

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

Field Operations Manual  
Chapter III - Inspection Procedures



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## **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 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 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, 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) 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 insured.

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 inquires 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.
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 OSH 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 and Section C 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 for procedures to follow if immunization areas are initially identified during walk around.)

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 behind the case file summary sheet on the left side of the folder. This is the **only** place in the file folder that this type of personal identification information will be

located with the exception of the **Unemployment Insurance Number** (which must be placed in the inspection report) and the minimal information needed to be placed in the narrative or on a violation worksheet.

The Confidential Information Log will be purged from closed case files per Chapter XVI – Administrative File Activities, Appendix B. Examples of personal identification information include: Social Security numbers; birth dates; employer tax identification numbers; 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 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 and 29 CFR 1903.6 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 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.
  - b. 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.
  - c. 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.

d. 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 5 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.

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.
  - b. If advance notice is to be given at a construction 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. for immunization requirements and Section B.9. for 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.
  
- a. **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).
  - 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.
- 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, etc.).

- 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 for information required by the warrant application.)
  - 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.

- 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. (Appendix III-C for information regarding warrant applications.)

- 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), 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 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). 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 reasons for not conducting the inspection, and will include the names of persons contacted in the narrative to be included in the case file.
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.

Note: For the purpose of this chapter, the term "employee representative" refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) 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, or (3) an individual employee who has been selected as the walk around representative by the employees of the establishment.

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, 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 predominately 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 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 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, a copy of the standards, and other informational materials. The CSHO will also inform the employer representatives of procedures for obtaining or purchasing additional copies of any materials.
  - ii. The employee representatives with a copy of the standards and other informational materials. The CSHO will also inform them that additional copies and other materials can be purchased.
- 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. 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 inspection
      - b. Fatality/catastrophe inspection
      - 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 on self-referrals below in paragraph D.3.h.i.A.4.

2. For purposes of efficiency and expediency, an employer’s worksite shall not be subject to concurrent consultation and compliance-related visits. The following information from CSP 02-00-003 – Consultation Policies and Procedures Manual, Chapter 7: Relationship to Enforcement, November 19, 2015, clarify the interface between compliance and consultation activity at the worksite.

- 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 or at the time of inspection by contacting CSB staff 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 CSP 02-00-003 – Consultation Policies and Procedures Manual.
  - a. 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 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 CSP 02-00-003 – 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 or at the time of inspection by contacting the Education, Training and Technical Assistance (ETTA) Bureau recognition program staff to verify the deferral. Current Building Star sites are listed on the Building Star Exemption list on the OSH One Stop Shop under Inspection Resources. 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 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 below in C. Unprogrammed Inspections.
  - C. Unprogrammed Inspections. Carolina Star deferrals do not apply to unprogrammed inspections. Where an employer has a 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 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 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 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 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 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 Chapter III, paragraph I. – NIOSH FACE 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:

- i. 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) that may apply to the employer.
- ii. 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.
- iii. 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. (See Section D.7.e.(i) for further instructions.)
- iv. 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). 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, 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.

v. **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.

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, 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 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.

ii. **Safety & Health Committee.** The employee members of an established plant safety & 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, where 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 employees 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 and NCGS 95-136.
  - 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 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, 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.
3. Long shoring, including all private and federal sector marine cargo handling establishments, or operations in SIC 4491 (NAICS 488310, 488320).
4. Gear certification.
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 (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 [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 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, etc., 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 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. Employers with NAICS codes listed in Appendix A to Subpart B of 29 CFR 1904 or with 10 or fewer employees are exempt from maintaining OSHA-300 logs. In accordance with NCGS 95-148(4), 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 that follow 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 standard or of 29 CFR 1910.1020 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 Occupational Safety and Health standard. As defined in 13 NCAC 7A. 0902, 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 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 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. 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 5 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. 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 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) and 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 & rescue or emergency medical services.

As part of an inspection, 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. The agency may provide the CSHO with records that are not considered

public records, not realizing that the records may be placed in the inspection case file and disclosed at a later time.

Whenever possible, the CSHO should conduct a review of the records, leave them on site, and reference them in the inspection narrative or OSHA 1B's as necessary. However, at times the CSHO may need the records to include in the case file to support an OSH inspection. When the CSHO receives any report or record from a public sector agency during an investigation that may be included in the case file, the CSHO must inform the agency that the records provided to the NCDOL may be placed into the case file and will then be subject to disclosure pursuant to NC General Statute §95-136, the Occupational Safety and Health Act, 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 OSH Act is entitled to receive a copy of the official inspection report following the issuance of citations which may include the agency's records.

When the CSHO receives these records, the CSHO will fill out the "Receipt of Public Agency Records Form" located in the Forms folder in the FIS. A copy of this signed form will be provided to the agency and the original will be maintained in the inspection case file. The records from the case file and the completed form will be added to the case file as an attachment.

- iv. **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 Inspection Resources page of 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 act.
- ii. OSHA Form 300A: Summary of Occupational Injuries and Illnesses 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 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 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 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/tag out.
- 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 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 ft. distance from top of scaffold platform to ground level"; "employee standing 2 ft. from unguarded floor edge"; "employee seated 2 ft. 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 the 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., 2 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 3 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 4 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 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 lessor. 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, 1910.132, 1910.134).

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 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.)

- 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.). 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), CSHOs have the right "to question privately any such employer, owner, operator, agent or employee" during an inspection and 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 10 days prior to a scheduled contested case hearing. 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, CDs, video recordings, and OSH documentation forms will be labeled: "TRADE SECRET"
    1. Under NCGS 95-152, 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. 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) 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.
  - 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 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.

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 and B.

- 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.

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 3 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 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.) 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. More complete information on variance protocol is contained in OPN 118 - Administration of Variance Requests and Related Records. Employers should be directed to ETTA.

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.

xvi. Referral Inspection.

- A. When applicable, the CSHO will explain that apparent serious violations which have been observed during the inspection, but which are not within the scope of the CSHO's expertise, will be subject to referral to the district supervisor and, as a result, additional inspections may be scheduled at a later date.
- B. 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 (30) 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 NCCS 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 by the Planning Statistics and Information Management (PSIM) Bureau. 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.

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.

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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 [Corporations Division of the North Carolina Secretary of State](#) or call (919) 807-2225 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.

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- 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 phone number: 919-733-4329. Tax information phone number: 919-707-1150. However, a CSHO's initial contact for UI account information questions will be the PSIM Bureau, 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.

FOM Chapter III, cont'd.

#### **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, Jesika Freeman and Rose Gray.
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 Jesika Freeman at 919-807-2958 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 919-807-2950.

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### **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 NCDOL Mine & Quarry (M&Q) Bureau, 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 the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration serves as a guide for delineating areas of authority, and defines mining and milling operations. A Memorandum of Understanding (MOU) between M&Q Bureau and the OSH division provides further clarification.
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.)