

A Guide to OSHA in North Carolina



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A Guide to CAL/OSHA (California, June 1985) and *Facts About Occupational Safety and Health* (Kentucky, February 1985) provided ideas and a framework for this guide. The information in this guide was updated in 2005.

This guide is intended to be consistent with all existing OSHA standards; therefore, if an area is considered by the reader to be inconsistent with a standard, then the OSHA standard should be followed.

To obtain additional copies of this book, or if you have questions about N.C. occupational safety and health standards or rules, please contact:

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Additional sources of information are listed on the inside back cover of this book.

The projected cost of the NCDOL OSH program for federal fiscal year 2008–2009 is \$17,042,662. Federal funding provides approximately 30 percent (\$4,090,400) of this total.



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Foreword

Few laws affect employers and employees more than the laws and regulations that have come to be known as “OSHA.” The United States Congress created the Occupational Safety and Health Act 35 years ago to protect working people. OSHA’s creation culminated a long struggle to find some way to help prevent individuals from being disabled or even killed while earning a living. This prevention-oriented act proposed to “preserve our human resources” through a combination of research, education and enforcement of occupational safety and health standards.

In North Carolina, DOL inspectors enforce OSHA laws through a state plan approved by the federal government. As the administering agency for North Carolina, the Department of Labor enforces all current OSHA standards and offers many educational programs to the public.

As you look through this guide, please remember, DOL’s mission is greater than enforcement of regulations. An equally important goal is to help citizens find ways to create safe and healthy workplaces. Everyone profits when managers and employees work together for safety. This guide, like the other educational materials produced by this department, can help.

Reading and understanding *A Guide to OSHA in North Carolina* will help you form a sound occupational safety and health policy where you work. And preventing occupational illness and injury is everybody’s business.

Cherie Berry
Commissioner of Labor

Introduction

This industry guide provides a comprehensive overview of North Carolina's occupational safety and health plan. The N.C. Department of Labor's Division of Occupational Safety and Health (OSH) uses the plan to meet the requirements of the Occupational Safety and Health Act of North Carolina and other applicable laws. Please note, this guide does not provide legal interpretations.

Both the federal Occupational Safety and Health Act of 1970 and its North Carolina counterpart have become known as "OSHA" to most people. This publication looks at how OSH enforces and administers OSHA in this state.

Chapter 1 explains differences between state and federal administration. Many employer and employee

responsibilities and rights are examined in chapter 2. The third section explores enforcement activities and the numerous services available to employers and employees. Administrative and judicial review procedures are discussed in chapter 4. Official announcement and listings (as promulgated) for the Occupational Safety and Health Act of N.C. are provided in Chapter 95, Article 16, of the N.C. General Statutes. A current copy of the Occupational Safety and Health Act of North Carolina is provided in chapter 5 of this industry guide.

The NCDOL's Division of Occupational Safety and Health fulfills its mission of helping people stay safe at work by incorporating industry partnerships, focusing compliance activities on employers with poor safety records and stressing prevention.

A Brief Overview of OSHA

Distinctions Between Federal OSHA and OSH

In 1970, Congress passed the Occupational Safety and Health Act “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.” Congress developed a two-pronged approach to meet the act’s goals: 1. research to determine the causes of occupational injuries and illnesses and, based on that research, 2. the development and enforcement of standards to remove those hazards from the workplace. The National Institute for Occupational Safety and Health (NIOSH) was created by the act to perform the research function. The Occupational Safety and Health Administration was created to perform the enforcement function. States were given the option of being subject to federal OSHA or administering their own occupational safety and health programs.

Public awareness of the magnitude of losses from occupational injuries and illnesses led to the enactment of the federal Occupational Safety and Health Act of 1970 (federal OSHA). That same year, a United States congressional committee determined that 2.25 million individuals in America had been disabled by accidents at work in 1969. The committee also estimated that American workers had contracted 336,000 cases of disease at work. The employees who sustained injuries and acquired diseases at work had lost over \$1.5 billion in wages during the year. The loss to the national economy was estimated to have exceeded \$8 billion, according to the Employment Safety and Health Guide (CCH, 1986).

For many years, North Carolina had its own industrial safety program in place, so it came as no surprise when the state chose to administer its own OSHA program. The Occupational Safety and Health Act of North Carolina was signed into law in 1973. North Carolina and federal OSHA funds jointly support the operation of the state OSHA program. The North Carolina plan is required to be “as effective” as federal OSHA and is monitored by federal OSHA to ensure that it remains as or more effective. OSHA safety and health rules and laws, collectively called “standards,” are enforced by the Division of Occupational Safety and Health (OSH) within the N.C. Department of Labor. These standards provide employees in the state with at least the same protection as they would receive under standards enforced by federal OSHA.

In addition, standards related to the particular needs of this state are promulgated and enforced by OSH. Occupational safety and health standards are promulgated pursuant to N.C. General Statute 150B and are located in Title 13, Subchapter 7, of the N.C. Administrative Code.

The 1992 N.C. General Assembly passed a comprehensive package of reforms. These included an expansion of the number of OSH compliance officers, enforcement focus on high-risk industries and the authorization of fines to be levied against governmental entities for noncompliance. The OSH state plan was designated as fully effective by the U.S. Department of Labor on Dec. 10, 1996.

Similarly, OSH provides consultation, education, training and technical assistance to help ensure the effectiveness of the state plan. Like federal OSHA, OSH pursues the overall aim of assuring workers safe and healthful working conditions “so far as possible.” With limited exceptions, protection under OSH extends to virtually all employees and employers in the public and private sectors.

The North Carolina OSHA Plan— Compliance; Consultation; Education, Training and Technical Assistance

The General Assembly designated the state Department of Labor to administer and enforce North Carolina’s OSHA plan. In the Department of Labor, the chief administrator is the commissioner of labor. The Occupational Safety and Health Advisory Council provides the commissioner with advice regarding the administration of the state OSH Act.

The commissioner appoints the director of OSH. Under the commissioner’s supervision, the director and his or her professional staff administer the OSH Act. The following bureaus are in OSH:

Compliance—OSH Compliance is composed of an East Bureau and a West Bureau. These two bureaus operate primarily on a state geographic basis to cover regional areas throughout North Carolina. The East Bureau is headquartered in the Raleigh field office, and the West Bureau is headquartered in the Winston-Salem field office. Additional field offices are located in Asheville, Charlotte and Wilmington. Relative to areas

within their respective regions, both East and West Bureaus have compliance and inspection duties: **Safety Compliance**—conducts safety inspections; **Health Compliance**—conducts health inspections. Through enforcement activity, the effort of OSH Compliance is to assist employers in improving their workplace safety and health programs to eliminate on-the-job injuries and illnesses.

Consultative Services provides free on-site consultation regarding both safety and health issues. Services are provided to employers of limited size and to employers within “high-hazard” industries, assisting them to reach their goal of achieving a safe and healthful workplace for their employees.

Education, Training and Technical Assistance (ETTA) offers educational materials, arranges conferences, and provides professional training for OSH staff members and for the public. The bureau also offers assistance with standards interpretation. In addition, ETTA administers the adoption of federal standards and develops North Carolina-specific standards, responds to requests for technical assistance and interpretations, and publishes a wide variety of industry guides, safety and health standards books for general industry and construction, and other documents that are available to the public.

Agricultural Safety and Health enforces the Migrant Housing Act of North Carolina through an annual housing registration, inspection and compliance program. The bureau also enforces OSHA requirements for field sanitation.

Planning, Statistics and Information

Management—The Bureau of Planning, Statistics and Information Management’s primary functions are targeting, data analysis and reporting, disclosure, and case file storage and retrieval. The bureau’s main office is located on the second floor at 111 Hillsborough St., Raleigh, with a mailing address of 1101 Mail Service Center, Raleigh, NC 27699-1101. The office may be reached at telephone number (919) 807-2950, or by fax at (919) 807-2951.

Though not part of OSH, other divisions within the N.C. Department of Labor also contribute to the state’s occupational safety and health effort:

The **Research and Policy Division** compiles and reports statistical information about the incidence of occupational injuries and illnesses in private industry and the public sector. The data are gathered from an annual survey of occupational injuries and illnesses. The information is drawn from records in which employers are required to log recordable injuries and illnesses. The survey results are published annually in the Occupational Injuries and Illnesses in North Carolina series.

The **Employment Discrimination Bureau** administers and enforces the Retaliatory Employment Discrimination Act. This act makes it illegal for an employer to discriminate against an employee who exercises certain rights guaranteed in North Carolina through the OSH Act, the Mine Safety and Health Act, the Wage and Hour Act, and the Workers’ Compensation Act. The Employment Discrimination Bureau investigates such discrimination complaints and offers educational programs on this subject.

Responsibilities and Rights

The Occupational Safety and Health Act of North Carolina provides employees and employers with numerous responsibilities and rights. Additional responsibilities and rights derive from other sources, including OSHA standards and judicial decisions regarding occupational safety and health issues in North Carolina.

Employee Responsibilities

The OSH Act makes each employer primarily responsible for the safety and health of its employees. However, the OSH Act also specifies that each employee has the responsibility to “comply with occupational safety and health standards and all rules, regulations and orders” issued under the act that relate to his or her work.

Employee Rights

The list of rights below is not intended to be comprehensive. Rather, the list is intended to be representative of an employee’s rights. Many of these rights were created by the OSH Act. Other rights are from OSHA standards, which are enforced through the act. Moreover, migrant employees have additional rights, whereas other rights do not apply to migrants. Additional rights have emerged from administrative and judicial resolutions of issues that have arisen under the act.

Employee Working Conditions

You have the right to:

1. Be provided safe and healthful working conditions.
2. Ask the commissioner of labor to investigate if you believe you are being harmed by physical hazards or by exposure to toxic materials.
3. Gain access to your employee “exposure records” if you have been exposed to toxic substances or harmful physical agents. Such records provide the results from tests that monitored the effects of exposure.
4. Obtain your “medical records” regarding your exposure to toxic substances or harmful physical agents.
5. Ask for and receive a copy of your employer’s hazard communication program if the employer uses chemicals that require such a program.
6. Obtain from your employer the identity of any chemical with which you are required to work.

7. Assist the commissioner of labor in an inspection of the employer’s hazardous chemicals. You are protected from discharge and discrimination that may result from such assistance.
8. Learn of any imminent danger in your place of employment, whenever it is discovered by an OSH compliance officer.

Employee Training

You have the right to:

1. Receive training regarding aspects of your job that might pose a hazard to you. The types of training you may be required to receive would vary with the nature of your job. Examples of such training include: the proper use of respirators; emergency and fire prevention techniques; safe working procedures involving occupational noise exposure; how to handle and store liquefied petroleum gases; the safe operation of particular machines; how to detect the presence of hazardous chemicals; and how to interpret a material safety data sheet (MSDS) regarding a hazardous chemical.

Employees and Standards

You have the right to:

1. Propose to the commissioner of labor that a safety or health standard be developed.
2. Participate in hearings about standards that have been proposed by anyone.
3. Petition the commissioner for a review of any standard you believe to adversely affect you or other employees.
4. Be notified by your employer of its application to the commissioner to be allowed to vary (protect employees in a manner other than prescribed) from a standard.
5. Participate in any hearing concerning your employer’s variance application.
6. Petition the commissioner to review any variance granted to your employer if you think the variance adversely affects you or other employees.
7. Within six months of the issuance of a permanent variance, apply to the commissioner asking that the variance be revoked.

Employees and Inspections

You have the right to:

1. Request the commissioner to inspect your workplace regarding what you believe to be a violation of safety and health standards. Employees can report conditions that they believe to be imminent dangers or extremely hazardous by calling the OSH toll-free hotline, 1-800-NC-LABOR.
2. Ask that your name not be revealed in any request you make for an inspection of your workplace. Your request for confidentiality will be honored.
3. Be free from discrimination or retaliatory action by your employer for having exercised your right to request an inspection in your workplace or for exercising any other right guaranteed by the act.
4. Consult with the commissioner and his or her agents, including compliance officers who inspect your workplace.

Employees and Citations

You have the right to:

1. See any citation received by your employer for the alleged violation of a safety or health standard. The citation should be posted at or near the place where the violation occurred.
2. Write to the commissioner contesting the length of time allowed to your employer for correcting a safety or health standard violation.

Employees and Reviews

You have the right to:

1. Appear before the Safety and Health Review Board of North Carolina as a party in any contest filed by your employer or by an employee in general or construction industry cases.
2. Participate as a party before the board when your employer petitions the commissioner for a modification, typically a postponement, of the date set in the citation for the abatement of any safety or health standard violation.
3. Appear as a party before the board to contest particular aspects of a proposal between your employer and the commissioner to settle a citation.
4. Appeal to the N.C. Superior Court any final board decision that is counter to your interest in a contested case.

Employer Responsibilities

The responsibilities listed below are not intended to be comprehensive. The list is meant to represent your responsibilities as an employer. Many of your responsibilities were created by the OSH Act. Other responsibilities are detailed within standards that are enforced through the OSH Act. Additional responsibilities have emerged from administrative and judicial resolutions of issues that have arisen under the act.

Employers and Working Conditions

You have the responsibility to:

1. Provide for each employee a place of employment and employment conditions that are free from recognized hazards that are likely to cause physical harm to employees.
2. Comply with OSHA standards that the commissioner of labor adopts.

Employers and Inspections

You have the responsibility to:

1. Assist the commissioner of labor's agents, typically compliance officers, in their inspection duties by making available necessary information, personnel and inspection aids.
2. Allow employees to confer with the commissioner's agents, including compliance officers conducting an inspection of your place of employment.
3. Allow employees to observe the monitoring of any toxic materials that are required by OSH standards to be monitored.

Employers and Information

You have the responsibility to:

1. Post in a conspicuous place the N.C. Department of Labor poster "North Carolina Workplace Laws," which informs employees of their protections and obligations. Employers may obtain this poster free of charge from NCDOL/ETTA by calling 1-800-NC-LABOR.
2. Maintain both a log (OSHA Form 300 or its equivalent) of recordable occupational injuries and illnesses and a supplement (OSHA Form 301 or its equivalent) to the log. Employers with fewer than 11 employees are normally exempted. Make both forms available to compliance officers and make Form 300 or its equivalent available to employees. An annual summary of Form 300 must also be posted during the entire month of February.

3. Participate in the annual occupational injury and illness survey to assist the commissioner in compiling statistics relative to the incidence of work-related injuries and illnesses.
4. Promptly notify any employee of his or her over-exposure to toxic or harmful substances.
5. Report to OSH within eight hours of its occurrence any work-related accident that is fatal to one or more employees or that requires hospitalizing three or more employees.
6. Post citations for alleged violations of OSH standards at or near the place where the violations allegedly occurred, so that employees are able to read the citations.
7. Post, in a place that will notify employees, copies of any petition for modification of an abatement date and of any amended citation that extends the abatement date.
8. Post a copy of any proposal and/or agreement between the employer and the commissioner to settle the terms of a citation.

Employer Rights

The act makes each employer primarily responsible for the safety and health of its employees. However, the OSH Act also provides employers with numerous rights. The list below details some of those rights.

Employer Assistance

You have the right to:

1. Ask OSH for education, training, technical assistance and consultation services relating to compliance with the act.
2. Receive material safety data sheets from manufacturers and importers of hazardous chemicals for each hazardous chemical they produce or import.

Employers and Standards

You have the right to:

1. Expect that any citation issued to you will be issued within a reasonable period of time, not to exceed six months from the occurrence of the violation.
2. Expect that any citation issued to you will specifically describe the nature of the alleged violation and the standard, regulation, rule or order allegedly violated.
3. Request an informal conference to discuss any aspect of a citation for the alleged violation of an OSH standard. Employees may also attend such a conference, and they may also request an informal conference.

Employers and Reviews

You have the right to:

1. Contest any alleged violation, the length of time allowed on a citation for correcting any alleged violation, and any penalty assessed for an alleged violation in general or construction industry cases.
2. Appeal to the N.C. Superior Court any final decision against your interest in a contested case.

OSH Administration and Enforcement

Prior to 1973, the N.C. Department of Labor had promoted safety by administering a program that encouraged industry to comply voluntarily with safety and health standards. Based on this program, the General Assembly designated the department to administer and enforce the OSH Act of North Carolina.

The department administers and enforces the OSH Act of North Carolina through the Division of Occupational Safety and Health, called OSH. This division is subdivided into bureaus composed of several functional organizations: Consultative Services; Education, Training and Technical Assistance; OSH Compliance (East Bureau; West Bureau); Agricultural Safety and Health; and Planning, Statistics and Information Management.

The OSH Act of North Carolina believes that employers and employees desire to comply voluntarily with safety and health requirements. Voluntary compliance is especially encouraged through the Bureau of Consultative Services and the Bureau of Education, Training and Technical Assistance.

Bureau of Consultative Services

The Bureau of Consultative Services' primary functions are the *Onsite Consultation Program*, *Carolina Star Programs* and the *Safety Awards Program*. The Consultative Services Bureau functions independently from the Compliance Bureaus. It does not share information with Compliance regarding visited sites. Therefore, when an employer asks for a consultative visit, that request neither increases nor decreases the chance that his or her business will be inspected by a compliance officer. The exceptions to this rule are when an employer is granted a one-year exemption from the safety compliance program following a consultation, when an accident investigation is necessary, or when a significant complaint is received.

As a main condition for securing consultative services, the employer must agree to eliminate immediately any hazards identified as "imminent dangers" and to correct all hazards that could be classified as "serious violations" of OSH standards. Consultative Services will only confer with the OSH director, who may then contact the appropriate compliance organization, if an employer fails or refuses to eliminate one of these imminent dangers or serious violations identified during a consultation.

The Bureau of Consultative Services does not cite employers for alleged standards violations. It does not assess monetary penalties. The results of a consultative visit are confidential, so there is no requirement that a consultant's findings be posted. The bureau's services are given free of charge. A consultative visit can mean savings for both employers and employees. Safe and healthy employees translate into low medical, legal, retraining, clerical and insurance costs.

Due to funding restrictions, the Consultative Services Bureau limits services to employers of limited business size and to those within high-hazard industries. In the private sector, the onsite consultation is funded to provide free consultation to "small employers" in high-hazard industries. A small employer is defined as one with 500 or fewer employees controlled by the company nationwide, and 250 or fewer employees at the specific site. Specific sites with 251 to 500 employees are eligible for consultation, but at a lower priority. In the public sector, the Onsite Consultation Program may serve any size employer; however, priority is given to the most hazardous operations when known.

Obtaining Consultative Services

The following steps lead to and through a visit from Bureau of Consultative Services:

Request for Consultation

The employer must contact Consultative Services and request a survey of part or all of his or her business. A safety or health consultant from the bureau will then contact the employer to set up a visit. The consultant will also expect the employer to commit to correct any unsafe conditions classified as "serious" that are discovered during the visit.

Opening Conference

The visit begins with a conference to establish the scope of the consultant's role and to define the employer's responsibilities. For example, the consultation may be limited to safety or health (or a combination) and may include one department or worksite or the entire operation.

Walkthrough

The consultant will conduct the safety and health survey by examining both work conditions and practices and by paying close attention to problems identified by

the employer. The consultant can be expected to look for hazards such as unguarded machines, fire safety problems and tool maintenance. Other facets of an employer's business that will be examined include looking for air contaminants, noise levels and extreme temperatures. The consultant will need to talk freely with employees about safety and health subjects.

Closing Conference

The visit ends with a conference to review any problems identified by the consultant. The consultant will suggest possible solutions to problems observed and may offer the additional assistance of colleagues who have special training. Sources of other technical assistance also may be identified. The consultant and employer will agree upon a plan to correct any observed hazards.

Follow-Through and Correction

Following the visit, the consultant will send the employer a written report of his or her findings. This report will include the mutually accepted plan, if any was needed, for correcting observed hazards. The employer will then be expected to send a completed form to Consultative Services confirming the correction of any such hazards. Should the form not be submitted, the employer will be revisited by the consultant.

There are numerous advantages to using Consultative Services. In addition to identifying hazards, consultants can help establish programs for training employees in safety and health and can help develop injury and illness prevention programs. Here are two examples:

Example One: Management of an embroidery emblem plant requested a comprehensive survey to identify hazards to its employees, including unsafe work procedures. The company's rate of injury and illness incidents was over five times that for the employer's industry nationally.

The safety survey revealed five hazards that would be considered violations of OSH standards. The time given to correct the hazards was approximately 18 months. Deficiencies in the company's safety and health training program and accident investigation/prevention program were highlighted.

Within two years of the consultative survey, the company's rate of injury and illness incidents had dropped to approximately one and one-half times that for the employer's industry. The employer reported a monetary savings from the reduction in lost workday injuries and illnesses. The employer also reported that employee production and morale had improved significantly.

Example Two: A company that produced metal components for the maintenance of diesel engines requested a comprehensive safety survey of its workplace.

Company employees had experienced numerous injuries from contact with machinery.

Ten hazards that would have been considered standards violations were identified through the safety survey. Approximately five months were required to correct the hazards.

As a result of the visit, the company hired a full-time director for safety and reorganized its safety policies and procedures, including the expansion of its safety and loss control policy.

The employer reported an immediate reduction in employee injuries. Production rose and employee morale greatly improved.

Though a Consultative Services consultant's actions will not alter the employer's chances of being inspected by Compliance, a consultation survey may lead to a limited exemption from safety-related inspections. There is no exemption for health-related inspections.

Exemptions From Safety Compliance Inspections Through Consultative Services

For employers who do not work within agriculture, construction at changing worksites or maritime operations, a consultation safety survey may lead to a one-year exemption from routine safety compliance inspections. Following such a one-year exemption, an employer is again eligible to participate in the exemption program after the expiration of one intervening year.

To apply for participation in the exemption program, an employer should submit a written request for a comprehensive safety survey to Consultative Services. A participant must agree to the conditions of the survey. For example, the participating employer may not limit the survey in scope, as he or she could do when requesting other consultative services. However, the employer may be assured that the consultant will not reveal an employer's trade secrets. Similarly, the employer must agree to abate all hazards identified by the consultant.

In addition to conducting the safety survey, the visiting consultant will be looking for evidence to substantiate the following:

- Commitment by top management to provide a safe and healthful workplace, free from recognized hazards. A written, effectively communicated safety program would be one example of such commitment. The assignment of responsibility to management for the employer's safety and health program. The existence of a readily identifiable safety officer is illustrative.
- Regular employee participation in the safety and health program through safety committees and/or

through meetings with supervision with respect to workplace safety and health.

- A formal program of self-inspection, with the timely removal of hazards and with appropriate corrective actions to prevent the recurrence of similar accidents.
- A program for training employees and supervisors relative to safe work practices and for establishing a sense of individual responsibility for contributing to overall safety and health efforts.

It should be noted that exemption from compliance inspections through Consultative Services applies only to randomly scheduled (programmed or “general schedule”) inspections. Compliance may investigate employee complaints, fatalities and accidents. The Compliance Bureau may inspect also for health hazards. If such inspections reveal violations classifiable as serious, then the employer’s exemption from inspections would be ended.

Safety Awards Program

The Safety Awards Program, administered by Consultative Services, recognizes private firms and public agencies throughout the state that achieve and maintain superior safety records. Both annual safety awards and million-hour safety awards are presented to provide an incentive to employers and employees to maintain safe and healthful workplaces.

Any company or public agency having 10 or more employees is eligible to participate in the awards program. Applications are mailed to participants in January, and awards are presented at a series of 30 banquets across the state each spring. Additional criteria are detailed on the applications. To participate in the program, contact the Safety Awards Coordinator at (919) 807-2908; N.C. Department of Labor, Division of Occupational Safety and Health, 1101 Mail Service Center, Raleigh, NC 27699-1101; toll-free telephone: 1-800-NC-LABOR.

Carolina Star Program

The Carolina Star Program offers several benefits to employers who make occupational safety and health excellence a fundamental part of their businesses. OSH offers four Carolina Star Programs: 1. The **Carolina Star Program** recognizes worksites that are self-sufficient in their ability to control hazards at the worksite. 2. The **Rising Star Program** recognizes worksites with good safety and health program, but must take additional steps to achieve Carolina Star quality. 3. The **Building Star Program** recognizes construction worksites that have Carolina Star quality safety and health programs

but require demonstration of approaches and procedures that differ from current Carolina Star requirements.

4. The **Public Sector Star Program** recognizes the safety and health programs of state and local government agencies. Requirements are identical to those for the Carolina Star Program with a few additions. Employers who meet the program’s tough criteria receive public recognition from the N.C. Department of Labor. Carolina Star recipients are exempted from regularly scheduled OSH safety and health inspections for three years.

Winning the Star designation is difficult. An applicant must have an illness and injury rate that is 50 percent or less of the average for that type business in North Carolina. The applicant must detail all of its safety and health programs and committees, as well as showing real employee involvement in those programs. Finally, the applicant must pass a rigorous onsite visit from the Carolina Star inspection team before it can receive a Carolina Star award.

The exemption only applies to regularly scheduled OSH inspections. The division can inspect a Carolina Star employer during the three-year period if it receives a complaint or if there is an accident at the site.

For more information about Carolina Star Programs, contact the Carolina Star program manager in the OSH Bureau of Consultative Services at 1-800-NC-LABOR or (919) 807-2899.

Bureau of Education, Training and Technical Assistance

In the North Carolina OSH Act, the General Assembly listed education as one of the prime means of preventing injuries and illnesses. The Bureau of Education, Training and Technical Assistance (ETTA) is the primary coordinator and administrator of this educational function. ETTA works to develop appropriate partnerships, coordinate and conduct internal and external training, and provide outreach to stakeholders and affected industries. The overall emphasis of ETTA, consistent with efforts of other OSH bureaus, is on removing/reducing hazards that lead to injuries, illnesses and/or fatalities in selected industries and activities.

Standards Interpretation and Publications

ETTA offers service and provides response to requests for technical assistance and interpretation of safety and health standards. The ETTA Bureau works on issues related to adoption and/or development of safety and health standards as applied by OSH. Additionally, ETTA evaluates variance requests, interprets safety and health standards, and provides technical

assistance. Copies of safety and health standards for 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction Industry) can be obtained from ETTA. Other North Carolina occupational safety and health publications available to the public include books, brochures, "Notice to Employees" poster, forms, industry guides and a publications list.

Education

Activities: The bureau's efforts of training and outreach include working with private health and safety organizations, industry groups, private safety consultants, individual businesses, and governmental agencies to provide informed speakers on safety and health topics. Fundamental, general information is presented to improve the ability of the participants to recognize and control workplace hazards.

Some activities are conducted each year within several "safety schools" located around the state. At these events, recognized authorities provide specialized information about safety and health to businesses, especially those of limited size. The cost to attend is minimal. Current schools include:

- *Charlotte Regional Occupational Safety and Health School*—Charlotte; March; co-sponsored by the American Society of Safety Engineers and the Safety and Health Council of North Carolina.
- *Eastern Carolina Safety and Health School*; April; effort of the N.C. Department of Labor, East Carolina University and local industry to promote safety and health in eastern North Carolina.
- *Hickory Safety School*; April; co-sponsored by the American Society of Safety Engineers.
- *Wilmington Regional Safety and Health School*—Wilmington; July; co-sponsored by the Greater Wilmington Chamber of Commerce.
- *Fertilizer and Crop Protection Health and Safety School*—Durham; August; sponsored by the National Agricultural Chemicals Association, National Safety Council, Southern Agricultural Chemicals Association and the Fertilizer Institute.
- *Central Carolina Occupational Safety and Health School*; October; co-sponsored by the American Society of Safety Engineers.
- *Western N.C. Safety and Health School*—Asheville; November; co-sponsors include Western Carolina Industries, General Electric and the N.C. Department of Labor.

A school generally lasts for two days. A sampling of recent topics includes OSHA recordkeeping, fall protection, trenching and excavation, electrical safety, fleet

safety management programs, ergonomics, respiratory protection, employee safety and health training, blood-borne pathogens, how to inspect for hazards, and hazardous waste and emergency operations.

Educational Information

Printed information on various topics is available through the Bureau of Education, Training and Technical Assistance to employers and employees. Periodically, ETTA issues "Hazard Alerts" to warn of newly identified hazards or to provide new or additional information about known hazards.

The technical assistance staff also provides information to the department's *Labor Ledger* publication. This monthly newsletter to the public covers a wide range of labor topics including OSH news. For more information on how to subscribe to the *Labor Ledger*, please call 1-800-NC-LABOR.

Industry guides (such as this one) address topics of a general nature or focus on specific subjects. The aim of the series is to provide information about occupational safety and health pertinent to the types of work commonly done in North Carolina.

Copies of industry guides, OSHA standards, injury and illness recordkeeping forms, safety and health posters, and other information are available through the Standards and Publications Section of ETTA.

The bureau releases a narrative account of OSHA case law as OSH issues develop and are resolved. The account is maintained by supplements and by revised editions. Additionally, the bureau provides access to the actual legal decisions regarding OSH issues by filing the cases with libraries throughout the state.

Departmental Library

Much of OSH's research and reference information is available to the public through the Department of Labor's library. The library's labor-related collection of 7,000 books, 50 periodical titles, vertical files, and several hundred videos, DVDs, slides and films contains many resources that deal with specific occupational safety and health subjects.

The library also has access to computer products that index occupational safety and health articles on topics from textile safety to ergonomics. Federal OSHA standards and documents can be accessed through the system.

The most popular occupational safety and health training materials are the videos, DVDs, slides and films. They are loaned free of charge, except for the costs to return the items. To request these audiovisuals, please call the library at 1-800-NC-LABOR or (919) 807-2848.

Research questions should be directed to the librarian at (919) 807-2850. To obtain a complete list of videos, DVDs, slides and films, please contact the librarian at: (Mailing address) N.C. Department of Labor Library, 1101 Mail Service Center, Raleigh, NC 27699-1101; Fax: (919) 807-2849; (Physical address) 111 Hillsborough St., Fifth Floor (located in the “Old Revenue Building” at corner of Hillsborough and Salisbury streets, across from the Capitol). (Library Internet homepage) <http://www.nclabor.com/lib/lib2.htm>

The following list of titles is illustrative of the library’s videos:

- Avoiding Computer Strains and Pains*
- Working in Confined Spaces: How to Do It Safely*
- Safety on the Job: Working With Electricity*
- Employee Evacuation: Action for Survival*
- Forklift Fundamentals: Get the Facts*
- Hazard Communication: A Healthy Responsibility*
- Heat Stress*
- Bloodborne Pathogens: Know the Risk*
- Bloodborne Pathogens: A Sharper Image*
- Chemical Safety in the Laboratory*
- Lockout/Tagout Control of Hazardous Energy Sources*
- Me and My Back*
- Machine Hazard Awareness*
- Hearing Protection Sounds Good to Me*
- Respiratory Protection*
- On Solid Ground: A Plan for Safe Excavation and Trenching*
- Personal Fall Protection: Hook Up!*
- Arc Welding Safety*

The public is encouraged to visit the library. It is staffed by a professional librarian who assists visitors in locating materials or in finding answers to research questions. Visitors may wish to call ahead and make an appointment to ensure that the librarian will be available for assistance.

Training

The OSH Act encourages employers to institute programs that will provide safe and healthful working conditions. OSHA standards require that employers provide employees with specific types of training. Efforts of training and outreach conducted by the Training Section of ETTA, as well as Consultative Services, and the Standards Section can help employers establish company safety programs, including safety committees that can be trained to recognize workplace hazards.

Technical Assistance

Hazard Abatement

Employers who require assistance to eliminate workplace hazards may call upon Standards Section for help. Examples of conditions for which technical assistance is frequently requested include electrical hazards, machine guarding problems, and matters regarding fire prevention and protection.

Standards Interpretation

The Bureau of Education, Training and Technical Assistance interprets OSHA safety and health standards for employers and assesses the employer obligations assigned by OSHA standards. For new and complex standards, ETTA may provide speakers to address groups of interested persons. State OSH Act standards may differ from those of federal OSHA. Information about state standards may be obtained by contacting ETTA’s Standards Section. (See the inside back cover of this publication for more contact information.)

Variance Applications

An employer may apply for a temporary variance from a standard based on the following reasons: unavailability of personnel, materials or equipment, or because construction will be needed that cannot be completed by the effective date of the standard.

A permanent variance may be granted where an employer’s practices do not follow the letter of the standard but do afford employees protection equal or superior to that specified by the standard. The ETTA Bureau may be called upon to evaluate a matter, to assess alternative protections being afforded to employees and to submit recommendations regarding the variance application. The most important consideration for granting any type of variance is the provision of equally effective or superior alternative protection for employees.

The Bureaus of Education, Training and Technical Assistance and Consultative Services are separate from the OSH compliance organizations. They do not issue citations nor assess monetary penalties. Services are free to North Carolina employers.

Compliance Bureau

Day-to-day responsibility for enforcing OSHA standards in North Carolina belongs to the OSH director. The director must “uniformly superintend, enforce, and administer applicable occupational safety and health laws.” All inspections necessary to the enforcement of the OSH Act are required to be “promptly and effectively” conducted by the director or his or her agents. The

director accomplishes these enforcement duties through the OSH Compliance Bureau.

The purpose of the Compliance Bureau is to ensure compliance with Occupational Safety and Health Act, rules, standards and regulations; to ensure employee protection in workplaces throughout North Carolina; and to provide professional industrial hygiene, safety engineering, administrative, training and technical services, as necessary, to all employers within the state of North Carolina. OSH Compliance consists of two bureaus, composed of an East Bureau and West Bureau within OSH. The East Bureau is headquartered in the Raleigh field office; West Bureau is headquartered in the Winston-Salem field office. Both East and West Bureaus inspect worksites, to address safety and/or health compliance, for safety hazards and occupational health and illness problems.

Inspections

Priorities and Types of Inspections

The Compliance Bureau investigates worksites based on the following priorities: 1. imminent dangers; 2. accidents and fatalities; 3. valid employee complaints; and 4. general workplace conditions. The last type includes follow-up inspections and randomly selected inspections of general industry sites, construction sites and agricultural operations.

Inspection Procedures

Entry: As required by the OSH Act, inspections are normally conducted without advance notice. The health or safety compliance officer may be expected to arrive at a reasonable time—usually during customary business hours. He or she will present OSH credentials and ask to meet with the senior employer official at the site. If permission to enter is refused, the compliance officer will leave and obtain an administrative inspection warrant, then return to conduct the inspection. Otherwise, the compliance officer will proceed with the “opening conference.”

Opening Conference: The primary purpose of the opening conference is to provide an opportunity for the compliance officer to explain the nature and scope of the inspection. Depending upon the type of inspection, the focus may concern part or all of the workplace.

The compliance officer will also ask that the employer’s occupational injury and illness records be made available for review. Next, the inspection process or “walkaround” will be explained. A request will be made that an employee representative accompany the compliance officer and employer representative on the walk-around.

Walkaround: During the walkaround, the compliance officer’s duty will be to determine whether the workplace is free from recognized hazards and whether it complies with OSHA standards. If there is no recognized employee representative, such as a union steward, the compliance officer will interview a number of employees. The compliance officer will expect to take photographs and conduct tests necessary to complete the inspection. The employer can expect the compliance officer to observe all safety rules and practices and to preserve the confidentiality of trade secret information that is identified by the employer. Following the inspection, the compliance officer will conduct a “closing conference.”

Closing Conference: This closing conference is a chance for the compliance officer to discuss the inspection results with the employer and employee representatives. The conference will focus on any apparent violations, the fact that citations and penalties may be issued, and periods of abatement for violative conditions. Rights regarding the process and period for contesting a citation, penalty or abatement date will also be covered. The right to request (prior to the end of the contestment period) an informal conference with OSH will also be explained.

Citations

Following the inspection, the inspection supervisor will review recommendations submitted by the compliance officer in his or her report. If reasonable grounds exist to suggest the presence of a recognized hazard or violation of an OSHA rule, regulation or standard, a citation will be issued to the employer.

The citation must be issued within six months from the occurrence of the alleged violation. The nature of the alleged violation will be described “with particularity,” and the standard, rule, regulation or order allegedly violated will be set forth. A time period will be fixed for the abatement of the alleged violation. The employer must post the citation where it can be readily observed by employees. The citation must remain posted for three workdays or until the violation is corrected, whichever period is longer.

Violations—Classifications

Citations issued most frequently classify violations as:

Serious: The alleged violation created the possibility of an accident where there was the substantial probability that serious physical harm or death could result to an employee, and the employer knew or, with the exercise of reasonable diligence, could have known of the alleged violation.

Other-than-Serious (“non-serious”): The alleged violation probably would not cause serious physical harm or death but does relate directly or immediately to an employee’s health or safety.

Repeated or Willful: In addition to serious or other-than-serious, alleged violations can be classified as “repeated” or “willful” violations. Generally, a repeated violation is a subsequent violation within a three-year period of any standard, regulation, rule, order or clause of the OSH Act. Generally, a willful violation is an “intentional and knowing” violation of any standard, regulation, rule, order or clause of the OSH Act.

Penalties

Monetary penalties assessed by OSH and paid by employers to the Department of Labor are “civil” (as opposed to “criminal”) in nature. The sums collected go into the Civil Penalty and Forfeiture Fund.

For any alleged violation classified as “serious” and for citations for the failure to post items (such as a citation or safety and health poster), the OSH Act requires the assessment of a penalty. For other classifications of employer violations and for failing to abate violations, OSH is given the option of assessing monetary penalties. “Willful” violations carry a maximum penalty of \$70,000 and a minimum penalty of \$5,000. Otherwise, the maximum penalty is \$7,000.

In practice, penalties are always assessed by OSH for alleged violations classified as “repeated,” “willful” or “serious.” Penalties are also assessed when there are 10 or more alleged violations classified as “other-than-serious.”

Whenever penalties are assessed, OSH considers the gravity of the penalty, the size of the employer being cited, and the good faith and history of the employer in calculating the penalty amount.

Strategies to Achieve Workplace Safety and Health Goals

OSH promotes the goal of safe and healthful workplaces by using a variety of strategies that include rule-making, enforcement, assistance and outreach. OSH continues efforts to move forward with successful approaches to improve workplace safety and health. OSH developed another five-year (2003–2008) strategic plan designed to guide OSH programs and resources. OSH’s strategic goals reflect the N.C. Department of Labor’s mission:

- Providing responsive, effective and efficient services,

- Providing and encouraging quality education and training,
- Administering consistently and fairly our regulatory mandates,
- Enhancing public confidence in the Department of Labor.

Over the five years of this plan, OSH will focus efforts on improving productivity in inspections and consultations while concentrating its efforts in industries and workplaces with safety and health problems. OSH health and safety compliance officers inspect workplaces based on employee complaints, workplace fatalities and injuries, random selection, and statistical targeting. OSH’s focus combines programmed (computer-generated inspections are known as “general schedule” assignments) and site-specific targeting in logging, construction, long term care, lead and silica. OSH’s goal is to increase the number of inspections conducted as well as the number of hazards eliminated.

The division has established two primary strategic goals as part of the five-year strategic plan. Goal No. 1 is to reduce occupational hazards through direct interventions. Goal No. 2 is to promote a safety and health culture through compliance assistance, cooperative programs and strong leadership. Although added previously, methylene chloride is not included in this strategic plan as an outcome goal even though its five-year end date is FY 2006. During FY 2001, methylene chloride was identified for potential health risk and added as an emphasis program to reduce workplace health hazards. Long-term exposure to methylene chloride can result in serious damage to the human nervous system. As a result of increased knowledge of the hazards associated with methylene chloride, many employers have discontinued its use. Due to its minimal impact on a 15 percent reduction of the overall industry injury and illness rate, a continued commitment of resources to this effort is not strategically appropriate.

Summary of Strategic Plan Activities and Efforts

For fiscal year 2004, the OSH Strategic Plan refined efforts to improve workplace safety and health throughout the state. Primary focus was given and continues to address the following goals included for the five-year period (2003–2008) identified:

- Reduce the construction industry fatality incidence rate by 15 percent (construction includes any activity performed by employers who fall under the SICs 1500–1799).
- Decrease fatalities in logging and tree felling (arborist) activities by 15 percent by the year 2008.

- Reduce injury and illness rate in establishments for the lumber and wood products, furniture and fixtures industry by 15 percent.
- Reduce the days away, restricted or transferred (DART) rate in long term care (LTC) facilities by 15 percent by FY 2008.
- Conduct emphasis inspections, training and consultation activity in establishments where employees will be exposed to lead.
- Conduct emphasis inspections, training and consultation activity in establishments where employers will be exposed to silica.
- Reduce lost workday injury and illness case rate (LWDII/DART) by an average of 15 percent in establishments selected for site-specific targeted interventions by FY 2008.
- Reduce DART rate by an average of 15 percent in public sector establishments selected for site-specific targeted interventions by FY 2008.
- Assist in the implementation or improvement of 10,000 occupational safety and health programs by FY 2008.
- Expand participation in occupational safety and health recognition program efforts.
- Develop/sustain partnerships and alliances supporting NCDOL mission. (Formalize 15 relationships with industry associations, public sector entities and not-for-profit groups by FY 2008.)
- Train 75,000 people (managers and workers) in occupational safety and health.

Planning, Statistics and Information Management/Information Technology Division

The *Planning, Statistics and Information Management Bureau* (PSIM) provides management information

services to the OSH director and to the division's other bureaus. The *Information Technology Division* (IT) provides technological solutions and service for the Department of Labor in order to increase efficiency, accuracy and productivity of services provided to the public. Services provided by PSIM and IT include:

- Preparing statistical and program analyses for use in evaluating the efficiency and effectiveness of the occupational safety and health program.
- Identifying computer service requirements and ensuring proper operation of current computer systems.
- Supporting the compliance organizations in developing and maintaining inspection scheduling systems.

The statistical and program analysis service includes publishing an annual report that uses statistics to compare the performance of OSH to federal OSHA, as well as a particular regional section of federal OSHA. Copies of the annual report, *North Carolina Occupational Safety and Health Program Statistics*, and other statistical information are available through the organization. It also monitors and reports on OSH's performance in relation to federal OSHA evaluation measures.

The division's computer service function includes the maintenance of a large database that has recorded information relating to every inspection OSH has ever conducted. It works with federal OSHA on several computer systems allowing it to send inspection data directly to federal OSHA.

Federal law requires using systems that ensure the objective selection of an employer for a safety or health inspection. State law requires the scheduling of inspections for employers with high rates of accidents. The organization manages scheduling systems based on industry classification (construction or agriculture for example) in order to ensure objectivity when an employer is selected for an OSH inspection.

The Safety and Health Review Board of North Carolina

The N.C. General Assembly created the Safety and Health Review Board of North Carolina with the Occupational Safety and Health Act of North Carolina. The sole function of the board is to resolve disputes that arise under the state's OSH Act.

In its enforcement activities, OSH is required by the OSH Act to issue citations for alleged violations of safety and health standards. Employers who dispute citations or challenge proposed penalties and employers and employees who contest the length of time allowed for correction of violations do so before the board.

Employers have a period of 15 working days in which to contest a citation or penalty assessment. The period begins upon receipt of the citation or notice of penalty. A failure to meet the deadline for contesting will result in the citation and/or penalty becoming final and not subject to review by the board or by any court.

The board is independent. The N.C. Department of Labor is not connected with the board. It does not influence the board's decisions. Therefore, the board is neutral. Its governing rules ensure that all affected persons, including employees, are impartially heard.

At the appellate level of the board are three members appointed by the governor. The chairman of the board appoints hearing examiners who hear and initially determine contested issues. The hearing examiners reside in various areas of the state, so that hearings can be conducted near an employer's worksite where the contested violation allegedly occurred.

Any party may ask the board's appellate level to review a hearing examiner's decision. On appeal, the board has the discretionary power to accept new evidence. However, the board will normally restrict its review to errors attributed to a lower decision.

Both levels of the board possess all the powers needed to fulfill their functions. Board proceedings follow the format of the judiciary. But since many employers appear before the board without benefit of a lawyer, the board's proceedings are less formal than those of a court. All hearings are open to the public.

An order from the appellate level of the board on the merits of an issue becomes final and not subject to further review unless there is a timely appeal to the state superior court.

The Occupational Safety and Health Act of North Carolina

Chapter 95, Article 16

§95-126. Short title and legislative purpose.

(a) This Article shall be known as the “Occupational Safety and Health Act of North Carolina” and also may be referred to by abbreviations as “OSHANC.”

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:

- a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
- b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;
- c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review board for carrying out adjudicatory functions under this Article;

- d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
- e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
- f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;
- h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;
- i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;
- j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
- k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
- l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the

Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.

- m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. (1973, c. 295, s. 1; c. 476, s. 128; 1989, c. 727, s. 219(13); 1997-443, s. 11A. 33.)

§95-127. Definitions.

In this Article, unless the context otherwise requires:

- (1) The term “Advisory Council” shall mean the Advisory Council or body established under this Article.
- (2) The term “Board” means the Safety and Health Review Board established under this Article.
- (3) The term “classified service” means a position included in the State Merit System of Personnel Administration subject to the laws, rules and regulations of the State Personnel Board as administered by the State Personnel Director and as set forth in Chapter 126 of the General Statutes.
- (4) The term “Commissioner” means the Commissioner of Labor of North Carolina.
- (5) The term “days” shall mean a calendar day unless otherwise noted.
- (6) The term “Department” means the Department of Labor of North Carolina.
- (7) The term “Deputy Commissioner” means the Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. The Deputy Commissioner shall exercise such power and authority as delegated to him by the Commissioner.
- (8) The term “Director” means the officer or agent appointed by the Commissioner of Labor for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.
- (9) The term “employee” means an employee of an employer who is employed in a business or other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer.
- (10) The term “employer” means a person engaged in a business who has employees, including any state or political subdivision of a state, but

does not include the employment of domestic workers employed in the place of residence of his or her employer.

- (11) The term “established federal standard” means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any act of Congress in force on the date of enactment of this Article, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.
- (12) The term “federal act,” as referred to in this Article, means the Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).
- (13) The term “imminent danger” means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article.
- (14) The term “issue” means an industrial, occupational or hazard grouping.
- (15) The term “occupational safety and health standards” means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and appropriate to provide safe and healthful employment and places of employment, and shall include all occupational safety and health standards adopted and promulgated by the Secretary which also may be and are adopted by the State of North Carolina under the provisions of this Article. This term includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the Secretary, promulgated as provided by the Occupational Safety and Health Act of 1970, and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the federal act or any appropriate federal agencies.
- (16) The term “person” means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives.
- (17) The term “Secretary” means the United States Secretary of Labor.

- (18) A “serious violation” shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.
- (19) The term “State” means the State of North Carolina. (1973, c. 295, s. 2; 1987, c. 282, s. 14.)

§95-128. Coverage.

The provisions of this Article or any standard or regulation promulgated pursuant to this Article shall apply to all employers and employees except:

- (1) The federal government, including its departments, agencies and instrumentalities;
- (2) Employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, as amended;
- (3) Employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725), or Subtitle V of Title 49 of the United States Code;
- (4) Railroad employees whose safety and health are subject to protection under Subtitle V of Title 49 of the United States Code;
- (5) Employees engaged in all maritime operations;
- (6) Employees whose employer is within that class and type of employment which does not permit federal funding, on a matching basis, to the State in return of State enforcement of all occupational safety and health issues. (1973, c. 295, s. 3; 1998-217, s. 27.)

§95-129. Rights and duties of employers.

Rights and duties of employers shall include but are not limited to the following provisions:

- (1) 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;
- (2) Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article;
- (3) Each employer shall refrain from any unreasonable restraint on the right of the Commissioner

or Director, or their lawfully appointed agents, to inspect the employer’s place of business. Each employer shall assist the Commissioner, the Director or the lawful agents of either or both of them, in the performance of their inspection duties by supplying or by making available information, any necessary personnel or necessary inspection aides;

- (4) Any employer, or association of employers, is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131;
- (5) Any employer is entitled, under G.S. 95-137, to review of any citation issued because of his alleged violation of any standard promulgated under this Article, or the length of the abatement period allowed for the correction of an alleged violation;
- (6) Any employer is entitled, under G.S. 95-137, to a review of any penalty in the form of civil damages assessed against him because of his alleged violation of this Article;
- (7) Any employer is entitled, under G.S. 95-132, to seek an order granting a variance from any occupational safety or health standard;
- (8) Any employer is entitled, under G.S. 95-152, to protection of his trade secrets and other legally privileged communications. (1973, c. 295, s. 4.)

§95-130. Rights and duties of employees.

Rights and duties of employees shall include but are not limited to the following provisions:

- (1) Employees shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Article which are applicable to their own actions and conduct.
- (2) Employees and representatives of employees are entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131.
- (3) Employees shall be notified by their employer of any application for a temporary order granting the employer a variance from any provision of this Article or standard or regulation promulgated pursuant to this Article.
- (4) Employees shall be given the opportunity to participate in any hearing which concerns an

application by their employer for a variance from a standard promulgated under this Article.

- (5) Any employee who may be adversely affected by a standard or variance issued pursuant to this Article may file a petition for review with the Commissioner who shall review the matters set forth and alleged in the petition.
- (6) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall have a right to file a petition for review with the Commissioner who shall investigate and pass upon same.
- (7) Subject to regulations issued pursuant to this Article any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Commissioner, Director, or their agents, at the time of the physical inspection of any work place as provided by the inspection provision of this Article.
- (8) to (10) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1021, s. 2 [effective October 1, 1992].
- (11) Any employee or representative of employees who believes that any period of time fixed in the citation given to his employer for correction of a violation is unreasonable has the right to contest such time for correction by filing a written and signed notice within 20 days from the date the citation is posted within the establishment.
- (12) Nothing in this or any other provision of this Article shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. (1973, c. 295, s. 5; 1991 (Reg. Sess., 1992), c. 1021, s. 2.)

§95-131. Development and promulgation of standards; adoption of federal standards and regulations.

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State

rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

(b), (c) Repealed by Session Laws 1991, c. 418, s. 8 [effective October 1, 1991].

(d) Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards established in a rule shall be expressed in terms of objective criteria and of the performance desired. In establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Health and Human Services, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

(e) The Commissioner may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the adoption of such State standard, or standards, is required by compelling local conditions and does not unduly burden interstate commerce.

(f) Repealed by Session Laws 1991, c. 418, s. 8 [effective October 1, 1991].

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes. (1973, c. 295, s. 6; c. 476, s. 128; 1975, 2nd Sess., c. 983, s. 81; 1987, c. 285, s. 17; 1987 (Reg. Sess., 1988), c. 1111, ss. 7, 8; 1989, c. 727, s. 219(14); 1991, c. 418, s. 8; 1997-443, s. 11A.34.)

§95-132. Variances.

(a) Temporary Variances.—

- (1) The Commissioner may upon written application by an employer issue an order granting such employer a temporary variance from standards adopted by this Article or promulgated by the Commissioner under this Article. Any

such order shall prescribe the practices, means, methods, operations and processes which the employer must adopt or use while the variance is in effect and state in detail a program for coming into compliance with the standard.

- (2) An application for a temporary variance shall contain all information required as enumerated in 29 C.F.R. 1905.10(b) which is hereby incorporated by reference, as if herein fully set out.
 - (3) Upon receipt of an application for an order granting a temporary variance, the Commissioner to whom such application is addressed may issue an interim order granting such a temporary variance, for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than 180 days.
 - (4) Such a temporary variance may be granted only after notice to employees and interested parties and opportunity for hearing. The temporary variance may be for a period of no longer than required to achieve compliance or one year, whichever is shorter, and may be renewed only once. Application for renewal of a variance must be filed in accordance with provisions in the initial grant of the temporary variance.
 - (5) An order granting a temporary variance shall be issued only if the employer establishes
 - a. (i) That he is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology, (ii) that all available steps have been taken to safeguard his employees against the hazards covered by the standard, and (iii) that he has an effective program for coming into compliance with the standard as quickly as practicable, or
 - b. That he is engaged in an experimental program as described in subsection (c) of this section as hereinafter stated.
- (b) Permanent Variances.—
- (1) Any affected employer may apply to the Commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Commissioner shall issue such rule or order if he determines on the record, after opportunity

for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard.

- (2) The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.
- (3) Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(c) Experimental Variances.—The Commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers. (1973, c. 295, s. 7; 1997-456, s. 27.)

§95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the Office of Occupational Safety and Health. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as he may deem advisable for the administration of the office, he shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his duties of office and shall not hold any other

office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service, as herein defined in G.S. 95-127, subdivision (3).

(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Office to administer and enforce. The Director shall have the power, jurisdiction and authority to:

- (1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;
- (2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;
- (3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;
- (4) Report to the Federal Occupational Safety and Health Administration any information which it may require;
- (5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;
- (6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;
- (7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the Office and compensate same with the approval of the Commissioner;
- (8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;
- (9) The Commissioner shall have the power and authority to issue all types of notices, citations,

cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the Board as hereinafter set forth.

- (10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.
- (11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.
- (12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject to review by the Board as hereinafter provided, including all assessments for civil penalties. (1973, c. 295, s. 8.)

§95-134. Advisory Council.

- (a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed

of three representatives from management, three representatives from labor, four representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this Article. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated in accordance with Chapter 138 of the General Statutes.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this Article. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives or professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as provided in Chapter 138 of the General Statutes. (1973, c. 295, s. 9; 1977, c. 806; 1983, c. 717, ss. 17, 18.)

§95-135. Safety and Health Review Board.

(a) The Safety and Health Review Board is hereby established. The Board shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the Board under this Article. The Governor shall appoint the members of the Board and name one of the members as chairman of the Board. The terms of the

members of the Board shall be six years except that the members of the Board first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the Board designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the Board.

(b) The Board shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the Board until after full and adequate hearing. The Board in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the Board.

(c) The Board shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the Board for the administrative operations of the Board and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Board's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the Board, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the Board. The Board shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the Board, and its decision shall be final. The compensation of the members of the Board shall be on a per diem basis and shall be fixed by the Governor. The chairman of the Board may be paid a higher rate of compensation than the other two members of the Board. For the purpose of carrying out its duties and functions under this Article, two members of the Board shall constitute a quorum and official action can be taken only on the

affirmative vote of at least two members of the Board. On matters properly before the Board the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the Board. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review. Prior to taking any action under this subsection to set compensation, the Governor may consult with the Advisory Budget Commission.

(d) Every official act of the Board shall be entered of record and its hearings and records shall be open to the public. The Board is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the Board adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The Board may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the Board. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the Board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the Board may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the Board, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the Board shall be in Raleigh, North Carolina, but whenever it deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the Board may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the Board, give any type of evidence, or to produce any books, records, papers, correspondence, memoranda or other records, such person upon such failure to obey the orders of the Board may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The Board shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the Board shall be

entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all such fees shall be taxed against the interested parties according to the judgment and discretion of the Board.

(h) The Director shall consult with the chairman of the Board with respect to the preparation and presentation to the Board for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the Board, and any and all other procedural papers and documents necessary for the administration of the Article as applied to employers and employees and for all procedures and proceedings brought before the Board for review.

(i) A hearing examiner appointed by the chairman of the Board shall hear, and make a determination upon, any proceeding instituted before the Board and may hear any motion in connection therewith, assigned to the hearing examiner, and shall make a report of the determination which constitutes the hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for the hearing examiner's determination. The report of the hearing examiner shall become the final order of the Board 30 days from the date of the report as determined by the hearing examiner, unless within the 30-day period any member of the Board had directed that the report shall be reviewed by the entire Board as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Board shall schedule the matter for hearing, on the record, except the Board may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of the hearing and shall be allowed to appear in person or by attorney at the hearing. Upon review of the report and determination by the hearing examiner the Board may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the Board upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the Board upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies."

(j) Repealed by Session Laws 1993, c. 300, s. 1 [effective October 1, 1993]. (1973, c. 295, s. 10; c. 1331, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 6, 7; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1111, s. 10; 1993, c. 300, s. 1, c. 474, s. 1.)

§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.)

§95-136.1. Special emphasis inspection program.

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

(b) The Department shall develop and implement a special emphasis inspection program that targets for special emphasis inspection employers who:

- (1) Have a high rate of serious or willful violations of any standard, rule, order, or other requirement under this Article, or of regulations prescribed pursuant to the Federal Occupational Safety and Health Act of 1970, in a one-year period;
- (2) Have a high rate of work-related deaths, or a high rate of work-related serious injuries or illnesses, in a one-year period;
- (3) Are engaged in a type of industry determined by the Department to be at high risk for serious or fatal work-related injuries or illnesses; or
- (4) Repealed by Session Laws 1997-443, s. 17(b) [effective July 1, 1997].

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State departments, divisions, boards, commissions, and other State entities. The Department shall ensure that every employer targeted for a special

emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and health compliance and enforcement. (1991 (Reg. Sess., 1992), c. 924, s. 1; 1997-443, s. 17(b).)

§95-137. Issuance of citations.

(a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this Article, or has violated any standard, regulation, rule or order promulgated under this Article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimus violations which have no direct or immediate relationship to safety or health. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred.

(b) Procedure for Enforcement.—

- (1) If, after an inspection or investigation, the Director issues a citation under any provisions of this Article, the Director shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of any penalty, if any, the Director has recommended to the Commissioner to be proposed under the provisions of this Article and that the employer has 15 working days within which to notify the Director that the employer wishes to:
 - a. Contest the citation or proposed assessment of penalty; or

b. Request an informal conference.

Following an informal conference, unless the employer and Department have entered into a settlement agreement, the Director shall send the employer an amended citation or notice of no change. The employer has 15 working days from the receipt of the amended citation or notice of no change to notify the Director that the employer wishes to contest the citation or proposed assessment of penalty, whether or not amended. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that the employer requires an informal conference to be held or intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under the provisions of this Article within such time, the citation and the assessment as proposed to the Commissioner shall be deemed final and not subject to review by any court.

- (2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Board in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.
- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that the employer intends to contest a citation issued

under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Board of such notification, and the Board shall afford an opportunity for a hearing. The Board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

- (5) Repealed by Session Laws 1993, c. 300, s. 2 [effective October 1, 1993].
- (6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes. (1973, c. 295, s. 12; 1987 (Reg. Sess., 1988), c. 1111, s. 11; 1991 (Reg. Sess., 1992), c. 1020, ss. 2, 3; 1993, c. 300, s. 2; 2003-308, s. 6.)

§95-138. Civil penalties.

(a) The Commissioner, upon recommendation of the Director, may assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order promulgated pursuant to this Article, as follows:

- (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty of seventy thousand dollars (\$70,000) for each willful or repeat violation.

- (2) A maximum penalty of seven thousand dollars (\$7,000) for each nonserious or serious violation.
- (3) A maximum penalty of seven thousand dollars (\$7,000) for each day that an employer fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties.
- (4) A maximum penalty of seven thousand dollars (\$7,000) for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Board, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

- (1) Size of the business of the employer being charged.
- (2) The gravity of the violation.
- (3) The good faith of the employer.
- (4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

The report of the hearing examiner and the report, decision, or determination of the Board on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 295, s. 13; 1987 (Reg. Sess., 1988), c. 1111, s. 12; 1989 (Reg. Sess., 1990), c. 844; 1991, c. 329, s. 1; c. 761, s. 17; 1993, c. 474, s. 2; 1998-215, s. 111; 2004-203, s. 39(a).)

§95-139. Criminal penalties.

Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and said violation causes the death of any employee, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the employer shall be guilty of a Class 1

misdemeanor which may include a fine of not more than twenty thousand dollars (\$20,000). This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor. Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000). 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. (1973, c. 295, s. 14; 1993, c. 539, s. 671; 1994, Ex. Sess., c. 24, s. 14(c).)

§95-140. Procedures to counteract imminent dangers.

(a) The superior courts of this State shall have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists, which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except those individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to assume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the superior court shall, without the necessity of showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Article. The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this State except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought. If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in the superior court of the district in which the imminent danger is alleged to exist or the employer has its principal office or place of business, for a writ of mandamus to compel the Commissioner to seek such an order for such relief as may be appropriate. (1973, c. 295, s. 15.)

§95-141. Judicial review.

Any person or party in interest who has exhausted all administrative remedies available under this Article and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, firm or corporation under order resides, or, if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1973, c. 295, s. 16; c. 1331, s. 3; 1987, c. 827, s. 265.)

§95-142. Legal representation of the Department of Labor.

It shall be the duty of the Attorney General to represent the Department of Labor or designate some member of his staff to represent them in all actions or proceedings in connection with this Article. (1973, c. 295, s. 17.)

§95-143. Record keeping and reporting.

(a) Each employer shall make available to the Commissioner, or his agents, in such manner as the Commissioner shall require, copies of the same records and reports regarding his activities relating to this Article as are required to be made, kept, or preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and regulations made pursuant thereto.

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this Article as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this Article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this Article, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make reports at least annually on, work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The Commissioner shall issue regulations requiring employers to maintain accurate records of employee exposure to potentially toxic materials of [or] harmful physical agents which are required to be monitored or measured under this Article. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable safety and health standard promulgated under this Article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Commissioner or his duly authorized agents under this Article shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible. (1973, c. 295, s. 18; 1991 (Reg. Sess., 1992), c. 894, s. 1.)

§95-144. Statistics.

(a) In order to further the purposes of this Article, the Commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner shall compile accurate statistics on work injuries

and illnesses which shall include all disabling, serious or significant injuries or illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. On the basis of records made and kept pursuant to the provisions of this Article, employers shall file such reports with the Commissioner as he shall prescribe by regulations and as may be necessary to carry out his functions.

(b) A listing of employment by area and industry of employers who have an assigned account number by the Employment Security Commission shall be supplied annually to the Commissioner by the Employment Security Commission of this State. The listing of employment by area and industry shall contain at least the following: employer name; Employment Security Commission account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the Commissioner to meet federal reporting requirements. (1973, c. 295, s. 19.)

§95-145. Reports to the Secretary.

(a) The Commissioner shall require employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan in force under this Article were not in effect, and

(b) The Commissioner shall make such reports to the Secretary in such form and containing such information as the Secretary from time to time shall require. (1973, c. 295, s. 20.)

§95-146. Continuation and effectiveness of this Article.

The Commissioner shall from time to time furnish to the Secretary information and assurances that this Article is being administered by adequate methods and by standards and enforcement procedures which are and will continue to be as effective as federal standards. (1973, c. 295, s. 21.)

§95-147. Training and employee education.

(a) The Commissioner, after consultation with appropriate departments and agencies of the State and subdivisions of government, shall conduct, directly or by grants or contracts, (i) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Article, and (ii) informational, educational and training programs on the importance of and proper use of adequate safety and health equipment to encourage voluntary compliance.

(b) The Commissioner is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) The Commissioner shall provide employers and employees programs covering recognition, avoidance and prevention of unsafe and unhealthful working conditions in places of employment and shall advise employers and employees, or their representatives, [of] effective means to prevent occupational injuries and illnesses. (1973, c. 295, s. 22.)

§95-148. Safety and health programs of State agencies and local governments.

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

- (1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article;
- (2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- (3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions;
- (4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action;
- (5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section;
- (6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, he shall, after unsuccessfully seeking by negotiations to abate such failure, include this in his annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct such condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

This section shall not apply to volunteer fire departments not a part of any municipality.

Any municipality with a population of 10,000 or less may exclude its fire department from the operation of this section by a resolution of the governing body of the municipality, except that the resolution may not exclude those firefighters who are employees of the municipality.

The North Carolina Fire and Rescue Commission shall recommend regulations and standards for fire departments. (1973, c. 295, s. 23; 1983, c. 164; 1985, c. 544; 1989, c. 750, s. 3; 1991 (Reg. Sess., 1992), c. 1020, s. 1.)

§95-149. Authority to enter into contracts with other State agencies and subdivisions of government.

The Commissioner may enter into contracts with the Department of Health and Human Services or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article. (1973, c. 295, s. 24; 1989, c. 727, s. 24; 1997-443, s. 11A.35.)

§95-150. Assurance of adequate funds to enforce Article.

The Commissioner shall submit to the General Assembly a budget and request for appropriations to adequately administer this Article which shall be sufficient to give satisfactory assurance that this State will devote adequate funds to the administration and enforcement of the standards herein provided and the proper administration of this Article as required by federal standards. (1973, c. 295, s. 25.)

§95-151. Discrimination.

No employer, employee, or any other person related to the administration of this Article shall be discriminated against in any work, procedure, or employment by reason of sex, race, ethnic origin, or by reason of religious affiliation. (1973, c. 295, s. 26.)

§95-152. Confidentiality of trade secrets.

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article which contains or which might reveal a trade secret shall be considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying out this Article or when it is relevant in any proceeding under this Article. In any such proceeding the Commissioner, the Board or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1973, c. 295, s. 27.)

§95-154. Authorization for similar safety and health federal-state programs.

Consistent with the requirements and conditions provided in this Article the State, upon the recommendation

of the Commissioner of Labor and approval of the Governor, may enter into agreements or arrangements with other federal agencies for the purpose of administering occupational safety and health measures for such employees and employers within the State of North Carolina as may be covered by such federal safety and health statutes. (1973, c. 295, s. 29.)

§95-155. Construction of Article and severability.

This Article shall receive a liberal construction to the end that the safety and health of the employees of the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1973, c. 295, s. 30.)

Other Sources of Information

Rothstein, M., *Occupational Safety and Health Law*, 2nd ed. (1983), West Publishing Company.

Employment Safety and Health Guide, Commerce Clearing House. The Guide and the related OSH decisions offer comprehensive information on all aspects of OSHA law.

North Carolina OSHA Standards for General Industry (29 CFR 1910), as well as *North Carolina OSHA Standards for the Construction Industry* (29 CFR 1926) and for agriculture, may be obtained from the OSH Bureau of Education, Training and Technical Assistance. (See inside back cover for address and telephone number.)

North Carolina Occupational Safety and Health Hazard Communication Standard (13 NCAC 7C.0101 (a)(105) is available in booklet form. It may be obtained from the OSH Bureau of Education, Training and Technical Assistance.

A copy of the *OSH Guide to Voluntary Training and Training Requirements in OSHA Standards* may be obtained by contacting the OSH Bureau of Education, Training and Technical Assistance.

Rules of Procedure: Safety and Health Review Board of North Carolina may be obtained by writing to the Safety and Health Review Board, 1101 Mail Service Center, Raleigh, NC 27699-1101. Telephone: (919)

733-3589. The *OSH Guide to Procedures of the Safety and Health Review Board of North Carolina* may be obtained from the OSH Bureau of Education, Training and Technical Assistance.

The *North Carolina Administrative Code (NCAC)* is sent to public libraries and may be obtained from local public libraries. The NCAC includes procedural rules and various regulations employed by the departments of state government. Title 13, Chapter 7 of the NCAC is where N.C. occupational safety and health standards are adopted and promulgated.

Occupational Injuries and Illnesses in North Carolina is published by the N.C. Department of Labor to report the results of the annual injury and illness survey. For more information or to order, contact the Research and Policy Division, N.C. Department of Labor, 1101 Mail Service Center, Raleigh, NC 27699-1101. Telephone: 1-800-NC-LABOR or (919) 733-2758.

North Carolina occupational safety and health decisions are rendered by the Safety and Health Review Board of North Carolina and by the state courts. The decisions result from contests following citation by OSH of alleged OSHA violations. These decisions are published in a series of volumes called *North Carolina Occupational Safety and Health Decisions*. For more information or to order, contact the OSH Bureau of Education, Training and Technical Assistance.

The following industry guides are available from the N.C. Department of Labor's Division of Occupational Safety and Health:

- #1. *A Guide to Safety in Confined Spaces*
- #2. *A Guide to Procedures of the Safety and Health Review Board of North Carolina* (downloadable PDF **ONLY**)
- #3. *A Guide to Machine Safeguarding*
- #4. *A Guide to OSHA in North Carolina*
- #5. *A Guide for Persons Employed in Cotton Dust Environments* (downloadable PDF **ONLY**)
- #6. *A Guide to Lead Exposure in the Construction Industry* (downloadable PDF **ONLY**)
- #7. *A Guide to Bloodborne Pathogens in the Workplace*
- #8. *A Guide to Voluntary Training and Training Requirements in OSHA Standards*
- #9. *A Guide to Ergonomics*
- #10. *A Guide to Farm Safety and Health* (downloadable PDF **ONLY**)
- #11. *A Guide to Radio Frequency Hazards With Electric Detonators* (downloadable PDF **ONLY**)
- #12. *A Guide to Forklift Operator Training*
- #13. *A Guide to the Safe Storage of Explosive Materials* (downloadable PDF **ONLY**)
- #14. *A Guide to the OSHA Excavations Standard*
- #15. *A Guide to Developing and Maintaining an Effective Hearing Conservation Program*
- #16. *A Guide to Construction Jobsite Safety and Health/Guía de Seguridad y Salud para el Trabajo de Construcción*
- #17. *A Guide to Asbestos for Industry*
- #18. *A Guide to Electrical Safety*
- #19. *A Guide to Occupational Exposure to Wood, Wood Dust and Combustible Dust Hazards*
- #20. *A Guide to Crane Safety*
- #21. *A Guide to School Safety and Health*
- #23. *A Guide to Working With Electricity*
- #25. *A Guide to Personal Protective Equipment*
- #26. *A Guide to Manual Materials Handling and Back Safety*
- #27. *A Guide to the Control of Hazardous Energy (Lockout/Tagout)*
- #28. *A Guide to Eye Wash and Safety Shower Facilities*
- #29. *A Guide to Safety and Health in Feed and Grain Mills*
- #30. *A Guide to Working With Corrosive Substances* (downloadable PDF **ONLY**)
- #31. *A Guide to Formaldehyde* (downloadable PDF **ONLY**)
- #32. *A Guide to Fall Prevention in Industry*
- #32s. *Guía de Protección Contra Caídas en la Industria* (Spanish version of #32)
- #33. *A Guide to Office Safety and Health* (downloadable PDF **ONLY**)
- #34. *A Guide to Safety and Health in the Poultry Industry* (downloadable PDF **ONLY**)
- #35. *A Guide to Preventing Heat Stress*
- #38. *A Guide to Safe Scaffolding*
- #40. *A Guide to Emergency Action Planning*
- #41. *A Guide to OSHA for Small Businesses in North Carolina*
- #41s. *Guía OSHA para Pequeños Negocios en Carolina del Norte* (Spanish version of #41)

Occupational Safety and Health (OSH)

Sources of Information

You may call 1-800-NC-LABOR (1-800-625-2267) to reach any division of the N.C. Department of Labor; or visit the NCDOL home page on the World Wide Web: <http://www.nclabor.com>.

N.C. Division of Occupational Safety and Health

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Local Telephone: (919) 807-2900 Fax: (919) 807-2856

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 3rd Floor)

For information concerning education, training and interpretations of occupational safety and health standards contact:

Bureau of Education, Training and Technical Assistance

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 807-2875 Fax: (919) 807-2876

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 4th Floor)

For information concerning occupational safety and health consultative services and safety awards programs contact:

Bureau of Consultative Services

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 807-2899 Fax: (919) 807-2902

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 3rd Floor)

For information concerning migrant housing inspections and other related activities contact:

Agricultural Safety and Health Bureau

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 807-2923 Fax: (919) 807-2924

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 2nd Floor)

For information concerning occupational safety and health compliance contact:

Safety and Health Compliance District Offices

Raleigh District Office (313 Chapanoke Road, Raleigh, NC 27603)

Telephone: (919) 779-8570 Fax: (919) 662-4709

Asheville District Office (204 Charlotte Highway, Suite B, Asheville, NC 28803-8681)

Telephone: (828) 299-8232 Fax: (828) 299-8266

Charlotte District Office (901 Blairhill Road, Suite 200, Charlotte, NC 28217-1578)

Telephone: (704) 665-4341 Fax: (704) 665-4342

Winston-Salem District Office (4964 University Parkway, Suite 202, Winston-Salem, NC 27106-2800)

Telephone: (336) 776-4420 Fax: (336) 776-4422

Wilmington District Office (1200 N. 23rd St., Suite 205, Wilmington, NC 28405-1824)

Telephone: (910) 251-2678 Fax: (910) 251-2654

To make an OSHA Complaint, **OSH Complaint Desk:** (919) 807-2796

For statistical information concerning program activities contact:

Planning, Statistics and Information Management

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 807-2950 Fax: (919) 807-2951

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 2nd Floor)

For information about books, periodicals, vertical files, videos, films, audio/slide sets and computer databases contact:

N.C. Department of Labor Library

Mailing Address:
1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 807-2848 Fax: (919) 807-2849

Physical Location:
111 Hillsborough St.
(Old Revenue Building, 5th Floor)

N.C. Department of Labor (Other than OSH)

1101 Mail Service Center
Raleigh, NC 27699-1101
Telephone: (919) 733-7166 Fax: (919) 733-6197