

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

Field Operations Manual
Chapter XIV – Safety and Health Programs and Committees



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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:** Self-insured employers will not have an ERM and do not have to comply with this legislation.) 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.

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 return a postcard verifying that they are in compliance with the legislation. The postcards are maintained in the department.

C. **Experience Rate Modifier Review.**

On each inspection, the CSHO will ask the employer for their ERM. If it is above 1.5, the CSHO will determine if the employer had been notified of their responsibility under SHPCA. If they had been notified, the scope of the inspection will be expanded to include this regulation. If they had not, the CSHO will provide the required information. *The CSHO will notify the Consultative Services Bureau (Bureau Chief assistant) and Consultative Services will send a letter to the employer and copy the CSHO.*

D. **Experience Rate Modifier Search Instructions.** Use the following steps to search an employer's ERM:

1. Click on the NC Rate Bureau link: <http://www.ncrb.org>
2. Click on the NCRB logo.
3. Click on the Workers Comp Service link.
4. Click on the Member Services Portal.
5. Login to Member Services Portal. ID: ncdol; Password: ncdol
6. Click on the Workers Comp button on the left side of the page.
7. Click on the Experience Mod Lookup.
8. Search by company name.
9. When the company name is listed; double click the company name for the rating(s).
10. If the company has an INTERSTATE ID the ERM will not be displayed.
11. CSHO's will need to contact NCCI (National Council on Compensation Insurance) for the INTERSTATE ERM.
12. Go to the NCCI link: <http://www.ncci.com/NCCI/>
13. Click on "contact us" at the top of the page.
14. Click on "customer service center."
15. Enter your name and "North Carolina Department of Labor" for company name.
16. Enter NCDOL account number. Account #: 2395075 (confidential).
17. Enter your NCDOL email address and OSH district office mailing address.
18. Drop down menu "Direct Question to": Use "Experience Modifications"

19. Drop down menu on "Subject of Inquiry": Use "Experience Modification Question"
20. Enter request for Interstate ID ERM. Please include the company name, address, Federal Employer Identification Number if known, Risk ID number if known. Include year(s) for the rating. You may request just the rating or the rating worksheet (detailed information).
21. NCCI will assign each user a Contact ID Number (When an ERM request is made to NCCI) and this ID will be used to log into NCCI to make future ERM requests from the customer service center page. CSHO's will need to create their own password when a Contact ID Number is assigned to them.
22. NCCI will respond within 24 hours of receipt of the ERM request.

E. **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.

F. **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?