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

Field Operations Manual
Chapter XVI – Administrative File Activities

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Chapter XVI

Administrative File Activities

A. **Purpose.**

The purpose of this chapter is to provide guidance to OSH Division personnel in conducting administrative file activities for OSH inspections and investigations.

B. **Scope.**

This procedure applies to all OSH personnel.

C. **Responsibilities and Authorities.**

1. Management - Bureau management (assistant director, bureau chief, district supervisor) provides the CSHO with necessary resources to accomplish their identified tasks. Bureau management, through the FOM, provides adequate and controlled activities that ensure proper process standards are met.

2. Compliance Bureau Personnel - Employees within the Compliance and ASH Bureaus use a combination of job knowledge, training, and experience to ensure processes are meeting all quality standards and requirements.

3. District Supervisors - The district supervisor has first level supervisory responsibility over CSHOs in the discharge of their duties and may also conduct compliance inspections. They receive and evaluate inspection assignments, assign inspections, evaluate case files, sign citations, hold informal conferences, issue informal settlement agreements, along with providing guidance and support to the CSHOs, all in accordance with the N.C. FOM. District supervisors ensure technical adequacy in applying the policies and procedures in effect in the agency.

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

5. Administrative Staff - The admin staff has the responsibility to process citations, copy case file information, mail documents to employers and employees, receive and distribute the incoming mail, along with other tasks associated with keeping the field office running smoothly.

D. **Requirements.**

1. OSH Compliance and ASH management and/or personnel may reject any service or work product that does not meet the established quality standards and criteria.

2. All compliance and ASH personnel will comply with the requirements identified here and in the OSHA Express (OE) manual.

E. **Action Steps.**

1. Petition for Modification of Abatement (PMA).

   a. Per 29 CFR 1903.14a, a PMA must be submitted in writing. Employers who attempt to request a PMA over the phone will be notified of this requirement.

   b. When a PMA is received, the admin staff will forward the request to the CSHO for review with the district supervisor. This review will determine whether the PMA contains the information outlined in 29 CFR 1903.14(b).

   c. Since the employees have 15 working days to contest a PMA request, the PMA will be held for 15 working days from the date the employer posted the PMA request.

   d. The supervisor will use the PMA Review form (located on the One Stop Shop, in the Forms folder) for processing and review of the PMA. The admin staff will process the PMA after the district supervisor approves the request and 15 working days have expired.

   e. The admin staff will return the case file with the PMA, amended citation(s) and cover letter to the district supervisor for signature.

   f. The admin staff will mail the approved (signed by supervisor) PMA information to the employer which will include the cover letter, new amended citation(s), and the new 2D's stating the new extended abatement dates.

2. Petition for Modification of Abatement (PMA) Employee Contestment.

   a. When a Notice of Contest (contestment) is received from an employee, due to a PMA request from the employer, the district supervisor will notify the employer by letter that the PMA cannot be granted , as an employee objection (contestment) was received and has been forwarded to the OSH Review Commission per 29 CFR 1903.14a(c)(2). The district supervisor will document the results of these contacts in the Case File Summary.

   b. The district supervisor will notify the admin staff when an employee Notice of Contest is received and the admin staff will:

      i. Date stamp the contestment correspondence when it is received.

      ii. Forward the case file to the district supervisor for review.

      iii. Once the district supervisor has determined that the employee intended to contest the PMA, the admin staff will fax a copy of the following information to the OSH Review Commission:

A. Contested Case Checklist – Fax or Scan Form;

B. Notice of Contest from employee w/ date stamp – can be received via U.S. Mail, fax or email;

C. Copy of envelope containing Notice of Contest, fax cover sheet; OR original email and attachment with date stamp (if applicable);

D. Copy of the PMA request from the employer, the "Notice to Employees" and the "Certificate of Posting";

E. Fax the information to the OSH Review Commission at the fax number indicated on the Contested Case Checklist – Fax Form. A copy of the fax receipt should be placed in the case file and an entry should be made in the Case File Summary. The information can also be scanned and emailed to the OSH Review Commission to the email addresses indicated on the Contested Case Checklist – Fax Form;

F. Note on the Contested Case Checklist that this is an employee contest.

3. Contestment.

a. When a Notice of Contest (contestment) is received, the district supervisor will follow the procedures in Chapter XIII, Section B.2.a. However, if the district supervisor determines that the notice of contest was received more than 15 working days from the date either the citations, No Change Letter or Proposed Settlement Agreement Cover Letter were received by the employer, then such late notice should be indicated in the appropriate place on the Contested Case Checklist – Fax Form and Contested Case Checklist – Mail Form. In addition, the district supervisor will inform the AG's office (OSH paralegal) about concerns with the timeliness of the notice of contest. The district supervisor will delineate the results of these contacts in the Case File Summary.

b. The district supervisor will notify the admin staff when a Notice of Contest is received and the admin staff will:

i. Date stamp the contestment correspondence when it is received.

ii. Forward the case file to the district supervisor for review.

iii. The admin staff will enter the specifics of what is being contested into the OSHA Express. From the main OSHA Express menu, hit 'F', then 'I', enter 'INSPECTION NUMBER'. Go to '4A' if everything is being contested or use '4B' for specifics.

iv. Pull the case file and stamp the outside "CONTESTED".

v. Once the district supervisor has determined that the employer intended to contest the citations, the admin staff will fax a copy of the following information to the OSH Review Commission:

A. Contested Case Checklist – Fax or Scan Form;

B. Notice of Contest from employer w/ date stamp – can be received via U.S. Mail, fax or scanned to email. Be sure to indicate if the Notice of Contest was received late, in accordance with Section E(3)(a), above ;

C. Copy of envelope containing Notice of Contest, fax cover sheet OR original email and attachment w/ date stamp (if applicable);

D. No Change Letter OR Proposed Settlement Agreement cover letter (if applicable) – NOT the Proposed Settlement Agreement;

E. White Certified Mail Receipt for No Change Letter OR Proposed Settlement Agreement Cover Letter (if applicable);

F. Signed Green Card for No Change Letter OR Proposed Settlement Agreement Cover Letter w/ Date Stamp (front and back) (if applicable);

G. Page 1 of citation package;

H. Page 1 of Invoice/Debt Collection Notice from citation package OR Summary of Proposed Penalties;

I. White certified mail receipt for citation package; and

J. Signed green card for citation package w/ date stamp (front and back).

vi. Fax the information to the OSH Review Commission at the fax number indicated on the Contested Case Checklist – Fax Form. A copy of the fax receipt should be placed in the case file and an entry should be made in the Case File Summary. The information can also be scanned and emailed to the OSH Review Commission to the email addresses indicated on the Contested Case Checklist – Fax Form.

vii. Check the case file for photos in any format (floppy disk, CD, etc.) and request duplicate photos (request the CSHO have additional photos processed if they are not on disk/CD). If there are no photos in the case file, the admin staff will verify with the CSHO if photos should be included in the file and request that the CSHO include the photos in the original case file and certified copy. (Excluding any medical records, etc.)

viii. Make two (2) copies of the contestment letter and envelope, one copy of the green card and corresponding white slip, and four (4) complete copies of the citations.

ix. <u>Within 10 working days of receipt of the Notice of Contest</u>, mail the following information to the OSH Review Commission*:*

A. Contested Case Checklist – Mail form;

B. Contested Case Record;

C. Original Notice of Contest from employer w/ date stamp – can be received via U.S. Mail, fax or email. Be sure to indicate if the Notice of Contest was received late, in accordance with Section D.3.a. above;

D. Copy of envelope containing Notice of Contest, fax cover sheet OR original email and attachment w/ date stamp, if applicable;

E. No Change Letter OR Proposed Settlement Agreement cover letter, if applicable – NOT the Proposed Settlement Agreement;

F. White certified mail receipt for No Change Letter OR Proposed Settlement Agreement cover letter (if applicable);

G. Signed green card for No Change Letter OR Proposed Settlement Agreement cover letter w/ date stamp (front and back, if applicable;

H. Two complete copies of citation package;

I. Complete copy of Invoice/Debt Collection Notice from citation package OR Summary of Proposed Penalties;

J. White certified mail receipt for citation package; and

K. Signed green card for citation package w/ date stamp (front and back)

Mail the OSH Review Commission's package to: OSH Review Commission, Lee House, 422 North Blount St., Raleigh, NC 27601.

Whenever an original of a document is removed from a case file for transmittal to the OSH Review Commission, a copy of that document will be made and placed in the case file.

xi. Type an acknowledgement letter to the employer.

xii. The district supervisor or point of contact (POC) will sign the certification certificate.

xiii. <u>Within 10 calendar days of receipt of the Notice of Contest</u>, create and deliver a certified copy of the case file to the Attorney General's office. The file should include a duplicate set of photographs, diskettes, CD's and/or videotape*s*. If the case file includes a Medical Records Chain of Custody Form, the admin staff copying the file will request a sealed copy of the medical records from the CSHO. Only the CSHO will make copies of medical records for a contested file. The CSHO will place all medical records related to a file in a single Kraft envelope and the envelope will be marked "Medical Records - Confidential" with company name and inspection number included on the outside of the Kraft envelope**.** Medical records sent to the AG's office do not need to be separated by employee and do not need to include the medical record identifiers. The CSHO will provide the sealed Kraft envelope to the admin staff who requested the records. The certified copy will be sent to the N.C. Department of Justice, Attn: Labor Section, P.O. Box 629, Raleigh, NC 27602, by certified U.S Mail, hand delivery or other secure means (such as UPS or FedEx) only. Medical records will **not** be sent to the Attorney General's office by fax, email, regular U.S. Mail or interoffice mail.

xiv. Any subsequent documents pertaining to the notice of contest filed by the employer, affected employees or representatives of affected employees will be transmitted promptly to the AG's office. In the event the director or any other personnel is served with any pleading after the filing of a notice of contest, the pleading will not be transmitted to the OSH Review Commission, but rather will be transmitted to the AG's office immediately upon being date stamped. These records will be copied and forwarded following the procedure in paragraph xiii above.

xv. If the case is not settled, within 5 working days of the scheduled hearing, create a certified copy of the case file for the CSHO. Medical records from the medical records locked file cabinet will **not** be duplicated for this copy. Place the certified copy of the file in a purple folder and return the original and certified copy to the CSHO. After the case is settled, all contents of the purple folder will be shredded.

4. Withdrawing a Contestment.

If a respondent/employer calls the district office or the CSHO and says he/she no longer wants to contest the citation(s) or does not want a hearing, the respondent/employer will be directed to the OSH Review Commission at 919-733-3782. Appropriate procedures must be followed to withdraw the contestment to protect the respondent/employer rights and options.

5. Inspection Case File Assembly and Management.

Case file reports that have an inspection type on the OSHA-1 classified as "No Inspection" (i.e., triple zero/ "000") will be kept by the admin staff in a folder for each fiscal year. These reports will be maintained in accordance with the Occupational Safety and Health Division, Compliance Bureau (Safety and Health Compliance, East and West) and Agricultural Safety and Health Bureau (ASH) Record Retention Schedules. Medical records associated with these files will be destroyed by the CSHO as soon as the file is determined to be a "000" and is closed. Except triple zero files, case files will be assembled in accordance with Appendix XVI-A. Case file documents will be two-hole punched and placed in the appropriately colored folder that has the "File Purge and Closeout Procedure" label placed on the folder. When a report is too thick for a regular folder, it will be placed in an expandable file with the appropriate color spine or use an additional regular folder and label the files "1 of 2 ", etc. The "File Purge and Closeout Procedure" label should only be placed on folder "1" of multiple folders.

Any documents discarded from a case file will be returned to the source or shredded. This procedure will be followed when discarding draft documents (for example) or purging the file following the Compliance and ASH Record Retention Schedules.

a. Files are to be color coded as follows:

i. Red - safety construction

ii. Manila - safety general industry

iii. Blue - health construction and general industry

iv. Yellow - all public sector

v. Green - agriculture safety and health

vi. Orange - non-formal complaint (investigation with no inspection).

b. The CSHO should enter the date and type of inspection on the Case File Summary

c. Draft letters and citations may be temporarily placed in the case file without holes punched. Also, any CD’s, floppy disks, etc., that contain Narrative’s, OSHA-1B’s , witness statements , etc., will be treated the same way as a draft document and removed from a file when final hard copies of these documents are made a part of the case file.

d. Reports with no citations ("In Compliance") will be assembled and filed in the same manner as other reports.

e. After the case file has been approved for processing, based on the inspection type from the OSHA-1, the admin staff will stamp the outside of the case file folder “FATALITY”, "ACCIDENT","COMPLAINT", "REFERRAL", or "FOLLOW-UP".

f. The admin staff should print two (2) labels for the case file, one for the front and one for the back, and place them on the folder tab so that the label is right side up when the file is in a vertical position. Each label will include the date entered (opening conference date), the OSHA-1 inspection number, the CSHO ID, and the establishment name. The admin staff will verify that the inspection number and establishment name on all labels are identical to the information on the OSHA-1.

g. The admin staff will insert the CSHO’s full name and supervisor’s initials (such as John Doe/JD) under the district office address below the phone/fax numbers at the top left side of the OSHA-2. The admin staff will make this change on page 1 of the OSHA- 2 “Citation and Notification of Penalty” only during the final assembly of the complete citation packet in the OSHA Express for mailing.

h. The admin staff should print three (3) more labels for the certified mailer label.

i. The admin staff should attach "alpha tabs" for the first three (3) letters of the establishment name from the OSHA-1. If the establishment name begins with "The", use the next part of the name. Attach number tabs on the folder tab to denote the appropriate federal fiscal year. A purge label (Avery 5160) will be affixed to the outside top right of the front cover of each inspection file.

j. Prior to closing a case file the CSHO will complete the “File Purge and Closeout Procedure” label on the front of the folder. The CSHO or admin staff will stamp the outside of the case file folder “FILE CLOSED.”

k. Closed case files located in the field office will not be removed from the file storage area without being replaced by an "Out Card". Whenever a case file is requested, the person making the request will enter the date and action taken on the Case File Summary. A separate "Out Card" must be completed (name of requestor, file name and number, and date) for each file requested.

Note: No original case file will be removed from the building without approval from the bureau chief.

l. Closed, non purged inspection files requested for audit or review purposes will be placed on a spreadsheet for signature and the "out card" in the field offices to ensure the location of the file at all times until the non purged file is returned to the field office. The staff returning the file will provide the file to the appropriate admin staff in the field office. The admin staff will record the file return on the spreadsheet and then file it in the appropriate area per the most current revision of APN 24.

m. The admin staff will re-file case files. CSHOs and district supervisors will return case files for re-filing to a designated space.

n. The CSHO may add information to existing open case files. The CSHO will note such additions and date on the Case File Summary.

o. The CSHO is responsible for ensuring that all open case files under their management are properly maintained, stored and documented. CSHOs will periodically verify that selected case files and medical records are being handled according to appropriate procedures. If it is necessary to produce a certified copy of an open case file, the CSHO is responsible for ensuring that the copy is true and accurate and that all documents, photos, etc., that are applicable to a particular case file are actually contained in the original case file and the certified copy.

p. A copy of the bureau chief's review response letter will be added to the case file.

6. Medical Records Management.

a. Medical Records Cabinet. Each field office will have at least one file cabinet capable of being locked. The medical records administrator will secure the file cabinet key. Only the medical records administrator or in their absence, their alternate, will unlock the cabinet. An additional key for each cabinet will be provided to the medical records coordinator. The medical records administrator will remain at the cabinet at all times while it is unlocked to verify that the records are added to or removed from the proper folder.

b. Transferring medical records to the medical records file cabinet.

i. After the principal OSH investigator (lead CSHO) has separated and marked each employee's medical record with a medical record identifier as described in FOM Chapter III and filled out the Medical Records Chain of Custody Form, the CSHO will transfer all medical records to the locked medical records file cabinet in their field office.

ii. The CSHO will take each envelope and its associated Medical Records Chain of Custody Form to the medical records administrator in their office. The medical records administrator will verify that each Kraft envelope is labeled "Medical Records – Confidential," coded with a medical record identifier and the CSHO's first initial and last name. The medical records administrator will complete the Medical Records Activity Log for each record added to the cabinet. The CSHO will sign the Medical Records Activity Log for each record added to the cabinet. The medical records administrator will also initial the Medical Records Chain of Custody Form each time a record is added. The Medical Records Activity Log will be kept in the file cabinet.

iii. After the Medical Records Activity Log has been filled out, the medical records administrator will unlock the file cabinet and the lead CSHO will place the files into a hanging file. The hanging file will be labeled with the lead CSHO's first initial and last name.

iv. After all files have been transferred to the cabinet; the medical records administrator will lock the cabinet and secure the key.

c. Removing medical records from the medical records file cabinet.

i. When the lead CSHO needs access to medical records, the medical records administrator will unlock the cabinet. The CSHO will remove the needed files from the cabinet and the medical records administrator will log out all files that were removed from the cabinet on the Medical Records Activity Log and initial the Medical Records Chain of Custody Form. No other OSH employee may access or remove medical records except the lead CSHO for the inspection, their immediate supervisor or bureau chief, without the authorization of the OSH director or his designee.

ii. Medical Records that are removed from the medical records cabinet must be placed back in the cabinet at the end of each work day and logged on the Medical Records Activity Log and the Medical Records Chain of Custody Form by the medical records administrator.

iii. Medical Records that are removed by authorized personnel and transported to another location (such as to the home of a teleworker) for review must remain secure at all times. Additionally, the medical records administrator will note on the Medical Records Activity Log the location of the records if they are removed from the field office. The medical records will be transferred back to the medical records cabinet in the field office as soon as possible but no later than 5 working days after removal and will be logged back in immediately.

d. Entering medical records information on the Medical Records Database.

The medical records administrator or their alternate will enter information from the Medical Records Activity Log onto the medical records database at least once a week. The database will be maintained on the f: drive and will be accessible by the medical records coordinator and the medical records administrators and alternates.

7. Purging Inspection Case Files.

a. Closed inspection case files will not be purged and shredded for 2 federal fiscal years beginning with FFY 2012 files. The federal year runs from October 1st to September 30th. CSHO's will maintain complete case files including any medical records maintained in the medical records file cabinet for the current and previous federal years. At the beginning of the third federal fiscal year, the oldest year can be released for purging and submittal to PSIM when requested **except** that closed files which contain medical records associated to another file per FOM Chapter III will not be purged until the associated case file(s) is(are) closed even if the 2 year retention period has passed.

i. After the 2 year federal cycle, the files will be pulled from the file storage area by the district supervisors and/or compliance/ASH staff. A person removing the file will complete an "Out Card" and place it in the location of the file(s) that are being removed per APN 24.

ii. Closed files will then be purged using the guidelines in Chapter XVI, E.7, and Appendix XVI -B: Case File Retention/Disposition Guide for Closed Files.

iii. Once a file has been purged, it will be documented on the date purged label and given back to the office assistant to be filed again. The office assistant will place the closed inspection file in the assigned area in the field offices to be filed again in preparation for submittal to PSIM.

8. Disposition of Case Files. (Also see E.7 above.)

a. Closed Inspection or Investigation Case Files. [Refer to paragraph E.8.b for Fatality/Catastrophe (FAT/CAT) and other files requiring a Citation Authorization Form.]

In accordance with the Occupational Safety and Health Division, Compliance Bureau (Safety and Health, Compliance East and West) and ASH Bureau Record Retention Schedules and E.7 above., review the case file and transfer the following case file contents to the Planning, Statistics, and Information Management (PSIM) Bureau: final orders, informal settlement agreements; all inspection generated OSHA forms including abatements, sampling forms, investigative summaries (narratives), inspection and accident reports, citation(s), worksheets (1B's), workplace measurement summary, letters to the employer, and letters to the complainant. Destroy photos, and audio/video tapes (disks and tapes may be recycled). Destroy or return to the rightful owner any remaining evidence and/or paper records (evidence provided by an employer/employee may be returned only to the employer/employee who provided the material). The Confidential Information Log and medical records of employees and employers must be shredded. Draft documents in a case file will also be shredded. After purging the case file per E.7., E.8.a., and/or E.8.b, and Appendix XVI-B of this FOM Chapter XVI there are still documents or evidence remaining in a case file that are considered trade secret or confidential (such as copies of checks with bank account numbers, 300 logs, 301 forms, Form 19's, employee timesheets, loss of work or restricted work recommendations, etc.), these documents or evidence will be put in a Kraft/clasped envelope and labeled on the exterior of that folder with the company name and inspection number. The envelope(s) will also be marked or stamped as "TRADE SECRET or CONFIDENTIAL – NOT FOR PUBLIC RELEASE". These envelopes will remain in the original case file when forwarded to the PSIM Bureau for archiving. It will probably be rare that these types of documents remain after the file is properly purged. The CSHO will document on the case file summary sheet that the file has been purged in accordance with Appendix XVI-B - Case File Retention/Disposition Guide.

b. Closed Fatality/Catastrophe (FAT/CAT) Inspection or Investigation Case Files and other files containing a Citation Authorization Form.

In accordance with the Occupational Safety and Health Division, Compliance Bureau (Safety and Health, Compliance East and West) and ASH Bureau Record Retention Schedules and E.7. above, review the case file and transfer the following file contents to the Planning, Statistics, and Information Management (PSIM) Bureau: final orders, informal settlement agreements; final copy of all inspection generated OSHA forms including abatements, sampling forms, investigative summaries (narratives), inspection and accident reports, citation(s), Worksheets (OSHA-1B's), letters to the employer, letters to the complainant, witness statements, CSHO created sketches and diagrams, photographs, digital images, video and audio media. Destroy or return to rightful owner remaining evidence and/or paper records (evidence provided by an employer/employee may be returned only to the employer/employee who provided the material). The Confidential Information Log and medical records of employees and employers must be shredded. Draft documents in a case file will also be shredded. After purging the case file per E.7., E.8.a., and/or E.8.b, and Appendix XVI-B of this FOM Chapter XVI there are still documents or evidence remaining in a case file that are considered trade secret or confidential (such as copies of checks with bank account numbers, 300 logs, 301 forms, Form 19's, employee timesheets, loss of work or restricted work recommendations, etc.), these documents or evidence will be put in a Kraft/clasped envelope and labeled on the exterior of that folder with the company name and inspection number. The envelope(s) will also be marked or stamped as "TRADE SECRET or CONFIDENTIAL – NOT FOR PUBLIC RELEASE". These envelopes will remain in the original case file when forwarded to the PSIM Bureau for archiving. It will probably be rare that these types of documents remain after the file is properly purged. The CSHO will document on the case file summary sheet that the file has been purged in accordance with the Appendix XVI-B - Case File Retention/Disposition.

The CSHO will ensure that all FAT/CAT and high profile cases contain all diskettes, photos, videos, and other forms of media that pertain to each case file (especially photos). If there is more than one version of a form or letter in a case file, the CSHO is responsible for ensuring that only the current version of the form or letter is contained in the closed case file. (E.g. there should only be one version of the narrative). The CSHO will not reference media (specifically photos) contained in other case files.

Photos in FAT/CAT or high profile case files that are considered to be very graphic will be maintained separate from other photos. Hard copies of graphic photos will be enclosed in a separate envelope and labeled "GRAPHIC PHOTOS" along with the inspection number and name of the employer. Graphic photos on a CD or other media form will be placed on a separate CD or media form and labeled "GRAPHIC PHOTOS" along with the inspection number and name of the employer.

Note: Section E.8. applies to the shipment of closed case files to permanent archived storage or for temporary storage pending archiving and do not apply to the routine transfer of files for review, disclosure or litigation purposes.

9. No Inspection Files.

"No Inspection" files will be destroyed in the office after 2 years in accordance with the Occupational Safety and Health Division, Compliance Bureau (Safety and Health, Compliance East and West) and ASH Bureau Record Retention Schedules. The admin staff in each field office will maintain the "No Inspection" folders. The admin staff will maintain a database on the OSH File Tracking System of all "No Inspection" case files which are destroyed. The database will include: Inspection/OSHA-1 number; company name; date of inspection; date destroyed, and the name of the admin staff who destroyed the file. The lists for destroyed "no inspection" files for FFY 2006 and older will be maintained on the F: drive.

10. Complaint and Referral Investigations.

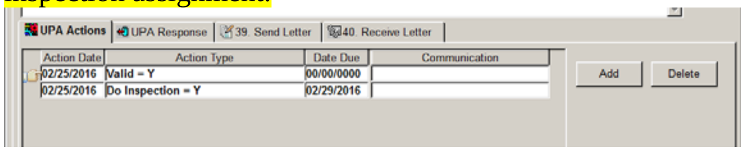
a. This procedure is for Complaints/Referrals that the supervisor has reviewed and determined that an investigation will be conducted in lieu of an inspection. Occasionally, a supervisor may also elect to handle a formal complaint in the same manner if the alleged hazards are non-serious and it is agreeable to the complainant. The investigation documentation for these types of complaints will be entered in the OSHA Express system and maintained in paperless form (this includes all Un-Programmed Activity (UPA) action dates, letters sent, response(s) and any other actions up to requiring an inspection if it becomes necessary). A hard copy of these files will not be created or maintained. If a determination is made that the investigation will turn into an inspection, all the investigation information in the OSHA Express system associated with the complaint will be printed out and placed in the inspection case file by the csho assigned. The procedures below will outline how to process paperless in the system.

b. Once the complaint or referral is assigned to the district supervisor and the determination is made that it is a valid non-formal complaint or referral that will be initially handled via an investigation instead of an inspection, it will then be addressed as (mail/phone/fax/email) using the UPA Action/UPA Response area in the complaint Details or the referral Details section. UPA actions must be addressed in the following manner.

c. **Supervisors**: UPA actions are an important part of the tracking events that set your due dates in the Dashboard function, so that you can keep track of the events for each action you have set. You must set the action dates for each action type for the tracking to work as it should. What do you set?

   i. Do Inspection = N. This is the preset that will always be in the UPA action field. This can be changed when needed to Do Inspection = Y with and assigned Date Due. This enables tracking and lapse time in the system and monitoring on the Dashboard.

ii. Do Inspection = Y. Once this is set and a date assigned all information on the complaint or referral must be addressed that pertains to an inspection assignment.



Field 31x. For complaints Safety or Health CSHO Assigned must be entered along with the date assigned.

iii. Field 42b. Inspection planned must be changed from N to Y. Once the inspection is opened and the complaint has been assigned to the Related Activity Field in the Inspection and satisfied it can then be closed in the Inspection in the Related Activity Field by checking Sat Safety or Sat Health or both if required and click on the Com/Ref Close box.

iv. Valid = N. Due dates are not set but a communication comment and follow up in the Notes section will be needed.

v. Valid = Y. No due dates or comments will be needed.

vi. Contact with the employer - Initial contact would have a due date for letter processing. Follow up contact granting an extension would have a due date.

vii. Contact with source- This will not have a due date unless there is letter processing involved.

viii. Mail/fax/email Letter – These can have a due date up to 13 calendar days out due to the systems calculations of using calendar days and not work days.

ix. Once the UPA is completed send the Complaint to the Office Assistant or Processing Assistant's "Queue" in the field office for processing. Make an entry to the Communication Log section adding the event instruction for processing, "Send (type) Letter".

x. For referrals that are investigations only and a letter is sent, the CSHO or supervisor must enter "Yes" in the field # 91 Rapid Response Investigation (RRI).

xi. Referrals will only have the UPA Action and UPA Response fields to complete in the details section. The UPA is where you will enter all letter and processing information.

d. **Administrative Staff**- Complaint Form Field 39. When directed by the Supervisor/POC (the file being routed to the queue) process the necessary letters required and enter the Send Letter date and days to respond if required. Referral UPA Action field is where the action type and communication to the administrative staff will be. Days to respond for OE purposes will be 11 standard and 13 if a holiday falls during the response time. The original processed letter will automatically "tiff" into the documents section of the complaint. Once the letter is signed the admin will tiff the signed letter into the system and it will take the place of the original unsigned document that was created. Tiff documents stay in the system for 10 years. Response letters to the employer will be entered in this section also as directed by the district Supervisor/POC via your queue.

i. All letters sent by admin will be noted and date stamped in the Communication Log section of the complaint. The Communication Log will take the place of the Case File Summary sheet and must be documented.

ii. The Administrative staff and Supervisors will go to the Communication Log of the Complaint form, click on "Add". Today's date will always be the default date, it can changed if needed. Always utilize: TYPE, Contact Name and Subject.

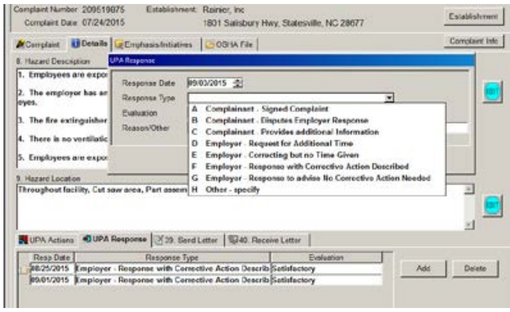
iii. All correspondence will be posted to the Communications Tab via the "ADD" button. Postings will include face to face conversations with outside contacts, phone conversations, email, and letters, etc.

iv. The Communication Log will substitute for the Case File Summary sheet in regards to all paperless complaint's, handled via an investigation.

v. When a response letter is received in the field office the Admin will date stamp the response letter, tiff the response letter into the Document section. They will then send the Complaint to the Supervisor/POC queue with a comment "response letter received, dated and tiffed". At that time the admin will file the response letter alphabetical order in a folder labeled Non-Formal Response's with the federal numeric year label affixed to it.

e. Un- Programmed Activity (UPA) Response

i. Supervisor: Once the response letter mail/email/fax is received back in the field office and has been forwarded to the queue, the district Supervisor/POC will review and document in the UPA response, if it is satisfactory and code the information properly using the available drop down boxes in the "ADD" function for the response. If the response is "Satisfactory" the Supervisor/POC will close the complaint and direct the admin if needed to send a response letter by routing to the admin queue with comment "file closed send letter".



f. Document Section

i. The Document section of the complaint will house all the information that the paper file previously held. This will include all letters, faxes, emails, responses from the employer etc. The Document section will hold this information for 10 years.

ii. The Pictures Section will hold pictures for 3 years

iii. The Attachment section will hold information for 30 days only after the Complaint/Referral has been satisfied and closed.

iv. The Communication Log section will hold information for the 10 year duration and will be considered as the Case File Summary for all paperless non formal complaints.

g. Notes- Communication Log and Audit Log Section

i. The Communication Log section for all paperless complaint investigation files will be a substitute for the Case File Summary Sheet. All information that is normally entered onto the Case File Summary for non-paperless files will be entered in this section.

ii. Within this section you will also see a **Notes** section, this log can be used to document correspondence with employer or others concerning the complaint. Please make sure to acknowledge this on the Communication Log (CFS) and date stamp.

iii. The **Audit Log** documents who has been in the specific complaint and the work that has been accomplished utilizing the name, date and time a specific entry was done if there are questions that need addressing.

h. Complaint Desk and Paperless Processing:

As part of the paperless processing the complaint desk will be processing the below entries into the complaint/referral's.

i. eNCOSH complaints (electronic complaints from NCDOL website)

ii. fed OSHA complaints (electronic complaints from fed OSHA website)

iii. email complaints (emails sent directly to complaint.desk@labor.nc.gov)

iv. letter and fax complaints (will scan to a pdf and tiff)

v. emailed accident forms sent by employers (online form on NCDOL website) – will be tiffed to the referral form

vi. Any miscellaneous correspondence for a complaint or accident such as Police Department, ME Reports

i. What is contained in a "paperless" Complaint/Referral Investigation File

Responsible Party	ITEMS
OE Automatic	Complaint
OE Automatic	Referral
Admin/CompDesk	OSHA7 (if one sent)
Admin	Signed OSH Letters to employer

Admin	Signed OSH letters to complainant
Admin	White Certified Mail receipt
Admin	Signed returned Green Card
Admin/Sup/POC	Employer Response-(letter, fax or email)
Admin	Signed Response letter to complainant (if needed)
Admin	Signed Response letter to employer
Admin/Sup/POC	Photos and all documentation received from employer

11. Additional Case File Information.

Information for a case file received after the case file has been transferred to PSIM for archiving, probably does not have any administrative value and does not need to be added to the case file. The bureau chief will determine if any of this type information has administrative value, and will make arrangements with PSIM to have the information added to the case file.

12. Disclosures. (Also reference FOM Chapter XIII, C.)

a. Processing.

i. The PSIM Bureau will process all OSH related case file disclosure requests to include East and West Compliance, ASH and Employment Discrimination. PSIM will request and/or retrieve case files from these offices, if they are not already under their control and notify the respective office of the date that the file or certified copy must be submitted to PSIM. If the case file has been contested, field office admin staff should be able to make the certified disclosure copy from the CSHO's certified copy. Make sure nothing has been added since the CSHO's certified copy was made that needs to be copied. If nothing has been added, make one (1) copy from the CSHO's copy to include photos and other forms of media. Medical records that are stored in the medical records locked file cabinet will **not** normally be duplicated with the exception of E.12.a.ii. below.

ii. If the PSIM Bureau has a signed, notarized release from an employee or their next of kin for medical records per FOM Chapter XIII, paragraph C.3.h., the CSHO will make copies of the medical records specifically requested in the release, place them in a sealed Kraft envelope marked "Medical Records – Confidential" with company name and inspection number and provide them to the admin staff requesting the records.

iii. All two-sided pages will be copied one-sided. All pages will be reproduced on 8 ½" x 11" paper, except drawn to scale documents. A copy will be made of the diskettes, CD's photos, videos, and any other forms of media.

iv. If the case file is still in the field office, the admin staff will request the original case file and have the CSHO review the case file for accuracy and completeness to ensure that the file includes all applicable documents, photos, etc., that relate to that particular file (excluding medical records).

v. If the case file is closed and has been purged in accordance with the OSH Division, Compliance Bureau (Safety and Health Compliance, East and West) and ASH Bureau Record Retention Schedules, the original case file can be forwarded to the PSIM Bureau. If the file is not closed or the original closed file needs to be maintained in the field office, the admin staff will make one copy of the reviewed case file (left and right side of the folder), including the front of the file folder, and any photos, videotapes, cassette tapes, CD's, diskettes, etc., and return the copy/original to the CSHO for verification. This copy will not contain medical records.

vi. The CSHO will ensure that all forms of media (photos, including graphic photos, videos, etc.) that pertain to the case file will contain only information pertaining to the requested case file. If there are draft copies or more than one version of a form or letter in the case file, the CSHO is responsible for ensuring that only the current version of the form or letter is contained in the case file. (E.g. there should only be one version of the narrative transmitted to PSIM.). It is not the responsibility of PSIM to discern which version(s) of forms and letters should be disclosed. Where case file evidence is maintained in a secured location or cannot be duplicated (e.g. soil sample), a page will be inserted in the original and certified copy of the case file in the appropriate location to delineate the existence and location of the evidence. Large manuals which are a part of a case file are usually not copied in their entirety. Admin staff will contact PSIM staff to verify if the entire manual is needed or if only the title page and table of contents or index of the manual will be copied (with a notation that the entire manual is a part of the original case file).

Photos in case files that are considered to be very graphic will be maintained separate from other photos. Hard copies of graphic photos will be enclosed in a separate envelope and labeled "graphic photos" along with the inspection number and name of the employer. Graphic photos on a CD or other media form will be placed on a separate CD or media form and labeled "graphic photos along with the inspection number and name of the employer. This applies to original case files and any copies made of the files.

Photos in a case file that are on CD or another electronic media format that are from the company and/or that verify abatement of violations will be designated as abatement photos in order to distinguish them from other photos in the file. These CD's, etc., will be labeled "ABATEMENT PHOTOS" along with the inspection number and the name of the employer. This applies to original case files and any copies of the files.

Any documents which are copyright protected or considered trade secret and are necessary to include in the file (rather than simply referencing in the narrative and/or on the1B) must be stamped or labeled

"COPYRIGHT PROTECTED" or "TRADE SECRET." If there are multiple pages in succession, **each page** in the original case file and any copy must be stamped or there must be clear designation of where the copyright or trade secret protected pages begin and end in the file. The CSHO who included the document in the case file is responsible for this designation as he or she is aware that the document is copyright or trade secret protected. If a file is released through disclosure, PSIM Bureau staff does not have access to information to determine if a document is copyright or trade secret protected.

vii. The CSHO or district supervisor will certify that the file copy is a true and accurate copy of the entire case file to include all documents, photos, etc., that are applicable to that particular file, excluding medical records, and have the certification notarized.

viii. The original closed file or a certified copy should be hand delivered to PSIM if anyone from the area office is going to Raleigh. If no one is visiting Raleigh by the deadline delivery date, the closed file or a certified copy will be forwarded to the OSH Division-PSIM Bureau per the following methods:

A certified file copy may be sent via certified U.S. mail to the attention of the PSIM staff person who requested the file at 1101 Mail Service Center, Raleigh, NC 27699-1101 or via Federal Express, UPS or the equivalent to 111 Hillsborough St., Raleigh, NC 27603 Attn: (the PSIM staff person requesting the file). An l original closed file will only be hand delivered or sent via Federal Express, UPS, or the equivalent. Original case files will not be sent by certified or regular U. S. mail.

Medical records which are released per FOM Chapter XIII, paragraph C.3.h., whether part of a disclosure or a separate request will be sent to the PSIM Bureau per the instructions above. If the PSIM Bureau receives a notarized release for medical records only, the records may be faxed by the CSHO only when the PSIM staff person requesting the records has been contacted prior to transmittal and is standing by the fax machine to receive them.

xi. PSIM Bureau staff will use the following disclosure priority schedule as a guide when processing OSH case files for release. Files are processed for release in order of receipt of request within each of the following categories. (**Note**: Requests for file documents from local, state, or federal agencies, the attorney general's office, the NCDOL Legal Affairs Division, OSH administration, or the commissioner's office may take precedence.):

- Receipt of a court order and/or subpoena;
- Company or company attorney request for an open case file which is in the informal conference or contestment stage;
- Employment Discrimination Bureau (EDB) file request for an OSH settled case (if under a time restriction to meet EDB policies and procedures);

- Request for a fatality or high profile settled case from the next of kin or their attorney;
- Request for a fatality or high profile settled case from an injured employee or their attorney;
- Request for a fatality or high profile settled case from the company or their attorney;
- Request for a fatality or high profile settled case from any other third party;
- Request for a settled case from the media;
- Request from a company, their attorney, or any third party for any other type of open or settled case.

x. A copy of citations may be sent to any requestor, free of charge, in accordance with the requirements in E.12.b.ii.

b. Disclosure Requests.

When a case file is still open, a redacted copy of a case file may be released by the PSIM Bureau. Factors that affect the release of case files include, but are not limited to, the following:

i. When the inspection is still in process and/or the case file has not been completed, no part of the case file can be released to anyone outside of OSH, unless approved by the OSH director or assistant director.

ii. When citation(s) have been received by the employer but there is no final order, copies of the citation(s) can be released to anyone but the expunged case file cannot be released to anyone outside of OSH except the company or their attorney, unless approved by the director or assistant director of OSH. When copies of citations have been requested and the employer may not have received the mailed original citations, the district supervisor will immediately contact the employer and fax or hand deliver copies of the citations.

iii. Upon request, and after citations have been received by the employer, the PSIM Bureau may provide a redacted copy of the case file (excluding medical records) to the employer or their attorney. Requests for copies of the case file from 3rd parties (anyone other than the employer or the employer's attorney is considered a 3rd party), will not be processed until the criteria in N.C. FOM, Chapter XIII, Sections C.3.d. and C.6. are met.

vi. When an Informal Conference has been requested, sections b.i. and b.ii. above still apply.

v. When an Informal Conference has resulted in an Informal Settlement Agreement (ISA) and 30 calendar days after the ISA has been executed, the PSIM Bureau can release redacted copies of the case file to any requestor. The case file does not have to be closed. (See FOM Chapter XIII, C.3.d.)

vi. When the case file has been contested, the PSIM Bureau may release a redacted copy of the case file to the employer or their attorney per section b.iii. above. Copies of citation(s) associated with the case file may be released to anyone per section b.ii. above.

vii. Thirty calendar days after a Formal Settlement Agreement (FSA) has been fully executed or 30 calendar days after a final order (if not appealed), the PSIM Bureau may release redacted copies of the case file to any requestor. (See FOM Chapter XIII.C.3.d.)

viii. When the time period to request an Informal Conference or contest the case file has elapsed without any action by the employer, the case file becomes a final order and the PSIM Bureau may release redacted copies of the case file to any requestor. (See FOM Chapter XIII.C.3.d.)

APPENDIX XVI-A: **Case File Assembly**

Left Side of Folder

1. Photos, floppy disks, CD's, DVD's thumbnail prints, etc. (each marked with company name and inspection number.)
2. OSH/ASH Debt Collection Checklist
3. Case File Summary
4. Confidential Information Log
5. Informal Conference Notes Form
6. Citation or Settlement Authorization
7. Disclosure Request Form
8. Certified mail receipt(s) and green card(s) stapled to the inside left cover
9. Medical Records Chain of Custody Form(s)
10. Multi-employer Inspection Medical Records Retention Request Form(s)

Right Side of Folder

1. Case File Audit
2. Abatement(s) [2D(s) with detailed information; specific documentation; written programs for programmatic citations, etc.]
3. All legal documents (contestment request, request for IC, PMA, signed copy of settlement agreement, Settlement Agreement Cover Letter, No Change Letter, Notice of Docketing, orders, Final Order, etc.)
4. Correspondence received subsequent to citation issuance
5. In Compliance Letter and Certificate (when applicable)
6. Copy(ies) of issued citation(s)
7. Draft response to complainant/referral source/NOK (Note: replaced by final letter, see #10)
8. Draft citation(s) (Note: replaced by issued citations, see #5)
9. OSHA-1
10. OSHA-1 Narrative (Including OSHA-300 data printout)
11. Copy of response letter mailed to complainant/referral source
12. Copy of all correspondence (letter, email) with NOK
13. Copy of all correspondence (letter, email) with employer
14. Copy of all correspondence (letter, email, etc.) with non-fatal accident victims
15. OSHA-36: Event Report
16. Copy of OSHA-7 given to employer and original OSHA-7 Complaint File Form
17. OSHA-90: Referral Report
18. Copy of Workplace Measurement Summary Sheet
19. OSHA-170: Investigative Summary
20. OSHA-2B(s): Failure to Abate Notice(s)
21. Violation Summary Process
22. OSHA-1B(s)
23. OSHA Field Sampling Sheet(s): OSHA 91-Air Sampling; OSHA 92-Noise Survey; OSHA 93- Direct Reading; OSHA 98-Screening; OSHA 99- Octave Band Analysis and Impact Noise
24. Sampling equipment date printout(s) (direct reading equipment)
25. Sampling Chain of Custody Form
26. Property/Evidence Form
27. Receipt of Public Agency Records Form and documents (except medical recs.)
28. Air and bulk lab/test analysis request and analysis results form(s)
29. Sketches and diagrams
30. Copy of original Programmed Inspection Assignment Sheet
31. Witness Statement(s)
32. OSHA-59: Employee/Employer Rights and Responsibilities
33. OSHA 300 Logs, 300A, 301 & Form 19
34. Appendices/other documents (Include a Table of Contents for Appendices)

***APPENDIX XVI-B:* Case File Retention/Disposition Guide for Closed Files**

Yes = Retain the Document in the Case File
No = Do Not Retain the Document – **Shred or Return to Source**
*** -** Entire certified copy of a contested case file (purple folder) will be shredded after Final Order.

Case File Retention/Disposition Guide		
FAT/CAT HP	**All Other Cases**	**Left Side of Folder**
YES	NO	1. Photos, floppy disks, CDs, DVDs, thumbnail prints, etc., (each marked with company name and inspection number.). This applies to left and right sides of folders.
NO	NO	2. OSH/ASH Debt Collection Checklist
YES	YES	3. Case File Summary
NO	NO	4. Confidential Information Log
YES	YES	5. Informal Conference Notes Form
YES	YES	6. Citation or Settlement Authorization
NO	NO	7. Disclosure Request Form
NO	NO	8. Certified Mail Receipt(s) and Green Card(s)
NO	NO	9. Medical Records Chain of Custody Form(s)
NO	NO	10. Multi-employer Inspection Medical Records Retention Request Form(s)
FAT/CAT HP	**All Other Cases**	**Right Side of Folder**
YES	YES	1. Case File Audit
YES	YES	2. Abatements [2D(s) with detailed information; specific documentation; written programs for programmatic citations; etc.] Note: district supervisors must review abatement information to ensure appropriate documentation is retained in case file that will show hazard was abated. (Refer to FOM Chapter III Section E.4 "Verification of Abatement"
YES	YES	3. All legal documents (Contestment request, request for IC, PMA, signed copy of settlement agreements, settlement agreement cover letter, no change letter, notice of docketing, orders, final order, etc.) Note: If the employer refuses to sign the Settlement Agreement, maintain unsigned copy of Settlement Agreement in the case file
YES	NO	4. Correspondence received subsequent to citation issuance in the order received; and all documents should be date stamped.
YES	YES	5. In Compliance Letter and Certificate (when applicable.)
YES	YES	6. Copy(ies) of issued citation(s)
NO	NO	7. Draft response to complainant/referral source/NOK (Note: Replaced by Final Letter, see #10).
NO	NO	8. Draft citation(s) (Note: Replaced by issued citations, see #5)

Case File Retention/Disposition Guide		
FAT/CAT HP	**All Other Cases**	**Right Side of Folder**
YES	YES	9. OSHA-1
YES	YES	10. OSHA-1 narrative (including OSHA 300 data printout)
YES	YES	11. Copy of response letter mailed to complainant/referral source
YES	YES	12. Copy of all correspondence (letter, email) with NOK
YES	YES	13. Copy of all correspondence (letter, email) with employer
YES	YES	14. Copy of all correspondence (letter, email) with non-fatal accident victims
YES	YES	15. OSHA-36: Event report
YES	YES	16. Copy of OSHA-7 given to employer and original OSHA-7 complaint file forms
YES	YES	17. OSHA-90: Referral report
YES	YES	18. Copy of workplace measurement summary sheet
YES	YES	19. OSHA-170: Investigative summary
YES	YES	20. OSHA-2B(s): Failure to Abate notices
YES	YES	21. Violation Summary Process
YES	YES	22. OSHA-1B(s)
YES	YES	23. OSHA Field Sampling Sheet(s) (OSHA 91; 92; 93; 98; 99 Sampling/Screening Reports)
YES	YES	24. Sampling Equipment Date Printouts (Direct Reading Equipment)
YES	NO	25. Sampling Chain of Custody Form
YES	NO	26. Property/Evidence Form
YES	NO	27. Receipt of Public Agency Records Form and Documents (except medical records.)
YES	NO	28. Air and Bulk Lab/Test Analysis Request Form(s) and Analysis Reports
YES	NO	29. Sketches or Diagrams
NO	NO	30. Copy of Original Programmed Inspection Assignment Sheet
YES	NO	31. Witness Statements(s)
YES	YES	32. OSHA-59: Employee/Employer Rights and Responsibilities
YES	NO	33. OSHA 300 Logs, 300A, and 301/Form 19
YES	NO	34. Appendices/ Other Documents *(*Include a Table of Contents for Appendices)
NO	NO	**Medical Records from locked cabinet (verify all associated case files are closed)**

Case File Retention/Disposition Guide		
YES	YES	**Kraft/Clasped envelope(s) containing Trade Secret or Confidential documents or evidence per E.7., E.8.a., and/or E.8.b. of this FOM Chapter XVI.**

APPENDIX XVI-C: Preparing Citations for Mailing; Release of Citations to Communications or PSIM for Disclosure

1. Verify that the citations have been signed by a district supervisor.

2. Make a complete copy of the citations including the Debt Collection Notice through the abatement forms and any other mailed documents. Place the copies in the case file folder on the right side on top of the report.

3. Place original citations in an envelope and tape it shut. Tear off and staple the certified mail white slip inside the left side of file folder. **Important: All citations must be mailed on the issuance date.**

4. Notifications of Failure to Abate are treated the same as citations.

5. Additional copies of citation pages 7 (page 5 for CSHO Apps) through the end are required for Complaint Letters, Referral Letters, and sometimes as needed for other groups, such as unions, corporate offices, etc.

6. *In all instances, the mailing should include copies of all citations issued.*

7. If the NCDOL Communications Division or the PSIM Bureau request citations from a case file, then as soon as the report is completed and approved, the supervisor needs to contact the employer via phone and either fax or hand deliver copies of the citations and explain that we have received a request for a copy of the citations. For fatality investigations, as soon as the citations are faxed/hand delivered to the employer, contact should be made with the next of kin by phone to brief them on the status of the investigation. If the next of kin cannot be reached in a timely manner, the next of kin ombudsman will be contacted. Copies should then be immediately faxed to the Communications Division or the PSIM Bureau (there should be no delay). If citations were faxed to the employer to expedite delivery, then the supervisor will also ensure that a hard copy is sent through the mail.

   Note: Do **not** mail the letter to the complainant until the green card is returned. Hold the complaint letter with copies of citations in the box until that time.

8. Per FOM Chapter VIII paragraph B.2.g.iv, within 5 working days of receiving verification that the company received the citations or in compliance letter, the victim's family members will be provided a letter and a copy of all citations issued or an in-compliance letter explaining the results of the accident investigation. The district supervisor will issue these letters.

   If the green card has not been returned to the field office within 5 working days from mailing, the PA/OA will do a search on the USPS web site for verification of delivery. If verification of delivery is found, the PA/OA will print it out and attach it to the left side of the inspection folder. This print out will be considered as return receipt of the green card. If verification of delivery cannot be determined, the PA/OA will contact the employer and ask if the employer received the citations or in compliance letter. When the PA/OA determines that the employer received the citations or in compliance letter, the Next of Kin notification will be mailed. **Note:** All contact with and attempts to contact the employer must be recorded in the Case File Summary.

APPENDIX XVI-D: **Penalty Payment/Collection Process**

A. **Penalty Payments**.

If penalty payments are received in any field office, that field office must submit the penalty payments and any other payments received via email using the Payment Submission Spreadsheet located under NCDOL Forms on the NCDOL Intranet page: http://10.21.81.220/ncdol-intranet/ncdol-forms?field_bureau_form_association_value=Budget+and+Management , to the NCDOL Budget Division on a daily basis for deposit. Payments are always deposited to a specified account. No payments are deposited to a "dummy" account and then transferred to the appropriate account at a later date. The Budget Division posts payments to the OSHA Express on the day of the transmittal.

If a payment does not have an inspection number on it, the correct inspection number should be placed on the payment. If that information is not known, the check should be forwarded to budget in the **original** envelope along with any accompanying paperwork. This will assist budget in depositing the payment to the correct account. If a refund check is issued, a copy of that check is faxed to the appropriate field office. The refund is posted on the OSHA Express the day the check is mailed to the employer.

If the employer requests a payment plan and an informal conference, the supervisor will incorporate the payment plan into the Informal Settlement Agreement. If the employer request a payment plan and did not request an informal conference or didn't request a payment plan during the informal conference, they will be referred to the NCDOL Budget Division to set up a payment plan.

Payment information, past due notices, etc. can be viewed by logging onto the Internet at http://omds.osha.gov/cgi-bin/est.

B. **Collection Process**.

Collections cannot begin until the employer's administrative rights have been exhausted. Those rights are exhausted when the time period for requesting an informal conference or review by the OSH Review Commission have expired or the appeal period from a decision at an informal conference or hearing have expired. Once the employer's administrative rights have been exhausted, the amount of the penalty at that point becomes a debt owed the state. A debt owed the state may only be reduced or deleted by a fiscal officer of the state. The fiscal officer for NCDOL is the director of budget.

The Budget Division cannot begin the collection process until they have verification of Proof of Service. This may be satisfied by a **signed** certified mail receipt (green card), a Notice of Service from a sheriff's dept. or a **signed** document from the CSHO that the citations were personally served on the employer, or the printout from the USPS internet site showing delivery of the citation package and the tracking number from the original green card that was mailed with the packet. **Note:** The numbers should match. The Proof of Service information should be entered on the OSHA Express under the **S 10** code (OSHA-1, field 42). The administrative staff will fill out the OSH/ASH Debt Collection Checklist located under FORMS on the Field Information System, and send it along with the Proof of Service, a copy of the citation (s) and a copy of the signed Informal Settlement Agreement to the Budget Division for collections.

The Budget Division cannot file a Notice of Final Order/Judgment against a company or person due to the lack of a Proof of Service (POS). The Budget Division can send out a reminder and send Dunning Letters to the Attorney General's office and to the collection agency for collection after all delivery avenues have been exhausted. At that time the administrative staff will note on the form that there is no POS and send the OSH/ASH Debt Collection Checklist, located under FORMS on the Field Information System to the Budget Division for collections.

The Budget NCDOL A/R Deferred Revenue Process- OSH/ASH Penalties flow chart details the process flow, key positions and time periods for time sensitive portions of the penalty collection process. This form is under FORMS on the Field Information System.

C. **Dunning Letters, Judgments & Attorney General's Office**.

When a penalty remains unpaid and the above elements have been satisfied, (e.g., employer's administrative rights have been exhausted), the administrative staff will notify the Budget Division by email to begin the collection effort. The Budget Division does not receive copies of the citations when they are issued, and does not know when penalties are delinquent. Upon receiving a request to begin the collection process, the Budget Division will send the employer a reminder letter requesting payment. After 30 days, if the penalty remains unpaid, a Dunning Letter is sent by the Budget Division, which results in the filing of a Notice of Final Order (NOFO/judgment) if the penalty remains unpaid for 30 days from the date of the Dunning Letter. Judgments which remain unpaid for 30 days will be sent to the Attorney General's Office.

The Notice of Final Order (NOFO/judgment) is filed in Superior Court, which means the Budget Division needs accurate employer information. The Budget Division also needs the owner's name for sole proprietorships as an NOFO cannot be filed against an unincorporated business. When the NOFO is served on an employer the sheriff needs the physical/street address, as they cannot serve a mailing address/post office box.

D. **Collection Agency**.

Files with unpaid judgments are sent to a collection agency. The files sent to the collection agency have had a judgment and have been sent to the Attorney General's Office with neither resulting in payment of the unpaid citation penalties. The collection agency generally will work the file for as long as the penalty remains unpaid and the NCDOL leaves it with them.

E. **Collection Process Status**.

The Budget Division sends a weekly Penalties Past Due Report to the OSH Division. This report is located on OSH One Stop Shop, under the Inspection Resources Tab, Reports page. This report contains the files that were sent to the Budget Division for collection. There is a key at the bottom of the list to explain the various notations contained under the status column. The status column is cumulative, therefore, if the status shows COLLECTION AGENCY, the file is at the collection agency and a Dunning Letter, NOFO (Judgment) and the Attorney General's steps have been completed prior to the file going to the collection agency. The administrative staff will review the collection status weekly to ensure forwarded collection requests were received and forward files to the supervisor where collections efforts have been exhausted.

F. **Penalty Reductions & Write-offs**.

1. After the department has exhausted administrative remedies, the penalty may be reduced or written-off. The district supervisor will send the OSH and ASH Write-Off Spreadsheet located under NCDOL Forms on the NCDOL Intranet page: http://10.21.81.220/ncdol-intranet/ncdol-forms?field_bureau_form_association_value=Budget+and+Management , via email to the Budget Division justifying and approving the reduction or write-off. The budget director will prepare and present a memo to the OSH director requesting the action. The Budget Division will send notification to the district supervisor which includes the determination whether or not the OSH director approved the write-off. This notification will be included in the case file.

2. The recommendation to write off the penalty is normally dependent on the justification provided by the district supervisor.

3. The request to write off a penalty may originate with the Budget Division, especially for cases which are in the collection and/or judgment phases. Any Budget Division request will be forwarded to the district supervisor along with the reason for the write-off request. The district supervisor will respond to the Budget Division request with a determination as to whether or not the penalty should be written off.

4. Penalty reductions or write-offs of $3000 or less may be authorized by the district supervisor. Penalty reductions or write-offs of $10,000 or less may be authorized by the bureau chief. Penalty reductions or write-offs in excess of $10,000 must be authorized by the OSH Division director or assistant director.

G. **Processing Penalty Checks (Processed by NCDOL Budget Division)**.

1. Check OSHA-OMDS (by company name and inspection number) and print out report.

2. Divide checks and reports by field office (Raleigh/Wilmington, Charlotte, and Winston–Salem/Asheville) after they have been scanned for deposit.

3. Open check penalty screen (F, J).

4. Go to line 6 (use tab button or F4).

5. Enter inspection number, name of company will appear (computer will automatically tab to the amount column-unless-number begins with "18"), enter amount; tab over until cursor returns to beginning of next line (if you highlight each check that is entered, it will make it much easier to total at the end).

6. Once all checks have been entered, press F8 - put in total; tab to end of line; press F9; press the #5 (safety) on the printer list; transmittal will print.

7. Press F6 (save); if total is correct you should be able to exit the screen; if not screen will read, "Batch total not equal to amount shown."

8. If a check is not on the transmittal or an incorrect number has been typed, you will get a "beep" - backspace until the number is erased and move to the next check. (If there is a dollar amount with an asterisk (*) on any of the transmittals, you will need to deduct that amount from the total showing on the check and use the adjusted amount.

9. A copy of the transmittal and county code sheet goes with the checks, for deposit.

10. The Budget Division will email copies of the transmittals to the appropriate field office.

11. The admin staff will run a Case Audit Report for each payment associated with an inspection number. If this is the last payment, write "paid in full" on the Case Audit report and attach copy of the transmittal in the corresponding case file and place in the CSHO's interoffice mailbox. If this is not the final payment the admin staff should place a copy of the transmittal in the corresponding case file.

12. It is possible that the department will receive some monies for a case file where the penalty has been written off and the case file closed. For these cases, the Budget Division will contact the district supervisor who will then instruct the system administrator by email to reopen the file, change the penalty due amount(s) in the OSHA Express to equal the amount received, if necessary, post the penalty payment, and close

the case file again. *A case audit report will be run and placed in the file if the file is still located in the field office. If the file has gone to PSIM's to be archived the bureau chief will determine if any of this type information has administrative value, and will make arrangements with PSIM to have the information added to the case file per section E.11.*

Important: Please notice line 2 on your penalty record **-** the payment number. This number can be found on the total payment sheet. You can always use this number to re-enter a screen if you need to make a correction at any time. If you forget to write it down you can locate the # by going into the Basic Utilities Screen, check other systems so you can verify if check belongs to them. If payment is 90 days past due, the administrative staff may email budget and request a Dunning Letter be sent to the employer.

APPENDIX XVI-F: Updating the Closed File Log

1. When the file comes up, hit "Ctrl" and "END" to take you to the end of the log.
2. Begin here to enter each closed file, following the same pattern as shown.
3. When you get to the end of the line, hit "TAB", which will create the next line.
4. After each case file has been entered, go up to the beginning of the new files.
5. When sorting is complete, again highlight the new files and print the log.
6. When printing is complete, go back to Tools and sort the entire file.
7. Save the log.
8. Write on the Case File Summary, "Entered in Closed Log", then file, initial and date.
9. Stamp the Case File Summary and the outside of the folder with "File Closed" stamp.

For "000" Files.

1. Date stamp the back of the OSHA-1.
2. Track in OSHA Express.
3. Give original file back to CSHO.