in conjunction with the CSHO, as to whether the inspection's scope will be further expanded. Where it is not clear that probable cause can be established, the district supervisor will consult with the bureau chief for guidance and for securing a warrant (if necessary). The results of the discussion and reasoning for the final decision should be documented in the inspection narrative. The district supervisor and CSHO should evaluate the following when considering expansion:

i. Observation of Serious "Plain View" Hazards. CSHOs should notify the district supervisor when serious hazards outside the scope of the inspection are observed. Situations where supervisors may consider expanding the scope include, but are not limited to, inspections with more than five serious hazards outside the original inspection scope, inspections with hazards that fall within the top four hazards categories (i.e., falls, struck – by, caught-in/between and electrocutions), or exposures to highly hazardous chemicals.

ii. The Industry is Covered by an Operational Procedure Notice (OPN) or Special Emphasis Program (SEP). In the event that OSHNC has an OPN and/or an SEP that covers an employer or one of the employer's processes for which an accident investigation is being assigned, the CSHO should initially obtain the employer's consent to conduct the inspection related to the accident. After employer consent to conduct the initial inspection is obtained and if the employer has not had a comprehensive inspection in the previous three years, the CSHO should notify the employer that their work site or process is currently also covered under an OPN or SEP.

The OPN inspection requirements shall be discussed during the opening conference and the CSHO shall attempt to obtain consent from the employer's management representative to expand the scope of the inspection in accordance with the applicable OPN or SEP. The employer's consent to conduct the accident inspection and separately the consent or denial to expand the inspection scope to include areas covered by an OPN or SEP shall be documented in the narrative. If an employer only consents to the accident-related inspection, the CSHO should only proceed with the accident related inspection, unless there is also an assignment for a comprehensive programmed inspection.

c. Advising Participants of Extended Scope. Whenever the scope of the inspection will be extended, the CSHO will advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.

2. Accidents reported by the media, reported by the employer, or received directly in the field office will normally be classified as referrals but will be investigated following the guidelines in paragraph C.

a. The division does not limit its investigation of accidents to only those resulting in a fatality or catastrophe. Accidents reported in the media or accidents that receive significant publicity will be evaluated by the bureau chief and district supervisor, to determine if an investigation or inspection is warranted.

b. The district supervisor will assign the inspection to a CSHO. Upon notification, the CSHO will notify the complaint desk with information of the assignment. The supervisor will ensure that the CSHO has completed the required Accident Notification Form (ANF 1b) or Fatality Notification Form (FNF 1), which are located in the Forms section of the FIS, and forward the form electronically to the complaint desk within 24 hours. The complaint desk will enter the applicable form (i.e. accident/event, complaint, referral and serious injury/fatality report) in OSHA Express and forward the information via email to the fatality group. Instructions in the memo "Entering and Processing Accidents and Fatalities in OSHA Express" will be followed. This memo is located on the One Stop Shop in the Field Information System, Memo folder. (The CSHO may have to wait until opening the inspection to obtain all necessary information.)

c. The CSHO will inform the district supervisor about the status of the accident investigation as soon as possible after opening the investigation.

d. Any public inquiries regarding an accident investigation will be referred to the Communications Division.

e. Newspaper articles and other media reports will be collected for possible inclusion in the case file.

f. If an accident involves a fatality, the CSHO must compile and send a letter to the victim's family within 5 working days of identification of the victim. The letter will be sent to the person(s) listed as emergency contact on the victim's employment record. The contents of the letter will follow the guidelines set forth in FOM Chapter VIII, Fatality and Catastrophe Investigations.

3. Accidents received at the complaint desk.

a. The CSHO receiving the call will obtain all the pertinent preliminary information and will complete applicable forms and follow the instructions in the memo "OSHA Express - Accident and Fatality Processing." This memo is located on the One Stop Shop in the Field Information System, Memo folder. The CSHO will scan and email all completed forms to the appropriate district supervisor.

b. The district supervisor will assign the inspection to a CSHO. The CSHO is responsible for ensuring that all accident information is added to OE per the "OSHA Express - Accident and Fatality Processing" memo.

c. The CSHO will inform the district supervisor about the status of the accident investigation as soon as possible after opening the investigation.

d. Any public inquiries regarding an accident investigation will be referred to the Communications Division.

e. Newspaper articles and other media reports will be collected for possible inclusion in the case file.

If an accident involves a fatality, the CSHO must compile and send a letter to the victim's family within 5 working days of identification of the victim. The letter will be sent to the person(s) listed as emergency contact on the victim's employment record. The contents of the letter will follow the guidelines set forth in FOM Chapter VIII, Fatality and Catastrophe Investigations.

D. **Medical Records Received by Complaint Desk.**

1. If medical records are received by the complaint desk, the complaint desk supervisor will review the documents upon receipt and shred them immediately if determined not to be relevant to an inspection or informal investigation. If the complaint desk responds by letter to the sender advising that no inspection or investigation will be conducted, the medical records will be returned and no copies will be maintained in the complaint desk files. The letter will include a statement that all medical records are being returned and that no copies have been retained by the N. C. Department of Labor. A notation will also be added to the "Unprocessed" log on the f: drive that medical records were received and that they were either shredded or returned to the sender.

2. If the records are relevant to an inspection or informal investigation, a copy of the medical records will be transferred via hand delivery or certified U.S. mail to the appropriate district supervisor with a request that the supervisor respond by email when the records are received. The complaint desk supervisor may fax the documents only if the district supervisor is in the office and is available to receive them at the time they are faxed. The original medical records received by the complaint desk will be locked in a cabinet with a copy of the complaint form, accident/event form, etc., that they relate to until the district supervisor confirms receipt by email. Once notified, the complaint desk supervisor will shred the medical records.

APPENDIX IX-A: Questions for Complaint Evaluation

Note: The following questions are written in technical jargon. Keep in mind that alternate wording may be necessary to get information from people who are not safety and health professionals.

A. For All Complaints.

1. Describe the alleged hazard resulting in unsafe or unhealthful conditions; identify the location. What is the nature and frequency of employee exposure?
2. What is the work being performed in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials such as chemicals being used, the process/operation involved, and the kinds of work being done near the hazardous area.
3. How often is work done at the task, which leads to the exposure? For how long at one time? How long has the condition existed as far as can be determined? Has it been brought to the employer's attention? Have any attempts been made to correct the condition?
4. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?
5. What personal protective equipment is required by the company? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.
6. How many people work in the establishment? How many are exposed to the hazardous conditions? What is their proximity to hazard?
7. Is there an employee representative in the establishment? Include the name, address, and telephone number of the union and/or of the employee representative(s).

B. For Health Hazards.

1. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What have been the results?
2. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any ventilation systems or acoustical insulation in the area, which may reduce exposure to the hazard?
3. What administrative or work practice controls has the employer put into effect?
4. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work- related disease or condition? What was it? Are there work practices in place that could result in exposure to hazardous substances?
5. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?
6. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees? Do employees receive audiograms on a regular basis?

C. For Safety Hazards.

1. Under what adverse or hazardous conditions are employees required to work? (This should include conditions contributing to stress and "other" probability factors.)
2. Have any employees been injured as a result of this hazardous condition? Have there been any "near-miss" incidents?

D. For Heat Complaints.

1. Inside work vs. outside work?
2. Type of business and machinery?
3. What is the source of the heat? Process or environment?
4. If inside, is the facility air-conditioned? Is the unit operating properly?
5. Is water available?
6. How many breaks are allowed?
7. Have employees been sick due to excessive heat? Did a health care professional make a diagnosis of heat related illness?
8. What is the shift schedule?
9. How many employees are there per shift and total?

Refer to Appendix IX-E for more information on heat-related complaints

APPENDIX IX-B: Secondhand Tobacco Smoke Complaint

The complaint desk will receive and process the majority of complaints; however, calls may come to any district office. For secondhand tobacco smoke complaints, get mailing addresses for the complainant and the company involved. Forward the complaint to the appropriate district supervisor.

A. Record the complaint on a complaint form as a valid complaint.

B. Inform the complainant that the department has no standard that covers secondhand tobacco smoke. However, we do take these complaints seriously. Explain to the employee that a letter will be sent to the company for them to look into the situation.

C. Forward the complaint to the appropriate district supervisor.

D. Send the proper nonformal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The secondhand tobacco smoke letters can be found in OSHA Express:

   1. Retrieve the selected complaint
   2. Click the Letters/Documents icon on the top menu
   3. Document Selection – Complaint/Referral Letters
   4. Form OS0154 (Comp-Secondhand Smoke Employer)
   5. Form OS0153 (Comp-Secondhand Smoke Employee)

E. Close the complaint.

APPENDIX IX-C: Workplace Violence Complaints

The complaint desk will receive and process the majority of complaints; however, calls may come to any district office. For workplace violence complaints (or any other imminent danger complaints), get as much information as possible and immediately forward the complaint to the appropriate district supervisor or the complaint desk.

A. Record the complaint on a complaint form as a valid complaint (if it is a valid workplace violence issue). Reference the "Workplace Violence Guidelines" memo, dated October 24, 2011, for guidance in evaluating workplace violence complaints. This memo discusses the use of CPL 02-01-052, Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents.

B. Inform the complainant that the department has no standard that covers workplace violence. However, we do take these complaints seriously. Explain that if the employee feels threatened by any individuals (physically or otherwise) or if they have been assaulted by anyone, they should contact their local law enforcement. Indicate that OSH will also refer the matter to the appropriate law enforcement officers (should be done by the complaint desk in imminent danger situations and noted under "comments" on the complaint form.)

C. Forward the complaint to the appropriate district supervisor.

D. Send a nonformal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The workplace violence letters can be found in OSHA Express:

   1. Retrieve the selected complaint
   2. Click the Letters/Documents icon on the top menu
   3. Document Selection – Complaint/Referral Letters
      a. Form OS0145 (Comp-Workplace Violence Comp). This is the letter to be sent to the employer.
   4. Form OS0140 (Comp-Workplace Violence EE). This is the letter to be sent to the complainant.

E. Follow complaint procedures.

F. If the employer fails to respond or provides an unsatisfactory answer, the district supervisor will review the response with the bureau chief and a decision will be made on how to proceed. The general duty clause may be applicable, as the employer has the responsibility to provide a workplace free from recognized hazards. Workplace violence covers a broad spectrum of items; therefore decisions will be made as to the best manner in which to proceed on a case-by-case basis.

APPENDIX IX-D: Mold and Mildew Complaints

The complaint desk will receive and process the majority of complaints; however, calls may come to any district office. For mold and mildew complaints, get mailing addresses for the complainant and the company involved. Forward the complaint to the appropriate district supervisor.

A. Record the complaint on a complaint form as a valid complaint.

B. Inform the complainant that the department has no standard that covers mold and mildew. However, we do take these complaints seriously. Explain to the employee that either an inspection will be conducted or a letter will be sent to the company for them to look into the situation.

C. Forward the complaint to the appropriate district supervisor.

D. If it is determined that an inspection will not be conducted, send the proper non-formal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The mold and mildew letters can be found in OSHA Express:

   1. Retrieve the selected complaint
   2. Click the Letters/Documents icon on the top menu
   3. Document Selection – Complaint/Referral Letters
   4. Form OS0161 (Comp-Mold Mildew Complainant)
   5. Form OS0151 (Comp-Mold Mildew Employer)

E. Follow complaint procedures.

F. If the employer fails to respond or provides an unsatisfactory answer, the district supervisor will review the response with the bureau chief and a decision will be made on how to proceed. The general duty clause may be applicable, as the employer has the responsibility to provide a workplace free from recognized hazards. Decisions will be made as to the best manner in which to proceed on a case-by-case basis.

APPENDIX IX-E: Heat Complaints

The complaint desk will receive and process the majority of complaints; however, calls may come to any district office. For heat complaints, get mailing addresses for the complainant and the company involved. Forward the complaint to the appropriate district supervisor.

A. Record the complaint on a complaint form as a valid complaint.

B. Inform the complainant that the department has not standard that covers workplace temperature. However, we do take these complaints seriously. Explain to the employee that either an inspection will be conducted or a letter will be sent to the company for them to look into the situation.

C. Forward the complaint to the appropriate district supervisor.

D. If it is determined that an inspection will not be conducted, send the proper non-formal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail.

   1. Retrieve the selected complaint
   2. Click the Letters/ Documents icon on the top menu
   3. Document Selection – Complaint/ Referral Letters
   4. Form OS0120 (Comp Complainant Notification)
   5. Form OS0152 (Complaint –Heat Stress Employer)
   6. Form OS0130 (Comp ER Response to Complainant)

E. Follow complaint procedures.

F. If the employer fails to respond or provides an unsatisfactory answer, the district supervisor will consult with the bureau chief and a decision will be made on how to proceed. The general duty clause may be applicable, as the employer has the responsibility to provide a workplace free form recognized hazards. A decision will be made as to the best manner in which to proceed on a case-by-case basis.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter X – Discrimination Complaints



Chapter Effective: February 2000
Revision 4: 12/15/2020

Table of Contents

A. Scope

B. Organization

C. Reference

D. Functional Responsibilities

E. Referrals

F. Discrimination Complaints

Appendix X-A: Related OSHA Discrimination Acts

Appendix X-B: Other Discrimination and Employment Law Related Agencies

Chapter X

Discrimination Complaints

A. **Scope**. This chapter sets forth guidelines for handling occupational safety and health discrimination complaints under North Carolina General Statute (NCGS) §95-240 to §95-245, the Retaliatory Employment Discrimination Act (REDA) and under Section 11(c) of the federal Occupational Safety and Health (OSH) Act that are referred to Retaliatory Employment Discrimination Bureau (REDB) for investigation pursuant to the North Carolina State Plan

B. **Organization**.

1. Commissioner of Labor. The commissioner has overall responsibility for the investigation of discrimination complaints under REDA.

2. Retaliatory Employment Discrimination Bureau. The commissioner has delegated the authority to investigate complaints alleging discrimination in violation of REDA to REDB.

3. Occupational Safety and Health Division. The division works in cooperation with the REDB, assuring coordination of OSH activities which have a bearing on the REDB program. The OSH Division policy is to make the agency as accessible as possible to employees who have legitimate discrimination complaints.

C. **Reference**. The REDB's Operations Desk Guide sets forth policy, procedures and other information relative to the handling of all discrimination complaints filed under REDA and Section 11(c) of the federal OSH Act.

D. **Functional Responsibilities**.

1. Director for Standards and Inspections. The director for the Standards and Inspections Division supervises the REDB Administrator and makes management level policy decisions that affect and inform the work of the bureau.

2. REDB Administrator. The REDB administrator has overall responsibility for the intake, assignment, investigation and proper closure of discrimination complaints filed under REDA and Section 11(c) complaints referred to REDB, including engaging the parties in settlement discussions and recommending litigation in appropriate cases. The administrator is responsible for the implementation of policies and procedures; setting bureau and staff goals and monitoring performance; and for the effective supervision of investigators, staff, and the investigative process.

3. REDB Discrimination Investigator Duties.

   a. Investigate cases assigned by the REDB administrator; maintain accurate records of all case activities; obtain and review relevant documentary evidence; conduct interviews; recommend determinations in each case; prepare written investigative reports; follow bureau policies and procedures; complete investigations and closing procedures consistent with investigator and bureau goals; and assist the administrator as required.

b. While investigating complaints, investigators shall be alert to potential safety and/or health hazards and, make appropriate referrals as necessary.

4. REDB Administrative Support Staff.

a. Information Officer. The information officer serves as the chief intake officer of filed complaints; is responsible for case opening and assignment procedures; acts as office manager; maintains office data base systems; and assists the administrator and investigators as needed.

b. Administrative Specialist II. The administrative specialist has primary responsibility for handling all incoming calls to the help line; explaining the requirements of REDA; making appropriate referrals to other agencies as needed; conducting routine file audits; and assisting the information officer and administrator as needed.

5. OSH Director. The OSH director has overall responsibility for assuring continued federal Occupational Safety and Health Administration (OSHA) grant support and serves as liaison between the OSH Division and REDB.

6. OSH Complaint Desk. The complaint desk has the overall responsibility for assuring that discrimination complaints made in conjunction with safety/health complaints are expeditiously referred to the REDB . When a discrimination complaint is made concurrently with a safety/health complaint, every attempt will be made to assign priority to the safety/health inspection.

7. OSH Supervisors. The OSH supervisors have the overall responsibility for assuring that discrimination complaints received by the compliance safety and health officers (CSHOs) are expeditiously referred to the REDB. When a discrimination complaint has been made concurrently with a safety/health complaint, the supervisor will assign priority to that inspection.

8. CSHOs.

a. Attain a general knowledge of the protection provided under REDA, the OSH Act, and the Surface Transportation Assistance Act (STAA) in order to advise employers and employees of their rights granted under those acts. Protected activity under STAA and other related discrimination laws are described in Appendix X-A: Related OSHA Discrimination Acts.

b. Notify employers during closing conferences that discrimination against employees for exercising their rights under the act is prohibited.

c. Note or record in the inspection case file statements, documents, etc. which might be contradictory to or supportive of a discrimination complaint.

9. Planning, Statistics and Information Management (PSIM) Bureau. The PSIM Bureau has overall responsibility for providing computer generated reports (e.g., inspection history of employers) from the state or federal computer systems and for archiving OSH Division inspection reports. They will make available to discrimination investigator copies of inspection case files, establishment history, etc., for review and copying. PSIM is also responsible for redacting and processing for disclosure any REDB occupational safety or

health related file for non-public and public disclosure, following bureau procedures reflected in FOM Chapters XIII – Fatality and Catastrophe Investigations and XVI – Administrative File Activities.

E. Referrals.

1. Oral REDB Complaints. If an employee or employee representative makes an allegation orally to an OSH Division employee regarding REDA discrimination, the OSH Division employee will refer the complainant to the REDB Office at (919) 707-7941 or (800) NCLABOR or (800) 625-2267.

2. Written Complaints. If a written discrimination complaint is received by the OSH Division, the information will be scanned/emailed or faxed to the REDB at 1-888-533-0886 and the original complaint and envelope will be sent immediately to the REDB Administrator or her designee.

Note: Discrimination complaints falling outside REDB jurisdiction will be referred to the appropriate authorities. See Appendix X-B: Other Discrimination and Employment Law Related Agencies for a list of contact information.

F. **Discrimination Complaints**.

1. Discrimination Prohibited. REDA provides that no person shall discriminate or retaliate against an employee because the employee in good faith does or threatens to do any of the following:

a. File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person (not necessarily to an investigative agency) with respect to any of the following:

i. The Occupational Safety and Health Act of North Carolina (NCGS Chapter 95, Article 16).
ii. The Wage and Hour Act of North Carolina (NCGS Chapter 95, Article 2A).
iii. The Workers' Compensation Act of North Carolina (NCGS Chapter 97).
iv. The Mine Safety and Health Act of North Carolina (NCGS Chapter 74, Article 2A).
v. Discrimination against Sickle Cell and Hemoglobin C carriers (NCGS Chapter 95-28.1).
vi. Genetic Testing Discrimination (NCGS Chapter 95-28.1A).
vii. National Guard Discrimination (NCGS Chapter 127A, Article 16).
viii. Participation in Juvenile Justice System (NCGS Chapter 7B, Article 27).
ix. Pesticide Board (NCGS Article 52 of Chapter 143).
x. Domestic Violence Victims (NCGS Chapter 50B-5.5).
xi. Control of Potential Drug Paraphernalia Products (NCGS Chapter 90, Article 5F).

b. Cause any of the activities listed in subparagraph F.1.a. above to be initiated on an employee's behalf.

c. Exercise any right on behalf of the employee or any other employee afforded by the Occupational Safety and Health Act of NC, the Wage and Hour Act of NC, or the Mine Safety and Health Act of NC.

2. Retaliation Defined. "Retaliatory action" means the discharge, suspension, demotion, retaliatory relocation of an employee, or other adverse employment action taken against an employee in the terms, conditions, privileges, and benefits of employment.

3. Filing a REDA Complaint.

a. Who May File? Any employee allegedly aggrieved by a violation of REDA. "Employee" means those individuals protected against discrimination under REDA and includes both private and public sector workers, temporary or leased employees, former employees, jointly employed employees, and common law employees.

b. Who is a Person under REDA? "Person" means any individual, partnership, association, corporation, business trust, legal representative, the State, a city, town, county, municipality, local agency or other entity of government. Both private and public sector employers are persons under REDA.

c. Nature of Filing. The complaint shall be submitted in writing by facsimile, electronic mail, express delivery, first-class mail, or hand delivery and must be signed by the employee. A complaint with an original signature must be submitted within 10 days of a faxed or emailed complaint.

d. Time for Filing. The complaint must be filed within 180 calendar days of the date of the last alleged adverse action against the employee. File date is the date of a facsimile or email transmission, the postmark on first-class mail envelope, the issuance date of an express mail package, or the date of hand delivery.

APPENDIX X-A: **Related OSHA Discrimination Acts**

A. The following provides a brief discussion of related discrimination acts (besides the OSH Act) that are covered under federal OSHA discrimination, Section 11(c) of the Act.

1. Section 405 of the Surface Transportation Assistance Act (STAA). STAA provides discrimination protection similar to protection provided under Section 11(c) of the Act. This protection is limited to employees of most commercial motor carriers engaged in interstate or intrastate operations who, in the course of their employment, directly affect motor carrier safety. This section provides that an employee may file a complaint within 180 calendar days after the alleged violation occurs. Federal OSHA Regional Offices have overall responsibility for the investigation of these complaints.

2. Section 211 of the Asbestos Hazard Emergency Response Act (AHERA). AHERA provides discrimination protection similar to protection provided under Section 11(c) of the Act, except that protected activity involves asbestos in elementary and secondary school systems. The EDB Office will treat asbestos-related discrimination complaints as occupational safety and health protected activity under REDA, except where federal OSHA has jurisdiction, i.e., on military bases/installations or Indian reservations.

3. Section 7 of the International Safe Container Act (ISCA). ISCA establishes uniform structural requirements for intermodal cargo containers designed to be transported interchangeably by sea and land carriers, and moving in, or designed to move in, international trade. The secretary of labor was delegated responsibility for the investigation and disposition of discrimination complaints filed under Section 7 of ISCA, which is similar to Section 11(c) of the Act. This section provides that an employee may file a complaint within 60 calendar days after the alleged violation occurs. Federal OSHA Regional Offices have overall responsibility for the investigation of these complaints.

APPENDIX X-B: Other Discrimination and Employment Law Related Agencies

A. Equal Employment Opportunity Commission (e.g., age, race, sex, religion, country of national origin, disability, maternity benefits):

1. Raleigh: (800) 669-4000 or (919) 856-4064

2. Charlotte: (800) 669-4000 or (704) 954-6423

3. Greensboro: (800) 669-4000 or (336) 547-4097

B. Office of Federal Contract Compliance (government contractors, Rehabilitation Act):

1. Raleigh: (919) 790-8248

2. Charlotte: (704) 749-3380

C. National Labor Relations Board (union or protected concerted activity): (336) 631-5201

D. Governor's Advocacy Council for the Disabled: (919) 856-2195 or (877) 235-4210

E. Employee Benefits Security Administration (EBSA), US Department of Labor (health insurance plans): (404) 302-3900

F. Private Personnel Services Division, NC Department of Labor: (919) 807-2796

G. Wage and Hour Division, US Department of Labor:

1. Raleigh: (919) 790-2741 or (866) 487-9243

2. Charlotte: (704) 749-3360

H. Occupational Safety and Health Division, NC Department of Labor:

1. Main Office: (800) NC-LABOR or (800) 625-2267

2. Standards Interpretations, Questions: (919) 707-7874

3. Complaints, Accident/Fatality Reports: (919) 779-8560 or (800) NCLABOR and (919) 733-3333 (after hours, and holidays)

I. Social Security Administration: (800) 772-1213

J. NC Department of Commerce, Division of Employment Security (unemployment): (888) 737-0259

K. NC Industrial Commission (workers' compensation): (919) 807-2501

North Carolina Department of Labor
Occupational Safety and Health Division

Agricultural Safety and Health Bureau

Field Operations Manual
Chapter XI – Agricultural Safety and Health Inspections

NCDOL
NC DEPARTMENT OF LABOR
LUKE FARLEY, COMMISSIONER

Chapter Effective: February 2000
Revision 13: 9/6/2023

Table of Contents

A. Agricultural Safety and Health Inspections

1. Definitions

2. Scope

3. Preoccupancy Inspections

a. Registration
b. Purpose
c. Occupation of Migrant Housing

i. Provisional Occupancy
ii. Arrival in Advance
iii. Inspection by Operator

d. Coordination with Local Public Health Departments (Environmental Health Specialists – EHS)

i. EHS Notification to Agricultural Safety and Health (ASH) Bureau
ii. ASH Notification to EHS
iii. EHS Forwarding Inspection Results to ASH
iv. ASH Forwarding Inspection Results to EHS

e. Assignments of Preoccupancy Inspections

i. Accessing Assignments
ii. Unscheduled Inspections

f. Contacting the Grower

i. Water and Septic Systems (EHS Reports)
ii. Electrical Power Activated
iii. Exact Housing Location
iv. Responding to Additional Questions

g. Conducting the Preoccupancy Inspection

i. Checklist
ii. Operator's Input
iii. Instructional Materials Provided By CSHO
iv. Diagrams, Photographs of Housing
v. Discussion of Field Sanitation, Pesticide Hazards
vi. EHS Review
vii. Hot Water Test
viii. Laundry Facility
ix. Fire Protection
x. Mattress and Mattress Cover

h. Closing Conference with Operator

i. No Violations
ii. Violations

i. Preoccupancy Inspection Reporting

j. Appeal by Operator

4. Abatement Verification

a. Assignments.
b. Abatement Verification Visits
c. Closing Conference
d. Certification
e. Appeal by Operator

B. Recognition Programs

1. Gold Star Growers

a. Registration
b. Water and Septic
c. Requirements
d. Improvements

2. Self-Inspection Procedures

C. OSH Migrant Labor Agricultural Post Occupancy Compliance Inspections

1. Scope

a. Housing Inspections
b. Agricultural-Related Compliance Inspections

2. Exemptions

3. Reporting Agricultural Workplace Violations

4. General

5. Inspection Categories

   a. Occupied Migrant Housing Compliance

      i. Substantive Violations at Preoccupancy
      ii. Identifying Unregistered Housing

   b. Field Sanitation Compliance
   c. Hazard Communication Compliance
   d. Agricultural Accidents and Fatalities
   e. Follow-Up Inspections

6. Inspection Procedures

   a. No Advance Notice
   b. Purpose
   c. Operator/Employer Information
   d. Denial of Entry
   e. Hazard Abatement
   f. Worker Interviews
   g. Interagency Referrals
   h. ASH Regulations

7. Violations of Agricultural Safety and Health Standards

8. Closing Conference with Operator

9. Post Inspection Report

10. Appeal by Operators

D. Consultations

1. Requests from Operators

   a. Priority
   b. Educational Materials Provided

2. Consultation Process

3. Post Consultation Follow-Up

Chapter XI

Agricultural Safety and Health Inspections

This chapter sets forth guidelines for conducting migrant housing preoccupancy inspections, migrant housing OSH compliance inspections, field sanitation compliance inspections, and agricultural field inspections. The North Carolina Department of Labor (NCDOL), Occupational Safety and Health (OSH) Division, Agricultural Safety and Health (ASH) Bureau is the agency that conducts preoccupancy inspections under the Migrant Housing Act (MHA) of North Carolina and OSH compliance inspections utilizing OSH division standards when there is employee exposure, an accident or a fatality.

Note: *Compliance inspections of the Field Sanitation Standard (29 CFR 1928.110), the Occupational Safety and Health Standards for Agriculture (29 CFR Part 1928), and the Hazard Communication Standard (29 CFR 1910.1200) are conducted under the Occupational Safety and Health Act of North Carolina (OSH Act). These inspections are also subject to the same policies and procedures as detailed in other compliance-related portions of this manual, such as the chapters on Inspection Procedures, Violations, Penalties, etc. (N.C. General Statute [NCGS) § 95-227(a)].*

The Field Sanitation Standard (29 CFR 1928.110) requires drinking water, toilets, and handwashing facilities for employees engaged in manual labor operations in the field. The inspection scope will not be limited to any specific number of employees, pursuant to 13 NCAC 07F .0302 – General Environmental Controls. Hazard communication inspections are conducted using 29 CFR 1910.1200, including Appendices A through E, pursuant to 13 NCAC 07F .0301 – Agriculture. Inspections resulting from farm worker complaints regarding pesticide exposure will be conducted pursuant to the most current revision of Operational Procedure Notice (OPN) 116 – SEP: Chemical Hazards on Farms. Certain agricultural inspections may be affected by exemptions included in Compliance Directive (CPL) 02-00-051 – Enforcement Exemptions and Limitations under the Appropriations Act and described in paragraph (C)(2) – OSH Migrant Labor Agricultural Post Occupancy Compliance Inspections, Exemptions, below.

A. **Agricultural Safety and Health Inspections**.

1. Definitions. As defined in the Migrant Housing Act of North Carolina (NCGS §§ 95-222 through 95-299.1), the Temporary Labor Camp Standard (29 CFR 1910.142), the Field Sanitation Standard (29 CFR 1928.110), and the Hazard Communication Standard (29 CFR 1910.1200):

   a. "Agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, or section 3121(g) of the Internal Revenue Code of 1986; and the handling, planting, drying, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state and including the harvesting of Christmas trees, and the harvesting of saltwater crabs. [NCGS § 95-223(1)].

   b. "Agricultural Employer" means any person, corporation, association, or other legal entity that:

      i. Owns or operates an agricultural establishment;

      ii. Contracts with the owner or operator of an agricultural establishment in advance of production for the purchase of a crop and exercises substantial control over production; or

iii. Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment. [29 CFR 1928.110(b)].

c. "Agricultural Establishment" is a business operation that uses paid employees in the production of food, fiber, or materials, such as seed, seedlings, plants or parts of plants. (29 CFR 1928.110).

d. "Hand-Labor Operations" means agricultural activities or agricultural operations performed by hand or with hand tools. "Hand-Labor Operations" also include other activities or operations performed in conjunction with hand-labor in the field. (29 CFR 1928.110).

e. "Migrant" means an individual, and his dependents, who are employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence. [NCGS § 95-223(5)].

f. "Migrant housing" means any facility, structure, real property, or other unit that is established, operated, or used as living quarters for migrants. [NCGS § 95-223(6)].

g. "Operator" means any person who owns or controls migrant housing. [NCGS § 95-223(7)].

h. "Person" means an individual, partnership, association, joint stock company, corporation, trust, or legal representative. [NCGS § 95-223(8)].

i. "Substantive violation" means a violation of a safety and health standard, including those that provide fire prevention, an adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protection for inhabitants from insects and rodents. A substantive violation does not include technical or procedural violations of safety and health standards. [NCGS § 95-223(9)].

j. "Temporary Labor Camp or Migrant Housing Facility" means structures directly related to the seasonal or temporary housing of migrant farm workers and their dependents. In this context, "housing" includes both permanent and temporary structures. (29 CFR 1910.142).

k. "Handwashing Facility" means a facility providing a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels. (29 CFR 1928.110).

l. "Potable Water" means water that meets the standards of drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Drinking Water Regulations, published in 40 CFR Part 141. (29 CFR 1928.110).

m. "Toilet Facility" means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination, which is supplied with toilet paper adequate to employee needs. Toilet

facility includes biological, chemical, flush and combustion toilets and sanitary privies. (29 CFR 1928.110).

2. Scope. The provisions of the MHA will apply to all operators and migrants except:

   a. Any person who:

      i. in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public; and,

      ii. provides housing to migrants of the same character and on the same or comparable terms and conditions as those provided to the general public.

   b. A housing unit owned by one or more of the occupants and occupied solely by a family unit. (NCGS § 95-224).

   c. The housing of a farm labor contractor (FLC) is subject to a preoccupancy housing inspection if the following conditions are met:

      i. The FLC is employed in "agricultural employment" as defined in NCGS §95-223(1) of a seasonal or other temporary nature; and

      ii. The FLC is required to be absent overnight from his permanent place of residence; and

      iii. The FLC is living in "migrant housing" as defined in NCGS §95-223(6).

      If these conditions are met, the "operator" will need to ensure FLC housing is registered and inspected.

3. Preoccupancy Inspections.

   a. Registration. Every operator will request a preoccupancy inspection at least 45 days prior to the anticipated date of occupancy, by submitting a Migrant Housing Notification (Registration) to the NCDOL ASH Bureau or to the local health department. [NCGS § 95-226 (a)].

   b. Purpose. This inspection is conducted to identify potential safety and/or health hazards prior to occupancy. The inspection is based on the OSH standards for Temporary Labor Camps (29 CFR 1910.142) and the Migrant Housing Act (NCGS §§ 95-222 through 95-229.1).

   c. Occupation of Migrant Housing. Migrant housing may not be occupied until the operator has received a Migrant Housing Certificate (the certificate), except in the following instances:

      i. Provisional Occupancy. Migrant housing may be occupied on a provisional basis if the operator applied for a preoccupancy inspection at least 45 days prior to occupancy and the preoccupancy inspection was not conducted at least four days prior to the anticipated occupancy. Upon subsequent inspection by the NCDOL, the provisional occupancy shall be revoked if any deficiencies have not been corrected within the period of time specified by the NCDOL, or within two days after receipt of

written notice provided on-site to the operator. No penalties may be assessed for any violation of this article which is found during the preoccupancy inspection, unless substantive violations exist during provisional occupancy. [(NCGS § 95-226 (d)].

ii. Arrival in Advance. If an operator has applied for an inspection and one or more migrants arrive in advance of the arrival date stated in the application, the operator will notify ASH within two working days of the migrant housing occupancy. [NCGS § 95-226 (d)].

iii. Inspection by Operator. An operator may be able to conduct his/her own preoccupancy inspection if certain criteria are met. [NCGS § 95-226 (f)]. This is part of the Gold Star Grower recognition program for operators who maintain proper migrant housing. [NCGS § 95-226 (f)]. This is covered more fully in paragraph (B) – Recognition Programs, below.

d. Coordination with the local Public Health Departments (Environmental Health Specialists – EHS). Under the MHA [NCGS § 95-226 (a)], operators may request preoccupancy inspections from the department or the local health departments. The local health departments are responsible for inspecting migrant housing to determine compliance with water and sewage system requirements [NCGS § 95-225(c) and (d)] while ASH is responsible for determining compliance with requirements dealing with the living quarters of migrant housing.

i. EHS Notification to ASH Bureau. If the notification arrives at the local public health department, the health department will immediately notify ASH. [NCGS § 95-226(a)].

ii. ASH Notification to EHS. If the notification is submitted to ASH, then ASH will immediately notify the local public health department in writing. [NCGS § 95-226(a)].

iii. EHS Forwarding Inspection Results to ASH. The local public health departments will forward the results of water and sewage inspections to ASH and the operator. [NCGS § 95-226(a)].

iv. ASH Forwarding Inspection Results to EHS. On a monthly basis, ASH will forward a listing of operators who have registered and operators who have received housing certification to the local public health departments. [NCGS § 95-226(a)].

e. Assignments of Preoccupancy Inspections. Preoccupancy inspections will be directed and conducted as follows:

i. Accessing Assignments. Agricultural safety and health officers (herein referred to as compliance safety and health officers or CSHOs) will access inspection assignments from the ASH Bureau computer program. All assignments will be made within a geographic district near their home county, when possible. Assignments from the ASH Bureau may be given by telephone or in writing, in addition to the computer listing. Each assignment will include the grower's name, address, telephone number, and home county, and location of the migrant housing.

Assignments may be given differing levels of priority, depending, for example, upon the expected occupancy date or inspection history.

A. Assignments will not be added, deleted, or traded without approval of the ASH bureau chief.

B. The CSHO's workload per week will be determined by the ASH bureau chief.

ii. Unscheduled Inspections. If a grower has not registered for a preoccupancy inspection, but contacts the CSHO who is working on location and asks for an inspection, the CSHO may complete the inspection if time permits. Prior to doing the inspection, the CSHO will phone the ASH Bureau and determine that the grower is not registered and that the inspection has not already been scheduled. If necessary, a Migrant Housing Notification Card will be obtained from the operator while the CSHO is on-site and forwarded to the ASH Bureau.

f. Contacting the Grower. The grower should be contacted in advance to schedule a time for the preoccupancy inspection. In most cases growers are more easily contacted in the morning (6:00 - 7:00 a.m.) or evening before 9:00 p.m.

i. Water and Septic Systems (EHS Reports). The CSHO will determine if the water and sewage systems have been inspected and approved by an EHS at the local health department. If the systems have been approved, the CSHO should advise the grower to have the EHS's report available for review at the preoccupancy inspection. (DENR 3765 – Preoccupancy Evaluation Report of Drinking Water Supply and Waste Water Facilities for Migrant Housing).

ii. Electrical Power Activated. The CSHO will ask the operator to have the power on for checking all electrical outlets, lamps, ceiling lights, refrigerators, and hot water availability. The CSHO will inform the operator of the need for access to hot water tank(s) to obtain capacity and recovery rate information. (Introduction to Migrant Housing Inspections in North Carolina, Appendix I).

iii. Exact Housing Location. The CSHO will confirm the physical address or Global Positioning Point Coordinates (GPPC) for the housing to be inspected.

iv. Responding to Additional Questions. The CSHO should also be prepared to answer any questions that the operator may have during this contact regarding compliance standards.

g. Conducting the Preoccupancy Inspection.

i. Checklist. The purpose of this inspection is to identify potential safety and/or health hazards prior to occupancy. The CSHO will inspect the housing based on the OSHA Standards for Temporary Labor Camps (29 CFR 1910.142) and the Migrant Housing Act standards (NCGS §§ 95-222 through 95-299.1) listed in the Migrant Housing Inspection Checklist (the Checklist).

ii. Operator's Input. The migrant housing operator or representative will be afforded an opportunity to provide pertinent information regarding conditions in the housing. If the housing operator is not able to be present for the inspection, a representative should be available. If neither the operator nor representative is able to participate, a closing should be conducted by telephone so that the inspector can explain the existing violations and the abatements required.

iii. Instructional Materials Provided by CSHO. CSHOs may provide instructional materials such as the Introduction to Migrant Housing Inspections in North Carolina booklet, a copy of the checklist, applicable OSH standards such as the Guide for Occupational Safety and Health Standards for Agriculture, informational posters in Spanish and English, and a guide for employers regarding compliance with the Immigration and Nationality Act. [NCGS § 95-226(a)].

iv. Diagrams, Photographs of Housing. The CSHO will ensure that updated diagrams and photographs of the housing site are on file.

v. Discussion of Field Sanitation, Pesticide Hazards. The CSHO will discuss field sanitation, pesticide hazards and the most current revision of OPN 116 on pesticides with the operator and/or representative.

vi. EHS Review. The CSHO will review the DENR 3765 form at the time of inspection. To be in compliance, the form must show the number of occupants for which the camp is approved, must indicate that there was not visual evidence of water system or septic system non-compliance, and must be signed by the EHS. If there are any questions concerning the acceptability of the water or septic systems, the CSHO will call the local health department for verification. If the housing site is on municipal water or municipal sewage, proof of this must be provided. Receipts, such as water bills, from the local agency are required.

vii. Hot Water Test. In the mountain regions, hot water must be operational after March 31 each year for preoccupancy purposes. Adequacy will be determined by using the Procedure to Determine Adequate Hot Water for Showers in Temporary Labor Camps report. (Introduction to Migrant Housing Inspections in North Carolina, Appendix I).

viii. Laundry Facility. Laundry facilities must be provided, with an adequate supply of hot and cold running water. [29 CFR 1910.142(f)(3)].

ix Fire Protection. Fire protection must be provided according to the MHA [NCGS § 95-225(f)] and Appendix F of the Introduction to Migrant Housing Inspections in North Carolina booklet.

x. Mattress and Mattress Cover. The CSHO will inspect the mattresses and mattress covers to ensure that they conform to NCGS § 95-225(h).

A. A mattress must have a "core" of springs, foam or air and be covered by "ticking," which is a layer of fabric or related material that encloses the core. (ASH 1 – Mattress and Cover

Requirements, January 25, 2008, located in the Field Information System (FIS), under Memos, on the One Stop Shop).

B. "Cover" means a protective covering made of a washable material that completely covers the sleeping surface or encases the mattress in order to prevent the mattress from being soiled. (ASH 1 – Mattress and Cover Requirements, January 25, 2008).

h. Closing Conference with Operator. At the conclusion of the preoccupancy inspection, the CSHO will review the inspection results with the operator and answer any questions the operator may have. The CSHO will furnish the operator with a copy of Notification of Selected Field Sanitation and Hazard Communication Requirements.

i. No Violations. If no violations are observed, the CSHO will:

A. Issue a field prepared certificate (see copy in Introduction to Migrant Housing Inspections in North Carolina, Appendix J).

B. Inform the operator that copies of certificates must be posted in a location accessible to all migrants.

ii. Violations. If violations are observed, the CSHO will:

A. Describe the violations to the operator and discuss possible methods for correction and control. If the operator or a representative is not present, this process will be conducted by phone.

B. Provide the operator with a copy of the Agricultural Housing Inspection Sheet. The CSHO will instruct the operator to record the date each violation is corrected, and verify the specific measures taken to correct the violation by including photos, invoices, and/or receipts for work done to complete abatements, and sign and return the notice to the ASH office. After the properly completed notice is received, ASH will issue a certificate to the operator.

C. Advise an operator who is not 100% in compliance at the time of the preoccupancy inspection that a post occupancy visit may be conducted to verify abatement. The CSHO will explain that if, during the post occupancy visit, the CSHO finds that the violations are uncorrected and the housing is occupied, citations and civil penalties may be assessed against the operator. [NCGS § 95-226(g)].

i. Preoccupancy Inspection Reporting. The CSHO will submit a copy of the Migrant Housing Preoccupancy Inspection Cover Sheet, the Agricultural Housing Inspection Sheet, and, if a certificate is issued, a copy of the certificate to the ASH office. Certification information will be sent to the ASH office on the date the certificate is issued. This can be done by phone, e-mail, or in person. Information submitted must include grower's name, camp location and number of occupants.

j. Appeal by Operator. An operator who is denied a certificate may appeal such denial to the commissioner. The commissioner's decision will be considered a final agency decision but may be appealed in accordance with Chapter 150B of the N.C. General Statutes, the Administrative Procedures Act. (13 NCAC 16 .0501 – Appealing Non-Issuance of a Migrant Housing Certificate).

4. Abatement Verification. Upon receipt of the Agricultural Housing Inspection Sheet that was filled in, signed and submitted by the operator, ASH will mail a Certificate to the operators who have completed the abatement properly. ASH will schedule an abatement verification visit for the following situations:

a. Assignments. Abatement verifications will be assigned to the inspector who conducted the preoccupancy inspection due to the following conditions:

i. The housing operator returned the abatement, but substantive violations were not listed as corrected;

ii. The abatement items were incomplete or inconclusive (such as listed as "fixed everything");

iii. Receipts of repairs or photos of necessary repairs were not included with the abatement; or

iv. The abatement was not returned to the ASH office prior to date of occupancy.

In addition, the CSHO who conducted the preoccupancy inspection may request an abatement verification visit because of statements made by the housing operator, such as comments indicating that the required corrections will not be made.

b. Abatement Verification Visits.

i. Advance notice to the operator will not be given for an abatement visit.

ii. The CSHO will determine whether violations listed on the Agricultural Housing Inspection Sheet that were signed and mailed in by the operators have been abated.

iii. The CSHO will also document any new violations.

c. Closing Conference. At the conclusion of the abatement verification visit, the CSHO will conduct a closing conference with the operator.

i. If the noted violations have been abated and no additional violations are observed:

A. The CSHO will present the certificate to the operator.

B. The CSHO will inform the operator that a copy of the certificate must be posted in a location accessible to all migrants.

ii. If all noted violations have not been abated, but no migrants are residing at the housing:

A. The certificate will not be presented to the operator.

B. The CSHO will inform the operator of the violations not abated and provide the operator with another Agricultural Housing Inspection Sheet that lists the violations yet to be abated.

C. The CSHO will remind the operator that the housing should not be occupied until a certificate is issued, and that such occupancy may result in a citation including possible civil penalties against the operator. [NCGS § 95-226(d)].

iii. If additional violations are noted, but no migrants are residing at the housing, proceed as with paragraph (A)(4)(c)(ii) above.

iv. If violations are found, and the operator has allowed housing to be occupied without a certificate, provisional or otherwise, and has not notified NCDOL within two working days that migrants are residing at the housing, the inspection becomes a post occupancy inspection [NCGS § 95-226(e)]:

A. The certificate will not be presented to the operator.

B. The CSHO will initiate a post occupancy inspection and inform the operator that they must make the necessary repairs in a timely manner. [NCGS § 95-226(g)].

C. If the housing provided to migrants is determined to be capable of causing death or serious physical harm, alternative housing will be provided by the operator at the same rate or less than the rate paid by migrants for the uninhabitable housing. (NCGS § 95-229.1).

D. The CSHO will issue the appropriate citations to the operator for the housing violations observed, including a citation for providing migrant housing without a certificate. [NCGS § 95-226(d)].

d. Certification.

i. If a certificate is issued, the CSHO will submit a copy of the Abatement Check - Certificate Delivery and the certificate to the ASH office.

ii. If a certificate is not issued, the CSHO will submit the previous and the new Agricultural Housing Inspection Sheets, and a copy of the Abatement Checks. If a certificate was issued in anticipation of delivery, it will be marked "void" and returned to the ASH office.

e. Appeal by Operator.

i. An operator who is denied a certificate may appeal such denial within 15 days of the denial to the commissioner. The commissioner's decision will be considered a final agency decision but may be appealed in accordance with Chapter 150B of the N.C. General Statutes, the Administrative Procedures Act. (13 NCAC 16 .0501).

ii. An operator may contest citations and penalties issued under the MHA in accordance with NCGS § 95-137. (13 NCAC 16 .0502).

B. **Recognition Programs**.

1. Gold Star Growers. If an operator receives a preoccupancy inspection rating from the NCDOL of 100% compliance for a particular migrant housing unit for two consecutive years, in the third year, the operator shall have the right to conduct the preoccupancy inspection for that particular migrant housing unit himself or herself. [NCGS § 95-226(f)]. The Gold Star Growers program recognizes operators for meeting or exceeding the following requirements in the following manner:

a. Registration. Submitted a Migrant Housing Notification at least 45 days prior to occupancy.

b Water and Septic. The water and sewage systems were approved at least 45 days prior to occupancy.

c. Requirements. Housing was 100% in compliance with applicable safety and health standards at the time of the preoccupancy inspection. Attendance at a Gold Star safety training meeting is required annually.

d. Improvements. The operator demonstrates a willingness to continually improve workplace safety and health conditions. Improvements may include: telephone, central heat/air conditioning, additional bathroom fixtures/facilities, better quality furnishings.

2. Self-Inspection Procedures.

a. An operator may be authorized to conduct his/her own preoccupancy inspection if the operator:

i. Was designated a Gold Star Grower for two consecutive years and housing improvements are documented in the file.

ii. Notifies the department of the intention to self-inspect at least 45 days prior to occupancy.

iii. Attends a Gold Star safety training meeting annually.

iv. Submits a completed and notarized checklist and Procedure to Determine Adequate Hot Water for Showers in Temporary Labor Camps forms to the department 30 days prior to occupancy.

v. Submits an approved DENR 3765, or documentation of municipal water and sewer utilization, to the ASH office at least 30 days prior to occupancy.

vi. Posts a copy of the certificate issued by the department in a place accessible to all migrants.

b. A self-inspection authorization is effective for the third year, after two consecutive years of 100% compliance in preoccupancy inspection and is only valid for that one growing season.

c. A certificate issued subsequent to a self-inspection will indicate "Gold Star Grower and Self-Inspection Certificate" on the form.

d. The operator will request a preoccupancy inspection in the year following the self-inspection. [NCGS § 95-226(a)].

C. **OSH Migrant Labor Agricultural Post Occupancy Compliance Inspections**

1. Scope.

a. Housing Inspections. OSH compliance inspections of occupied migrant labor housing (post occupancy inspections) are conducted under both the MHA and the OSH Act. These inspections are subject to the same policies and procedures covered in this manual, such as the chapters on inspection procedures, violations, penalties, etc. [NCGS § 95-227(a)]. An assignment for a programmed OSH inspection of an agricultural employer reflects authority for both a migrant housing and the agricultural workplace, such as field inspection, or a fatality due to agricultural machinery. The MHA also includes provisions for post occupancy inspections including specific housing standard requirements, such as failed septic systems, contaminated water supplies, overcrowding of available housing.

b. Agricultural-Related Compliance Inspections. As with OSH compliance inspections, these inspections may come from several sources. Programmed agricultural compliance inspections are included on a randomly selected assignment list generated by the Planning Statistics and Information Management (PSIM) Bureau. Unprogrammed inspections result from referrals, complaints, fatalities and accidents. Inspections related to farm worker work sites could include enforcement of OSH standards such as field sanitation and hazard communication standards. Such inspections may be the result of scouting efforts. Compliance inspections of unregistered, uninspected housing may also result from scouting efforts. Field sanitation and hazard communication inspection may be scheduled alone or in conjunction with migrant housing inspections.

c. Citations regarding housing will be issued to FLCs if the FLC owns or controls the housing (directs workers where to live). Housing citations may not be issued to FLCs who do not meet these conditions.

2. Exemptions. A rider to the annual Appropriations Act (CPL 02-00-051) enacted by the U.S. Congress exempts small farming operations from enforcement of all rules, regulations, standards or orders under the Occupational Safety and Health Act.

a. A farming operation is exempt from all OSHA activities if it:

i. Employs ten or fewer employees currently and at all times during the last 12 months; and

ii. Has not had an active temporary labor camp during the preceding 12 months.

Note: *Family members of farm employers are not counted when determining the number of employees.*

b. A farming operation with ten or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months is not exempt from inspection. For OSH, the inspection may include all working conditions covered by the Migrant Housing Act and OSH standards.

3. Reporting Agricultural Workplace Violations.

a. Referrals may be provided by any department representative or other agency member who suspects or believes that a dwelling is used for migrant housing and is not registered, or that unsafe agricultural practices exist including the absence of field sanitation or exposure to agricultural chemicals.

b. The identity of the source of referrals or complaints will not be revealed to the operator. These sources will receive a letter with inspection findings.

c. ASH employees may be assigned to review geographic areas where migrant housing is suspected and to identify unregistered migrant housing operations or agricultural worksites where appropriate field sanitation is not provided or workers are exposed to pesticides.

d. After investigating, the CSHO will refer non-OSH complaints to the appropriate agencies if NCDOL does not have oversight.

4. General. Inspections will be conducted when occupancy can be established and documented. Inspections will be scheduled as soon as feasible after workers occupy housing, so that workplace hazards may be corrected early in the work season.

a. The CSHO should conduct inspections in such a manner as to minimize disruptions to the personal lives of those living in the housing facilities. If the owner/operator refuses entry for inspection purposes, the CSHO will not insist on entry. The procedures for refusal of entry will be followed. Refer to the warrant application, Field Operations Manual (FOM) Chapter III – Inspection Procedures, paragraph D.1.d., Refusal to Permit Inspection, and NCGS § 95-136 – Inspection, and paragraph (C)(6)(d) – Denial of Entry, below.

b. If the CSHO determines that housing provided to migrants under this article is uninhabitable, but is not reasonably expected to cause death or serious physical harm, the migrants shall be allowed to remain in the housing for a reasonable period, not to exceed 14 days, while the operator locates alternative housing or makes necessary repairs to make the housing habitable. No additional penalties shall be levied. (NCGS § 95-229.1).

c. If the ASH bureau chief determines, after recommendation of the CSHO, that the housing could reasonably be expected to cause death or serious physical harm, alternative housing shall be provided by the operator to the migrant at the same rate or less than was paid for the uninhabitable housing. (NCGS § 95-229.1).

d. Farm workers will be interviewed at their worksite. If the worksite is the field, a field inspection will be conducted. Field Inspections will include field sanitation, 29 CFR 1928.110. Employee interviews will include questions regarding chemical exposure. Determination will be made regarding compliance with the Hazard Communication Standard, 29 CFR 1910.1200. If there have been incidents of pesticide exposure, the N.C. Department of Agriculture & Consumer Services, Structural Pest Control & Pesticide Division will be contacted.

All farm worker housing, as defined in N.C. General Statutes §95-223, will be inspected. If the housing has been inspected and certified during the same calendar year, a walk-through inspection will be conducted. If the housing is unregistered, a complete housing inspection will be conducted. OSH Division requirements associated with pesticide exposure may be handled by ASH, East Compliance or West Compliance in accordance with procedures (reference most current revision of OPN 116). All other inspection policies and procedures described in other chapters of the FOM also apply to agricultural related OSH inspections.

5. Inspection Categories. Like other compliance activity, migrant housing inspections will include fatality, catastrophe, complaint, referral, programmed, unprogrammed, and follow-up inspections. Fatality investigations may be the result of a fatal incident involving agricultural machinery, such as a tobacco harvester, corn harvester, or forklift; heat stress, heat stroke while hand-harvesting crops; fatal exposure to pesticides. A complaint may be from a farm worker advocate representing the farm worker's workplace safety interest, or from the farm worker union or the farm worker with a workplace safety and health concern. A referral may come from a state employee, such as a sanitarian at a local Public Health Department, or from an ASH employee concerned about the status of the housing (registered or unregistered). Programmed inspections are run for ASH by the PSIM Bureau on an annual basis. Unprogrammed inspections are those that are not assigned through PSIM but are scheduled in response to a hazardous workplace condition, as discussed above and in FOM Chapter II – Compliance Programming.

An unprogrammed inspection of migrant housing may result from a complaint, referral, accident or fatality. For example: a referral may be made from the preoccupancy inspector who has reason to doubt that required abatements will be made because of statements by the housing operator; or from local health department officials who are aware of water or septic problems. It may be the result of a complaint from a worker who lives in the housing as a condition of employment and calls in regard to violations such as inadequate hot water, refrigeration, and heat.

a. Occupied Migrant Housing Compliance.

i. Substantive Violations at Preoccupancy. Inspections may include visits to housing sites that were inspected during the preoccupancy season and were not in 100% compliance due to the existence of three or more substantive violations, such as inadequate general maintenance, lack of structurally sound construction, plumbing problems, and/or inadequate

fire prevention among other problems. [NCGS § 95-223(9)]. This inspection will be considered a referral for OSH inspection purposes.

ii. Identifying Unregistered Housing. Inspections may include visits to housing sites that were unregistered and uninspected. All CSHOs conduct scouting in their counties and may discover unregistered housing sites.

b. Field Sanitation Compliance. Field sanitation inspections, or inspections relating to the use of hazardous chemicals, may be scheduled alone or in conjunction with a migrant housing inspection. Reasons for conducting field sanitation inspections include the following: high heat and humidity on harvest days, leading to the hazard of heat stress, heat stroke; complaints or referrals listing the absence of field sanitation facilities or exposure to pesticides through failure to post restricted entry interval signs in fields recently sprayed or provide protective equipment. Referrals may be made by local officials, local residents, or ASH inspectors. Complaints are from workers or from those representing workers. Each field sanitation inspection will address all of the requirements of 29 CFR 1928.110, as well as 13 NCAC 07F.0302 – General Environmental Controls, which indicates that the scope of 29 CFR 1928.110(a) shall not be limited to any specific number of employees. If there were 11 employees in the field at any time during the past six months, they are covered by 1928.110(a) – Scope. If the number never reaches 11 or more, than any citation issued needs to reference 13 NCAC 07F .0302.

The provisions include the following:

i. Potable drinking water will be provided and placed in locations readily accessible to all employees. Suitable cool water must be provided by single service cups or dispensed by a fountain. [Refer to 29 CFR 1928.110(c)(1)] – Potable Drinking Water.

ii. Toilet facilities must be adequate, sanitary, private and accessible. Facilities are not required for employees who perform fieldwork for a period of three hours or less during the day. [Refer to 29 CFR 1928.110(c)(2)] – Toilet and Handwashing Facilities.

iii. Handwashing facilities must be located in close proximity to toilet facilities and within a one-quarter mile walk of the employees' place of work in the field. Where, due to terrain, it is not feasible to locate facilities as indicated above, facilities will be located at the point of closest vehicular access. [Refer to 29 CFR 1928.110(c)(3)] – Maintenance.

iv. Potable drinking water, toilet and handwashing facilities will be maintained in accordance with appropriate public health sanitation practices.

v. The employer will notify each employee of the location of the sanitation facilities and water and will allow each employee reasonable opportunities during the workday to use them.

c. Hazard Communication Compliance. Inspections involving hazard communication will address all the requirements of 29 CFR 1910.1200, including the following:

i. A written hazard communication program shall be developed and implemented and maintained at each workplace discussing safety data sheets and labeling. [Refer to 29 CFR 1910.1200(e)(1)] – Written Hazard Communication Program.

ii. Employers shall have a safety data sheet in the workplace for each hazardous chemical which they use. [Refer to 29 CFR 1910.1200(g)(1)] – Safety Data Sheets.

iii. Employee training shall include measures employees can use to protect themselves from these hazards, including emergency procedures, and personal protective equipment to be used. [Refer to 29 CFR 1910.1200(h)(3)(iii)] – Training.

d. Agricultural Accidents and Fatalities. Incidents that occur as a result of agricultural machinery, such as fatalities due to tobacco harvesters, balers, forklifts, heat stress, or pesticide exposure, will be addressed by the ASH Bureau following OSH Division procedures.

e. Follow-up Inspections. Failure-to-abate procedures will follow FOM Chapter III – Inspection Procedures, paragraph G.

6. Inspection Procedures. (See also FOM Chapters III – Inspection Procedures, IV – Violations, VII – Imminent Danger and VIII – Fatality and Catastrophe Investigations).

a. No Advance Notice. NCGS § 95-136(f) prohibits giving advance notice of an inspection to an employer.

b. Purpose. The purpose of the inspection is to identify potential safety and/or health hazards in the workplace. The CSHO will inspect the housing and the field for compliance, as well as interview the operator and workers, and note any violations observed.

c. Operator/Employer Information. The operator/employer will be afforded an opportunity to provide pertinent information regarding conditions in the housing. (13 NCAC 16 .0201).

i. At the beginning of the inspection, the CSHO will locate the operator or a representative and present credentials.

ii. The CSHO will inform the operator of the purpose of the inspection and obtain the operator's consent to enter the housing or the agricultural operation.

iii. The operator will be informed of the opportunity to accompany the CSHO during the inspection.

d. Denial of Entry. If a denial of entry occurs, a warrant will be sought. Factors considered in processing a warrant application include:

i. Warrant processing time;

ii. Anticipated duration of the hand-labor field operation;

iii. Impact on compliance; and

iv. Violations already documented.

Note: *In instances where denial of entry is the known policy of an operator/employer, an anticipatory/pre-inspection warrant may be sought*.

e. Hazard Abatement. During the inspection, the CSHO will encourage operators to correct hazards immediately. Particular attention will be paid to potential repeated or failure-to-abate violations.

f. Worker Interviews. The CSHO will interview workers. Bilingual assistance will be provided by the ASH Bureau. Information sought during the interview will include whether other safety or health standards have been violated.

g. Interagency Referrals. The CSHO will refer non-OSH complaints to the appropriate agency.

h. ASH Regulations. The CSHO will leave the workers copies (in their native language, if possible) of all ASH regulations and the phone number of the ASH office.

7. Violations of Agricultural Safety and Health Standards.

a. Migrant Housing.

i. If the dwelling is not used for migrant housing, then the CSHO should take no further action.

ii. If the dwelling is used for migrant housing, then the CSHO will proceed with a compliance inspection of the housing.

iii. The CSHO (with the assistance of an interpreter, as necessary) will interview workers. Information sought during the interview will include:

A. The length of occupancy;

B. Who owns or operates the housing;

C. Whether other safety or health standards have been violated, and

D. Whether the housing is a condition of employment.

1. Cost of the housing to the employee. Is the housing provided for free or a low rental fee?

2. Distance to the worksite from camp, distance to the worksite from other non-camp residences. Is alternative housing reasonably accessible (distance, travel, cost, etc.) to the worksite?

3. Benefit to employer. Does the employer make the camp available in order to ensure that the business is provided with an adequate supply of labor?

4. Relationship of the camp occupants to the employer. Are those living in the camp required to work for the employer upon demand?

b. Violations of the Migrant Housing Act.

NCGS § 95-225(c) and NCGS § 95-225(d) will not be cited by NCDOL. These statutes are enforced by the local public health departments. They are listed here for reference purposes only. Note that application to the county health department for an inspection qualifies as an application for registration of the housing, pursuant to NCGS § 95-226(a).

i. NCGS § 95-225(c). This statute will not be cited by the NCDOL and refers to the authority of the local public health departments to certify that the water quality complies with the regulations promulgated by the N.C. Department of Environment and Natural Resources, Water Quality Division, Environmental Health Services Section. These regulations can be found in 15A NCAC 18A.1700.

ii. For a lack of an adequate and convenient water supply, the CSHO will use 29 CFR 1910.142(c)(1) – Water Supply, which refers to water supply approved by the appropriate health authority, along with 29 CFR 1910.142(c)(2) through 1910.142(c)(4) which refer to water supplies required in temporary labor camps.

A. Classification. Citation will be issued as a substantive violation and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI – Penalties, paragraph B, Civil Penalties.

B. Adjustment Factors. Adjustment factors will be for size, good faith and history and applied in accordance with FOM Chapter VI, paragraph B.9. – Penalty Adjustment Factors.

iii. NCGS § 95-225(d). This statute will not be cited by the NCDOL and refers to the authority of the local health department to inspect and certify that sewage collection, treatment and disposal standards comply with the regulations promulgated by the N.C. Department of Environment and Natural Resources, Division of Environmental Health, On-Site Water Protection Section. These regulations can be found in 15A NCAC 18A .1900.

iv. For lack of sanitary toilet facilities, the CSHOs will cite 29 CFR 1910.142(d)(1) through 1910.142(d)(10) – Toilet Facilities. 29 CFR

1910.142(e) – Sewage Disposal Facilities, will be used when sewer lines and floor drains are not found to be properly connected if the system is in fact connected to a public wastewater system.

A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, paragraph B.

B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9. for size, good faith and history.

v. NCGS § 95-225(e). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without providing heating equipment that was operable whenever the outside temperature was below 50-degrees Fahrenheit, or without providing heating equipment that was capable of maintaining living areas at 65-degrees Fahrenheit at all times. This standard will be cited in place of 29 CFR 1910.142(b)(11) – Shelter, which requires that adequate heating equipment be provided, but does not specify dates needed, nor the temperature required in the main dwelling(s).

A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, paragraph B.

B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9, for size, good faith and history.

vi. NCGS § 95-225(f). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without complying with the standards regarding fire safety for migrant housing promulgated by the Commission for Health Services in effect on January 1, 1989.

A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, paragraph B.

B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9., for size, good faith and history.

vii. NCGS § 95-225(g). In this statute (g)(1) through (g (5) will be cited when a CSHO discovers that the owner/operator has allowed the housing to be occupied without complying with the standards regarding kitchen and dining facilities provided for in NCGS 95-225(g). This standard will be used in place of 29 CFR 1910.142(i) –Construction and Operation of Kitchens, Dining Hall, and Feeding Facilities, and (b)(10) – Shelter.

A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, paragraph B.

B. Adjustment Factors. Refer to adjustment factors in FOM Chapter VI, paragraph B.9., for size, good faith and history.

viii. NCGS § 95-225(h). This statute will be cited when an inspector discovers that the owner/operator has allowed the housing to be occupied without providing a mattress in good repair with a clean cover.

A. Classification. Citation will be issued as a substantive violation, and be categorized depending on the degree of health hazard posed in accordance with FOM Chapter VI, paragraph B.

B. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9., for size, good faith and history.

ix. NCGS § 95-226(a). This statute will be cited when housing has not been registered with the NCDOL or the appropriate health department at least 45 days prior to the anticipated date of occupancy. A full inspection of the migrant housing will be conducted to determine deficiencies of any and all violations of the MHA, including the appropriate 29 CFR 1910.142 standards.

A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.

B. Penalty. An unadjusted civil penalty of $10,000 will be assessed if the employer did not register. An unadjusted penalty of $2,000 will be assessed if the employer did not register at least 45 days prior to the anticipated date of occupancy. The bureau has determined these fixed penalty amounts are appropriate to achieve the necessary deterrent effect.

C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9., for size and good faith. No reduction will be given for history.

x. NCGS § 95-226(d). This statute will be cited when the operator has allowed migrant housing to be occupied prior to receiving certification.

A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.

B. Penalty. An unadjusted civil penalty of $6,000 will be assessed. The bureau has determined this fixed penalty amount is appropriate to achieve the necessary deterrent effect.

C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9., for size and good faith. No reduction will be given for history.

Note: *This statute will not be cited when an operator has registered the migrant housing 45 days prior to the expected occupancy date and NCDOL has not conducted a preoccupancy inspection within at least four days prior to the anticipated occupancy. Under such conditions, the housing may be occupied on a provisional basis until NCDOL conducts a housing inspection.*

xi. NCGS § 95-226(e). This statute will be cited when housing is registered, but migrants arrive prior to the date stated on the application, and the operator fails to notify the NCDOL of their arrival within working two days of the occupancy.

A. Classification. Citation will be issued as non-serious, regulatory. Neither severity nor probability will be categorized.

B. Penalty. An unadjusted civil penalty of $1,000 will be assessed. The bureau has determined this fixed penalty amount is appropriate to achieve the necessary deterrent effect.

C. Adjustment Factors. Adjustment factors will be given in accordance with FOM Chapter VI, paragraph B.9., for size and good faith. No reduction will be given for history.

c. Field Sanitation Standards.

i. All assignments received concerning alleged violations of the field sanitation standard (29 CFR 1928.110) will be processed as quickly as priorities permit because of the short duration of these operations.

ii. Classification. In general, failure to comply with field sanitation standards, especially during peak planting or harvesting periods, will be classified as a serious violation. When it is clear that non-compliance consequences would probably not cause death or serious physical harm, violations may be classified as non-serious. For example, when an employer provides a single toilet (at an appropriate place in the field) for 21 employees, instead of 20 employees, a non-serious violation may be issued.

iii. Abatement of Violations. Due to the short duration of hand-labor field operations, the abatement period will be the shortest possible interval, with particular emphasis given to immediate abatement.

iv. Follow-Up Inspections. Failure-to-abate procedures will follow FOM Chapter III. Field sanitation inspections resulting in serious citations may receive follow-up inspections to verify that the employer has corrected the violation.

d. Hazard Communication Standard.

i. Classification. In general, failure to comply with the Hazard Communication Standard (29 CFR 1910.1200), especially during peak planting or harvesting periods, will be classified as serious violations.

When it is clear that non-compliance consequences would probably not cause death or serious physical harm, violations may be classified as non-serious. For example, when an employer provides some but not all of the safety data sheets, and the employees are not directly involved in chemical application, a non-serious violation may be issued.

ii Abatement of Violations. Due to the short duration of hand-labor field operations, the abatement period will be the shortest possible interval, with particular emphasis given to immediate abatement.

iii. Complaints received relating to chemical hazards should be inspected within 24 hours consistent with the most current revision of OPN 116.

e. The CSHO will leave the workers copies (in their native language, if possible) of all ASH regulations and the phone number of the ASH office.

8. Closing Conference with Operator. At the conclusion of the inspection, the CSHO will conduct a closing conference with the operator:

a. If the dwelling is not used for migrant housing, then the CSHO should inform the operator that he/she is not under the scope of the MHA or the OSH Act.

b. If the dwelling is used for migrant housing:

i. The CSHO will inform the operator that failure to register constitutes a violation of the MHA.

ii. If other violations of the occupational safety and health standards are found during the compliance inspection, the CSHO will:

A. Describe the violation(s) to the operator and discuss possible correction and control options.

B. Inform the operator that citations and penalties may follow.

C. Inform the operator that the cited conditions must be abated by the dates set in the citation, or as noted in NCGS § 95-229.1.

D. The CSHO will furnish a copy of the Employer/Operator and Employee/Migrant Rights and Responsibilities (OSH 59), review each item with the operator and answer any questions they might have.

c. For all other agricultural inspections:

i. If no violations are found, the CSHO should inform the operator/employer that he/she was in compliance.

ii. If violations are found, the CSHO will:

A. Describe the violation(s) to the operator/employer and discuss possible correction and control options.

B. Inform the operator/employer that citations and penalties may follow.

C. Inform the operator/employer of the time established to correct the violations.

D. Furnish a copy of the Employer/Operator and Employee/Migrant Rights and Responsibilities to the operator/employer. Review each item with them and answer any questions they might have.

9. Post Inspection Report.

a. If no violations are found, the CSHO will enter a note in the case file.

Note: *If the dwelling is not used for migrant housing, the CSHO will enter a note in the case file and a letter will be sent to the owner/operator notifying them that no citations will be issued.*

b. If violations are found, the CSHO will input appropriate documentation into the appropriate computer system and:

i. Mail a copy of the Citation and Notification of Penalty (OSHA-2) with a listing of violation(s) and penalty to the operator/employer.

ii. Submit a copy of the Inspection Report (OSHA-1), a copy of the Worksheet (OSHA-IB), a copy of the Employees Contact Form, a copy of the Citation and Notification of Penalty (OSHA-2), and a copy of the Referral Report (OSHA-90) or Complaint (OSHA-7) to the ASH office.

iii. Along with these forms, a copy of the Fatality/Catastrophe Report and Investigations Summary should be submitted for fatality investigations.

iv. Case file documentation will include the following information:

A. On every inspection report, write "migrant" in field 25e.

B. The identity of the housing operator. The operator may be a grower, a cooperative made of multiple growers, a crew leader, a housing owner, or any combination of these. The operator is any person who controls the housing. [NCGS § 95-223(7)].

C. Description and specific location of site with supporting photos.

D. Number of dwelling units, number of occupants in each unit.

E. Approximate size of area in which the housing is located, including the distance between dwelling units and water supply, toilets, livestock and service buildings.

Note: *Citations will be written to include all parties responsible for the housing. Housing operators who are not employers of the migrant workers may only be cited under the MHA.*

10. Appeal by Operators. An operator may contest citations and penalties issued under the OSH Act in accordance with NCGS § 95-137.

D. **Consultations**.

1. Request from Operators. Occasionally, an operator requests the assistance of ASH to plan construction, renovations, site selections, the hazard communication standard or field sanitation standards, or other matters relating to agricultural workplace safety issues. ASH usually honors such requests by sending a CSHO to consult with the operator.

   a. Priority. A request for consultation receives the same priority in scheduling as a preoccupancy inspection.

   b. Educational Materials Provided. Diagrams and building plans are provided in the Introduction to Migrant Housing Inspections in North Carolina booklet.

2. Consultation Process.

   a. As appropriate to the situation, the CSHO may:

      i. Inspect the potential site.

      ii. Discuss appropriate standards and requirements with the operator.

      iii. Provide written information, such as standards, sample blueprints, a blank copy of the checklist, and/or a copy of the Introduction to Migrant Housing Inspections in North Carolina booklet.

      iv. Conduct follow-up visits.

   b. During a consultation visit, the CSHO will limit comments and recommendations to those issues for which the operator could be cited under the MHA or the OSH Act (such as electrical standards). For issues and questions concerning topics covered by other regulations or ordinances the CSHO should advise the operator to seek assistance from the appropriate enforcement agency.

3. Post Consultation Follow-Up. The CSHO will submit a copy of the Agricultural Safety and Health Consultation to the ASH office.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XII – Construction



Chapter Effective: February 2000
Revision 5: 09/28/2015

Table of Contents

A. General CSHO Responsibilities

B. Standards

C. Employer Worksite

D. Advance Notice

E. Entry of the Workplace

F. Special Health Concerns

G. Closing Conference

H. Citations and Penalties

Chapter XII

Construction

A. **General CSHO Responsibilities**. CSHO responsibilities for construction inspections are the same as for general inspections. Special situations arising in the construction industry are discussed in this chapter.

B. **Standards**.

1. Applicability. The standards issued under the Construction Safety Act and published as 29 CFR Part 1926 have been adopted as occupational safety and health standards under NCGS 95-131. They will apply to every employer and place of employment of every employee engaged in construction work, including noncontract construction work.

a. Definition. The term "construction work" means work for construction, alteration, and/or repair, including painting and decorating. These terms are discussed in 29 CFR 1926.13. Replacement in kind is general industry maintenance. Upgrades or improvements are construction work. *To eliminate confusion over how to properly classify and document inspections associated with construction related tree felling operations, the OSH Division inspection classification will be based on guidance provided in CPL 02-01-045: Citation Guidance Related to Tree Care and Tree Removal Operations, which can be found in the CPL folder on the FIS.* If any question arises as to whether an activity is deemed to be construction for purposes of the Act, the supervisor will be consulted.

b. Part 1910 Standards Applicable to Construction. Many Part 1910 standards, such as those published in the Construction Industry Standards, are applicable to construction work. The supervisor will ensure that they are enforced as appropriate, consistent with their scopes and definitions.

i. Among the identified Part 1910 standards, all health standards in Subpart Z, except for:

A. The exposure limits contained in 29 CFR 1910.1000, Tables Z-1, Z-2, and Z-3. The applicable exposure limits for construction are referenced in 29 CFR 1926.55(a).

B. Asbestos regulations in 29 CFR 1910.1001. The applicable standard regulating occupational exposure to asbestos, tremolite, anthophyllite, and actinolite in construction is 29 CFR 1926.1101.

C. Lead regulations in 29 CFR 1910.1025. The applicable standard regulating occupational exposure to lead in construction is 29 CFR 1926.62.

ii. 29 CFR 1910.1020, Access to Employee Exposure and Medical Records, has been identified as applicable to construction.

iii. The CSHO will not recommend a citation of a 1910 standard other than one identified as applicable to construction work without the approval of the supervisor and bureau chief.

2. Enforcement. In the event of violations, citations will be issued and penalties assessed in accordance with procedures set forth in other chapters in this manual.

C. **Employer Worksite.**

1. General. Inspections of employers in the construction industry are not easily separable into distinct worksites. The worksite is generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road building), the entire job will be considered a single worksite.

2. Administrative Convenience. The definition of worksite in this chapter is only for administrative convenience and has no effect upon the issuance of failure-to-abate notifications or repeat citations that are governed by the manual's general inspection procedures. For instructions regarding multi-employer worksites, the manual's chapter on citations should be reviewed.

D. **Advance Notice.**

1. General. The same general policies and procedures on advance notice set forth in chapter III on inspection procedures are applicable to construction inspections. Thus, in general, advance notice will be given only where it will enhance the effectiveness of the inspection and must be authorized by the director's office, as stated in NCGS 95-136(f)(2).

2. Authorized. When advance notice is authorized, the CSHO will contact the prime or general contractor's office by telephone. If there is more than one general contractor (e.g., if two or more general contractors have formed a joint venture for purposes of the job in question), the CSHO will attempt to ascertain the identity of all such general contractors and contact each of them. The general contractor(s) will be told to advise all subcontractors working on the job that the inspection will take place. The general contractor will also be asked to advise the labor organizations representing employees and to instruct each subcontractor to take similar action. Where there are no labor organizations or other representatives of employees, advance notice need not be given to the employees.

E. **Entry of the Workplace.**

1. Severe Weather Conditions. If severe weather conditions encountered during an inspection cause construction activities to shut down, the inspection will be continued when weather permits. If the work continues and the weather creates hazardous working

conditions, these facts will be reported, since they may be the subject of citations and proposed penalties based on a specific standard or, if no such standard is applicable, the General Duty Clause (NCGS 95-129(1)). In no case will the CSHO put themselves in danger (e.g., stay out in a lightning storm.)

2. Opening Conference. In conducting the opening conference the CSHO will follow the procedures outlined in the Inspection Procedures chapter. Upon arrival at the construction site, the CSHO will contact the "prime" or general contractor's representative in charge of the job; usually, this will be the superintendent or project manager. The CSHO will advise this individual that the purpose of this visit is to make an inspection of the worksite in order to determine compliance with the requirements of the Act.

   a. Focused Inspections. On a construction site, all construction inspections start out as comprehensive in scope, but are candidates for focused inspections and the site must meet the requirements outlined in the most current revision of OPN 96 - Focused Inspections in Construction**.** The CSHO will determine if there is project coordination by the general or prime contractor with an adequate and effective safety and health program and a designated, competent person responsible for implementing the program. If any or all of these elements are not found, the CSHO will conduct a comprehensive inspection. If all these elements exist, the CSHO will conduct a focused inspection, concentrating on falls, electrical hazards, "caught-in" and "struck-by" hazards. If any or all of these elements are not found, the CSHO will conduct a comprehensive inspection.

   b. Subcontractors. Normally, there will be several subcontractors at the site. A list of all subcontractors will be requested during the opening conference with the general contractor, prime contractor or other controlling entity. If the site qualifies for a focused inspection and no serious hazards are observed during the walkthrough, inspections will not be opened with subcontractors. If serious hazards are observed during the walkthrough the CSHO will hold an opening conference with the affected employer(s) or his representatives on the jobsite and may cite the affected subcontractor, and/or other employers, as per the multi-employer worksite policy. (See CPL 02-00-124 in the CPL folder on the FIS).

   c. Employee Representatives. Authorized representatives of employees for each contractor and subcontractor, if any, will be informed of the inspection and provided an opening conference. Based upon inspection circumstances the CSHO may hold individual conferences with the subcontractor and the employee representative or may hold a joint conference with employers if both parties are in agreement.

   d. Closing Conference. The CSHO will advise all employers and employee representatives that a closing conference will be held with each of them following their respective portion of the inspection, and request that each of them arrange to have a representative available.

e. Responsibilities for Common Services. At the opening conference, or at some other suitable time during the inspection, the CSHO will ascertain who is responsible for providing such special services as common sanitation, eating facilities, first aid, etc., available to all employees on the worksite. Even though arrangements have been made for one subcontractor or for the general contractor to provide common services, each employer is responsible for his/her own employees in this regard. Any or all of the employers can be cited for lack of such services.

f. Complaints. If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished as follows:

i. A copy of every complaint against the general contractor and information concerning complaints against subcontractors will be provided to the general contractor.

ii. A copy of every complaint against the general contractor will, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.

iii. A copy of every complaint against a subcontractor will be provided to that subcontractor and, if possible, to others whose employees may be exposed to the alleged hazard.

iv. Care will be taken to protect the identity of the complainant including the typing of handwritten complaints and the covering of all signatures.

v. For further details see the procedures outlined in FOM Chapter IX.

g. Collecting Recordkeeping Information.

i. If a site has been or expects to be under construction for more than one year, an OSHA 300 log is required specific to that site for each employer who will have employees assigned to the site for longer than one year. The CSHO will request the recordkeeping data from each employer and enter it into OSHA Express to produce the DART rate.

ii. If the site has been under construction for less than one year and/or the general contractor has fewer than 11 employees, do not attempt to collect the data. Any site less than one year old should be treated as a non-fixed establishment. Although construction employers are required to keep injury and illness records, employers at projects under construction for less than one year are not required to maintain their injury and illness records on the site. Construction contractors that employ fewer than 11 workers are not required to maintain recordkeeping logs.

iii. The CSHO will collect site recordkeeping data from the corporate office when the office maintains the original with copies going to the site. (29 CFR 1904.)

3. Selecting Employer and Employee Representatives. The CSHO will conduct a walkaround inspection in accordance with general inspection provisions outlined in this manual.

a. Authorized Representative. Each employer is entitled to select an authorized representative to accompany the CSHO during the inspection. Similarly, the employees of each employer have the right to select an authorized representative for this purpose. If the job is unionized, then the labor organization representing the employees will select the authorized employee representative. If there is no representative, the CSHO will normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees will include at least some employees of each employer and each craft on the job.

b. Employee Interviews. Pursuant to NCGS 95-136, during the walkaround the CSHO will consult with individual employees as well as the employee representative concerning working conditions, as judged appropriate by the CSHO.

c. Walkaround Provisions. The main difficulty in implementing the walkaround provisions on construction sites derives from the fact that in the usual situations there will be numerous employers on the job. If all employers and groups of employees selected a different representative to accompany the CSHO on the inspection, the group participating in the inspection could be so large that work on the worksite might be disrupted and the effectiveness of the inspection would be diminished.

i. An attempt will be made to encourage employer and employees to select, respectively, a limited number of representatives for accompaniment purposes. It will be pointed out by the CSHO that this arrangement makes an effective inspection possible without diminishing the accompaniment rights. If any matter comes up during the course of the inspection that requires special knowledge, the representative of the appropriate employer or employees will be called in to participate in that phase of the inspection.

ii. The CSHO may also divide the inspection into separate phases; e.g., excavation work followed by electrical work, and so forth. If this procedure is followed, the number of employer and employee representatives for each phase of the inspection can be limited to those immediately involved. The CSHO should avoid, to the extent possible, inspecting the same areas of the worksite more than once.

d. Excessive Representation. The CSHO will conduct the inspection accompanied by the representatives designated by the employers and employees. However, if during the course of the inspection, the CSHO determines that, because of the large number of persons involved, the inspection is not being conducted in an effective manner or that work is being unduly disrupted, the participants will be advised that walkaround representation is discontinued and instead a reasonable number of employees will be interviewed. If the participants then agree to a limited number of representatives for accompaniment purposes, the CSHO will resume the inspection with such representatives.

F. **Special Health Concerns.** The potentially hazardous operations that bring a health compliance officer to a construction site, especially with complaints or referrals of airborne asbestos, silica and lead, are often of short duration and completed prior to the CSHO arriving on site. In these cases the CSHO will contact the complainant or other reliable source and determine if the same conditions exist at another worksite. If they do, the CSHO will open an inspection at that alternate worksite.

G. **Closing Conference.**

1. General. Upon completion of the inspection, the CSHO will confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, at their option, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed. The closing conference with each general contractor and subcontractor may be a joint conference with employer and employee representatives.

   Note: For information on citing violations at multi-employer worksites, refer to Chapter V on citations. It discusses citing non-exposing employers and legitimate defenses of exposing employers.

2. Contractor Names and Addresses. The CSHO should make certain before leaving the worksite that he has obtained the names and addresses of the general contractor and all other employers at the worksites.

H. **Citations and Penalties.**

1. Mailing. Upon the completion of citations and notifications of penalties, the OSHA 2 Form for each employer will be sent to each employer's home office.

2. Where to Post Citations. The citations will be posted at a location where they are protected from the elements and the employees have daily access.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XIII – Informal Conferences, Contested Cases and Disclosures



Chapter Effective: February 2000
Revision 20: 11/01/2019

Table of Contents

A. Informal Conferences

1. General
2. Scheduling the Informal Conference
3. Conducting the Informal Conference
4. Results of the Informal Conference
5. Post Conference Systems Update/Changes
6. Employee Representation
7. Employee Rights

B. Contested Cases

1. General
2. Transmittal of Notice of Contest and Other Documents to OSH Review Commission
   a. Notice of Contest
3. Transmittal of Copies of Case Files to the Attorney General's Office
4. Communications With OSH Review Commission Employees
5. Dealing with Parties While Proceedings are Pending Before the OSH Review Commission
6. Responsibilities of Field Personnel
7. Expert Witnesses

C. Disclosures

Chapter XIII

Informal Conferences, Contested Cases and Disclosures

A. **Informal Conferences.**

1. General. North Carolina General Statute (NCGS) 95-137(b)(1) – Issuance of Citations, allows an employer to either contest a citation or penalty, or request an informal conference (IFC) within 15 working days of receipt of a citation. If an IFC is scheduled, the employer is still allowed the option of contesting after the result of the IFC is determined. This process was designed to resolve disagreements in an informal manner and to reduce the number of contestments.

2. Scheduling the Informal Conference.

   a. An employer has 15 working days from receipt of a citation to request an IFC. The IFC should be conducted within those 15 days.

   b. If scheduling problems exist, an additional five working days may be allowed. No more than 20 working days should lapse from the employer's receipt of the citation to the district supervisor providing written notification of IFC results to the employer.

   c. If an IFC is requested by the employer but cannot be held within 20 days, a "No Change" letter will be issued. From the date of the "No Change" letter, the employer would have 15 working days in which to contest and/or schedule, conduct, and receive a reply to an IFC.

   d. Informal conference requests may be received via mail, fax, email, etc. All OSH compliance personnel, including district supervisors and compliance safety and health officers (CSHOs), that receive an informal conference request shall give the request to the office administrative staff. Upon receipt of an informal conference request, the administrative staff will stamp and scan the request with the date received into the document section and enter this date in OSHA Express (OE) under the S 06 code (Inspection form, Field 42. Optional Codes).

   e. An employer who does not request an IFC within 15 working days from the receipt of a citation will be informed that the citation(s) is now considered a final order and an informal conference cannot be held. The district supervisor can consider any information the employer provides and make decisions regarding the disposition of the inspection, but this will not be considered an informal conference and the informal conference forms will not be used. Any action taken by the district supervisor because of a late informal conference request must be documented in the Case File Summary and the Notes section of OE. These actions must also be approved by the bureau chief and documented in the Notes section of OE.

3. Conducting the Informal Conference. The IFC is the employer's opportunity to present any questions, problems, concerns, evidence and/or abatement verification to the district supervisor. Even though these procedures refer to the conduct of the IFC by the district supervisor, the IFC may be conducted by one of the following Occupational Safety and Health (OSH) Division management representatives: director, assistant director, bureau

chief, district supervisor or CSHO II. A CSHO II who conducts an IFC has the same authority as the district supervisor in the IFC process. A case file that requires bureau chief approval for citation issuance or closing the case file also requires bureau chief approval for settlement. A settlement agreement with a penalty reduction greater than 35% requires bureau chief approval.

The district supervisor will consider the employer's information in a fair manner, giving thought to information that may not have been available during the inspection. The district supervisor will document the IFC results on the Informal Conference Notes Form located in the Forms folder on the FIS. The completed form will be maintained in the case file in accordance with Field Operations Manual (FOM) Chapter XVI – Administrative File Activities and will be scanned, labeled and "tiffed" into the Documents section of OE.

Following the IFC, one of the following will occur:

a. The district supervisor may modify the citation(s) based on information reviewed at the IFC. One reason may be to correct an error in penalty calculation or citation processing. Amended citations may be issued after the IFC. Draft ISA's, letters and amendments are to be placed in the attachments section of OE

b. The district supervisor may find that the work of the CSHO was appropriate and the case file complete. In this case, the district supervisor will give the employer a "No Change" letter that advises the employer of the right to contest the citation and/or penalties within 15 working days of receipt of the "No Change" letter.

c. The district supervisor may draft an Informal Settlement Agreement (ISA) if it is determined it would be beneficial to employee safety and health or to expedite abatement or to resolve the case. Many ISA options are available to the district supervisor including, but not limited to, penalty reduction, modifying citations, mandating the establishment of safety and health guidelines or requiring the correction of similar hazards at all company locations. The ISA must specify that the employer waives the right to contest the citation issues and/or penalties agreed upon.

d. All interactions above will be documented on the Informal Conference Notes form prior to tiffing and appropriate notations will be entered into the Case File Summary sheet.

Note**:** If the employer signs the ISA, it must be posted at the workplace for three working days or until all the items are corrected.

4. Results of the Informal Conference. The district supervisor will provide written notification to the employer of the results of the IFC. Where the employer has a designated representative, the district supervisor will verbally review any proposed ISA with the employer representative prior to sending any written notification. The OSH Division management representative will provide written notification of IFC results to the employer. This notification will normally be one of the following: a cover letter and an amended citation(s), a cover letter/settlement agreement, or a letter of no change. The district supervisor can consider using a combination of the preceding three to reach an ISA.

The notification also includes information that the employer has 15 working days to contest if the settlement proposal is not acceptable. Once the notification is mailed to the employer, the district supervisor should not make any further contact with the employer that could be construed as extending the time limit the employer has to respond to the ISA. For example, an ISA may cover areas on which the district supervisor and employer agree along with a letter indicating no change may be provided for any issue(s) for which agreement is not reached. An ISA requiring a signature must be sent certified U.S. Mail. After signatures are secured, the ISA can be sent regular mail.

5. Post Conference Systems Update/Changes.

a. The district supervisor will enter the date that the informal conference occurred in OE via the Inspection Update screen, tab OSHA-167I, field13a, and place a hard copy of the IFC notes in the case file. The mailings are completed as follows:

i. Changes to citations via ISA.

A. The administrative staff mails a signed copy of the ISA and cover letter to the employer.

B. The administrative staff inserts the original copy of the ISA into the case file.

C. The administrative staff makes the appropriate entries on the Case File Summary sheet.

D. Once the executed ISA is returned from the employer, the administrative staff updates the Violation Worksheet(s) as indicated in the ISA.

E. An executed copy will be mailed to the employer with an "executed ISA" cover letter.

F. The administrative staff will tiff the fully signed ISA into the Document section of the inspection in the OE. (If a copy of an unsigned ISA is in the document section, the administrative staff will delete the unsigned copy).

ii. Changes to citations via amended citations (no ISA).

A. The administrative staff processes a citation amendment form.

B. The administrative staff forwards a copy of the amended citation with cover letter to the employer by certified U. S. Mail.

C. The administrative staff updates the Event Processing tab in the violations screen per the recommendation of the district supervisor.

iii. No changes as a result of the IFC.

A. The administrative staff processes a "No Change" letter.

B. The processed letter is mailed to the employer.

6. Employee Representation.

a. Employers are required to post a notice of the IFC for the information of their employees. Employees represented by a bargaining agent will be provided notice of the IFC by the employer and given the option of attending the conference.

b. Employees who do not have a designated representative will be notified by the employer posting the "Notice to Employees of Informal Conference," which is part of the citation package. These employees may attend the IFC at the discretion of the district supervisor.

c. The person conducting the IFC will ask the employer at the beginning of the IFC whether the form in the citation package indicating the date, time and location of the conference has been posted as required.

d. If the employer has not posted the form, the IFC may be postponed until such action is taken.

7. Employee Rights. When an employee contests an abatement period, any IFC results pertaining to abatement dates must be agreed to by the employee prior to any finalized ISA.

B. **Contested Cases.**

1. General. The N.C. OSH Review Commission, created under NCGS 95-135 – North Carolina Occupational Safety and Health Review Commission, is an independent adjudicatory body. It consists of three members appointed by the governor. The OSH Review Commission provides employers and employees an opportunity for a hearing in matters associated with citations, proposed penalties and abatement periods as provided by the Act.

2. Transmittal of Notice of Contest and Other Documents to OSH Review Commission.

a. Notice of Contest. In accordance with the Rules of Procedure of the OSH Review Commission, the original notice of contest and envelope, together with all relevant documents as described in FOM Chapter XVI – Administrative File Activities, Section E.3. will be transmitted by the field office to the OSH Review Commission via facsimile (FAX) and certified U.S. Mail, except as specified in subsection ii. below. This also applies to an employee notice of contest in which objections are made to the abatement period.

i. A copy of the notice of contest and a copy of the envelope that contained the notice of contest (with the postmark intact) will be retained in the case file.

ii. If the employer's notice of contest indicates they are contesting only the reasonableness of the abatement period, the district supervisor will immediately contact the employer to determine if the abatement period

differences can be resolved as a Petition for Modification of Abatement and handled in accordance with the instructions in FOM Chapter XVI. If the abatement period differences cannot be resolved, the communication from the employer will be treated as a notice of contest and forwarded to the OSH Review Commission. The district supervisor will delineate the result of this contact in the Case File Summary.

iii. If written communication is received from an employer containing objection, criticism or other adverse comment as to a citation or proposed penalty, but does not explicitly indicate that it is a notice of contest, the district supervisor will immediately contact the employer to clarify the intent of the communication. This clarification must be obtained within 10 working days after receipt of the communication so that if it is a notice of contest, the file may be forwarded to the OSH Review Commission within the allowed time if it is determined to be a notice of contest. If the district supervisor cannot contact the employer within 10 working days, the communication will be treated as a notice of contest and forwarded to the OSH Review Commission.

iv. When the district supervisor determines that the employer intends the communication from iii. above to be a notice of contest, it will be transmitted to the OSH Review Commission in accordance with FOM Chapter XVI, Section E.3. If the employer did not intend the communication to be a notice of contest, it will be retained in the case file along with any additional correspondence to the employer.

v. If the district supervisor determines that the employer intended the communication to be a request for an IFC, the employer will be informed that the employer has 15 working days from the receipt of the IFC results to contest the citation and/or penalty.

vi. If a notice of contest is received, and no IFC has been requested or conducted, the district supervisor will contact the employer via telephone and confirm that the employer does not want an IFC, prior to or instead of, a contestment. When an employer prefers an IFC, a notation of this decision will be placed in the case file.

3. Transmittal of Copies of Case Files to the Attorney General's Office.

a. When a notice of contest is received, it will immediately be date stamped.

b. A copy of the case file will be made and forwarded to the Attorney General's (AG's) Office per FOM Chapter XVI, Section E.3.

4. Communications with OSH Review Commission Employees. There will be no one-sided communication with the OSH Review Commission with respect to the merits of any case not yet concluded, including any member, officer, employee, or agent of the OSH Review Commission. OSH Division personnel will refrain from any direct or indirect communication regarding the merits of the case with hearing examiners or any members or employees of the OSH Review Commission. All OSH Review Commission inquiries and communications will be referred to the AG's Office. Media requests and inquiries regarding contested cases will be referred to the Communications Division.

5. Dealing With Parties While Proceedings are Pending Before the OSH Review Commission.

   a. Withdrawing a Contestment.

      If a respondent/employer calls the district office or the CSHO and says he/she no longer wants to contest the citation(s) or does not want a hearing, the respondent/employer will be directed to the OSH Review Commission at 919-733-3782. Appropriate procedures must be followed to withdraw the contestment to protect the respondent/employer rights and options.

   b. Clearance from the AG's Office. After the notice of contest is filed and the case is within the jurisdiction of the OSH Review Commission, there should be no investigations of or conferences with the employer without clearance from the AG's Office. Such requests should be referred promptly to the AG's Office for a determination of the advisability, scope and timing of any investigation, and the advisability of and participation in any conference. To the maximum extent possible, there should be consultation with the AG's Office on questions of this nature so as to insure no procedural or legal improprieties.

   c. Inquiries. Once a notice of contest has been filed, all inquiries relating to the general subject matter of the citation and notification of penalty raised by any of the parties of the proceedings, including the employer and affected employees or authorized employee representative, will be referred promptly to the AG's Office. All other inquiries, from prospective witnesses, insurance carriers, other government agencies, attorneys, etc., will be referred promptly to the AG's Office.

      Note: Cooperation with the AG's Office in this area is important. There are practical advantages in having an attorney participate in these conferences. Moreover, serious questions of legal propriety could be raised about meetings with parties involved in hearings and litigation without the presence of counsel and about the discussion or disclosure to non-parties of any aspect of pending cases.

6. Responsibilities of Field Personnel.

   a. District Supervisor.

      i. Assure that the CSHO meets with the AG's Office to discuss the case as soon as possible after notice of contest is filed. (District supervisor attendance is optional.)

      ii. Evaluate the results of the CSHO's meeting with AG's Office and make appropriate recommendations regarding the contestment to the AG's Office.

      iii. Assist the AG's Office with preparation of the contested case file, including case documentation material.

b. CSHO.

i. Schedule a meeting to discuss the notice of contest with the AG's Office as soon as possible after the contestment is filed and report the meeting results to the district supervisor.

ii. Assure that a certified copy of the case file is available for the CSHO at the hearing site on the day of the hearing. Nothing from the original file will be taken into the hearing room or submitted into evidence. Do not include medical records in the CSHO certified copy.

iii. Assist the AG's Office with the contest as appropriate, including augmenting or clarifying case documentation material.

iv. Ensure that the final order is filed in the case file and that the final order data is entered in OE.

7. Expert Witnesses. The bureau chief would be responsible for determining, in conjunction with the AG's office, whether an expert witness is needed for a hearing. The bureau is responsible for providing assistance in finding an expert witness. If expenses are to be incurred, they need to be approved by the bureau chief prior to anyone making arrangements to secure an expert witness. The funding would come from the applicable bureau. The bureau chief would determine if funds are available to cover expenses. The bureau chief will determine if a contract is needed between all parties. If a contract is necessary, the bureau chief will work with the AG's Office to develop one and it will be reviewed by the NCDOL Legal Affairs Division and the OSH Assistant Director's Office prior to being forwarded to the expert witness for signature. The assistant director needs to be kept informed of the status of the contested case. If a case is settled prior to a hearing, any expenses incurred by the witness will be paid by NCDOL.

C. **Disclosures.**

Inspection or investigative case files are public information and the inspected or investigated company, employees, employee representatives, attorneys, next of kin, and the public in general can request copies for a minimal per page charge. Case files are redacted prior to release so that personal identifiers, medical records, names and other identifiers of witnesses and complainants, trade secret information and records of accidents, injuries, illnesses and settlements received from the Industrial Commission are removed as required by and in accordance with NCGS 132-1.10; NCGS 14-43.17; NCGS 14-113.20(b); 13 NCAC 7A .0301; 13 NCAC 7A .0303; 13 NCAC 7A .0900; NCGS 95-136; NCGS 95-152; NCGS 132-1.2; NCGS 132-1.7; NCGS 97-81; and NCGS 97-92.

1. All requests for disclosures must be submitted in writing to the Planning, Statistics and Information Management (PSIM) Bureau and should include as much of the following information as possible:

a. Name, mailing address, telephone number and email address of the requestor.

b. Requestor's relationship to the employer.

c. Name of the employer/company.

d. OSH case file number (inspection, complaint, referral or accident/event number).

e. Date of inspection or investigation.

f. Specific information requested from the case file (may be the entire file or any portion of the file).

2. PSIM Bureau staff, based on scheduled hearing dates and other pertinent information, will determine the estimated date that the disclosure will be sent to the requestor.

3. Case file information may be released as follows and will be redacted in accordance with NCGS 95-136 – Inspections, and other applicable requirements referenced in C. above:

a. Copies of citations and penalties may be released to the public after the citations have been received by the employer.

b. A redacted copy of an inspection case file may be released by the PSIM Bureau to the inspected employer or their attorney at any time after the citations or the in-compliance letter has been received by the employer.

c. A disclosure request by an inspected employer or the attorney representing the company in the OSH case, prior to citation issuance, for photos or videos taken during an inspection must be in writing and submitted to PSIM. It should be noted in the request letter that they would like the photos prior to citations being issued. When the CSHO is made aware of the request, they will forward copies of the materials requested to the PSIM Bureau.

d. A redacted copy of an inspection case file may be released by the PSIM Bureau to any requestor after the citations and penalties become final order and if there are no other related case files associated with the specific file request. If there are other related case files which were generated from more than one company being inspected relative to a specific event, none of the related case files will be released to a third party requestor until all the related inspection case files meet the following criteria:

i. Fifteen (15) working days after the company receives the citations, if there is no notice of contest or request for an informal conference.

ii. Thirty (30) calendar days after an ISA is fully executed.

iii. Thirty (30) calendar days after a Formal Settlement Agreement is approved by the OSH Review Commission.

iv. Thirty (30) calendar days after the OSH Review Commission releases a Final Order after a contested case has been heard unless it is appealed.

v. If the Final Order of the OSH Review Commission is appealed, 30 calendar days after the entry of an Order that has become final because no appeal has been entered.

e. A redacted copy of an investigative case file may be released to any requestor once the file is closed.

f. An unredacted copy of a case file may be released to any NCDOL employee outside of the OSH Division if approved by the OSH director or assistant director. However, medical records contained in case files may only be released to the NCDOL Legal Affairs Division unless the division has a notarized release per paragraph h. below.

g. An unredacted copy of a case file may be requested in writing and released by PSIM to another local, state or federal agency (e.g., N.C. Department of Health and Human Services, N.C. Department of Environmental Quality, N.C. Department of Commerce, federal OSHA, state legislator), if approved by the OSH director or assistant director. However, medical records contained in case files may only be released to the AG's Office for litigation unless the division has a notarized release per paragraph h. below. If approved for release, an unredacted case file is generally sent only after the file and all associated cases are settled. (See C.3.d. above.)

h. Unredacted personnel and medical records will be released only when permission is granted for release by the affected employee or their next of kin. The release must be in writing, notarized, and must specify the exact person and address to forward the documents.

4. The following list contains examples of documents or information contained in OSH case files which will be redacted by the PSIM Bureau pursuant to a public records request. Any questions about whether a particular document or information within a case file can be released will be referred through the PSIM Bureau to the NCDOL Legal Affairs Division or the AG's Office for clarification.

a. The names or other identifying information of all witnesses and complainants (to include addresses, phone numbers, etc.), unless a written and notarized release, signed by the witness or complainant, is received that permits the release of such information to any persons or entities designated in the release.

b. Statements that are in the handwriting of the witness or complainant unless a written and notarized release, signed by the witness or complainant, is received that permits the release of such information to any persons or entities designated in the release.

c. All Social Security numbers, birth dates, employer tax identification numbers, unemployment numbers, Dunn & Bradstreet numbers, driver's license numbers, state identification card numbers, passport numbers, identification card numbers issued by any foreign consulate, personal identification numbers (PIN), electronic identification numbers, personal email names and addresses, internet account numbers, internet identification names, digital signatures, fingerprints, biometric data, passwords, or parent's legal surnames prior to marriage.

d. Trade secret information or photographs/videotapes of trade secrets, which have been designated "TRADE SECRET." It is the responsibility of the CSHO and district supervisor to acquire input and evaluation of NCDOL Legal Affairs Division in order to designate and mark/label accordingly any trade secret information.

e. Copyright protected materials.

f. Photographs, videotapes or audio recordings of an official autopsy. The text of an official autopsy report is releasable, with applicable redactions.

g. Inter- and intra-agency documents or memos between agency personnel and the AG's Office or NCDOL Legal Affairs Division.

h. Attorney working papers and/or opinions, including emails between the AG's Office or NCDOL Legal Affairs Division and OSH Division personnel.

i. Personnel and medical records, except employee exposure records, unless permission is granted for release per paragraph C.3.h. above.

j. Financial records, including but not limited to, checking or savings account numbers, debit card or credit card numbers, unemployment insurance numbers, or any other information or numbers that can be used to access a company or person's financial resources.

k. The Consultative Services Bureau survey reports and/or OSHA Data Initiative (ODI) Survey reports that are part of a case file are only provided to the employer who requested the consultative survey or were surveyed or their attorney, but are not to be released to the public. Anyone requesting ODI Survey data will be referred to the OSHA website for retrieval of available ODI Survey data (http://www.osha.gov/pls/odi/establishment_search.html), which was collected for calendar years 1996-2011.

l. N.C. Department of Commerce, Division of Employment Security site search results.

m. N.C. Rate Bureau information or history.

n. Any optional information entered on any OSHA form, such as an inspection, complaint, or referral form.

o. Any records of accidents, injuries, illnesses or settlements obtained **directly from** the North Carolina Industrial Commission.

5. Responsibilities.

a. PSIM is responsible for responding to all disclosure requests, including NCDOL employee requests, for the release of information contained in OSH case files. This includes the transmittal of copies of the citations or an in-compliance letter. Where appropriate, field office personnel have the authority to send copies of citations to the inspected employer, the complainant, and the next of kin. When directed by PSIM, field office personnel may be asked to send copies of citations to other requestors, such as the victim of a non-fatal accident or their next of kin (per FOM Chapter VIII – Fatality and Catastrophe Investigations, paragraph B.2.j.).

b. Compliance field offices will respond to PSIM requests for case file information within two weeks of the request date unless a specific date of return is specified

as a result of a subpoena, hearing, etc. The case file will be processed and mailed per the procedures in FOM Chapter XVI – Administrative File Activities, paragraph E.12 and Appendix E.

c. The CSHO is responsible for verifying the completeness of the file copy before it is forwarded to the PSIM Bureau. The CSHO will verify that all case file pages are properly photocopied, that all documents are as legible as the original documents, that all file photos are included and that the procedures in FOM Chapter XVI, paragraph E.12. and Appendix E are followed.

6. Disclosure to Third Parties.

a. No disclosure will be released by PSIM to a third party until the following have been resolved:

i. The case file and/or any related inspection file is closed or a final order is rendered as in section C.3.d. or e.; or,

ii. The requestor has been granted legal third-party status.

7. Medical Records. When medical records are released per C.3.h. above, a copy of the released information is maintained by PSIM until the case is closed. The PSIM Medical Records Administrator will maintain these copies in a locked cabinet in the PSIM bureau chief's office. This copy of the medical records will be shredded when the case file is closed.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XIV – Safety and Health Programs and Committees



Chapter Effective: February 2000
Revision 4: 08/11/2014

Table of Contents

A. General

B. Employer Notification

C. Experience Rate Modifier Review

D. Inspection Procedures

E. Penalties

Penalty Calculation Table

Appendix XIV-A: Safety and Health Program and Committee Checklist

Chapter XIV

Safety and Health Programs and Committees

A. **General.**

*The Safety and Health Programs and Committees Act (SHPCA) at NCGS 95-250 requires that certain employers must establish safety and health programs and committees. This includes those employers with an experience rate modifier (ERM) of 1.5 or greater as applied by the North Carolina Rate Bureau (NCRB) as a means to determine workers' compensation premiums. The committee requirements apply to those employers with an ERM of 1.5 or greater who employ 11 or more employees. (**Note:** Employers who do not have an ERM applied by NCRB are **not** subject to this legislation. However, employers with interstate modifiers applied by NCCI are subject to this legislation because NCRB uses interstate rates.) In addition to the requirements contained in the statutes, rules relating to the requirements for safety and health programs and committees are found in NCAC 07A.0600.*

When determining whether the employer is required to have a committee, it is important to note that "employee" for the purposes of G.S. 95-252(a), 95-252(c)(1)b., 95-255, and 95-256 means an employee employed for some portion of a working day in each of 20 or more calendar weeks in the current or preceding calendar year.

B. **Employer Notification.**

The SHPCA requires that the department notify every employer who is required to comply with this law. The packets are sent by mail and each employer is required to respond verifying that they are in compliance with the legislation. The responses are maintained by the Consultative Services Bureau (CSB).

C. **Experience Rate Modifier Review.**

Prior to each inspection, the CSHO will check the ERM List on the One Stop Shop under Inspection Resources to determine if the employer was notified about the SHPCA. The CSHO will also check the ERM list to determine whether the covered employer responded verifying that they are in compliance with the legislation. (This list is requested in October and is current as of the date it is run.)

Additionally, the CSHO will check the NCRB database to verify the employer's current ERM. If the NCRB database indicates that the employer has an interstate modifier, then the CSHO will check the NCCI database to verify the interstate rate. The instructions for using these databases are also located on the One Stop Shop under Inspection Resources. If the employer is listed on the ERM List on the One Stop, but the ERM has dropped below 1.5 since the date the ERM List was generated, then the CSHO will not conduct an inspection about the SHPCA, however, the CSHO will proceed with the inspection (accident, complaint, general schedule, etc.) that was originally generated. If the employer has an ERM of 1.5 or greater and was not listed on the ERM List on the One Stop Shop, the CSHO will provide copies of NCGS 95-252, et seq. and 13 NCAC 7A.0600 and will inform the employer of their responsibility to comply with the legislation and that they will likely receive information from the CSB within the next year.

D. **Inspection Procedures.**

1. The SHPCA Requirements Checklist in Appendix XIV-A may be used to evaluate program and committee requirements. The overall program and committee assessment will be documented in the inspection narrative.

2. Walkaround Inspection. During the walkaround, the CSHO will determine if the written safety and health program and committee documentation (where appropriate) have been implemented. The observed conditions and employee interviews can help to ascertain whether or not the program and committee (where required), represent a "paper program" rather than a functioning effort.

3. Worksite with Significant Violations. Any inspection that results in a significant number of safety and health violations indicates a deficiency in the program and/or committee (where required). Special attention should be paid to these programs and committees to determine the areas of deficiency. A "paper program" does not address the safety and health needs of employees.

4. Disagreement Relating to Coverage. Any question or disagreement as to whether or not an employer is covered by this act should be referred to the Consultative Services Bureau.

E. **Penalties.**

NCGS 95-256 provides that the commissioner may levy a civil penalty for violations of requirements related to the establishment of safety and health programs and committees. The employer may be assessed a civil penalty of up to $25,000, depending on the number of employees, as follows:

# of Employees	Maximum Penalty
10 or less	$2,000
11-50	$5,000
51-100	$10,000
101 or more	$25,000

1. General Application. The procedures that follow will be used in determining proposed penalties. The total penalty for SHPCA violations will not exceed the maximum penalty allowed for the employer. For citation purposes, each violation will be classified as nonserious. Documentation, for citation purposes, should be included on the OSHA-1B form.

2. Penalty Factors. Penalties will be assessed for violations of SHPCA based on three specific factors:

   a. The nature of the violation.

   b. Whether it is a first or subsequent violation.

   c. Steps taken by the employer to remedy the violation upon discovery of the violation.

   The usual OSHA penalty adjustment factors will not apply for SHPCA violations.

3. Programs. Penalties for employers with an ERM of 1.5 or greater who have not established a safety and health program or have a deficient program will be proposed as follows:

a. A first violation penalty for an employer with no safety and health program will be 25% of the maximum penalty. For example, an employer with 75 employees would be assessed a penalty of $2500.

b. Program deficiencies will be assessed a monetary penalty based on the following calculation table:

Deficiencies	Percent of Max. Penalty
1-5	0
6-10	5
11-15	10
16-20	15
21 and above	20

Note: Each item on the checklist represents a potential deficiency. The penalty amount should be determined based on the total number of deficiencies.

4. Committees. Penalties for employers with an ERM of 1.5 or greater and 11 or more employees who have not established a safety and health committee or have a deficient committee structure will be proposed as follows:

a. A first violation penalty for an employer with no (established) safety and health committee will be 25% of the maximum penalty. For example, an employer with 75 employees would be assessed a penalty of $2,500.

b. Committee deficiencies will be assessed a monetary penalty based on the following calculation table:

Deficiencies	Percent of Max. Penalty
1-5	0
6-10	5
11-15	10
16-20	15
21 and above	20

Note: Each item on the checklist represents a potential deficiency. The penalty amount will be determined based on the total number of deficiencies.

5. Remedy of Violation/Penalty Reduction. Each penalty will be reduced by 50% if the deficient item(s) is abated by the prescribed abatement date(s).

6. Failure-to-abate. When a follow-up inspection determines that items previously cited have not been abated, an additional penalty may be assessed for those unabated items. The new penalty assessment will reflect the initial penalty amount multiplied by 7 for all unabated items, not to exceed the maximum penalty. In those instances in which no initial penalty was assessed, the base penalty amount will be 5% of the maximum penalty.

7. Repeat Violation. For those items repeatedly violated, the amount of the initial penalty will be doubled for the first repeated violation, multiplied by 5 if the violation has been cited twice before, and multiplied by 10 if the violation has previously been cited three or more times, not

to exceed the maximum penalty. In those instances in which no initial penalty was assessed, the base penalty amount will be 5% of the maximum penalty.

8. No Violations Worksite. No penalty will be assessed against any employer for first time violations of the SHPCA requirements if no safety or health violations were observed at the worksite during a comprehensive inspection.

9. Failure to Return Certification Form. Any affected employer who fails to return the postcard verifying compliance with SHPCA within 60 days of notification by the commissioner will be assessed a penalty of 5% of the maximum penalty.

PENALTY CALCULATION TABLE
Safety and Health Programs and Committees

Percent	Penalty (in dollars)			
0	2,000	5,000	10,000	25,000
5	100	250	500	1,250
10	200	500	1,000	2,500
15	300	750	1,500	3,750
20	400	1,000	2,000	5,000
25	500	1,250	2,500	6,250
30	600	1,500	3,000	7,500
35	700	1,750	3,500	8,750
40	800	2,000	4,000	10,000
45	900	2,250	4,500	11,250
50	1,000	2,500	5,000	12,500
55	1,100	2,750	5,500	13,750
60	1,200	3,000	6,000	15,000
65	1,200	3,000	6,000	15,000
70	1,400	3,500	7,000	17,500
75	1,500	3,750	7,500	18,750
80	1,600	4,000	8,000	20,000
85	1,700	4,250	8,500	21,250
90	1,800	4,500	9,000	22,500
95	1,900	4,750	9,500	23,750

Appendix XIV-A: Safety and Health Program and Committee Checklist

Safety and Health Programs

NCGS 95-251(a)(1)

Has a written Safety and Health Program been established?

NCGS 95-251(b)(1)

Does it list the responsibilities of employees? Of supervisors? Of managers?

What is the leadership role of top management?

How will continued participation of management be assured?

NCAC 7A.0603(b)(7)

Does the written program include all required MSHA or OSHA programs? (i.e., emergency action, BBP, LO/TO, confined space, etc.)

NCAC 7A.0603(b)(9)

Does the employer review/revise all required programs on an annual basis?

Are records of program changes retained for 2 years?

NCAC 7A.0603(b)(10)

Does the program discuss the purpose and operation of the Safety and Health Committee, if applicable?

NCGS 95-251(b)(1)

Is there a method for identifying, evaluating, and documenting safety and health hazards?

NCGS 95-251(b)(7)

Is there a procedure for providing safety and health training and education to employees? To Safety and Health Committee members?

NCAC 7A.0603(b)(2)

How is the Safety and Health Program communicated to employees?

NCAC 7A.0606(b)(1)

How are employees informed of safety and health hazards in the workplace?

Do new employees work in a carefully supervised program of on-the-job training until thoroughly trained in safe work practices and procedures?

NCAC 7A.0606(b)(2)

How are existing employees trained on hazards when given a new assignment?

NCAC 7A.0606(b)(3)
How are employees trained when a new process or procedure in the workplace presents new safety and/or health hazards?

NCAC 7A.0606(b)(4)
How are employees trained on new PPE or new safe work practices?

NCAC 7A.0606(b)(5)
Does the safety and health training comply with all MSHA and OSHA regulations?

NCAC 7A.0606(c)
Did a knowledgeable person conduct training?

NCAC 7A.0603(b)(6)
How will new hazards be evaluated?

How will changes be made to the safety program?

NCGS 95-251(b)(2)
Is there a method for correcting the safety and health hazards identified?

NCAC 7A.0603(b)(3)
How are safe work practices and work rules enforced?

NCGS 95-251(b)(3)/(b)(5)
Is there a method for investigating work related fatalities, injuries and accidents?

NCAC 7A.0603(b)(5)
Is there a method for investigating near misses?

NCAC 7A.0603(b)(4)
How will corrective action be implemented?

NCAC 7A.0603(b)(4)/(b)(5)
Are there records of each incident investigation, with findings and corrective action?

NCGS 95-251(b)(4)
Is there a procedure for providing occupational safety and health services including emergency response and first aid?

NCGS 95-251(b)(5)
Is there a procedure for employee participation in the implementation of the safety and health program?

NCGS 95-251(b)(6)
Is there a procedure for responding to the recommendations of the Safety and Health Committee, where applicable?

NCGS 95-251(c)

Are employees on the payroll while in training?

NCGS 95-251(b)(8)

Is there designation of an employer representative who has the qualifications and responsibility to identify safety and health hazards and the authority to correct the hazards?

NCAC 7A.0603(b)(8)

Is there a checklist of potential hazards?

Are quarterly inspections conducted?

Are inspection checklists retained for two years?

Are the hazards corrected as soon as possible?

NCGS 95-251(b)(9) and NCAC 7A.0603(b)(11)

For multi employer worksites, is there a procedure for the employer to protect employees under their control?

Is there a procedure to provide information on safety and health hazards to other employers and employees at the worksite?

Safety and Health Committees

NCGS 95-252(c)(1)

Has a Safety and Health Committee been established?

NCGS 95-252(c)(2)

Does the committee have employee safety and health representatives selected by non-management employees?

NCGS 95-252(d)

Is there 1 employee representative for 10 to 50 non-managerial employees?

Are there 2 employee representatives for 50 to 100 non-managerial employees?

Is there an additional employee for each additional 100 non-managerial employees?

Is there a maximum of 6 employee representatives?

NCGS 95-252(c)(2)

Does the committee have employer safety and health representatives (number does not exceed the number of employee selected representatives)?

NCGS 95-252(c)(3)

Is the committee co-chaired by:
- an employer co-chair selected by management?
- an employee co-chair selected by the employee committee representatives?

NCAC 7A.0604(a)

Has the employer documented the employee representative selection process used?

NCAC 7A.0606(a)

Is the training and education of safety and health committee members based on the type of business activity?

NCAC 7A.0606(a)(1)

Are they informed of the hazards identified in the workplace?

NCAC 7A.0606(a)(2)

Are they educated in the principles of effective accident and incident investigation?

NCAC 7A.0606(a)(3)

Are they informed of the employee and employer rights and responsibilities under NCGS 95-250?

NCAC 7A.0606(a)(4)

Are they familiar with the recordkeeping requirements of Worker Compensation, MSHA and OSHA?

NCAC 7A.0606(a)(5)

Are they informed of the most common causes of on the job injuries?

NCAC 7A.0606(a)(6)

Are they informed of the most frequently cited standards?

NCAC 7A.0606(c)

Did a knowledgeable person conduct training?

NCGS 95-252(c)(4)

Does the committee exercise its rights? Do they:

Review any and all Safety and Health programs required by NCGS 95-251?

Review fatalities, injuries, illnesses and safety and health complaints?

Review injury and illness records and other safety and health reports or documents?

Conduct inspections quarterly or in response to complaints?

Interview employees as part of the inspection process?

Conduct quarterly meetings and keep minutes of those meetings?

Observe industrial hygiene monitoring?

Establish procedures for exercising their rights?
Make recommendations for improvements in the safety and health program and for hazard correction in an advisory capacity?

Accompany CSHOs on inspections?

NCGS 95-252(c)(5)

Is the committee provided with reasonable time away from normal duties to carry out their safety and health function with no loss of pay or benefits?

NCAC 7A.0605(a)(1)

Do mobile crews of 11 or more employees have a separate safety and health committee?

NCAC 7A.0605(a)(2)

Do remote fixed worksites of 11 or more employees have a separate safety and health committee?

NCAC 7A.0605(b)(1)

On multi-employer worksites, has the employer notified the general contractor of the existence of the safety and health committee?

NCAC 7A.0605(b)(2)

Has the general contractor designated a representative to the safety and health committee?

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XV – Industrial Hygiene Compliance

NCDOL
NC DEPARTMENT OF LABOR
LUKE FARLEY, COMMISSIONER

Chapter Effective: February 2000
Revision 9: 05/24/2019

Table of Contents

A. Responsibility and Authority

1. District Supervisor
2. Compliance Officer
3. Inter-departmental Loan

B. Equipment Inventory

1. Receiving Equipment
2. Physical Inventory
3. Inventory Management at Administrative Office Level
4. Equipment Calibration and Repair

C. Inspection Activity

1. Information Required of the Employer
2. Collecting Samples
3. Personal Exposure Determination
4. Sampling Types
5. Closing Conference

D. Evaluation of Sampling Data

1. Calculations
2. Interpretation of "Z" Tables

E. Carcinogen Inspections

F. Citation Guidance

1. Violations of the Ventilation Standards
2. Violations of the Noise Standards
3. Violations of the Respirator Standards
4. Violations of the Air Contaminant Standards
5. Classification of Violations of Air Contaminant Standards
6. Guidelines for Issuing Citations of Air Contaminant Standards
7. Violations of the Hazard Communication Standard
8. Citing Improper Personal Hygiene

    a. Ingestion Hazards
    b. Absorption Hazards
    c. Regulated Substances
    d. Issuing Citations
    e. Supporting Citations

G. Feasible Administrative, Work Practice and Engineering Controls

Appendix XV-A: Sample Calculations

- Figure XV-1: Example of One-sided Lower Confidence Limits (LCL) and Upper Confidence Limits (UCL)
- Figure XV-2: Classification According to One-sided Confidence Limits
- Figure XV-3: Calculation of LCL and UCL with Multiple Samples

Appendix XV-B: Air Sampling for Extended (> 8 Hour) Work Shifts

Appendix XV-C: AVDs for Air Contaminant Overexposures

Appendix XV-D: Evaluation of Noise Sampling Results

Appendix XV-E: AVDs for Noise Exposures Exceeding the PEL or Action Level

Chapter XV

Industrial Hygiene Compliance

A. **Responsibility and Authority**.

1. District Supervisor.

   a. Supervisors are responsible for all equipment assigned to them or to the persons under their direction and are jointly responsible for all shared equipment and furniture assigned to their location.

   b. Supervisors are responsible for exhausting all efforts to locate any items reported to be lost.

   c. In the event that any items are stolen, a report must be file immediately with the appropriate law enforcement agency and the bureau chief and assistant director. The report must describe in detail the events surrounding the theft.

2. Compliance Safety and Health Officer.

   The compliance safety and health officer (CSHO) is responsible for the proper care of individuallly assigned equipment, as well as the care and return of any shared equipment used for compliance inspections.

3. Inter-departmental Loan.

   a. Supervisors are authorized to loan equipment belonging to the compliance bureau to other state agencies. The agency borrowing the equipment must sign it out.

   b. While the equipment is in the possession of another state agency, that agency is responsible for the proper care of it, as well as repair or replacement if the equipment is damaged or lost.

B. **Equipment Inventory**.

1. Receiving Equipment.

   a. Equipment received by the supervisor from the bureau chief may be assigned to a CSHO or placed in a pool of shared equipment. The supervisor will establish procedures for checking in/out shared equipment.

   b. When equipment is shipped from the vendor directly to the district office, a supervisor or his designee must sign for the equipment and send the packing (receiving) slip to the bureau administrative assistant. If the designee picks up the equipment, the designee must sign a slip acknowledging receipt.

   c. The administrative assistant will provide a bar code and/or fixed asset number. Bar codes and/or fixed asset numbers are affixed to all items with a value of $1000.00 or greater.

2. Physical Inventory.

   a. A CSHO in each district office will be assigned to manage the technical equipment in their district. The CSHO will also assist with the yearly physical inventory of equipment in their district.

b. After the inventory is complete, the supervisor, when requested, will submit a written response to the bureau chief concerning any missing/lost items.

3. Inventory Management at the Administrative Office Level. The administrative assistant will conduct a yearly on-site physical inventory in all district offices and the Raleigh administrative office, maintain a current computerized inventory list, and periodically provide same to the district offices.

4. Equipment Calibration and Repair. The electronics technician is responsible for performing or coordinating on-going repair of all OSH technical equipment, as well as the annual calibrations required for equipment such as sound level meters, noise dosimeters, velometers, and air pressure gauges. The technician will coordinate calibration and repair through the equipment officers in each district office.

C. **Inspection Activity.**

1. Information Required of the Employer.

a. Monitoring Program. Information required for the review of the industrial hygiene monitoring programs includes the personnel responsible for such activities, sampling and calibration procedures, ventilation measurements and laboratory services. The use of industrial hygiene personnel and of accredited laboratories will be noted. Compliance with the monitoring requirement of any applicable standard will be determined.

b. Medical Program. Information concerning the employer's medical program will be requested as required. The CSHO will determine whether the employer provides the employees with preplacement and periodic medical examinations. The medical examination protocol will be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.

c. Protective Devices. The CSHO will determine whether an effective personal protective equipment program exists in the plant. A detailed evaluation of the program will be made to determine compliance with the specific standards which require the use of protective equipment (e.g., 29 CFR 1910.95, 1910.132, and 1910.134.)

d. Regulated Areas. The CSHO will investigate compliance with the requirements for regulated areas as specified by certain standards. (e.g., 29 CFR 1910.1001 or 1926.1101 for asbestos)

i. Regulated areas must be clearly identified and known to all appropriate employees.

ii. The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.

2. Collecting Samples. The CSHO will determine whether sampling is required by using the information collected during the walkaround and the preinspection review. If sampling is necessary, the CSHO will develop a sampling strategy by considering potential chemical and physical hazards, number of samples to be taken and the operations and locations to be sampled. Sampling procedures should be conducted for all complaints and referrals alleging exposure to substances. If the CSHO determines that sampling is not necessary, the CSHO will discuss this with their supervisor. If sampling is not conducted, the CSHO will document the reasons in the case file.

a. Representative jobs must be selected for sampling and personal sampling devices prepared accordingly. Employees with the highest expected exposures at specific operations should be monitored. It is not necessary to monitor every employee that may be over-exposed.

b. All sampling equipment will be checked and calibrated according to the procedures described in The OSHA Technical Manual or the manufacturer's instructions. A record of each calibration must be recorded on the appropriate sampling sheet (e.g., OSHA-91s).

Note: The CSHO is responsible for the reasonable care of equipment issued and for its field calibration.

c. Once sampling equipment is established; i.e. after a 30-minute check and a 1-hour check, each sampling device should be checked about every 2 hours.

d. Although it is not essential that the CSHO continuously observe each employee being monitored, an account must be made for each monitored employee's movements and duties in each area of the establishment which may significantly affect the total exposure. Comments on employee movements, work activities, use of personal protective equipment, and sampling equipment will be documented on the appropriate sampling sheet. A CSHO will remain at the workplace while the samples are being collected.

i. Samples collected by a trainee are acceptable if such samples are collected under the guidance of an accompanying "field qualified" CSHO. All sampling will be done according to the methods and protocols documented in the OSHA Technical Manual, NIOSH analytical methods, the laboratory analyzing the samples or established as good industrial hygiene practice.

ii. In certain situations, it may not always be necessary for the "field qualified" CSHO to be present for the entire inspection, provided the trainee has sufficient experience to adequately complete the inspection.

3. Personal Exposure Determination.

a. The determination of noncompliance with PELs requires measurement and documentation of an overexposure to at least one employee. For air contaminants having PELs, sampling must be conducted within the breathing zone. (Some standards; e.g., cotton dust, may necessitate area sampling.) The "breathing zone" is defined as a sphere approximately 2 feet in diameter surrounding the head.

b. If the employee refuses to wear the sampling equipment and another employee who is similarly exposed cannot be sampled, the CSHO will collect the sample by means which provide a representative sample of the employee's exposure (possibly an area sample). If it becomes obvious that the employer has instructed the employees not to wear the sampling equipment, the CSHO will inform the supervisor who will begin the warrant process.

c. In some instances (e.g., the carcinogens in 29 CFR 1910.1002 through 29 CFR 1910.1014) personal sampling is not necessary to establish the presence of the material in order to substantiate a violation.

4. Sampling Types. To eliminate error associated with fluctuations in exposure, full-shift sampling for air contaminants is the preferred method.

a. Full-shift sampling is defined to be a minimum of the total time of the shift less 1 hour; e.g., 7 hours of an 8-hour work shift or 9 hours of a 10-hour work shift. Every attempt will be made to sample the periods of greatest exposure. Such exposure may occur during set-up and take-down.

i. Pumps may be changed to avoid pump failure due to excessive sampling periods.

ii. Monitoring may be accomplished with a full shift single sample or continuous multiple samples taken to determine any 8 hours of exposure for comparison with the PEL. A separate sample should be used to determine any additional exposure beyond 8 hours. Reference Appendix XV-B for a specific example.

iii. Lunch Breaks.

A. Generally, it is not advisable to sample during lunch breaks unless employees eat their lunches in areas where potential exposure exists. In most cases, the device should simply be turned off by the CSHO prior to lunch and then turned on again after lunch.

B. Generally, it is not necessary to remove the equipment unless the employee leaves the company premises. Care may be taken to assure that contamination of the collection medium does not occur (i.e. the sample should be capped and removed).

C. If the pump is turned off for lunch, the time it is off should not be counted as sample time for calculation of the TWA.

iv. See Appendices XV-B and XV-C for additional information about air sampling for work shifts that extend beyond eight hours, as well as guidance on writing AVDs for air sampling overexposures.

b. Less than Full-shift Sampling (e.g., less than 7 hours of an 8-hour shift). Professional judgment is necessary for making any conclusions or assumptions regarding the unsampled period (i.e. the set-up and/or take-down time which is not to exceed 1 hour). For example, if the work shift is 8 hours, and sampling was conducted for 7 hours and 15 minutes, the CSHO needs to make some professional judgment regarding the unsampled 45-minute period.

i. A zero exposure will be assumed unless the CSHO can defend a professional judgment on the magnitude of the exposure for the unsampled period. Thus, a TWA should generally be calculated by dividing the sample results by 8 hours (or 480 minutes) rather than the actual time sampled.

ii. Given sufficient information, a professional judgment on estimated exposure for the unsampled period could be defended.

A. For example, if an 8-hour operation is continuous and the concentration of the substance would not be likely to vary substantially due to the process; and if the employee by virtue of the job could be assumed to be exposed continuously to essentially the same concentration, it would then be acceptable to assume that the exposure for the unsampled time would be the same as that measured for the actual sample time.

B. In this situation, it would be acceptable to calculate a TWA by dividing the sample results by the actual time sampled and compare the resulting TWA with the 8-hour standard.

iii. The CSHO should carefully document the rationale for any professional judgment regarding unsampled exposure periods. A determination that any employer is in compliance will not be made in any case unless the sampled period is representative of the employee's normal exposure.

c. Grab Sampling for 8-Hour TWA Determination. If technology has not been developed to allow full-shift sampling, a series of "grab" or "spot" samples taken throughout the work shift is acceptable. Grab sampling is defined as collecting a number of short-term samples at various times during the sample period which, when combined, provide an estimate of exposure over the total period. Common examples include the use of detector tubes or direct-reading instrumentation (with intermittent readings). One defensible statistical approach would be to take 32 samples throughout the day, with one being taken every 15 minutes.

d. Area samples. Area samples may be taken to identify sources and their relative contributions to employee exposure (e.g., to assist in the determination of the effectiveness of or need for engineering controls).

e. Wipe Sampling. In general, wipe sampling may be used to establish the presence of hazardous quantities of a toxic material with potential skin or ingestion hazard. In arriving at a determination of what constitutes a hazardous quantity of a toxic material, reliance is placed on the professional judgment of the CSHO and the supervisor. Further guidance on wipe sampling can be found in the OSHA Technical Manual.

f. Biological Monitoring. If the employer has been conducting biological monitoring, the CSHO should review the results of such testing. The results may assist in determining whether a significant quantity of the toxic material is being ingested or absorbed through the skin. If biological testing is determined to be necessary to document a hazard, medical support should be arranged through the bureau chief.

g. Noise Sampling.

i. Many of the procedures for noise sampling are outlined in Section III, Chapter 5 of the OSHA Technical Manual.

ii. All noise sampling will be performed using datalogging noise dosimeters on the "A" weighting scale, with a criterion level of 90 dBA and an exchange rate of 5 dBA. Compliance officers will use the 90-dBA threshold level to document all noise overexposures, and the 80-dBA threshold level to document employee noise exposures in terms of the Action Level. See Section D.1.g below for details about instrument accuracy.

iii. Sound level meters (SLMs) will be used for the following purposes:

A. As a pre-dosimetry screening tool for noise exposure;

B. To spot-check noise dosimeter performance;

C. To identify and evaluate individual noise sources for abatement purposes;

D. To evaluate hearing protectors;

E. Octave band analysis;

F. Measurement of background sound levels in audiometric booths

iv. In reference to Section C.4.g.iii.B above, CSHOs are expected to take 5-8 SLM readings for each dosimeter during noise sampling shifts. These readings should be used as a quality check to determine whether the noise dosimeter appears to have accurately captured the noise profile. The CSHO is not expected to compute a relative-weighted TWA from the SLM readings, as it would not be accurate when compared to dosimeter readings. The number of readings a CSHO with an SLM could take would not be large enough for statistical significance.

v. For less than full shift sampling, use the rules as stated in C.4.b. above for determining whether to consider the unsampled time as zero-exposure time, or to extrapolate previous exposure to this time. Dosimeters will calculate both the average sound level for the time sampled (L_{AVG}) and the 8-hour average sound level (L_{TWA}), which assumes zero exposure for the unsampled time period. Some dosimeters (e.g. Quest M-27) will calculate both the actual dose and projected 8-hour dose.

vi. For further information on evaluating noise exposures and guidance on writing noise AVDs, see Appendices XV-D and XV-E.

h. Determination of Source. Prior to the issuance of a citation, the CSHO must carefully investigate the source or cause of the observed hazards to determine if some type of engineering, administrative or work practice control, or combination thereof, may be applied which would reduce employee exposure. The CSHO is expected to list example control measures in the AVD of all citations requiring the implementation of engineering and/or administrative controls (e.g. 29 CFR 1910.1000(e), 29 CFR 1910.95(b)(1), 29 CFR 1926.55(b)).

5. Closing Conference. The general procedure for closing conferences as described in the Inspection Procedures chapter will be followed. An immediate explanation of available inspection results will be given along with general guidelines in controlling the hazards.

a. Since the CSHO may not have the results of collected samples prior to the first closing conference, a second closing conference will be held by telephone or in person to inform the employer and the employee representative of any alleged violations.

i. If the results indicate noncompliance, discussions will be held on apparent violations, correction procedures and interim methods of control. Alleged violations will be discussed at that time.

ii. If the employer is in compliance, discussion will include the results, and any recommendations of the CSHO on good industrial hygiene practices.

b. The strengths and weaknesses of the employer's occupational health program, as previously noted, will be discussed at the closing conference.

D. **Evaluation of Sampling Data.** The CSHO and supervisor must use professional judgment in the evaluation of the data and conditions. The CSHO should examine the data for unusual deviations. Further sampling may be required to explain such deviations, or justification for using the results will be documented in the case file.

1. Calculations.

a. Actual time weighted average (airborne contaminants).

$$TWA = \frac{C_1T_1+C_2T_2+C_3T_3+...C_nT_n}{T_1+T_2+T_3+...T_n}$$

Where C is concentration, and

Where T is the actual duration of time sampled.

b. 8-hour time weighted average (airborne contaminants).

$$TWA = \frac{C_1T_1+C_2T_2+C_3T_3+...C_nT_n}{T_1+T_2+T_3+...T_n}$$

Where $T_1+T_2+T_3+...T_n$ = 8 hours (or 480 min.)

c. Chemical concentrations.

$$ppm = \frac{(mg/m^3)x24.45}{MW} \quad \text{or} \quad mg/m^3 = \frac{ppm \times MW}{24.45}$$

Where ppm is parts contaminant per cubic meter of air,

Where mg/m^3 is concentration in milligrams per cubic meter of air,

Where 24.45 is a volume constant based on a temperature of 70 degrees F and a pressure of 1 atmosphere, and where MW is the molecular weight of the chemical in question.

d. Air contaminant mixture. Substances which have a known additive effect and therefore result in a greater probability of risk will be evaluated using this formula. The use of this approach requires that the exposures have an additive effect on the same body organ or system. Caution must be used in applying the additive formula, and consultation with the supervisor is recommended.

$$E_m = (C_1/L_1) + (C_2/L_2) + (C_3/L_3) + ... (C_n/L_n)$$

Where E_m is the equivalent exposure for the mixture (not to exceed 1),

Where C is the measured concentration for a particular contaminant, and

Where L is the PEL for that particular contaminant.

e. Noise dose.

% Dose = 100 $(C_1/T_1) + (C_2/T_2) + ... (C_n/T_n)$

Where C is the exposure duration for the nth sound level, and

Where T is the corresponding allowed noise exposure.

f. Time weighted average sound level

TWA (dBA) = 16.61 log (D/100) + 90

Where TWA is the time weighted average sound level,

Where dBA is decibels measured on the "A" weighted scale, and

Where D is the noise dose.

g. Noise measurement accuracy. The accuracy of noise measuring equipment must be considered when using readings for compliance purposes. The instrumentation used in the division is Type 2, meaning the accuracy is +/- 2 dBA. To prove an overexposure, both the average sound level (L_{AVG}) and 8-hour TWA sound level (L_{TWA}) must be 2 dBA over the PEL. In practice, the employees are overexposed to noise with an 8-hour TWA of 92 dBA (a dose of 132% as measured at the 90-dBA threshold setting of the dosimeter) and an average sound level of 92 dBA. Employees must be included in a hearing conservation program when measured noise levels are 87 dBA as an 8-hour TWA (a dose of 66% as measured at the 80-dBA threshold setting).

h. Modification of PELs for Prolonged Exposure. The ACGIH TLVs that were adopted for the OSHA PELs are directly related to assumed conventional exposure periods of no more than 8 hours per day and 40 hours per week, with 16 hours of recovery time between shifts. Today, the workforce works more overtime and extended work shifts. Therefore, information on adjusted PELs should be provided to employers. Citations will be issued on adjusted PELs for lead and cotton dust only, until rulemaking for adjusting all PELs is complete. However, adjusted PELs for substances with acute and/or cumulative toxicity should be calculated (see iii-iv below) and given to the employer as advisory information. Thus, the employer will know what levels should not be exceeded during extended work shifts, as intended by the PEL for the particular substance.

i. Ceiling limit standards are intended never to be exceeded at any time, and so, are independent of the length or frequency of the work shift. The ceiling PELs will not be adjusted.

ii. Some standards have been set primarily to prevent acute irritation or discomfort. They have no known cumulative effects resulting from exposures for extended periods of time. PELs for such substances should not be adjusted.

iii. Substances with acute toxicity have PELs which prevent excessive accumulation of the substance in the body during the day (e.g., carbon monoxide). The following equation determines a level which ensures that employees exposed more than 8 hours per day will not receive a dosage (concentration x exposure time) in excess of that intended by the

PEL, and accounts for the fact that employees who work extended shifts generally do not have 16 hours of recovery time before being exposed again.

Adjusted PEL = 8-hr PEL x [(8/h) x (24 - h)/16], where h = hours worked per day. Reference Patty's Industrial Hygiene and Toxicology 3rd Edition, Volume III, Part A, pp. 248-252.

iv. Substances with cumulative toxicity (e.g., mercury) have PELs designed to prevent excessive accumulation in the body resulting from days or even years of exposure. The following equation ensures that workers exposed more than 40 hours per week will not receive a dosage in excess of that intended by the PEL, and accounts for the fact that employees who work extended shifts generally do not have 16 hours of recovery time before being exposed again.

Adjusted PEL = 8-hr PEL x [(40/h) x (168 - h)/128], where h = hours worked per week. Reference Patty's Industrial Hygiene and Toxicology 3rd Edition, Volume III, Part A, pp. 248-252.

v. The PELs for substances with both acute and cumulative toxicity should be adjusted by the equation which provides the greatest protection to the employee. Remember that citations can be issued on adjusted PELs for lead and cotton dust only.

vi. See Appendix XV-B for additional information about air sampling for work shifts that extend beyond eight hours.

vii. See Appendix XV-D for additional information about noise sampling for work shifts that extend beyond eight hours.

i. Severity of exposure.

Y = Employee Exposure/PEL.

Where Employee Exposure is the result of sampling,

Where Y is severity, (not to exceed 1), and

Where PEL is the permissible exposure limit.

j. 95% confidence limits for air contaminants The LCL and UCL are calculated differently depending upon the type of sampling method used.

i. Calculation for a single sample, (full-period or ceiling).

UCL (95%) = (Y) + SAE

LCL (95%) = (Y) - SAE

Where SAE is sampling and analytical error,
Where Y is severity, and
Where UCL and LCL are upper and lower confidence limits.

If LCL > 1, a violation exists.
If LCL ≤ 1 and the UCL > 1, classify as possible overexposure.
If the UCL ≤ 1, a violation does not exist.

A. If the measured exposure exceeds the PEL, but the LCL of that exposure is below the PEL, we cannot be 95 percent confident that the employer is out of compliance. (See example B1 in Figure XV-2, found in Appendix XV-A). Likewise, if the measured exposure does not exceed the PEL, but the UCL of that exposure does exceed the PEL, we cannot be 95 percent confident that the employer is in compliance. (See example B2 in Figure XV-2, found in Appendix XV-A). In both of these cases, our measured exposure falls into a region which is termed "possible overexposure."

1. A citation should not be issued if the measured exposure falls into the "possible overexposure" region. It should be noted that the closer the LCL comes to exceeding the PEL, the more probable it becomes that the employer is out of compliance.

2. If measured results are in this region, the CSHO should consider further sampling, taking into consideration the seriousness of the hazard, pending citations, and how close the LCL is to exceeding the PEL.

3. If further sampling is not conducted, or if additional measured exposures still fall into the "possible overexposure" region, the CSHO should carefully explain to the employer and employee representative in the closing conference that the exposed employee(s) may be overexposed but that it cannot be established. The employer should be encouraged to voluntarily reduce the exposure and/or to conduct further sampling to assure that exposures are not in excess of the PEL.

B. If the measured results do not exceed the PEL and the UCL also does not exceed the PEL, we can be 95 percent confident that the employer is in compliance. (See Example C in Figure XV-2, found in Appendix XV-A).

C. Sampling and Analytical Error (SAE).

1. For personal sampling with pumps and media, the SAE will be based on the analytical method used on the sample by the laboratory service provider.

2. The SAE must be calculated in every situation where the severity (Y) is between 1.0 and 1.3. For other situations, calculating the SAE is recommended, but optional.

3. Determining the SAE for an analytical method:

a. For OSHA methods, the SAE can be read directly from the Chemical Sampling Information page on the OSHA website.

b. For NIOSH methods, consult the NIOSH Manual of Analytical Methods on the NIOSH website.

The SAE must be calculated by multiplying the Overall Precision (S_{rT}) by the statistical constant 1.645. Example: NIOSH Method 7500 for Methylene Chloride. SAE = 1.645 x S_{rT}, S_{rT} = 0.076, SAE = 1.645 x 0.076 = 0.125.

c. For NIOSH methods with no calculated SrT (e.g. Method 7300 for Lead and Other Elements), and methods from ASTM or other organizations, contact the laboratory service provider directly to get the SAE. Another possible solution is to use the SAE from a known method (such as an OSHA method) that uses the same media, quantification technique, etc. as the method with the unknown SAE.

D. Direct Reading Instrument Error.

1. Direct-reading instruments do not have an SAE per se, but do have instrument error, which must be taken into account when determining if an overexposure exists with 95% confidence.

2. For direct reading instruments (e.g. SafeLog 100, Toxilog, detector tubes), the instrument error will be the manufacturer's listed performance tolerances. Examples: Quest Safelog 100 detectors with CO sensors have a manufacturer-listed accuracy of 5%. Therefore, the instrument error (equivalent to SAE) would be 0.05, and an overexposure can be documented if severity (Y) is greater than 1.05 (meaning the LCL > 1). The Sensidyne Gastec MEK Detector Tube lists an accuracy of tolerance of 25%. The instrument error is thus 0.25, and overexposures can be documented if Y > 1.25.

3. For noise dosimetry using Type 2 instruments, the instrument error is +/- 2 dBA (see Evaluation of Sampling Data, Section D.1.g) above.

ii. Calculation method for consecutive samples. The use of multiple consecutive samples will result in slightly lower SAEs than the use of one continuous sample since the inherent errors tend to partially cancel each other. However, the calculations are somewhat more complicated. If preferred, the CSHO may first determine if compliance or noncompliance can be established using the calculation method noted for a single sample measurement. If results fall into the "possible overexposure" region using this method, the more exact calculations should be performed. To compute the (95%) UCL and LCL, see Figure XV-3, found in Appendix XV-A.

2. Interpretation of 29 CFR 1910.1000, Tables Z-1, Z-2 and Z-3, and 29 CFR 1926.55 Appendix A. **Remember that 29 CFR 1926.55 is used for construction inspections**.

a. The nuisance dust (particulates) standard applies to both organic and inorganic dusts. The standard should not be used when evaluating an exposure to a substance listed in 29 CFR 1910.1000 Table Z-1 or 1926.55.

b. Where toxicity information exists for a substance with no PEL and a serious hazard exists, protective limits recommended by other agencies will be reviewed (i.e., ACGIH TLVs, NIOSH RELs, AIHA WEELs, EPA, IARC, etc.). If a recommended limit is set, a citation under NCGS 95-129(1) for general duty should be considered. The CSHO will follow the guidance in Memo

AC 1 - Memorandum for Enforcement Policy for Respiratory Hazards Not Covered by OSHA Permissible Exposure Limits, found in the Field Information System on the OSH One Stop Shop.

c. Where there is a recommended limit set by another agency that is lower than the OSHA PEL, the PEL will be used. The exceptions are:

i. If the other agency sets a ceiling limit (higher than the PEL) and OSHA has only a PEL, then the ceiling limit may be enforced using the general duty clause.

ii. If the CSHO can demonstrate that the PEL is not providing adequate protection and the other agency limit is more likely to provide proper protection, then the use of the general duty clause may be considered. The CSHO will follow the guidance in Memo AC 1 - Memorandum for Enforcement Policy for Respiratory Hazards Not Covered by OSHA Permissible Exposure Limits.

d. Interpretation of Ceiling Limits.

i. Contaminants in 29 CFR 1910.1000 Table Z-1 may have a STEL (short term exposure limit) or a ceiling limit. The STEL is the employee's 15 min TWA exposure (unless another time limit is specified) which will not be exceeded at any time during the day. The ceiling limit will not be exceeded at any time during the day. If instantaneous monitoring is not feasible, then the CSHO will use a 15-minute sample to determine compliance with the ceiling limit.

ii. Contaminants in 29 CFR 1910.1000 Table Z-1 preceded by a "C" are ceiling limits which theoretically should never be exceeded, even instantaneously. Practically, the CSHO should use a 15-minutes sampling period to evaluate compliance with ceiling standards, unless direct-reading instrumentation or methods with sufficient analytical accuracy are available.

iii. Contaminants in 29 CFR 1910.1000 Table Z-2 have both "acceptable ceiling concentrations" (column 2) and "maximum peak concentrations" (column 3) up to which exposures are allowed for the period specified in column 4. Generally, OSHA uses a 15-minute sample to evaluate ceiling limits due to analytical accuracy.

A. All the time periods specified in column 4 are less than 15 minutes. Therefore, if a 15-minute continuous exposure exceeds the ceiling value in column 2, noncompliance is established.

B. Where less than a 15-minute sample is taken, a citation may be issued if one of two conditions exists:

1. Column 2 is exceeded, and the sampling time is beyond the time allowed by column 4.

2. Column 3 is exceeded, even instantaneously.

Note: When sampling for substances with ceiling or STEL limits, consider the analytical method to be used. Will the 15-minute sampling time provide enough volume to quantify the contaminant? A small sample volume can result in a higher detection limit.

E. **Carcinogen Inspections.** Most inspections for the evaluation of carcinogens will be assigned in the usual manner. However, certain standards regulating carcinogenic materials require employers to report in writing to the Director all regulated areas. Upon receipt of such reports, inspections will be conducted. These will be considered programmed inspections.

1. Investigation of potential employee exposure to known or suspect carcinogens requires that special precautions be taken by the HCO. Respiratory equipment and protective clothing must be carefully selected based on potential exposure.

2. Air sampling will be conducted when necessary to help define employee exposure. Prior to entry into any contaminated area, the HCO will consider the following:

   a. If the substance can be absorbed through the skin, impervious protective clothing (foot, body, head, hand covering) must be worn. Respiratory protection and personal protective equipment should be carefully selected based on the properties of the substance and potential exposure.

   b. Disposable clothing is preferable and will be disposed of at the worksite or transported in an impervious bag to an appropriate disposal site. Nondisposable clothing will be removed at the worksite and transported in an impervious bag to an appropriate decontamination or cleaning site.

   c. Where contamination of equipment or personal protective clothing is possible, decontamination procedures must be prepared in advance. Industrial cleaning services with appropriate expertise and facilities may be contracted on a local basis for cleaning of contaminated clothing. The cleaner will be informed of the potential hazard in writing.

   d. The type of respiratory protection used must be approved and appropriate for the exposure and must be selected to protect against the maximum potential exposure. Assistance from the supervisor is available for making this decision.

      i. Normally, the HCO will not enter an area where a self-contained breathing apparatus is required. When possible, sampling equipment will be placed on an employee in a clean area prior to the employee's entry into a regulated area.

      ii. A self-contained breathing apparatus (positive pressure, demand) may be required where:

         A. There is an unknown concentration of a known airborne carcinogen, and other respiratory protection equipment may not be effective.

         B. The employer requires the use of self-contained breathing apparatus.

         C. An emergency (i.e. fatality/catastrophe) investigation involving potential hazardous exposures requires entry into unknown concentrations in containment.

         HCOs **will not** place themselves in situations that may risk their health or life.

   e. Wipe sampling may be necessary to define the extent of contaminated areas and to evaluate the effectiveness of decontamination procedures. Special precautions must be taken when collecting wipe samples. Gloves used to collect wipe samples must be impervious to the chemical collected.

The analytical laboratory should be contacted to discuss collection and analytical methods for non-routine chemical wipe sampling.

f. Special regulations must be followed for shipment of bulk samples. (Refer to the OSHA Technical Manual.)

F. **Citation Guidance.**

1. Citation of Ventilation Standards. In cases where a citation of a ventilation standard may be appropriate, consideration will be given to standards intended to control exposure to recognized hazardous levels of air contaminants, to prevent fire or explosions, or to regulate operations which may involve confined space or specific hazardous conditions. In applying these standards, the following guidelines will be observed:

a. Health-Related Ventilation Standards. An employer is considered in compliance with a health-related airflow ventilation standard when the employee exposure does not exceed appropriate airborne contaminant standards; e.g., the PELs prescribed in 29 CFR 1910.1000.

i. Where an over-exposure to an airborne contaminant is detected, the appropriate air contaminant engineering control requirement will be cited; e.g., 29 CFR 1910.1000(e). In no case will citations of this standard be issued for the purpose of requiring specific ventilation systems to control such exposures.

ii. Other requirements contained in health-related ventilation standards will be evaluated without regard to the concentration of airborne contaminants. Where a specific standard has been violated and an actual or potential hazard has been documented, a citation will be issued.

EXAMPLE: Welding or cutting on several specialty metals (e.g., lead, beryllium, zinc, etc.) indoors or in a confined space requires the use of local exhaust ventilation or an airline respirator, regardless of the air concentration of the metal.

b. Fire and Explosion Related Ventilation Standards. Although they are not technically health violations, the following guidelines will be observed when citing fire and explosion related ventilation standards:

i. Adequate Ventilation. In the application of fire and explosion related ventilation standards, an operation has adequate ventilation when both of the following criteria are met:

A. The requirement of the specific standard has been met.

B. The concentration of flammable vapors is 25 percent or less of the lower explosive limit (LEL).

EXCEPTION: Certain standards specify violations when 10 percent of the LEL is exceeded. These standards are found in maritime and construction exposures.

CAUTION: If explosive atmospheres are suspected, suitable (e.g., mechanical or explosion proof) equipment must be used.

CAUTION: While obtaining LEL readings for citation documentation is desirable, remember that these concentrations may be well over the PEL for that chemical. For example, the LEL for methane is 5.4% and 25% LEL is 1.35%. This is equivalent to 13,500 ppm. The CSHO must not put him/herself in a hazardous situation. Thus, the CSHO may only be able to document the potential for exceeding 25% LEL unless the equipment has remote sampling capability.

ii. If 25 percent (10 percent when specified for construction operations) of the LEL has been exceeded and:

A. The standard requirements have not been met; the violation normally will be cited as serious.

B. There is no applicable specific ventilation standard; NCGS 95-129 (1) will be cited in accordance with the guidelines given in the violations chapter.

iii. If 25 percent (10 percent when specified for construction operations) of the LEL has **not** been exceeded and:

A. The standard requirements have not been met; the violation normally will be cited as nonserious.

B. The standard requirements have been met; no citation will be issued.

c. Special Conditions Ventilation Standards. The primary hazards in this category are those resulting from confined space operations.

i. Overexposure need not be shown to cite ventilation requirements found in the standards themselves. However, an actual or potential hazard must be documented.

ii. Other hazards associated with confined space operations, such as potential oxygen deficiency or toxic overexposure, must be adequately documented before a citation may be issued.

2. Violations of the Noise Standard. Current enforcement policy regarding 29 CFR 1910.95 does not allow employers to rely on personal protective equipment and a hearing conservation program rather than engineering and/or administrative controls.

a. Violations of 29 CFR 1910.95(b)(1) will be cited when both the average sound level (L_{AVG}) and eight-hour TWA (L_{TWA}) exceeds 92 dBA (a dose of 132%) and engineering or administrative controls are feasible but not utilized.

i. 29 CFR 1910.95(b)(1) will be classified as serious when;

A. Hearing protection is not provided or properly utilized; and/or

B. The hearing conservation program is deficient or nonexistent. This citation can be assigned an abatement time of up to one year with progress reports required every 120 days.

ii. 29 CFR 1910.95(b)(1) will be classified as nonserious when;

A. Effective hearing protection is provided and is being utilized; and,

B. The hearing conservation program is effective; and

C. The employer has an effective training program and is following it.

b. A violation of 29 CFR 1910.95(c)(1) will be cited when an employee's exposure *equals or exceeds* an eight-hour TWA of 87 dBA (a dose of 66%) and the hearing conservation program is nonexistent. The AVD should list the elements of an effective hearing conservation program.

Note: The provision of ear plugs does not constitute a hearing conservation program. If there is an overexposure to noise and the employer has provided ear plugs only, 29 CFR 1910.95(c)(1) will be cited.

i. 29 CFR 1910.95(c)(1) will be cited as serious when the 8-hour TWA (L_{TWA}) is 92 dBA or more (dose > 132%), and the hearing conservation program is nonexistent.

A. When portions of 29 CFR 1910.95(c)(1) are deficient, then those parts of 29 CFR1910.95(d) through (o) will be cited specifically as serious.

ii. 29 CFR 1910.95(c)(1) will be cited as nonserious when the TWA *is equal to or greater than* 87 dBA, but less than 92 dBA, and the hearing conservation program is nonexistent.

A. When portions of 29 CFR1910.95(c)(1) are deficient, then those parts of 29 CFR 1910.95(d) through (o) will be cited specifically as nonserious.

iii. Abatement times of up to 120 days can be assigned with progress reports at 60 days; however, earliest possible times should be assigned for deficiencies in the hearing conservation program.

c. When an employee is overexposed, but effective hearing protection is being provided and used, an effective hearing conservation program has been implemented, and no feasible engineering or administrative controls exist, a citation will not be issued.

3. Violations of the Respirator Standard. When considering a citation for respirator violations, note that the standard applies whenever the employer requires the use of respirators or if the employee uses a respirator on a voluntary basis. Thus, overexposures are not necessary to document a violation. (See the compliance directive *CPL 02-00-158 – Inspection Procedures for the Respiratory Protection Standard, 29 CFR 1910.134* for interpretation and application of the standard.)

a. Exception. The exception to this is that the employer is not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering face pieces (dust masks). [See 29 CFR 1910.134(c)(2)(ii)]

b. In Situations Where Overexposure Does Occur. In cases where an overexposure to an air contaminant has been established, the following principles apply to citations of 29 CFR 1910.134:

i. 29 CFR 1910.134(a)(2) is the general section requiring employers to provide respirators when such equipment is necessary to protect the health of the employee and requiring the establishment and maintenance of a respiratory protection program which meets the

requirements outlined in 29 CFR 1910.134(c). Thus, if no respiratory program at all has been established, 29 CFR 1910.134(a)(2) alone will be cited. The AVD should contain an abatement note which outlines all the elements required for an effective program.

ii. An acceptable respiratory protection program includes all of the elements of 29 CFR 1910.134. If a program has been established and some, but not all, of the requirements under 29 CFR 1910.134(c-o) are being met, the specific standards under 29 CFR 1910.134(c-o) that are not implemented will be cited and grouped as one item.

4. Violations of Air Contaminant Standards. The standard itself provides several requirements.

a. 29 CFR 1910.1000 Table Z-1 provides ceiling values and 8-hour time weighted averages (threshold limit values) applicable to employee exposure to air contaminants.

b. 29 CFR 1910.1000(e) provides that to achieve compliance with those exposure limits, administrative or engineering controls will first be identified and implemented to the extent feasible. When such controls do not achieve full compliance, protective equipment will be used. Whenever respirators are used, their use will comply with 29 CFR 1910.134.

c. 29 CFR 1910.134(a) provides that when effective engineering controls are not feasible, or while they are being instituted, appropriate respirators will be used. Their use will comply with requirements contained in 29 CFR 1910.134 which provide for the type of respirator and the proper maintenance.

d. The situation may exist where an employer must provide feasible engineering controls as well as feasible administrative controls (including work practice controls) and personal protective equipment. 29 CFR 1910.1000(e) has been interpreted to allow employers to implement feasible engineering controls and/or administrative and work practice controls in any combination the employer chooses provided the abatement means chosen eliminates the overexposure.

e. Where engineering and/or administrative controls are feasible but do not or would not reduce the air contaminant levels below the applicable ceiling value or threshold limit value, the employer, nevertheless, must institute such controls. Only where the implementation of all feasible engineering and administrative controls fails to reduce the level of air contaminants below applicable levels will the use of personal protective equipment constitute satisfactory abatement. In such cases, usage of personal protective equipment will be mandatory.

5. Classification of Violations of Air Contaminant Standards. When it has been established that an employee is exposed to a toxic substance in excess of the PEL established by OSH standards (without regard to the use of respiratory protection), a citation for exceeding the air contaminant standard will be issued. The violation will be classified as serious or nonserious on the basis of the requirements in the OSHA Chemical Sampling Information on the OSHA website, and the use of respiratory protection at the time of the violation. Classification of violations is dependent upon the determination that the illness is reasonably predictable at that exposure level, whether the illness is serious or nonserious and that the employer knew or could have known through reasonable diligence that a hazardous condition existed.

a. Principles of Classification. The Chemical Sampling Information page on the OSHA website provides "health codes" for each substance listed based upon the expected toxicity.

i. In general, substances having a single health code of 13 or less will be considered as serious at any level above the PEL. Substances in categories 6, 8 and 12, however, are not

considered serious at levels where only mild, temporary effects would be expected to occur.

ii. Substances causing irritation (i.e., categories 14 and 15) will be considered non-serious up to levels at which moderate irritation could be expected.

iii. For a substance (e.g., cyclohexanol), having multiple health codes covering both serious and nonserious effects, a classification of nonserious will be applied up to the level at which a serious effect(s) could be expected to occur.

iv. For a substance having an ACGIH Threshold Limit Value (TLV) or a NIOSH recommended value, but no OSHA PEL, a citation for exposure in excess of the recommended value will be considered under NCGS 95-129(1) if the exposure (dose) and toxicity of the substance would result in a serious illness or injury.

v. If an employee is exposed to concentrations of a substance below the PEL, but in excess of a recommended value (e.g., ACGIH TLV or NIOSH recommended value), a citation for inhalation cannot normally be issued. The CSHO will advise the employer that a reduction of the PEL has been recommended.

vi. For a substance having an 8-hour PEL with no ceiling limit but for which a ACGIH TLV ceiling and/or NIOSH ceiling value has been recommended, the case will be discussed with the supervisor and the bureau chief. If no citation is to be issued, the CSHO will, nevertheless, advise the employer that a ceiling value has been recommended.

b. Effect of Respirator Protection Factors. The CSHO will consider protection factors for the type of respirator in use as well as the possibility of overexposure if the respirator fails. If protection factors are exceeded and if the potential for overexposure exists, a citation for failure to control excessive exposure will be issued.

c. Additive and Synergistic Effects. Substances which have a known additive effect and, therefore, result in a greater probability/severity of risk when found in combination will be evaluated using the formula found in 29 CFR 1910.1000(d)(2).

i. The use of this formula requires that the exposures have an additive effect on the same body organ or system. Caution must be used in applying the additive formula and prior consultation with the supervisor and bureau chief is required.

ii. If the CSHO suspects that synergistic effects are possible, it will be brought to the attention of the supervisor, who will refer the question to the bureau chief. If it is decided that there is a synergistic effect of the substances found together, the violations will be grouped, when appropriate, for purposes of increasing the violation classification severity and/or the penalty.

6. Guidelines for Issuing Citations of Air Contaminant Violations .

a. Grouping.

i. In situations where an overexposure is documented, feasible engineering and/or administrative controls have not been implemented, and respiratory protection has not been provided or is insufficient or ineffective, the CSHO will issues citations for each and group the violations as one item.

A. When the overexposure is for a contaminant in General Industry, the CSHO will cite 29 CFR 1910.1000(a), (b) or (c) for the overexposure, 29 CFR 1910.1000(e) for engineering/administrative controls, and 29 CFR 1910.134 paragraphs for respirator violations (see Section F.3.b for information on the specific respirator sections to cite) and group the violations together.

B. When the overexposure is for a contaminant in the Construction Industry, the CSHO will cite 29 CFR 1926.55(a) for the overexposure, 29 CFR 1926.55(b) for engineering/administrative controls, and 29 CFR 1910.134 paragraphs (verbatim with 29 CFR 1926.103) for respirator violations (see Section F.3.b for information on the specific respirator sections to cite) and group the violations together.

ii. For overexposures of contaminants covered under an expanded health standard (e.g. 29 CFR 1910.1025 for lead), grouping of violations will be done in accordance with FOM Chapter 5, Section C.3.

b. No violation of the 29 CFR 1910.1000 series would exist and no citation would be issued in the following circumstances:

i. Where no identified employee exposure level is above that specified in the standard, whether or not engineering controls, administrative controls or personal protective equipment are utilized.

ii. Where the exposure level of an identified employee is above that specified in the standard, but all feasible engineering and administrative controls are utilized, and personal protective equipment is provided, worn and maintained in accordance with the provisions of 29 CFR 1910.134.

7. Violations of the Hazard Communication Standard. For HAZCOM citation guidance, the CSHO will use *CPL 02-02-079 – Inspection Procedures for the Hazard Communication Standard (HCS 2012)* or the most current HAZCOM CPL.

8. Citing Improper Personal Hygiene Practices. The following guidelines apply when citing personal hygiene violations:

a. Ingestion Hazards. A citation under 29 CFR 1910.141(g)(2) and (g)(4) will be issued where there is reasonable probability that in areas where employees consume food or beverages (including drinking fountains), a potentially hazardous amount of toxic material may be ingested and subsequently absorbed.

i. A "toxic material" is defined in 29 CFR 1910.141(a)(2)(viii) as "... a material in concentration or amount which exceeds the applicable limit established by a standard, such as 29 CFR 1910.1000 and 29 CFR 1910.1001 or, in the absence of an applicable standard, which is of such toxicity so as to constitute a recognized hazard that is causing or is likely to cause death or serious physical harm."

A. There are presently no standards defining an ingestion hazard. The PELs are not applicable because they establish limits for inhalation only. Thus, citations do not depend on measurements of airborne concentrations.

B. The material must be a recognized hazard, and since, by the definition, must cause or be likely to cause death or serious physical harm by ingestion, violations of 29 CFR 1910.141(g)(2), when dealing with a toxic material, cannot be cited unless a serious violation is documented.

ii. For citations under 29 CFR 1910.141(g)(2) or (4) wipe sampling results will be adequately documented to establish a serious hazard.

iii. Where, for any substance, a serious hazard is determined to exist due to the potential of ingestion or absorption of the substance for reasons other than the consumption of contaminated food or drink (e.g., smoking materials contaminated with the toxic substance), a serious citation will be considered under NCGS 95-129(1).

iv. A citation under 29 CFR 1910.141(g)(4) will be considered where there is reasonable probability that a potentially hazardous amount of a toxic material may be ingested due to storage of food or beverages in a contaminated area.

b. Absorption Hazards. A citation for exposure to materials which can be absorbed through the skin or which can cause a skin effect (e.g., dermatitis) will be issued where appropriate personal protective equipment (clothing) is necessary but not worn. (See 29 CFR 1910.1000 Table Z-1, substances marked "skin".) The citation will be issued under 29 CFR 1910.132(a) as either a serious or nonserious citation according to the hazard.

i. Such citations do not depend on measurements of airborne concentrations.

ii. If a serious skin absorption or dermatitis hazard exists which cannot be eliminated with protective clothing, a NCGS 95-129(1) citation may be considered. Engineering or administrative (including work practice) controls will be required in these cases to prevent the hazard.

c. Regulated Substances. Citations for specific work practices and personal hygiene requirements for highly toxic or carcinogenic substances, e.g., 29 CFR 1910.1004, 29 CFR 1910.1025, will be issued under the applicable standard. The CSHO will review the appropriate substance specific CPL, if available, for citation guidance.

d. Issuing Citation. There are two primary considerations when issuing a citation of an ingestion or absorption hazard, such as a citation for lack of protective clothing:

i. A health risk exists as demonstrated by one of the following:

A. A potential for an illness, such as dermatitis, and/or

B. The presence of a toxic material that can be ingested or absorbed through the skin or in some other manner. (See the OSHA website for Chemical Sampling Information.)

ii. The potential that the toxic material can be ingested or absorbed, e.g., that it can be present on the skin of the employee can be established by evaluating the conditions of use and determining the possibility that a health hazard exists.

iii. The conditions of use can be documented by taking both qualitative and quantitative results of wipe sampling into consideration when evaluating the hazard.

e. Supporting Citation. There are four primary considerations which must be met to support a citation:

i. The potential for ingestion or absorption of the toxic material must exist.

ii. The ingestion or absorption of the material must represent a health hazard.

iii. The toxic substance must be of such a nature and exist in such quantities as to pose a serious hazard. The substance must be present on surfaces which have hand contact (such as lunch tables, cigarettes, etc.) or on other surfaces which, if contaminated, present the potential for ingestion or absorption of the toxic material (e.g., a water fountain).

iv. The protective clothing or other abatement means would be effective in eliminating or significantly reducing exposure.

G. **Feasible Administrative, Work Practice and Engineering Controls.**

1. Administrative Controls. Any procedure which significantly limits daily exposure by control or manipulation of the work schedule is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.

2. Work Practice Controls. Work practice controls are the actions of the employee which result in the reduction of exposure through such methods as effective use of engineering controls, sanitation and hygiene practices, or other changes in the way the employee performs the job.

3. Engineering Controls. Engineering controls consist of substitution, isolation, ventilation and equipment modification.

a. Substitution may involve process change, equipment replacement or material substitution.

b. Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.

c. A detailed discussion of ventilation controls can be found in the OSHA Technical Manual.

d. Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.

4. Feasibility. Feasibility is the existence of general technical knowledge as to materials or methods which are available or adaptable to specific circumstances and which can be applied with a reasonable possibility that employee exposure to occupational health hazards will be reduced.

a. Technical Feasibility.

i. The HCO (following available directions and guidelines provided by the supervisor and bureau chief, if necessary) will determine whether engineering controls are feasible. Sources which can provide information useful in making this determination are the following:

A. Similar situations observed elsewhere where adequate engineering controls do, in fact, reduce employee exposure.

B. Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations.

C. Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible.

D. Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.

ii. OSHA's experience indicates that feasible engineering controls exist for most hazardous exposures.

b. Economic Feasibility. The employer's economic cost of correction is generally not considered to be a factor in the issuance of a citation. However, there may be instances where calculating the cost of abatement would be beneficial in order to prove feasibility.

i. If the cost of implementing effective engineering, administrative or work practice controls, or combination, would so seriously jeopardize the employer's financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended correction date may be set.

ii. Abatement periods greater than 1 year in a single request or 4 years in cumulative time requires the approval of the bureau chief.

5. Reducing Employee Exposure. Whenever feasible engineering, administrative, or work practice controls can be instituted, and yet are not sufficient to reduce exposure to, or below the PEL, they will be used nonetheless, to reduce exposure to the lowest practical level.

6. Infeasibility. A determination that engineering controls are infeasible will not be made without consultation with and approval of the director's office.

APPENDIX XV-A: **Sample Calculations**

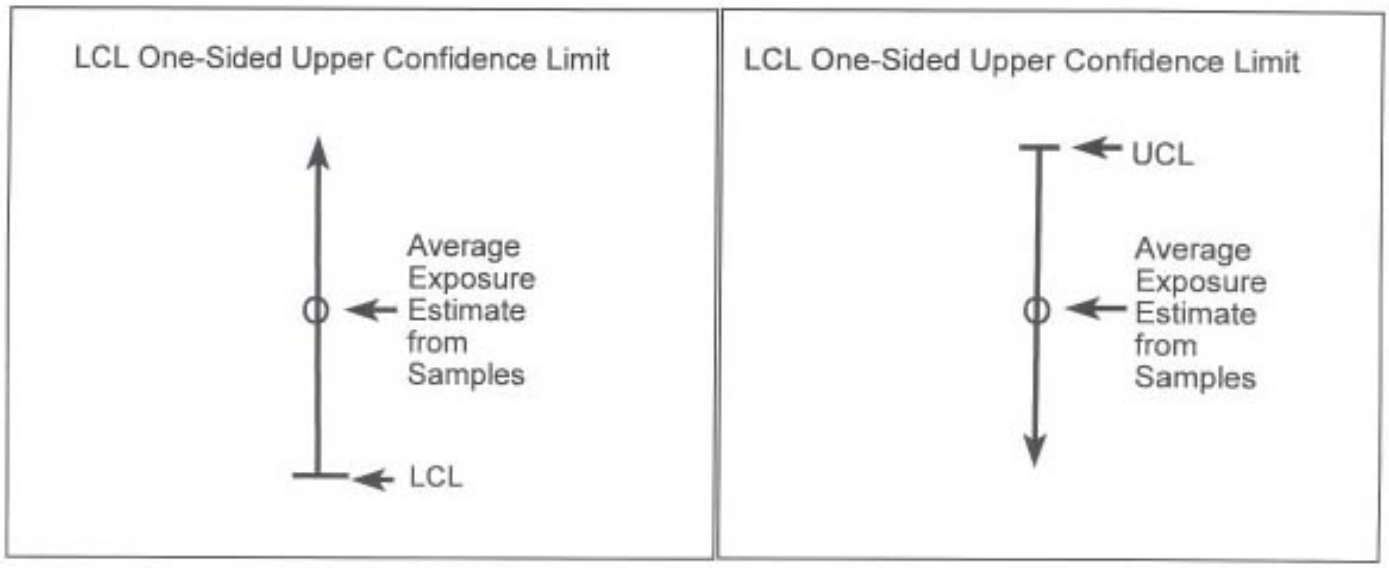


Figure XV-1 Example of one-sided LCL and UCL.

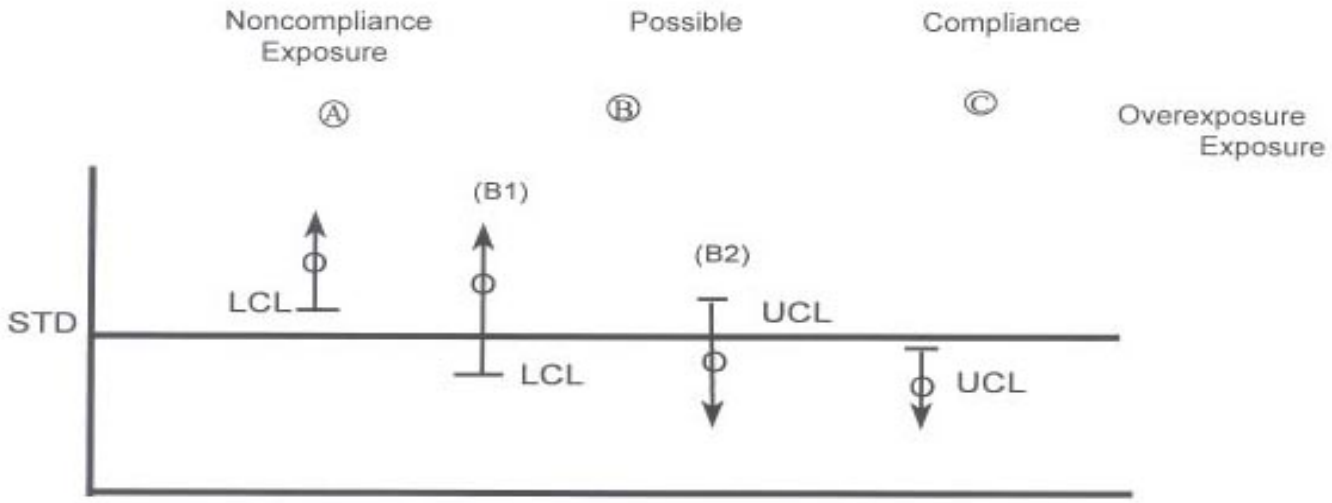


Figure XV-2 Classification according to one-sided confidence limits.

$$LCL = Y - SAE \frac{\sqrt{T_1^2 X_1^2 + T_2^2 X_2^2 + \ldots T_n^2 X_n^2}}{PEL \quad (T_1 + T_2 + \ldots T_n)}$$

$$UCL = Y + SAE \frac{\sqrt{T_1^2 X_1^2 + T_2^2 X_2^2 + \ldots T_n^2 X_n^2}}{PEL \quad (T_1 + T_2 + \ldots T_n)}$$

Figure XV-3 Calculation of LCL and UCL with Multiple Samples

APPENDIX XV-B: Sampling for Extended (> 8 Hour) Work Shifts

A. Sampling Procedures

From Chapter XV, Section C.4.ii., above:

"Monitoring may be accomplished with a full shift single sample or continuous multiple samples taken to determine any 8 hours of exposure for comparison with the PEL. A separate sample should be used to determine any additional exposure beyond 8 hours."

The CSHO should attempt to capture "the worst" 8 hours of the extended work shift by changing the media at fixed intervals throughout the day. For example, during an evaluation of total welding fume exposure over a 12-hour shift, the PVC filters were changed every 4 hours with the following results:

Sample #	Sampling Time	Results
1	4 hours	2.5 mg/m^3
2	4 Hours	5.2 mg/m^3
3	4 Hours	6.4 mg/m^3

In this situation, the second and third samples would be used to calculate the employee's 8-hour Time Weighted Average (TWA) exposure of 5.8 mg/m^3, which exceeds the 8-hour TWA Permissible Exposure Limit of 5.0 mg/m^3. The results from the first sample should be presented to the employer, but would not be used in exposure calculations for comparison to the 8-hour TWA PEL. Clearly, this procedure is preferred to using only two filters (8 hours + 4 hours) or only one filter (all 12 hours) to calculate the employee's 12-hour TWA. While a 12-hour TWA can be compared directly to an 8-hour TWA PEL, it may underestimate "the worst" 8-hour exposure. In this case, the 12-hour TWA would be 4.7 mg/m^3, which is below the 8-hour TWA PEL.

Note: In cases where the PEL is adjusted (lead in general industry & construction, cotton dust for respiratory protection), the CSHO must calculate an actual time weighted average for the extended work shift.

B. Calculating Extended Shift Time-Weighted Averages

In cases where samples collected for longer than 480 minutes will be used to calculate the employee's average exposure, the CSHO must ensure the total sampling time, and not 480 minutes, is used in the denominator of the TWA calculation equation:

$$[(C_1 \times T_1) + (C_2 \times T_2) + \ldots\ldots + (C_n \times T_n)] / [T_1 + T_2 + \ldots\ldots + T_n]$$

Where: Cn = Concentration for the nth sampling period
Tn = Time duration of nth sampling period

Since the contaminant was collected over an extended work shift, the use of 480 minutes in the denominator will artificially inflate the calculated result for average exposure. For example, an employee works a 10-hour shift and is exposed to acetone vapors. Sampling was conducted using three charcoal tubes spread out over the full shift, with the following results:

Sample #	Sampling Time	Results
1	224 minutes	700 ppm
2	162 minutes	650 ppm
3	184 minutes	725 ppm

In this example, the TWA exposure for this employee is calculated using 570 minutes of total time:

TWA=[(224 min. x 700 ppm)+(162 min. x 650 ppm)+(184 min. x 725 ppm)] / (224 min. + 162 min. + 184 min.)

TWA = 694 ppm.

This result is then compared directly to the 8-hour TWA PEL of 750 ppm to show that this is not an overexposure. In the future, if the decision is made to adjust PELs (other than lead and cotton dust) based on extended work shifts, then this exposure may, in fact, be over an adjusted limit for acetone.

In the above example, if the CSHO mistakenly uses 480 minutes in the denominator, the TWA is calculated to be 824.0 ppm, which is over the PEL. This result is artificially inflated, as contaminants collected over 570 minutes are represented as if they had been collected over only 480 minutes. This error would result in citations and penalties mistakenly being assessed against the employer.

APPENDIX XV-C: AVDs for Air Contaminant Overexposures

When a citation for an overexposure is written, it is important to include enough detail to accurately describe the nature of the violation. The CSHO should include the specific location at the site, sampling date, job title of the exposed employee, exposure concentration, PEL, and sampling duration. In situations where sampling is conducted for 8 hours or less, AVD language similar to the following example should be used.

> 29 CFR 1910.1053(c): The employer did not ensure that no employee was exposed to an airborne concentration of respirable crystalline silica in excess of 50 µg/m^3, calculated as an 8-hour TWA:
>
> a) gravel plant, on February 5, 2002, a crusher operator was exposed to respirable crystalline silica at an 8-hour time-weighted average of 118.5 µg/m^3 [2.37 times the permissible exposure limit of 50 µg/m^3]. This exposure was derived from one sample collected over 415 minutes, with zero concentration assumed for the remainder of the shift.

When sampling is conducted for more than 8 hours, the CSHO must use caution to ensure the language in the AVD is appropriate based on the sampling duration and averaging time. Terms such as "8-hour time-weighted average" should be avoided in situations where an "actual time weighted average" is used. In these cases, AVD language similar to the following example should be used:

> a) gravel plant, on February 5, 2002, a grounds man was exposed to respirable crystalline silica at an average concentration of 166 µg/m^3 [3.32 times the permissible exposure limit of 50 µg/m^3]. This exposure was derived from two samples collected over 499 minutes.

APPENDIX XV-D: Evaluating Noise Sampling Results

A. Dose vs. L_{AVG} vs. L_{TWA}

When evaluating noise sampling results, the CSHO can get an accurate picture of the exposure by recording eight parameters: Dose, L_{AVG}, and L_{TWA} for both threshold settings, as well as the peak sound level and sampling time. Dose is a measure of cumulative noise exposure over a stated time period and takes into account both the intensity of sound and the duration of exposure. It begins at 0.0% at the start of the sampling event and increases when sounds above the threshold level are measured.

L_{AVG} (or L_A) is the average sound level (in dBA) for the time sampled. It is represented by the following equation, with t being the time sampled (in hours):

$$L_A = 16.61 \log_{10} \frac{D}{12.5t} + 90$$

L_{TWA} is the time-weighted average sound level (in dBA) and is based on 8 hours, regardless of the sampling time. It is represented by the formula below (same as above, except with t = 8 hours). The CSHO should take note of the direct relationship between dose and L_{TWA}. A dose of 100% is always equivalent to an L_{TWA} of 90 dBA, a dose of 200% to 95 dBA, a dose of 50% to 85 dBA, and so on. If you know one parameter, you can solve for the other.

$$TWA = 16.61 \log_{10} \frac{D}{100} + 90$$

L_{TWA} will always be less than L_{AVG} if the sampling time is less than 8 hours, and greater than L_{AVG} if the sampling time is greater than 8 hours. The use of L_{TWA} is analogous to dividing by 480 minutes in the TWA formula for air contaminants. If the CSHO conducts noise sampling for less than 8 hours, L_{TWA} assumes zero exposure for the unsampled time period. If sampling time is greater than 8 hours, L_{TWA} becomes artificially inflated as dose accumulated during an extended work shift is compressed back into 8 hours. Based on these properties of L_{TWA}, **CSHOs should primarily use Dose and L_{AVG} to describe employee noise exposure for extended work shifts (> 8 hours).** CSHOs also should use caution to ensure dose, L_{TWA}, and L_{AVG} are not confused, and that they are explained accurately to the employer and appropriately referenced in the violation worksheet and workplace measurement summary.

B. Compliance Information

1. Compliance with the PEL (90 dBA)

As discussed in Section C.4.G.ii above, noise sampling for determining compliance with the 8-hour TWA PEL of 90 dBA is conducted with a Type 2 dosimeter, with a criterion of 90 dBA, a threshold of 90 dBA (aka HTL - High Threshold Level), and an exchange rate of 5 dBA. With that threshold setting, only sound levels above 90 dBA will be recorded by the dosimeter. Table G-16 of the noise standard (29 CFR 1910.95) specifies the Permissible Noise Exposures for various time durations up to 8 hours. Employees exposed greater than 90 dBA for 8 hours, 95 dBA for 4 hours, 100 dBA for two hours, and so on (based on the 5 dBA exchange rate) are said to have exceeded the PEL. Table G-16 does not address exposure durations greater than 8 hours. As a result, the PEL is <u>not</u> adjusted for extended work shifts. For any 8-hour period of exposure within the extended work shift, exposures are required to be limited to a TWA of 90 dBA.

Based on the 2-decibel error factor, the CSHO must show that the 8-hour TWA (L_{TWA}) sound level exceeds the PEL by 2 dBA (i.e. 92 dBA) before a citation can be issued for the lack of engineering or administrative controls or PPE. This sound level is equivalent to a dose of 132%. Additionally, if the sampling time exceeds 480 minutes (extended work shift), the CSHO must show the average sound level (L_{AVG}) also exceeds 92 dBA. The table below shows the different situations that may be found when evaluating noise exposure for compliance with the PEL and the result for each.

Dose (L_{TWA}) - HTL	**L_{AVG} - HTL**	**Result**
<= 132% (<= 92 dBA)	> or <= 92 dBA	Exposure < PEL - **No Violation**
> 132% (> 92 dBA)	<= 92 dBA	Extended work shift situation. Average exposure does <u>not</u> exceed PEL + error factor - **No Violation**
	> 92 dBA	Exposure > PEL - **Violation**

2. **Compliance with the Action Level (85 dBA)**

The Hearing Conservation amendment to 29 CFR 1910.95 established an Action Level of 85 dBA as an 8-hour TWA or, equivalently, a noise dose that is 50% of the PEL. When evaluating employee noise exposure in terms of the Action Level, a threshold level of 80 dBA (aka LTL - Low Threshold Level) is used. This lower threshold allows for adjustment of the Action Level based on an extended work shift (see Table G-16a of the standard). As a result, an employee exposed to 80 dBA for 16 hours will be exposed at the Action Level, with a dose of 50%.

In order to overcome the 2-dBA error factor, the CSHO must document an 8-hour *TWA equal to or exceeding* 87 dBA (*or a dose equal to or exceeding 66%)* to issue citations for hearing conservation violations. Since the Action Level is adjusted downward for extended work shifts, the CSHO only needs to document a *dose equal to or exceeding 66%* to show an exposure above the Action Level when sampling is conducted for longer than 480 minutes. Unlike determining compliance with the PEL, It is not necessary to show an L_{AVG} exceeding 87 dBA in an extended work shift situation. The table below shows the different situations that may be found when evaluating noise exposure for compliance with the Action Level and the result for each.

Dose (L_{TWA}) - LTL	**L_{AVG} - LTL**	**Result**
< 66% (<87 dBA)	> or <= 87 dBA	Exposure < Action Level - **No Violation**
>= 66% (>=87 dBA)	> or <= 87 dBA	Exposure > Action Level - **Violation**

APPENDIX XV-E: AVDs for Noise Exposures Exceeding the PEL or Action Level

Whether sampling is conducted for greater or less than 8 hours, it is important to list the dose, L_{AVG}, and L_{TWA} in the AVD. All three values are important in understanding the overall noise exposure. In order to properly present the exposure information to the employer, the following SAVE/AVD language should be used.

A. **Exposures Exceeding the PEL**:

Sampling data from the high (90 dBA) threshold level (HTL) will be used when documenting noise exposures above the PEL. All HTL data (dose, L_{AVG}, and L_{TWA}) should be presented in the AVD, along with the location in the facility, job title of the exposed employees, sampling date, and sampling duration (in minutes). The CSHO will also list some example engineering and/or administrative controls that may be feasible in reducing employee noise exposure. The following example shows a template AVD for a violation of 29 CFR 1910.95(b)(1):

> 29 CFR 1910.95(b)(1): Employees were subjected to sound levels exceeding those listed in Table G-16 of Subpart G of 29 CFR 1910 and feasible administrative controls or engineering controls were not utilized to reduce sound levels:
>
> a) [**Location in the facility**], for the [**Job Title**] who, on [**Sampling Date**], was exposed to noise at [**Dose - HTL**] of the permissible daily dose, or an average sound level of [**L_{AVG} - HTL**], as measured over [**Sampling Time in minutes**] of sampling. This dose is equivalent to an 8-hour TWA exposure of [**L_{TWA} - HTL**].
>
> Feasible engineering and/or administrative controls include, but are not limited to, the following:
>
> 1. Highest priority engineering control (e.g. source substitution, modification)
> 2. Next highest priority engineering control (e.g. booth or enclosure)
> 3. Administrative or work practice control

B. **For Exposures between the Action Level and PEL**:

AVDs for hearing conservation citations should be similar to those for overexposures, except the low (80 dBA) threshold data (LTL) should be used. The following example shows a template AVD for a violation of 29 CFR 1910.95(c)(1).

> 29 CFR 1910.95(c)(1): A continuing, effective hearing conservation program as described in 29 CFR 1910.95(c) through (n) was not instituted when employee noise exposures equaled or exceeded an eight-hour time weighted average sound level (TWA) of 85 dBA:
>
> a) [**Location in the facility**], for the [**Job Title**] who, on [**Sampling Date**], was exposed to noise at [**Dose - LTL**] of the permissible daily dose, or an average sound level of [**L_{AVG} - LTL**], as measured over [**Sampling Time in minutes**] of sampling. This dose is equivalent to an 8-hour TWA exposure of [**L_{TWA} - LTL**].

Note: The HTL values for Dose, L_{AVG}, and L_{TWA} can also be used when citing 1910.95(c)(1) provided the Dose-HTL exceeds 66%. This will mainly occur when 1910.95(c)(1) or the other hearing conservation paragraphs are being cited along with 1910.95(b)(1) and the HTL has already been referenced in the AVD for the preceding violation. This will ensure two sets of noise exposure data (HTL and LTL) are not listed in the citation.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XVI – Administrative File Activities



UNDER REVIEW

Chapter Effective: February 2000
Revision 39: 04/08/2020

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XVII - Ergonomics Inspection Procedures



Chapter Effective: July 2004
Revision 3: 03/16/2011

Table of Contents

A. Purpose

B. Phase One

C. Phase Two

D. Phase Three

E. Case Resolution

F. OSHA-1 Optional Information Codes

Appendix XVII-A: Calculations

Appendix XVII-B: Ergonomics Records Review Checklist

Appendix XVII-C: Sample "Good Written Program / Good Controls" Letter

Appendix XVII-D: Sample "Good Controls / Could Improve Written Program" Letter

Appendix XVII-E: Sample "Good Written Program / Could Improve Controls" Letter

Appendix XVII-F: Sample "Could Improve Written Program and Controls" Letter

Appendix XVII-G: Sample Employee Interview Form

Chapter XVII

Ergonomics Inspection Procedures

A. **Purpose.**

This document provides guidance for OSHNC Field Staff (CSHOs and Consultants) to use in conducting inspections/ surveys of workplaces where ergonomic (ergo) hazards may exist and in determining the appropriate responses to those hazards. The three-phase method is intended to identify case outcomes as early as possible in the process, allowing efficient use of CSHO/ Consultant time. Phase One activities are intended to screen out cases where the employer is responding appropriately to any ergo hazard that exists. Phase Two involves the identification of specific ergo hazards and deficiencies in the employer's response to those hazards. Phase Three stipulates the requirements for issuance of a citation under the general duty clause of the OSH Act (for CSHOs only).

B. **Phase One** - Determine the presence of unaddressed hazards.

The purpose of Phase One is to identify cases requiring intensive scrutiny while limiting OSHNC activity at worksites where ergo risk factors are not an issue or are being adequately addressed.

1. Open inspection/consultative visit per guidelines. (i.e., FOM Chapter 3 or OPN)

2. Obtain documents related to ergonomics such as OSHA 300 logs, NC-19s or OSHA 301s, first aid/ physical therapy logs, incident reports, ergo training program and attendance logs, etc. *for the prior five years*. (See checklist in appendix B.)

3. Evaluate OSHA 300 logs - identify possible ergo-related cases, primarily those with musculoskeletal disorders (MSDs). If the employer has no logs or records of injuries/illnesses, look for stressors during walkthrough. (Contact Supervisor if ergo related MSDs or stressors are identified on non-GS inspection in order to receive permission to expand scope of inspection.)

4. Obtain NC-19's (or 301s) for cases identified in step #3. Evaluate the NC-19's to determine true ergo related cases. (Note: At the onset of an effective ergo program there will be increased reporting of ergo related problems. The number of MSDs will decrease as corrective measures are implemented.)

5. Identify the ergo cases by departments/ jobs and identify # employees in each category.

6. Calculate the DART and severity rates for the various departments to determine areas of highest priority. This data may later be used to establish relationships between tasks and injuries. The difference in rates between jobs links injuries with the task performed and minimizes the influence of non-work factors.

   DART = Days Away, Restricted, or Transferred rate. Calculated using OSHA-300 data and employee hours worked. (See calculations in appendix A.)

7. Evaluate the worksite. Look for ergo stressors or indicators of ergo problems (i.e., back belts, wrist splints, etc.). Look for "home made" work station modifications. Since the CSHO/ consultant cannot observe every task, interview employees about awkward postures as well as observed risk factors. Ask whether or not employees have made modifications to their own workstations.

8. Determine action taken by the company regarding stressors identified in the workplace.

    a. Is there a plan to address ergo hazards? (Get copy if written.)
    b. Does the employer use the injury/ illness records to identify ergo hazards?
    c. Has the employer conducted a workplace analysis (job safety analysis, etc.)?
    d. What corrective actions has the employer taken?
    e. Is there a schedule for implementing additional corrections?
    f. Are employees trained on ergo issues?
    g. Are employees involved in the correction of ergo hazards?
    h. Do the employees receive proper medical attention?

9. Review data with OSH District Supervisor.

    a. Where the DART and severity rates are improving over time (use at least 3 years of data) and the company has implemented an effective ergo program, the ergo inspection will be terminated. Send the employer a letter acknowledging their efforts. (See suggested letter in appendix C.)

    b. Where the DART and severity rates are improving but the company has deficiencies in the ergo program, the ergo inspection will be terminated. Send the employer a letter acknowledging their efforts and include suggestions for program improvements. (See suggested letter in appendix D.)

    c. Where either the DART or severity rates are not improving but the company has an effective ergo program, the ergo inspection will be terminated. Send the employer a letter acknowledging their efforts and include suggestions for program improvements and additional available resources. (See suggested letter in appendix E.)

    d. Where 1) either the DART or severity rates are not improving, and 2) the company has deficiencies in the ergo program, consider continuing with Phase Two of the ergo inspection.

    e. At establishments where there may be relatively low DART and/or severity rates, clusters of ergo injuries may exist in one or more specific tasks. If there are significant deficiencies in the company's ergo program, consider continuing with Phase Two of the ergo inspection.

C. **Phase Two** - Assessing the extent of unaddressed hazards.

The purpose of Phase Two is to identify and focus on high-risk jobs, to assess whether and to what extent those jobs involve ergo hazards, and to make a preliminary determination whether the elements of a general duty clause violation are present.

1. Evaluate the jobs that were identified in Phase One as causing or likely to cause MSDs to determine the ergo risk factors. The factors include:

   a. Repetitive performance of the same motion or motion pattern;
   b. Awkward work postures;
   c. Using forceful exertions;
   d. Frequent or forceful lifting, pushing or other manual handling; or
   e. Using vibrating tools or equipment.

2. Interview employees in the jobs identified in B.1. (See sample interview sheet in appendix G.) Obtain medical release paperwork (Use HIPAA release form in FIS).

3. Videotape employees in their jobs.

4. Evaluate the documentation (obtained in Phase One). Determine a possible cause and effect relationship between identified stressors and MSDs identified in record review. Identify possible abatement methods.

5. If an ergo hazard is found to exist, evaluate the elements of the general duty clause to see if there is sufficient evidence to carry the inspection further. These elements include:

   a. A hazard is present;
   b. The hazard is recognized by the employer and by the industry;
   c. The hazard is causing or likely to cause serious physical harm to employees; (**For this there should be medical evidence that demonstrates an association between employees' injuries and their work.)**
   d. There is a feasible method of abatement that will reduce or eliminate employee exposure to the hazard.

      Note: The employer may be addressing the hazards incrementally. Determine how much had been done prior to the start of the inspection A general duty violation will likely not be recommended if the employer is making a good faith effort to eliminate ergonomic hazards,

6. Review this material with the Supervisor and Bureau Chief.

   a. If it is determined that there is insufficient evidence to issue citations, hold the closing conference. Send the employer a letter describing specific deficiencies, possible abatements, and available assistance. (See suggested letter in appendix F.)

   b. If there is sufficient evidence to issue citations, proceed with Phase Three.

D. **Phase Three** - Documenting significant hazards for citation.

The purpose of Phase Three is to develop cases that NC DOL and the AG's Office agree are appropriate candidates for citation and possible litigation. A decision will have to be made by NC DOL and the AG's Office regarding additional resource needs.

1. Solid development and documentation of each of the four elements are essential to establish a general duty case. Only those tasks that contain clearly recognized hazards for which there are known abatement techniques can be cited.

   a. Proof that a hazard exists - There should be a disproportionate number of employees in a particular job title, job description or department that have diagnosed MSDs that can be associated with the documented risk factors. The DART rate should be in excess of other populations, including general industry. The injuries/ illnesses must correlate to the job or task elements with the ergo stressors (i.e., repetitions, force, awkward posture, manual handling and/or vibrating tools.)

   b. Proof of employer or industry recognition - Extensive injuries/ illnesses, surgeries, or high DART and severity rates for particular job title, job description or department can assist in showing employer recognition. Reports from physicians, insurance companies, or other outside sources may be available. These should be obtained, along with management's admission that they read the reports. Evidence of industry recognition may also be available (internet, Federal Ergonomics Response Team, industry association publications or web sites, etc.)

   c. Proof of serious harm to employees - Interviews of affected employees, medical records, severity rates, worker compensation claims, and surgeries for MSDs all document the serious nature of the hazards and employees' exposure to those hazards.

   d. Proof of feasible abatement - Feasible abatements for each task must be established. Show that the abatements, when implemented, will eliminate or substantially reduce the hazard. Demonstrate that the suggested abatement methods will not have a negative effect on the employer's product or process.

2. Prior to the closing conference the Supervisor, Bureau Chief, Director's Office and AG's Office must review the materials developed. For these types of citations the Citation Authorization Form must be completed. Medical experts may also be contacted prior to citation development.

3. Once the final decision to issue citations or to send an advisory letter (see appendix F) is made, the closing conference can be held. The inspection file is completed and citations or letters are issued at this time.

E. **Case Resolution.**

1. If an informal conference is requested, the Bureau Chief, Director's Office and AG's Office must be informed of any proposed Informal Settlement Agreement.

2. If citations are contested, the CSHO must advise NC DOL management and the AG's Office as soon as possible for the best possible litigation preparation.

F. **OSHA-1 Optional Information Codes.**

The following Optional Information Codes (Block 42) should be used when appropriate.

S 16 – General Duty Ergonomic Citation Issued
S 17 – Ergonomic Hazard Alert Letter Issued

No Optional Information Code is necessary if an Appendix C - "Good Written Programs/Good Controls" letter is sent to the employer.

Appendix XVII-A: **Calculations**

Calculation of incident rates (IR) uses the NUMBER OF CASES:

Days Away, Restricted and Transferred (DART) uses totals from columns H and I from OSHA-300 logs.

DART = [(lost workday cases + restricted work cases) ÷ Hours worked] x 200,000

Calculation of the severity rate (SR) uses the TOTAL NUMBER OF DAYS FOR EACH CASE:

For OSHA-300 use totals from columns K and L.

Severity rate = [(Days away from work + Days restricted) ÷ Hours worked] x 200,000

If necessary, estimate number of "hours worked", but if at all possible get accurate payroll hours. Count **ALL EMPLOYEES ON SITE**, including management, temporary and/or part-time:

Hours worked = # of employees x 40 hours/week x 50 weeks/year

To evaluate the progress in correcting ergonomic problems, the Ergo IR and SR can be calculated. By comparing data from at least 3 years, trends specific to ergonomics can be assessed.

Ergonomic Incident Rate (Ergo IR) uses only those lost workday and restricted work cases that are related to ergonomic stressors. It is divided by the number of hours worked by employees in the high ergo risk jobs and then multiplied by 200,000.

Ergonomic Severity Rate (Ergo SR) uses the number of days lost or restricted due to ergonomic stressors. It is divided by the number of hours worked by the employees in the high risk ergo jobs and then multiplied by 200,000.

Appendix XVII-B: **Ergonomics Record Review Checklist**

Information Received?		DESCRIPTION OF RECORD/PROGRAM
YES ☐	NO ☐	
		OSHA 300 Logs
		Industrial Commission Forms (NC IC-19)
		Ergonomics Program
		Ergonomic Surveys
		Ergonomic Improvements
		Industrial Engineer Reports
		Production Studies (handling records, size, weight, etc)
		Consultant Reports
		National Studies
		Medical Records/Company Physician Reports
		Treatment Plan/Wellness Program
		Job Change/Restriction
		Safety Committee (reports/minutes)
		Labor Agreements (union involvement)
		Work Hours (audit reports)
		Pay System (wages, hours of work, standards, breaks)
		Floor Plan
		Employee Turnover Rate
		Number of employees on each job, w/job description
		Departments (breakdown w/# of employees, etc.)

Appendix XVII-C: **Sample "Good Written Program / Good Controls" Letter**

Date

Name
Title
Address 1
Address 2
City, State Zip

Dear (Name):

A Compliance Officer (CSHO) from the Bureau of Compliance of the North Carolina Division of Occupational Safety and Health conducted an inspection of your facility in (city,) North Carolina on (date). The CSHO reviewed the various aspects of your ergonomics program and concluded that it is an effective program as demonstrated by the reduction in ergonomic related injury rates. The CSHO also conducted a workplace analysis for ergonomic stressors and did not identify any ergonomic hazards of which the company was not aware.

It is recommended that (Company) continue in its efforts to manage ergonomic stressors in the workplace. We encourage you to continue to:

1. Evaluate the workplace regularly (e.g., job safety analyses);
2. Promote early reporting and medical management of any injuries and illnesses;
3. Provide annual retraining of your employees; and
4. Maintain the safety committees at all levels (i.e., production and management).

In - Compliance Option: (This option will be used ONLY if no hazards were observed during the inspection and no citations will be issued AT ALL. If the inspection resulted in ANY alleged violations and proposed citations, use the "Citations Enclosed Option" shown below.)

During the inspection, the CSHO did not identify any apparent violations of North Carolina occupational safety or health standards or regulations, including the general duty clause. We commend you on maintaining your workplace in this manner and we appreciate your commitment to protecting the health and safety of your employees.

Citations Enclosed Option:

During the inspection, the CSHO did observe violation of North Carolina occupational safety or health standards or regulations. Citations for those items are enclosed.

Please contact CSHO (name) or myself if you have any questions or comments about our program or your inspection or if you need additional assistance.

Sincerely,

District Supervisor

Appendix XVII-D: **Sample "Good Controls / Could Improve Written Program" Letter**

Date

Name
Title
Address 1
Address 2
City, State Zip

Dear (Name):

A Compliance Officer (CSHO) from the Bureau of Compliance of the North Carolina Division of Occupational Safety and Health conducted an inspection of your facility in (city,) North Carolina on (date). The CSHO reviewed the various aspects of your ergonomics program and concluded that it is an evolving program as demonstrated by some reduction in ergonomic related injury rates. The CSHO also conducted a workplace analysis for ergonomic stressors.

It is recommended that (Company) continue in its efforts to manage ergonomic stressors in the workplace. We encourage you to:

1. Evaluate the workplace regularly (e.g., job safety analyses);
2. Promote early reporting and medical management of any injuries and illnesses;
3. Provide annual retraining of your employees; and
4. Maintain the safety committees at all levels (i.e., production and management).

Option: It is also strongly recommended that (Company) formalize its ergonomics program in a written format that includes details of the above-mentioned aspects of its program. The most important aspects of the program are management commitment and employee participation.

Option: The CSHO determined that the use of the following controls might have a positive effect toward minimizing the risks of musculoskeletal disorders. In addition, you may find other approaches to relieving ergonomic stressors as you continue to improve your ergonomics program:

(List suggestions)

In - Compliance Option: (This option will be used ONLY if no hazards were observed during the inspection and no citations will be issued AT ALL. If the inspection resulted in ANY alleged violations and proposed citations, use the "Citations Enclosed Option" shown below.)

During the inspection, the CSHO did not identify any apparent violations of North Carolina occupational safety or health standards or regulations, including the general duty clause. We commend you on maintaining your workplace in this manner, and we appreciate your commitment to protecting the health and safety of your employees.

Citations Enclosed Option: During the inspection, the CSHO did observe violation of North Carolina occupational safety or health standards or regulations. Citations for those items are enclosed.

Please contact CSHO (name) or myself if you have any questions or comments about our program or about your inspection or if you need additional assistance.

Sincerely,
District Supervisor

Appendix XVII-E: **Sample "Good Written Program / Could Improve Controls" Letter**

Date

Name
Title
Address 1
Address 2
City, State Zip

Dear (Name):

A Compliance Officer (CSHO) from the Bureau of Compliance of the North Carolina Division of Occupational Safety and Health conducted an inspection of your facility in (city,) North Carolina on (date). The CSHO reviewed the various aspects of your ergonomics program and concluded that it is comprehensive. The CSHO also conducted a workplace analysis for ergonomic stressors and determined that the use of the following controls may have a positive effect toward minimizing the risks of musculoskeletal disorders. In addition, you may find other approaches to relieving ergonomic stressors as you continue to improve your ergonomics program:

(List suggestions)

It is recommended that (Company) continue in its efforts to manage ergonomic stressors in the workplace. We encourage you to continue to:

1. Evaluate the workplace regularly (e.g., job safety analyses);
2. Promote early reporting and medical management of any injuries and illnesses;
3. Provide annual retraining of your employees; and
4. Maintain the safety committees at all levels (i.e., production and management).

In-Compliance Option: (This option will be used ONLY if no hazards were observed during the inspection and no citations will be issued AT ALL. If the inspection resulted in ANY alleged violations and proposed citations, use the "Citations Enclosed Option" shown below.)

During the inspection, the CSHO did not identify any apparent violations of North Carolina occupational safety or health standards or regulations, including the general duty clause. We commend you on maintaining your workplace in this manner, and we appreciate your commitment to protecting the health and safety of your employees.

Citations Enclosed Option: During the inspection, the CSHO did observe violation of North Carolina occupational safety or health standards or regulations. Citations for those items are enclosed.

Please contact CSHO (name) or myself if you have any questions or comments about our program or about your inspection or if you need additional assistance.

Sincerely,

District Supervisor

Appendix XVII-F: **Sample "Could Improve Written Program and Controls" Letter**

Date

Name
Title
Address 1
Address 2
City, State Zip

Dear (Name):

A Compliance Officer (CSHO) from the Bureau of Compliance of the North Carolina Division of Occupational Safety and Health conducted an inspection of your facility in (city,) North Carolina on (date).

In-Compliance Option: (This option will be used ONLY if no hazards were observed during the inspection and no citations will be issued AT ALL. If the inspection resulted in ANY alleged violations and proposed citations, use the "Citations Enclosed Option" shown below.)

During the inspection, the CSHO did not identify any apparent violations of North Carolina occupational safety or health standards or regulations, including the general duty clause. We commend you on maintaining your workplace in this manner, and we appreciate your commitment to protecting the health and safety of your employees.

Citations Enclosed Option: During the inspection, the CSHO did observe violation of North Carolina occupational safety or health standards or regulations. Citations for those items are enclosed.

Also during the inspection, ergonomic hazards were evaluated. CSHO (name) interviewed employees and evaluated workplace stressors associated with their duties that include, but are not limited to:
(List hazards)

At this time, the North Carolina Department of Labor has decided not to issue citations against (company) with regard to ergonomic concerns. As was discussed in the closing conference, it is strongly recommended that (company) develop an effective written ergonomics program.

An ergonomics program should be fully endorsed by management and be effectively communicated to the employees. The program should consist of at least the following elements:

Worksite Analysis
Hazard Prevention and Control
Training and Education
Medical Management

<u>Worksite Analysis</u>

The worksite analysis should include review of the injury and illness data (OSHA 300 logs, NC-19 forms), employee interviews and on site analysis of the jobs conducted by employees. The worksite analysis will help pinpoint the areas on which you may need to focus first.

Hazard Prevention and Controls

The prevention and control of ergonomic hazards in the workplace can be accomplished by the use of engineering controls, work practice controls or administrative controls. The following recommendations are specific to your facility:

Engineering Controls

(Add information)

Work Practice Controls
(Add information)

Administrative Controls

Administrative controls can be used to eliminate or reduce the employees' exposure to the particular ergonomic stress in the environment. We recommend that, where possible, employees be rotated through jobs that will alternately work and rest the muscle groups involved.

Training and Education

Educating the employees properly on ergonomic hazards and the timely reporting of pain can help inform management of problems before they get out of control. The employees and management officials should by trained in the proper techniques and work habits that help reduce ergonomic stress on the body.

Medical Management

Protocol should be established to provide consistent medical treatment for the employees that experience cumulative trauma disorders (CTDs). An active CTD surveillance program should be implemented to detect the magnitude and location of the problems within the workplace. A conservative and medically-acceptable approach for the treatment of CTDs should be developed. Following proper treatment, a "return to work regimen" including light duty jobs and work hardening, should be implemented.

The implementation of an ergonomics program in the workplace is essential in preventing the occurrence of CTDs. The recommendations outlined in this letter are basic approaches to preventing and managing CTDs in the workplace. You may find additional approaches to solving the ergonomic problems while implementing your program. The most important aspect of the program is management commitment and participation. The ergonomics program cannot succeed without management support.

We appreciate your cooperation. Please contact CSHO (name) or myself if you have any questions regarding the inspection or if you need additional information.

Sincerely,

District Supervisor

Appendix XVII-G: **North Carolina Department of Labor Ergonomic Assessment Form**

Date:_____ File # _____

Name: _____ Phone:_____

Address:_____

Gender: M ☐ F ☐ Age:_____ yrs.

Job Title:_____ Job Tenure:_____

Dept. _____ Shift:_____

Previous Job:_____ How long? _____

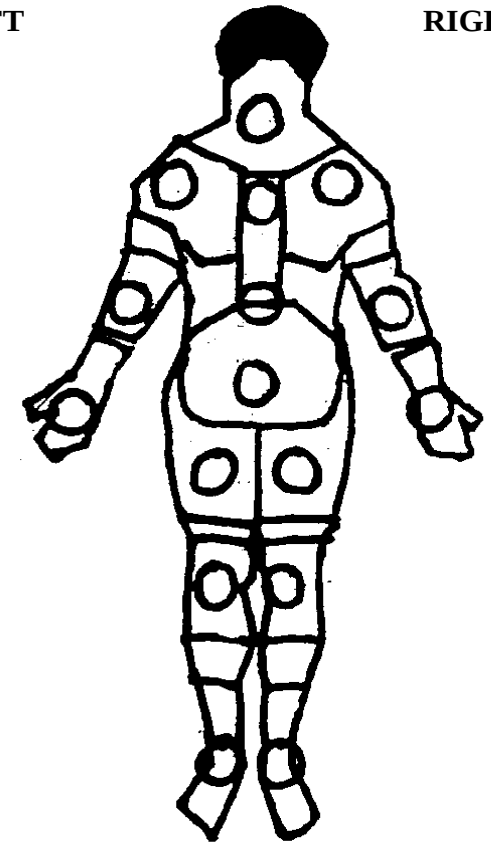
Previous Job:_____ How long? _____

If answer is Yes, proceed with remaining questions. If answer is No, proceed to page 3.

{Discomfort scale: 1=slight; 2=mild; 3=moderate; 4=prominently uncomfortable; 5=very uncomfortable}

LEFT:	**Rate:**
(1) Hand, fingers	1 2 3 4 5
(2) Wrist	1 2 3 4 5
(3) Arm	1 2 3 4 5
(4) Elbow	1 2 3 4 5
(5) Shoulder	1 2 3 4 5
RIGHT:	**Rate:**
(6) Hand, fingers	1 2 3 4 5
(7) Wrist	1 2 3 4 5
(8) Arm	1 2 3 4 5
(9) Elbow	1 2 3 4 5
(10) Shoulder	1 2 3 4 5
(11) Neck	1 2 3 4 5
(12) Back	1 2 3 4 5
(13) Legs	1 2 3 4 5
(14) Other (specify)	1 2 3 4 5

LEFT **RIGHT**



(BACK VIEW)

Are you free to report symptoms? Yes ☐ No ☐

Were you treated for an MSD? Yes ☐ No ☐

Where were you treated? On site ☐ Off site ☐

Who treated you?	Company Physician ☐ Company Nurse ☐ Personal Physician (w/ company knowledge) ☐ Personal Physician (w/o company knowledge) ☐
What type of treatment did you receive? (Check all that apply)	Medication ☐ Surgery ☐ Physical Therapy ☐ Counseling ☐ Other (braces, hot/cold, etc.)_____
Name of treating physician?_____	
Was treatment effective?	Yes ☐ No ☐
Did anyone follow up with you to see your status?	Yes ☐ No ☐
On light duty from MSD?	Yes ☐ No ☐
If yes, **when** and for **how long**? For what job?	_____
Do you rotate to a **different job** two or more times every shift?	Yes ☐ No ☐
Have you had a MSD **before** working for the present employer?	Yes ☐ No ☐
Did you receive treatment for MSD?	Yes ☐ No ☐
Treatment by previous employer effective?	Yes ☐ No ☐
How often do you experience this discomfort?	Always ☐ Occasionally ☐ Only at rest ☐ Only when active ☐
How long ago did you start to feel discomfort?	Days ☐ Weeks ☐ Months ☐ Years ☐
When first hired, was your work load increased slowly, and then increased over time?	Yes ☐ No ☐
How did the symptoms start?	Gradually, over time ☐ Suddenly ☐ Injury/Accident ☐
What increases your comfort?	Nothing ☐ Home/Not doing job ☐ Medication ☐ Hot/Cold Treatment ☐ Aids (i.e., splint) ☐ Sports ☐ Other_____
What decreases your comfort?	Doing same job ☐ Overtime ☐ Other_____
Outside of work activities/hobbies?	Nothing ☐ Knitting ☐ Gardening ☐ Playing musical instruments ☐ Other_____
Other Health concerns? (Such as Diabetes, Rheumatoid Arthritis, etc.) _____	

TOOLS:

Type(s) of tools used:

Concerns with tools used:

Additional Comments:

Signature of Interviewee:_____ Date:_____

Signature of Interviewer:_____

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter XVIII – Maritime Inspection Procedures



Effective: November 2011
Revision 0: 11/02/2011

Table of Contents

A. Maritime Industry Primary Resources

1. Directives
2. Standards
3. Guidance Documents
4. eTools, Expert Advisors, eMatrix

B. Shipyard Employment

1. Coverage
2. Shipyard Authority
3. Shipyard Inspections
4. Applicable Standards
5. Shipyard References

C. Marine Cargo Handling Industry

1. Coverage
2. Marine Cargo Handling Authority
3. Marine Cargo Handling Inspections
4. Applicable Standards
5. Marine Cargo Handling References

D. Other Marine Activities

1. Commercial Diving
2. Commercial Fishing
3. Marine Construction
4. Towboats/Tugboats
5. Training Marine Oil Response Workers under HAZWOPER
6. Other Regulatory Agencies

E. Security Procedures

Chapter XVIII

Maritime Inspections Procedures

A. Maritime Industry Primary Resources.

1. Directives.

   a. CPL 02-00-142 – Shipyard Employment "Tool Bag" Directive, August 3, 2006.

   b. CPL 02-00-139 – Longshoring and Marine Terminals "Tool Shed" Directive, May 23, 2006.

   c. CPL 02-01-039 – Enforcement of Cargo Gear Regulations and the Requirements for Gear Certification in the Maritime Program, March 24, 2003.

   d. CPL 02-01-047 – OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), February 22, 2010.

   e. CPL 02-00-143 – 29 CFR Part 1910, Subpart T – Commercial Diving Operations, August 11, 2006.

   f. CPL 02-01-042 – 29 CFR Part 1915, Subpart B, Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, September 7, 2005.

   g. CPL 02-01-049 – 29 CFR Part 1915, Subpart I, Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment, November 4, 2010.

B. Standards.

1. Guidance Documents.

   a. Shipyard Employment Industry.

   - Abrasive Blasting Hazards in Shipyard Employment. OSHA Guidance Document (December 2006).
   - Deck Barge Safety. OSHA Guidance Document, Publication 3358-01N (January 2009).
   - Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Shipyards. OSHA Guidance Document, Publication 3341-03N (March 2008).
   - Fire Protection in Shipyard Employment. OSHA Slide Presentation (March 2005).
   - Safe Work Practices for Marine Hanging Staging. OSHA Guidance Document (April 2005)..
   - Safe Work Practices for Shipbreaking. OSHA Publication 3375-03 (April 2010).

- Shipyard Fire Protection Frequently Asked Questions (FAQs). OSHA (March 2006).

- Spud Barge Safety. OSHA Fact Sheet, Publication 3358 (January 2009).

b. Marine Cargo Handling Industry.

- First Aid in Marine Cargo Handling, OSHA Quick Card, Publication 3368 (2009).

- Gangway Safety in Marine Cargo Handling, OSHA Quick Card, Publication 3369 (2009).

- Lifesaving Facilities in Marine Cargo Handling, OSHA Quick Card, Publication 3367 (2009).

- Marine Terminal Fall Protection for Personnel Platforms. OSHA Fact Sheet (June 2006).

- OSHA Guidance Update on Protecting Employees from Avian Flu (Avian Influenza) Viruses. OSHA Guidance Document, Publication 3323 (October 2006).

- Radio Communication Can Assist Container Gantry Crane Operators in Marine Terminals. OSHA Fact Sheet (June 2007).

- Roll-On Roll-Off (RO-RO) Ship and Dock Safety. OSHA Guidance Document, Publication 3396-06N (July 2010).

- Traffic Safety in Marine Terminals. OSHA Guidance Document, Publication 3337-07 (July 2007).

2. eTools, Expert Advisors, eMatrix.

a. eTools are "stand-alone," interactive, web-based training tools that provide highly illustrated information and guidance on occupational safety and health topics. Some also use expert system modules, which enable users to answer questions and receive reliable advice on how OSHA standards apply to their worksite(s).

b. Shipyard Employment eTools were developed by OSHA in conjunction with the shipyard employment industry for ship repair, shipbuilding, shipbreaking, and barge cleaning activities. The eTools provide comprehensive information, in an electronic format with photos and illustrations, regarding the applicability of safety and health standards. They are excellent overall training tools and good for safety briefs of specific standards.

C. Shipyard Employment - 29 CFR Part 1915.

1. Coverage.

a. Shipyard employment includes the building, repairing, and breaking (scrapping, disposal, recycling) of vessels, or a section of a vessel, without regard to geographical location, and is covered by 29 CFR Part 1915 for Shipyard Employment (see 29 CFR 1910.11(b)). Examples of vessels include, but are not limited to: ships, barges, fishing boats, work boats, cruise liners, and floating oil drilling rigs (i.e., mobile offshore drilling units).

b. Shipyard employment involves work activities aboard floating vessels as well as vessel-related work activities on the land, docks, piers, etc., of a shipyard. Although 29 CFR Part 1915 covers many hazards in shipyard employment, it does not cover all such hazards. Therefore, some of the 29 CFR Part 1910 General Industry Standards are also applicable in shipyard employment. (See Appendix A of Shipyard Employment "Tool Bag" Directive, CPL 02-00-142, August 3, 2006.)

Note: Not all activities within a shipyard are considered shipyard employment covered by 29 CFR Part 1915. For example, erection of a new building, roadway construction, demolition activities (including the dismantling of cranes), and the installation of water pipes are covered by Construction Standards, 29 CFR Part 1926.

2. Shipyard Authority.

a. U.S. Coast Guard and OSH Division Jurisdiction.

- OSHA and the U.S. Coast Guard each have authority over shipyard employment activities. In North Carolina, the NCDOL OSH Division has authority over public sector shipyard employment activities. The U.S. Coast Guard regulates working conditions for seamen (crew members) on inspected vessels through 46 CFR 90.05-1. OSHA has authority to cite shipyard employment activities on inspected vessels if the work is performed by shipyard employees (non-crew members), except that the NCDOL OSH Division retains the authority to cite public sector shipyard employment activities on inspected vessels if the work is performed by shipyard employees (non-crew members).

  Note: An inspected vessel is any ship, boat, barge, etc., that has or is required to have a Certificate of Inspection (COI) issued by the U.S. Coast Guard.

- On uninspected vessels, the OSH Division has authority to cite public sector shipyard employers for all working conditions. The OSH Division can also cite the owners or operators of uninspected vessels for violations involving shipbuilding, shipbreaking, and ship repair operations regardless of whether the work is performed by seamen (crew members) or by non-crew members unless the hazards are covered by U.S. Coast Guard regulations. (See Section XIV.B.1. in CPL 02-01-047 – OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), February 22, 2010.)

- CSHOs should contact the vessel owner, master or captain to obtain the vessel identification or official number (VIN or ON) and contact the

nearest U.S. Coast Guard Sector (http://homeport.uscg.mil or USCG phonebook) to determine whether the vessel is inspected or uninspected.

3. Shipyard Inspections.

a. Public Sector Programmed Inspections will be scheduled in accordance with Compliance Programming, Chapter II, F.3., of the Field Operations Manual. Additionally, the most current revision of Operational Procedure Notice 128 will be used.

b. Compliance Officer Training.

District supervisors are responsible for ensuring that CSHOs are qualified to inspect/intervene in shipyard employment establishments. CSHOs must complete the OSH Division Maritime 10 hour course, or have received equivalent training and/or experience prior to conducting shipyard inspections.

c. Compliance Officer Preparation.

In addition to normal inspection preparation procedures, CSHOs must be properly equipped and attired. All necessary personal protective equipment (PPE) must be available for use and in proper operating condition. CSHOs must be trained in the uses and limitations of PPE before beginning the inspection.

At the opening conference, the CSHO will request a copy of the employer's certification of hazard assessment prepared in accordance with 29 CFR 1915.152(b) in order to be aware of the necessary PPE. The suggested minimum PPE for a CSHO is: a hard hat, safety shoes, gloves, eye protection, hearing protection, a personal flotation device (PFD), and a high-visibility/retro-reflective vest. Additional PPE may be required, such as a respirator, if conditions warrant. All testing and monitoring equipment must be calibrated (if necessary) and in good condition. It may be advisable for a CSHO to carry a multi-gas meter when conducting a vessel inspection to test for O_2, H_2S, CO, and/or LEL.

d. Safety and Health Rules at Shipyards.

29 CFR 1903.7(c) requires CSHOs to comply with all site safety and health rules and practices at a shipyard or on a vessel, and to wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.

e. Inspection Data.

Inspection data is accessible through OSHA's web page. The "Statistics & Data" page allows the user to conduct searches by establishment, Standard Identification Classification (SIC) code, North American Industry Classification System (NAICS) code, OSHA inspection number, accidents, and frequently cited standards. The page also contains links to the Bureau of Labor Statistics (BLS) for injury and illness statistics. The NAICS codes that correspond to shipyard employment include, but are not limited to:

336611 Shipbuilding and Repairing, except for floating dry-docks not associated with shipyards (SIC codes 3731 and 3732);

488390 Shipbuilding and Repairing at floating dry-docks not associated with shipyards (SIC codes 3731 and 3732);

713930 Marinas (SIC 3732) that are located on or adjacent to U.S. navigable waters and build, repair, or break recreation boats are covered by the 29 CFR Part 1915 Shipyard Employment Standards;

Note: Boats are defined by NAICS code 336612 as watercraft not built in shipyards and typically of the type suitable or intended for recreational or personal use (such as dinghy manufacturing, motorboat building, rowboat manufacturing, and sailboat/yacht building that is not done in shipyards). Boat building, repair, and breaking, including recreational boat building and manufacturing facilities, that are not located on or adjacent to U.S. navigable waters of the United States are covered by 29 CFR Part 1910 General Industry Standards.

811490 Recreational Boat Repair (SIC code 3732) is part of "Other Personal and Household Goods Repair and Maintenance." The repair of recreational boats is covered by the 29 CFR Part 1915 Shipyard Employment Standards if performed on or adjacent to U.S. navigable waters;

336611 Shipbreaking at shipyards (SIC code 4499);

423930 Shipbreaking, except at floating dry-docks and shipyards (SIC code 5093); and

488390 Shipbreaking at floating dry-docks (SIC code 4499).

Note: A complete list of NAICS codes is available on the U.S. Census Bureau website.

f. Leased Employees and Employer Responsibilities.

Many shipyards use contract or temporary leased employees. The company on whose payroll the employee is listed, as well as the company that supervises and controls the employee's activities, may be regarded as the employer. However, only the company that supervises the employee's daily work activities is responsible for injury and illness recordkeeping for that employee.

g. Multi-employer Worksites.

More than one employer may be liable for a hazardous condition that violates an OSHA standard. The process which must be followed in determining whether more than one employer is liable for employee safety and health conditions can be found in OSHA Instruction CPL 02-00-124, Multi-Employer Citation Policy, December 10, 1999. See also the multi-employer worksite provisions in 29 CFR 1915.12(f) and 29 CFR 1915.501.

4. Applicable Standards.

a. 29 CFR Part 1915 – Shipyard Employment Standards.

Apply to all ship repairing, shipbuilding, shipbreaking and related employments.

b. 29 CFR Part 1910 – General Industry Standards.

For a list of general industry standards that do or do not apply in shipyard employment, refer to Appendix A: Application of 29 CFR Part 1910 Standards to 29 CFR Part 1915 Shipyard Employment, in the Shipyard "Tool Bag" Directive.

c. 29 CFR Part 1926 – Construction Standards.

Apply when:

- Construction activities occur on shipyards; or
- Construction materials, equipment and supplies in support of a construction project are unloaded, moved, or handled into, in, on, or out of any vessel, from shore-to-vessel, from vessel-to-shore, or from vessel-to-vessel. (See STD 03-13-002, 29 CFR 1926.605(a)(1) as Applied to Maritime Construction; July 15, 1982.)

Note: Incidental maintenance or normal upkeep performed on floating equipment during actual construction operations is not covered by 29 CFR 1915.115(a), but major overhauls of floating equipment when equipment is taken out of service and is not being used for construction operations are covered by 29 CFR 1915.115(a). (See STD 03-13-002, 29 CFR 1926.605(a)(1) as applied to Maritime Construction; July 15, 1982.)

d. 29 CFR Part 1919, Gear Certification.

Provides guidance for the approval of OSHA-accredited agencies and criteria for Part 1919 agencies to evaluate and issue a certificate (OSHA Form-71 and -72) for certain cranes in shipyards. **The 29 CFR Part 1919 standards may not be cited by CSHOs.** CSHOs will use the appropriate 29 CFR Part 1915 standards to cite hazards.

5. Shipyard References.

There are a number of resources available to assist CSHOs in conducting shipyard employment inspections; two principle references are listed below.

a. Shipyard Employment "Tool Bag" Directive.

The Shipyard "Tool Bag" Directive, CPL 02-00-142, is the primary source of information for all aspects of shipyard employment inspections. All maritime industry primary resources that have relevance in the shipyard employment industry can be accessed through the "Tool Bag" directive.. The "Tool Bag" directive is designed to provide comprehensive information about inspection scheduling, conduct of shipyard inspections, shipyard alliances, training sources, etc. Appendix A of the directive is very useful because it contains guidance about which General Industry Standards (29 CFR Part 1910) can be used in shipyard employment, and equally important, which general industry standards are applicable aboard a vessel. The "Tool Bag" directive also consolidates all

OSHA interpretations related to shipyard employment into a question-and-answer appendix. This directive is located on the OSH One Stop Shop.

b. Additional Shipyard Information and Documents.

OSHA's public maritime webpage provides access to shipyard employment directives, standards, guidance documents and eTools, as well as:

- Shipyard employment fatality videos – presents 16 computer-generated animated scenarios based on actual shipyard fatalities. Each scenario includes a review of the factors that contributed to the accident and how to avoid them;

- Maritime Outreach Training Programs – includes OSHA's Maritime "Train-the-trainer" (course #5400), and OSHA's 10-hour and 30-hour Maritime Industry courses;

- MACOSH (Maritime Advisory Committee for OSH) – includes upcoming/recent events, background and history, current membership, meeting minutes, and MACOSH Federal Register notices;

- Federal Registers pertaining to the maritime industry are located on the OSH One Stop Shop.

- SHIPS – Safety and Health Injury Prevention Sheets developed by OSHA in conjunction with the shipyard industry to provide specific guidance and "Do's and Don'ts" with accompanying photographs for various shipyard processes;

- Maritime crane accreditation and certification program information including: an explanation of the program, instructions for the use of the OSHA-71 and -72 forms, and a list of agencies accredited under the 29 CFR Part 1919 program; and

- Shipyard Employment Industry "Flyer." OSHA Products, Information and Guidance (November 2007);

D. Marine Cargo Handling Industry – 29 CFR Parts 1917 & 1918.

1. Coverage.

The marine cargo handling industry includes:

a. Longshoring and related employment aboard a vessel. Longshoring is the loading, unloading, moving or handling of cargo, ship's stores, gear, or any other materials into, in, on, or out of any vessel. Related employment is any employment performed incidental to or in conjunction with longshoring, including securing cargo, rigging, and employment as a porter, clerk, checker, or security officer. (The NCDOL OSH Division does not enforce the 29 CFR 1918, Longshoring Standards); and

b. Marine terminal (on shore) employment, as defined in 29 CFR 1917.1, includes the loading, unloading, movement or other handling of cargo, ship's stores, or gear within the terminal or into or out of any land carrier, holding or consolidation area, and any other activity within and associated with the overall operations and functions of the terminal, except as noted in the standards. It includes all cargo transfers using shore-based material handling devices.

CSHOs will review the Longshoring and Marine Terminals "Tool Shed" Directive, CPL 02-00-139, May 23, 2006, for more information related to marine terminal employment.

2. Marine Cargo Handling Authority.

a. U.S. Coast Guard and OSH Division Jurisdiction.

The NCDOL OSH Division has authority to cite employers engaged in public sector marine terminal operations; U.S. Coast Guard regulations do not preempt the OSH Division from citing such employers. However, on inspected vessels, the NCDOL OSH Division has no authority to cite the owner or operator of the vessel with respect to any working conditions of seamen (crew members), regardless of the work they are performing. On uninspected public sector vessels only, the NCDOL OSH Division may cite the owner or operator of the vessel for any violation of working conditions affecting seamen or non-seamen, unless the hazards are covered by U.S. Coast Guard regulations.

CSHOs will review CPL 02-01-047 – OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), February 22, 2010, for more complete information regarding U.S Coast Guard authority.

3. Marine Cargo Handling Inspections.

a. Public Sector Programmed Inspections will be scheduled in accordance with Compliance Programming, Chapter II, F.3., of the Field Operations Manual. Additionally, the most current revision of Operational Procedure Notice 128 will be used.

b. Compliance Officer Training.

District supervisors are responsible for ensuring that CSHOs are qualified to inspect/intervene in marine cargo handling establishments. CSHOs must complete the OSH Division Maritime 10 hour course, or have received equivalent training and/or experience prior to conducting marine cargo handling industry inspections.

c. CSHO Preparation.

In addition to normal inspection preparation procedures, CSHOs must be properly equipped and attired. All necessary personal protective equipment (PPE) must be available for use and in proper operating condition. CSHOs must be trained in the uses and limitations of PPE before beginning the inspection. The suggested minimum PPE for a CSHO is: a hard hat, safety shoes, gloves, eye protection, hearing protection, a personal flotation device (PFD), and a high-visibility/retro-reflective vest. Additional PPE may be required, such as a respirator, if conditions warrant. All testing and monitoring equipment must be calibrated (if necessary) and in good condition.

d. Safety and Health Rules at a Marine Cargo Handling Facility.

29 CFR 1903.7(c) requires CSHOs to comply with all site safety and health rules and practices at marine cargo handling facility, and to wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.

e. Inspection Procedures.

A CSHO will gain access to a marine terminal by following local security measures per the Security Procedures in paragraph E. below.

f. Multi-employer Worksites.

More than one employer may be liable for a hazardous condition that violates an OSHA standard. The process which must be followed in determining whether more than one employer is liable for employee safety and health conditions can be found in OSHA Instruction CPL 02-00-124, Multi-Employer Citation Policy, December 10, 1999.

4. Applicable Standards.

a. There are separate standards for the two components of marine cargo handling.

- Marine Terminal Standards.

  Material handling activities that occur on piers, docks, wharves, and other shore-side locations are covered by 29 CFR Part 1917, Marine Terminals Standards. In North Carolina, the Marine Terminal Standards are only enforced in the Public Sector.

- Longshoring Standards.

  Material handling activities occurring **on a vessel** are covered by 29 CFR Part 1918, Longshoring Standards. The NCDOL OSH Division does not enforce the Longshoring Standards.

b. General Criteria for Standard Application.

There are often uncertainties as to which part applies. The following are basic "rule-of-thumb" criteria for making a determination concerning standard applicability.

- Lifting Devices.
  - Use 29 CFR Part 1917 for cranes, derricks, hoists, spouts, etc., located on the marine terminal.

    Note: See the third bullet under C.4.c, below, if cranes, derricks, or hoists are involved in construction activities.

    Note: See Enforcement of Cargo Gear Regulations and the Requirements for Gear Certification in the Maritime Program, CPL 02-01-039, March 24, 2003. This document is for informational purposes only and has not been adopted for use in North Carolina. The NCDOL OSH Division does not enforce 29 CFR 1919.

- Work Location.
  - 29 CFR Part 1917 applies if the work occurs within a marine terminal (i.e., on the land-side), including all piers, docks and wharves.
  - 29 CFR Part 1918 applies if the work occurs on a vessel (i.e., on the water), including the gangway. The NCDOL OSH Division does not enforce 29 CFR Part 1918.

    Note: See the third bullet under C.4.c, below, if cranes, derricks, or hoists are involved in construction activities.

c. Other Applicable Standards.

- Gear Certification – 29 CFR Part 1919.

  Provides guidance for the approval of OSHA-accredited agencies and criteria for Part 1919 agencies to evaluate and issue a certificate (OSHA Form-71 and -72) for cargo handling gear onboard vessels and at marine terminals. **The 29 CFR Part 1919 standards may not be cited by CSHOs**. CSHO's will cite the appropriate standard in 29 CFR Part 1917

- General Industry Standards – 29 CFR Part 1910.

The only 29 CFR Part 1910 General Industry Standards that are applicable to marine terminals are identified in the Scope and Applicability section.

- Construction Standards – 29 CFR Part 1926.

  Apply when:

  - Construction activities occur on marine terminals; or
  - Construction materials, equipment and supplies in support of a construction project are unloaded, moved, or handled into, in, on, or out of any vessel, from shore-to-vessel, from vessel-to-shore, or from vessel-to-vessel. (See STD 03-13-002, 29 CFR 1926.605(a)(1) as Applied to Maritime Construction; July 15, 1982.)

- Shipyard Employment Standards – 29 CFR Part 1915.

  When vessels located at marine terminals are repaired, 29 CFR Part 1915 Shipyard Employment Standards apply.

5. Marine Cargo Handling References.

There are a number of resources available to assist CSHOs in conducting marine cargo handling industry inspections; two principle references are listed below.

a. Longshoring and Marine Terminal "Tool Shed" Directive.

The Longshoring and Marine Terminal "Tool Shed" Directive, CPL 02-00-139, is the primary source of information for all aspects of marine cargo handling industry inspections. All maritime industry primary resources that have relevance in the marine cargo handling industry can be accessed through the "Tool Shed" directive. The "Tool Shed" directive is designed to provide comprehensive information about inspection scheduling, conduct of marine cargo handling inspections, alliances, training sources, etc. Appendices are provided which cross-reference similar 29 CFR Part 1917 and Part 1918 standards and include a question-and-answer section about the longshoring and marine terminal standards. This directive is located on the OSH One Stop Shop.

b. Additional Marine Cargo Information and Documents.

OSHA's public maritime webpage provides access to marine cargo handling directives, standards, guidance documents and eTools, as well as:

- Longshoring and Marine Terminals: Fatal Facts – presents 42 written scenarios based on actual marine cargo handling fatalities;
- Maritime Outreach Training Programs – includes OSHA's Maritime "Train-the-trainer" (course #5400), and OSHA's 10-hour and 30-hour Maritime Industry courses;

- MACOSH (Maritime Advisory Committee for OSH) –includes upcoming/recent events, background and history, current membership, meeting minutes, and MACOSH Federal Register notices;

- Federal Registers pertaining to the maritime industry are located on the OSH One Stop Shop;

- Maritime crane accreditation and certification program information including: an explanation of the program, instructions for the use of the OSHA-71 and -72 forms, and a list of agencies accredited under the 29 CFR Part 1919 program; and

- Longshoring and Marine Terminal Industries "Flyer." OSHA Products, Information and Guidance (November 2007);

E. Other Marine Activities.

There are a number of other activities that occur on, above, or in water. Although these other activities involve water, there are no separate 29 CFR parts that specifically deal with them. Rather, the activities are covered by either general industry or construction standards.

1. Commercial Diving – 29 CFR Part 1910, Subpart T. (See 29 CFR Part 1910, Subpart T – Commercial Diving Operations CPL 02-00-143, August 11, 2006.)

   Diving activities related to shipyard employment are covered by 29 CFR 1915.6 and diving activities related to construction activities are covered by 29 CFR Part 1926, Subpart Y. Both standards reference 29 CFR Part 1910, Subpart T.

   Diving is classified as NAICS code 561990 – Diving services on a contract or fee basis (SIC code 7389).

2. Commercial Fishing – 29 CFR Part 1910. (See CPL 02-01-047 – OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), February 22, 2010.)

   Shipyard employment activities for fishing vessels are covered by 29 CFR Part 1915; marine cargo handling activities for fishing vessels are covered by 29 CFR Parts 1917 and 1918.

   Commercial fishing is classified as NAICS codes:

   114111 Finfish Fishing (SIC code 0912 – Finfish);

   114112 Shellfish Fishing (SIC code 0913 – Shellfish); and

   114119 Other Marine Fishing (SIC code 09190919 – Miscellaneous Marine Products (Except plant aquaculture, cultured pearl production, and catching sea urchins)).

3. Marine Construction – 29 CFR Part 1926. (See in particular 29 CFR 1926.605 and 29 CFR 1926.106.)

Construction activities (e.g., bridge and pier construction, bulkhead construction, installation of sewage outfalls) occurring from a vessel are considered marine construction and are covered under the 29 CFR Part 1926 Construction Standards.

4. Towboats/Tugboats – 29 CFR Part 1910. (See CPL 02-01-047 – OSHA Authority over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS), February 22, 2010.)

Unless a ship repair or cargo transfer activity is involved with work in the above industries, the Shipyard Standards (29 CFR Part 1915), Marine Terminals Standards (29 CFR Part 1917), and Longshoring Standards (29 CFR Part 1918) do not apply. Normal towboat and tugboat operations are covered by the 29 CFR Part 1910 General Industry Standards.

On August 9, 2004, Congress gave the U.S. Coast Guard authority to regulate all towing vessels as inspected vessels under 46 U.S.C. 3301; as a general rule, such vessels were previously classified as uninspected vessels. The U.S. Coast Guard has not yet exercised this authority; thus, towing vessels, remain uninspected vessels. Therefore, the NCDOL OSH Division will continue to provide safety and health coverage of employees on uninspected public sector towing vessels until the U.S. Coast Guard issues inspected vessel regulations for these vessels.

Note: The U.S. Coast Guard is required by 46 CFR 4.07-1 to conduct an investigation of all marine casualties or accidents, as defined in 46 CFR 4.03-1, to ascertain the cause of the casualty or accident. The mere fact that the U.S. Coast Guard is authorized to investigate a marine casualty or accident, or investigates one, does not mean that the OSH Division is preempted from exercising its authority pertaining to occupational safety and health.

5. Training Marine Oil Spill Response Workers under OSHA's Hazardous Waste Operations and Emergency Response Standard.

Training needed for marine oil spill response employees is covered under 29 CFR 1910.120 – Hazardous waste operations and emergency response (HAZWOPER) and explained in OSHA Publication 3172.

OSHA's website, Keeping Workers Safe during Oil Spill Response and Cleanup Operations, compiles safety and health information for workers conducting such operations including: multi-lingual fact sheets and guidance documents, oil spill training materials, national response system information, and many other additional resources relating to oil spills and cleanup operations.

6. Other Regulatory Agencies.

During a maritime inspection, CSHOs may encounter other regulatory agencies such as, but not limited to: federal OSHA; the Department of Homeland Security (DHS), including the U.S. Coast Guard (USCG) and the Transportation Security Administration (TSA); U.S. Army Corps of Engineers (USACE); Department of Transportation (DOT); Environmental Protection Agency (EPA); Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE); Nuclear Regulatory Commission (NRC); and Federal Grain Inspection Service (FGIS). CSHOs should contact their district supervisor for any questions regarding coordination and/or jurisdiction with other agencies.

F. Security Procedures.

Transportation Worker Identification Card (TWIC).

The TWIC program is a Transportation Security Administration (TSA) and U.S. Coast Guard initiative. The TWIC program provides a tamper-resistant biometric credential to: maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, and vessels regulated under the Maritime Transportation Security Act (MTSA); and all U.S. Coast Guard credentialed merchant mariners. An estimated 750,000 individuals require TWICs.

Question:

Do OSHA compliance officers (federal and State) require a TWIC to gain access to maritime facilities?

Answer:

No, a CSHO's credentials and government identification card are equivalent to a TWIC for the purposes of access to and escorting non-TWIC holders on maritime facilities (see Redefining Secure Areas and Acceptable Access Control, January 7, 2008 and TWIC & Law Enforcement Officials & Other Regulatory Agencies, November 21, 2007). If problems arise, the CSHO should contact their district supervisor. The district supervisor will contact the local U.S. Coast Guard office (http://homeport.uscg.mil or USCG phonebook) to obtain resolution and access.

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Definitions



Revision 0: 10/31/2013

Definitions

Action Request - A form used to define an observed or potential problem, opportunity for improvement, complaint, or other nonconformity and provide the control mechanism for resolution.

Action Request Log – A log of all action requests received and the status of the action request. The bureau documentation coordinator maintains this log.

Administrative Support Staff (admin staff) – Refers to the district office administrative staff.

Bureau documentation coordinator - Individual assigned the responsibility for the managing documents affecting the quality system.

Case File - A group of forms, information, and completed documents prepared by the CSHO as a result of a compliance inspection.

Case File Summary - A tracking form used to note dates and activities related to the inspection case file.

Citation or Settlement Authorization Form – A form used to obtain approval on significant cases (bureau chief, assistant director and/or director approval, as required by APN 16).

Complaint Desk - The complaint desk is staffed by CSHOs and is the central intake point for OSH complaints. The complaint desk is staffed by complaint intake officers.

Compliance Officer (CSHO) – A safety, health or ASH compliance officer.

Complaint – Refers to an alleged workplace safety or health hazard (s) brought to the attention of an OSH Division by an employee, an employee representative or other non-referral source. Formal and non-formal complaints are identified in the FOM.

Controlled Document- A document reflecting accurate and up to date information so that current policies are utilized by employees

Corrective action - An action that remedies or eliminates errors or mistakes. This action also includes addressing the cause of the problem and confirming that a solution is found. Corrective action is a proactive approach that does not always wait for an internal assessment or external audit to uncover errors or mistakes.

Customer Complaint Log - A document used to record a complaint received from the customer and any action taken in response to that complaint.

District Supervisor – A supervisor managing a geographical district that is staffed by CSHOs.

Employee Development Plan - A written plan developed by a supervisor and an employee to further develop the employee's skills during an upcoming evaluation cycle.

Ergonomics Record Review Checklist – This form is used during ergonomics inspections.

Ergonomics Letter to Employer – This letter is issued by the district supervisor after an ergonomics inspection.

Federal Fiscal Year (FFY) - A year measured from October 1st to September 30th (i.e. October 1, 2013 to September 30, 2014 is one federal fiscal year—FFY 2014).

Field Information System (FIS) - The FIS is a dynamic series of documents that provides information, policies and guidance to the OSH Division staff in the conduct of their daily work. The documents may be developed by the OSH Division or they may be federal OSHA documents adopted for application to North Carolina workplaces. The FIS includes procedures that OSH Division compliance programs must follow and is maintained electronically as part of the One Stop Shop.

Field Operations Manual (FOM) - Refers to the compliance Field Operations Manual, which is an electronically maintained document that is part of the FIS. It defines the activities and procedures that OSH Division employees are expected to follow.

Final Order – The point when a case file is finalized which is determined by one of the following: fifteen working days after the employer has received citations and failed to request an informal conference or contest, an informal settlement agreement is signed, fifteen working days after receipt of informal conference results and an employer has failed to contest, or having all contested items resolved through a formal hearing process.

Green Card – The card received from the U.S. Postal Service verifying delivery of certified mail, such as citations or letters.

Hazard Alert Letter – A hazard alert letter is sent to the employer as required by certain OSH policies/documents to address hazards and make recommendations for correction (such as National Emphasis Programs).

Informal Conference (IFC) - A meeting held between the OSH Division, an employer (and possibly employee representatives) after citations have been issued, to discuss pertinent inspection issues.

Informal Conference Notes Form – This form will be used to record the details of informal conferences.

Informal Settlement Agreement (ISA) - An agreement between the OSH Division and the employer reached after citations are issued and prior to contestment (usually reached during an informal conference).

Integrated Management Information Systems (IMIS) manual - The federal OSHA forms documentation manual.

Medical Record - For purposes of this procedure, medical record means a record concerning the health status of an employee which is made or maintained by the employer, a physician, nurse, or health care personnel, or technician, including: (1) medical and employment questionnaires or histories (including job description and occupational exposures); (2) the results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other x-ray examinations taken for the purposes of establishing a baseline or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record" per 29 CFR 1910.1020); (3) medical opinions, diagnoses, progress notes, and recommendations; (4) first aid records; (5) description of treatments and prescriptions; (6) employee medical complaints, (7) EMS reports, and (8) Photographs or videos of autopsies.

Medical Records Administrator - The OSH employee at each field location designated to maintain a log of uses and transfers of all medical records for each applicable file.

Medical Records Coordinator - The OSH employee designated to ensure that the security procedures are being followed at each field location and to provide assistance and information regarding the rules to the Medical Records Administrators.

Medical Records Chain of Custody Form – The form the CSHO will complete and maintain as a part of their case file that tracks all activity related to medical records received for a specific employee.

Multi-employer Inspection Medical Records Retention Request Form – This form will be used to assure that medical records related to multiple case files are retained until all associated case-files are closed.

NCDOL A/R Deferred Revenue Process Flow Chart - This flow chart details the process, timelines, and key personnel responsible for handling penalty collections for OSH/ASH compliance inspections.

NCR System - NCR is an acronym for "National Cash Register", which was the manufacturer of the federal computer system used by compliance officers for recording compliance activities and writing reports.

No Change Letter (NCL) - A letter issued by the district supervisor after an informal conference indicating no changes are warranted in the citation package.

Operational Procedure Notice (OPN) – Refers to an operating procedure related to a specific standard/topic. OPN's are part of the FIS.

OPN 64 – Training plan that has been established for all compliance officers in training.

OSHA 1 - Inspection Activity Form. The form prepared for every compliance inspection that provides information on the employer, type of inspection and CSHO conducting inspection. Specific information can be found in the FOM and IMIS manuals.

OSHA-1B – A form utilized to record information related to a violation of OSH Division standards.

OSHA-7 – A complaint intake form used for gathering information from complainants.

OSHA-36 – The intake form for gathering information on fatalities, catastrophes, and accidents.

OSHA-90 - The intake form for gathering information from a referral source.

OSHA-91A - Air Sampling Report. This form is used in case file to record air-sampling data.

OSHA-92 - Noise Survey Report. This form is used in a case file to record noise measurement data.

OSHA-93 - Direct Reading Report. This form is used in a case file to record data from direct reading instruments.

OSHA-98 – A form used to record data from screening activities.

OSH/ASH Debt Collection Checklist – This checklist is used to notify the NCDOL Budget Division of companies that have not paid their penalties and to provide the Budget Division with information needed to pursue collection and other legal action.

OSH/ASH Penalty Collection Process – This flow chart details the process, timelines, and key personnel responsible for handling penalty collections for OSH/ASH compliance.

OSH/ASH Write-off Spreadsheet– This spreadsheet is used to notify the Budget Division of penalty reductions or write-offs.

OSH Division - The North Carolina Department of Labor, Occupational Safety and Health Division.

Payment Submission Spreadsheet – This spreadsheet is used daily to send any payments received in a field office to the Budget Division for deposit.

Position Descriptions – Written descriptions of the requirements and expected activity for each of the OSH compliance positions.

Preventive action - A review of operation(s) with information from management reviews, quality records, audit reports, action requests or customer complaints. The intention is to use analysis of data or root causes to prevent future non-conformities in written or unwritten practices or written procedures within the bureau's quality management system.

Processing Assistant – Administrative support position in the field office.

Records Retention and Disposition Schedule for the OSH Division - This is a written schedule for retention periods developed by the OSH Division and the North Carolina Department of Cultural Resources, Office of Archive and History, Division of Archives and Records, in accordance with the provisions of Chapters 121 and 132 of the General Statues of North Carolina.

State Fiscal Year - A year measured from July 1st to June 30th (i.e. July 1, 2013 to June 30, 2014 is one state fiscal year—FY 2014).

State Plan Coordinator - an individual that reports directly to the OSH Director and who is responsible for coordinating State Plan activity with federal OSHA. The state plan coordinator conducts internal audits consistent with the state plan monitoring process and quality procedures.

Work Plan - A written plan developed by supervisors and employees combining what an employee will accomplish with the skills used to reach those results.