

CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 07A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0100 - PURPOSE: DEFINITIONS

13 NCAC 07A .0101 NAME: ADDRESS

The office of occupational safety and health is located in the Raleigh office of the North Carolina Department of Labor and is known as the OSH Division. The mailing address of the office is: Occupational Safety and Health Division, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

*History Note: Authority G.S. 95-133;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 1, 2020.*

13 NCAC 07A .0102 PURPOSE: RESPONSIBILITIES

In order to ensure the safety and health of employees throughout the state, the division administers the Occupational Safety and Health Act of North Carolina through a broad program of consultative services, education and training, and inspections.

*History Note: Authority G.S. 95-133;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0103 DEFINITIONS

(a) The following definitions shall apply throughout this Chapter:

- (1) Act. The Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) Division. The Occupational Safety and Health Division, or OSH, name used to denote the office of occupational safety and health;
- (3) Director. The Director of the Office of Occupational Safety and Health, Occupational Safety and Health Division, or OSH;
- (4) Days. Calendar days unless otherwise specified. In computing 20 calendar days the day of receipt of any notice shall not be included, but the last day of the 20 calendar days shall be included;
- (5) Working days. Days of the week from Monday through Friday, but shall not include Saturdays, Sundays or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, but the last day of the 15 working days shall be included;
- (6) Inspection. Any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed, any reinspection, follow-up inspection, accident investigation or other inspection conducted pursuant to G.S. 95-136 or 95-136.1.

(b) The definitions and interpretations contained in G.S. 95-127 of the Act shall be applicable to such terms when used in this Chapter.

*History Note: Authority G.S. 95-127; 95-136(g);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. August 2, 1993; July 1, 1988; September 20, 1976;*

*Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 1, 2020.*

SECTION .0200 - ORGANIZATION

13 NCAC 07A .0201	DIVISION: GENERAL
13 NCAC 07A .0202	STANDARDS AND INSPECTIONS SECTION
13 NCAC 07A .0203	EDUCATION AND TRAINING SECTION
13 NCAC 07A .0204	CONSULTATIVE SERVICES SECTION
13 NCAC 07A .0205	SAFETY AND HEALTH ENGINEERING SECTION
13 NCAC 07A .0206	ADVISORY COUNCIL
13 NCAC 07A .0207	REVIEW BOARD

*History Note: Authority G.S. 95-126; 95-133; 95-134; 95-136; 95-147;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. February 21, 1978;
Repealed Eff. July 1, 1988.*

SECTION .0300 - PROCEDURES

13 NCAC 07A .0301 INCORPORATION BY REFERENCE

(a) Subject to the exceptions provided in Paragraph (h) of this Rule, the provisions of Title 29 of the Code of Federal Regulations referenced below are incorporated by reference throughout this Chapter, including subsequent amendments and editions thereof. Copies of these standards are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Publishing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at <http://bookstore.gpo.gov>. The cost is sixty-seven dollars (\$67.00) for Title 29, Parts 1900-1910:

- (1) 29 CFR 1903 – Inspections, Citations, and Proposed Penalties;
- (2) 29 CFR 1904 – Recording and Reporting Occupational Injuries and Illnesses;
- (3) 29 CFR 1905.10(b) – Variances and Other Relief under Section 6(b)(6)(A);
- (4) 29 CFR 1905.11(b) – Variances and Other Relief under Section 6(b)(6)(A); and
- (5) 29 CFR 1908 – Consultation Agreements.

(b) The provisions of 29 CFR 1910 are incorporated by reference in accordance with 13 NCAC 07F .0101. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the North Carolina Department of Labor, via U.S. Mail at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, via telephone at (919) 707-7876, or via the internet at www.labor.nc.gov. The cost is thirty-seven dollars (\$37.00), plus postage and mailing costs.

(c) The provisions of 29 CFR 1915 are incorporated by reference in accordance with 13 NCAC 07F .0501. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Publishing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at <http://bookstore.gpo.gov>. The cost is thirty-five dollars (\$35.00) for Title 29, Parts 1911-1925.

(d) The provisions of 29 CFR 1917 are incorporated by reference in accordance with 13 NCAC 07F .0502. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Printing Publishing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at <http://bookstore.gpo.gov>. The cost is thirty-five dollars (\$35.00) for Title 29, Parts 1911-1925.

(e) The provisions of 29 CFR 1926 are incorporated by reference in accordance with 13 NCAC 07F .0201. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the North Carolina Department of Labor, via U.S. Mail at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, via telephone at (919) 707-7876, or via the internet at www.labor.nc.gov. The cost is thirty-two dollars (\$32.00), plus postage and mailing costs.

(f) The provisions of 29 CFR 1928 are incorporated by reference in accordance with 13 NCAC 07F .0301. Copies of this standard are available for public inspection at the North Carolina Department of Labor, or may be obtained from the U.S. Government Publishing Office, via U.S. Mail at 732 N. Capitol Street, N.W., Washington, DC 20401, via telephone at (866) 512-1800, or via the internet at <http://bookstore.gpo.gov>. The cost is sixty-eight dollars (\$68.00) for Title 29, Parts 1927-END.

(g) The following Safety Library Publications (hereinafter referenced as SLP) are incorporated by reference and include subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists. Copies of the following applicable SLP publications are available for inspection at the North Carolina Department of Labor or may be obtained from The Institute of Makers of Explosives, via U.S. Mail at 1120 Nineteenth Street N.W., Suite 310, Washington, D.C., 20036, via telephone at (202) 429-9280, or via the internet at www.ime.org.

- (1) SLP 17 - Safety in the Transportation, Storage, Handling & Use of Commercial Explosive Materials - (\$20.00).
- (2) SLP 20 – Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps) – (\$20.00).
- (3) SLP 22 – Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials – (\$20.00).

(h) The provisions of Title 29 of the Code of Federal Regulations referenced in Paragraph (a) of this Rule are subject to the following exceptions:

- (1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) All references to the Occupational Safety and Health Review Commission shall mean the North Carolina Occupational Safety and Health Review Commission as established in G.S. 95-135;
- (3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Occupational Safety and Health Division (or OSH Division);
- (4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;
- (5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Occupational Safety and Health Division (North Carolina Department of Labor) or his authorized representative;
- (6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;
- (7) All references to Compliance Officers shall mean State compliance safety and health officers;
- (8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;
- (9) Within 29 CFR 1903.14, "Citations; notices of de minimis violations," any reference to a notice of de minimis violations is deleted as North Carolina does not have a procedure for issuance of a notice with respect to de minimis violations that have no direct or immediate relationship to safety or health;
- (10) 29 CFR 1903.14a(c)(1) that requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) that refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;
- (11) 29 CFR 1903.22, "Definitions," is not incorporated;
- (12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local governments in North Carolina under the State Plan.

*History Note: Authority G.S. 95-133; 150B-21.6;
Eff. August 2, 1993;
Amended Eff. December 1, 2010; March 1, 2010; December 1, 2003; June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 1, 2020.*

13 NCAC 07A .0302 COPIES AVAILABLE

History Note: Authority G.S. 95-133; 150B-21.6;
Eff. August 2, 1993;
Amended Eff. July 1, 1998; June 1, 1994;
Codifier determined that agency's findings of need did not meet criteria for temporary rule on March 20, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. December 1, 2001; March 20, 2000;
Amended Eff. August 1, 2002;
Repealed Eff. December 1, 2010.

13 NCAC 07A .0303 DISCLOSURE

- (a) The Department shall disclose documents in investigative and other files in accordance with G.S. 132 and the exceptions set forth in G.S. 95-136. Specific guidelines for OSH division files are set forth in this Rule. The department shall disclose all documents to which the public is entitled under North Carolina's statutory provisions, while safeguarding the rights of complainants and witnesses required to be protected by law.
- (b) Prior to the issuance of a citation, the contents and copies of the case file, including any complaints, samples, photographs, testing results, trade secrets, and the narrative of the investigator's report, shall not be disclosed.
- (c) After a citation and notice of proposed penalty have been issued, the citation and notice are disclosable, upon request. Disclosure shall be issued by the director or his authorized representative. Prior to the contestment deadline, no other file contents shall be disclosable.
- (d) If an employer or employee files a notice of contest respecting a citation, the case file (except for the citation and proposed penalty) shall not be disclosable until a final order is issued and the dates for all further appeals have expired. The disclosure of documents in proceedings before the Safety and Health Review Board shall take place in accordance with the rules of evidence of the Safety and Health Review Board.
- (e) Case files shall be disclosed, upon written request, in the following situations:
 - (1) if a determination is made that no citation will be issued and that no court action will be initiated, unless further inspection is contemplated, in which case the file shall not be disclosed until a final decision is made not to issue a citation; or
 - (2) if no notice of contest is filed within the statutory period, or if a notice of contest is filed but a settlement is reached, the notice is withdrawn, or the case is otherwise closed; or
 - (3) if a notice of contest is filed and the statutory requirements of G.S. 95-136(el) have been met.
- (f) The following information contained in a releasable case file shall not be released at any time:
 - (1) Trade secrets;
 - (2) Personnel or medical files unless permission is granted for release by the employee;
 - (3) Complainant and witness names or statements unless permission is granted for release by the complainant or witness, pursuant to the statutory requirements of G.S. 95-136(el); and
 - (4) Interagency or intra-agency documents otherwise protected by law
- (g) Documents that are matters of public record may be disclosed at any time; for example, pleadings and briefs filed with the Safety and Health Review Board or the courts.

History Note: Authority G.S. 95-129; 95-136(el); 95-136(g);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Recodified from 13 NCAC 7B .1001 Eff. August 2, 1993;
Amended Eff. February 1, 2004; August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0401 CAROLINA STAR PROGRAM

History Note: Authority G.S. 95-133;
Eff. August 2, 1993;
Repealed Eff. April 1, 2001.

SECTION .0500 - STATE ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Editor's Note: 13 NCAC 7A .0501 - .0513 was recodified from 13 NCAC 7B .0701 - .0713 Eff. August 2, 1993.

13 NCAC 07A .0501 PURPOSE AND SCOPE

- (a) G.S. 95-134 of the Occupational Safety and Health Act of North Carolina established a State Advisory Council on Occupational Safety and Health (hereinafter referred to as the council), to advise, consult with, and make recommendations to the Commissioner of Labor on matters relating to the administration of the act.
- (b) This Section sets forth the procedures used by the council in fulfilling its responsibilities.

*History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0502 MEMBERSHIP

The council is a continuing advisory board of 11 members. Three members will represent management, three members will represent organized labor, five members will represent the public sector, one member of which will have a knowledge of migrant labor. All members will be knowledgeable of occupational safety and occupational health professions. All the members will be appointed by the Commissioner of Labor, who will designate one of the public sector members as chairman. The commissioner should appoint members to the advisory council that represent both large and small industries, different labor unions, and various areas of the public sector.

*History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. February 21, 1978;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0503 TERMS OF MEMBERSHIP

Each member of the council shall serve a term of four years. Members may serve more than one term and such terms may be consecutive. The terms of the members shall be staggered. In the case of the members representing the private sector, two members will serve parallel terms. The chairman of the council shall be appointed for a term of two years and may be reappointed. Each member of the council shall serve his full term unless he resigns or becomes unable to serve in the judgment of the Commissioner of Labor because of disability or because he ceases to be qualified to serve on the council because he is found by the Commissioner of Labor no longer to meet the representational requirements of the act. In such cases the Commissioner of Labor may appoint for the remainder of the unexpired term a new member who meets the same representational requirements, and is designated in the manner of his predecessor.

*History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0504 MEETINGS

The council shall hold no fewer than two meetings during each calendar year and, it is contemplated that no more than 12 meetings a year will be held. At least one meeting each year will be held in the eastern area and one in the western area of the state. No meeting shall be held except at the call, or with the advance approval, of the Commissioner of Labor, or his duly authorized representative. An agenda shall be approved in advance by the person calling or approving the meeting, in consultation with the chairman or his delegate. No particular form for the agenda is prescribed. Members of the council may propose items for the agenda to the chairman.

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0505 ADVICE AND RECOMMENDATIONS
13 NCAC 07A .0506 QUORUM

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Repealed Eff. July 1, 1988.

13 NCAC 07A .0507 NOTICE OF MEETINGS

Public notice of any meetings of the council shall be given by the person calling the meetings in accordance with Rule .0501 of this Section or at his direction at least 14 days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given. Such notice shall be given by press releases in the major newspapers across the state and in newspapers in the area where the meeting is held.

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0508 CONTENTS OF NOTICE

(a) Notices of meetings shall describe fully or summarize adequately the agenda.
(b) The notice shall announce that the meeting is open to the public.
(c) The notice shall indicate that interested persons have an opportunity to file statements in written form with the council. The notice shall specify when the statements are to be filed with the council.
(d) In the discretion of the chairman of the meeting, oral statements may be made before the council by interested persons, according to the following guidelines, after taking into consideration, the number of persons in attendance, the nature and extent of their proposed individual participation, and the time, resources, and facilities available to the council:

- (1) Any citizen who has something of interest for presentation to the council shall be permitted to present this matter before the council at a regular council meeting.
- (2) Any items for consideration by the council shall be submitted to the council in writing at least seven days prior to a regularly scheduled meeting requesting time before the council and a brief outline of the subject matter to be presented for the council's consideration. A suggested time limit of 15 minutes shall be set by the council but the council shall have the right to allow extensions of time as required. All technical matters should be accompanied with supplementary documents at the time of formal presentation for the council members information and guidance. The seven days advance notice assumes that a public notice of the council meeting will be made at least 14 days prior to the council meeting.
- (3) Equal time shall be provided for rebuttal to any proposed matter before the council when requested in the same procedure as indicated in (2) of this Subsection for the original presentations. The rebuttal can of course be presented at the next regular meeting of the council after the original presentation is submitted.
- (4) The chairman of the advisory council shall reply to any request for action giving the results of the council's decision whether positive or negative and the chairman shall also keep petitioners advised of the status on an interim basis if the decision extends over a reasonable period of time.
- (5) At the end of any regular council meeting, time permitting, general comments from members of the public in attendance will be welcome with time limits being set at the chairman's discretion.

- (6) A public proposal is defined as one received from an individual who is not an employee of the North Carolina Department of Labor or an active member of the advisory council.
- (7) These policies and procedures may be amended by a majority vote of the membership of the council.

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0509 ASSISTANCE TO THE COUNCIL
13 NCAC 07A .0510 MINUTES: TRANSCRIPT
13 NCAC 07A .0511 SUBCOMMITTEES AND SUBGROUPS

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Repealed Eff. July 1, 1988.

13 NCAC 07A .0512 PETITIONS FOR CHANGES IN THE RULES: COMPLAINTS

- (a) Any interested person shall have the right to petition for the issuance, amendment or repeal of rules published in part. Any such petition will be considered in a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition. Except in affirming a prior denial or when the denial is self-explanatory the notice shall be accompanied by a brief statement of the reasons therefor.
- (b) Any advisory council member or any other aggrieved person may file a written complaint with the Commissioner of Labor alleging noncompliance with the rules in this part. Any complaint must be timely filed, but in no case shall any complaint be filed later than 90 days following the day on which the act of alleged noncompliance occurred. Any complaint shall be acted upon promptly and a written notice of the disposition of the complaint shall be provided to the complainant.
- (c) Complaints and petitions should make reference to this Rule and be filed and addressed as follows: Commissioner of Labor, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

History Note: Authority G.S. 95-134;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 1, 2020.

13 NCAC 07A .0513 ADVICE OF THE ADVISORY COUNCIL

- (a) The commissioner may request the recommendation of the advisory council appointed under G.S. 95-134 of the act regarding adoption, promulgation, modification or revocation of standards. In such event the commissioner shall submit to the council all pertinent factual information available to him including the results of research, demonstrations, and experiments.
- (b) The advisory council shall submit to the commissioner its recommendations within 90 days from the date of commencement of its assigned tasks or within such longer or shorter period otherwise prescribed by the commissioner. If the council believes that it cannot submit its recommendations within the applicable period, its chairman may make a written request for an extension of time to the commissioner before the expiration of the period. The commissioner may grant such a request, provided that the period of extension or extensions together with the original period for the submission of the recommendations is not longer than 270 days from the date the advisory council commenced its assigned tasks.

History Note: Authority G.S. 95-134;

Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0600 - SAFETY AND HEALTH PROGRAMS AND COMMITTEES

13 NCAC 07A .0601 PURPOSE AND SCOPE

- (a) This Section sets forth rules of procedure for implementation of G.S. 95, Article 22 which is entitled "Safety and Health Programs and Committees."
- (b) The purpose of this Section is to establish programs which will promote safety and health for all North Carolina employers with a workers' compensation experience rate modifier of 1.5 or above. Employee Safety and Health Committees will be established by all North Carolina employers having 11 or more employees and an experience rate modifier of 1.5 or above.
- (c) For the purposes of Rules .0603 and .0606 of this Section, compliance with the safety and health program and the safety and health training requirements of the Mine Safety and Health Administration of the United States Department of Labor shall be deemed sufficient for compliance with Rules .0603 and .0606 of this Section for those operations subject to the federal Mine Safety and Health Act (Public Law 91-173 as amended by Public Law 95-164).

History Note: Authority G.S. 95-251; 95-252; 95-254;
Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0602 DEFINITIONS

- (a) "Fixed location worksite" means any worksite to which an employee regularly reports for at least a consecutive three month period.
- (b) "Near-miss" means any accident or incident at a worksite that does not result in injury, but the potential for serious physical harm exists.
- (c) "FMSHA" means the Federal Mine Safety and Health Act of 1977 [Public Law 95-164].
- (d) "MSHANC" means the Mine Safety and Health Act of North Carolina as contained in North Carolina General Statute 74-24.1 et seq.
- (e) "Mine Safety Laws" means MSHANC and FMSHA and the rules and standards adopted pursuant thereof.
- (f) "OSHANC" means the Occupational Safety and Health Act of North Carolina as contained in North Carolina General Statute 95-126 et seq.
- (g) "Regular location worksite" means a single region or geographic area where employees perform work for one employer.
- (h) "Mobile work crews" means a group of employees of one specific trade (i.e. carpenters, electricians, roofers) who report to various, non-fixed worksites within one geographic area.
- (i) "Multi-employer worksite" means any worksite at which more than one employer has employees reporting to work.

History Note: Authority G.S. 95-251;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0603 SAFETY AND HEALTH PROGRAMS

- (a) All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall meet or exceed the requirements of G.S. 95-251(b)(1)-(9).
- (b) The written program shall also include:
- (1) The manner in which managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and

- maintained including specifically what the leadership role of the top employer official at the worksite shall be in regard to the program.
- (2) The manner in which the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls.
 - (3) The manner in which safe work practices and rules will be enforced.
 - (4) The manner in which workplace accidents will be investigated and corrective action implemented. The employer shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.
 - (5) The manner in which near-miss incidents will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The employer shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.
 - (6) The methods used to identify, analyze and control new or existing hazards, conditions and operations, and the manner in which changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.
 - (7) Written compliance plans as required by either the Mine Safety laws or OSHA standards, whichever is applicable to the employer. Written compliance plans shall include, the following OSHA standards, when applicable: Excavations, Hazard Communication, Occupational Noise Exposure, Control of Hazardous Energy Sources (Lockout/Tagout), Respiratory Protection, Process Safety Management of Highly Hazardous Chemicals, Bloodborne Pathogens, Life Safety Code, Cotton Dust, and Confined Spaces.
 - (8) A written checklist of all potential hazards to be inspected during the quarterly inspections required pursuant to G.S. 95-252(c)(4)d, if applicable, including, but not limited to, checking for properly marked doors (including exit doors and doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there are no material safety data sheets; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery. Each item on the aforementioned written checklist shall be checked during the quarterly inspections and a copy of the list shall be retained by the employer for not less than two years. All conditions or items deemed to be out of compliance shall be immediately abated, unless circumstances beyond the control of the employer requires a longer period of time.
 - (9) The employer shall conduct an annual self-audit of all required safety and health programs. Written findings and a statement of remedial actions taken shall be retained for not less than two years. Companies with less than 11 employees that are not required to have safety and health committees shall appoint a company safety officer to conduct the annual self-audit.
 - (10) The purpose and operation of the Safety and Health Committee where such committee exists.
 - (11) The methods used to communicate requirements of the program to other employers or subcontractors and their employees who may be present at the same site.

*History Note: Authority G.S. 95-251;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0604 SELECTION OF SAFETY COMMITTEES

(a) An employer may elect to implement any one of the following selection processes as a means of meeting the requirements for selection of representatives to employee Safety and Health committees pursuant to G.S. 95-252(d). The employer shall retain written documentation outlining any utilized selection process. An employer whose employees are represented by a collective bargaining representative must utilize either subsection 8, 9, or 10 for committee selection purposes. Any non-management employees who choose not to participate in the collective bargaining process are still considered to be represented by the collective bargaining representative for purposes of this Rule for committee selection purposes.

- (1) The employer may devise and implement any means of employee selection so long as:
 - (A) the employee representatives are selected "by and from among the employer's non-management employees" as specified in the statute,

- (B) minimum numbers are met, and
 - (C) the intent of the statute is satisfied.
- (2) The employer may require that all non-management employees serve on a Safety and Health Committee. In the instance of a small employer, there may be one committee comprised of all non-management employees which serves the entire organization. In a larger organization, there may be several committees, each addressing one or more of the responsibilities of the safety committee as outlined in G.S. 95-252, with employees divided among the committees.
 - (3) The employer may conduct an election at either a meeting or through the distribution of ballots. The election process shall provide for the nomination by non-management employees (including self-nominations) of non-management employees in the numbers specified by the employer, but shall not be less than one nor more than the number of non-management members specified by statute. The number of non-management employees specified by statute receiving the most nominations shall serve on the Safety and Health Committee.
 - (4) The employer may conduct an employee meeting at which open nominations are held and secret ballots are used to elect employee representatives. The meeting may be for all non-management employees or by working unit.
 - (5) The employer may conduct an employee meeting at which non-management employees nominate one peer by listing that employee's name on a ballot. The ballots shall be tallied and the appropriate number of representatives, in the numbers required by statute, shall be determined by those employees named on the most ballots.
 - (6) The employer may solicit nominations from all non-management employees for employee representatives to serve on the committee, then select representatives by lottery from among those nominated to obtain the statutorily appropriate number of employee representatives for the safety and health committee.
 - (7) The employer may solicit volunteers and nominations from among the non-management employees for a pool of applicants to serve as employee representatives on the safety committee. (If no volunteers or nominations are received, the employer shall require that nominations be submitted from a cross section of employee work units within the establishment.) The members of the applicant pool shall select from among its ranks the initial employee representatives necessary to meet minimum numbers as specified in the statute.
 - (8) Employees shall be selected to serve on a safety and health committee(s) in accordance with any contract that exists between a collective bargaining unit and the employer. Should the contract not otherwise specify selection of a safety and health committee, non-management members shall be selected in a manner approved by the certified collective bargaining agent.
 - (9) Employers having more than one collective bargaining unit shall devise and implement a means of employee selection utilizing the provisions of the existing contracts or methods approved by the certified collective bargaining agents. Safety committee members shall be selected in proportionate numbers to the number of employees represented by the certified collective bargaining agents.
 - (10) Employers having some non-management employees represented by a collective bargaining agent or agents and some not represented shall devise a means that utilizes language in the contract or methods approved by the certified collective bargaining agent(s) for selection of bargaining unit representatives, and one or more of the above means for selecting non-management employee members not represented by the bargaining agent(s). Safety committee members shall be selected in proportion to the number of employees represented by the certified collective bargaining agent(s) and the number of employees not represented.
- (b) However initial members of the committee are selected, replacement members may be chosen in accordance with one of the procedures in this Rule, or the committee may continue with the same members.
- (c) Non-management employee representatives shall serve a term of at least one year, and shall not be allowed to succeed themselves in the same position more than once. Terms may be staggered. However, employers with less than 25 employees may allow non-management employee representatives to serve two successive terms.
- (d) It shall not be a violation of any part of the statute if an employer has a safety and health program utilizing some other form of employee involvement which has been in operation for more than one year prior to July 15, 1993, and which is submitted for approval and subsequently approved by the Commissioner or his authorized representative, for that program to be used to satisfy the requirements of Section .0600.

*History Note: Authority G.S. 95-252;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0605 SAFETY & HEALTH COMMITTEE REQUIREMENTS

(a) Multi-Site Employers:

- (1) Employers with 11 or more employees who do not report to a fixed or regular location worksite are required to have a Safety and Health Committee to represent those employees. The employer must have a separate Safety and Health Committee for each mobile work crew consisting of 11 or more employees.
- (2) Employers with employees who report to a fixed or regular location worksite must have a separate safety and health committee for each location with 11 or more employees.

(b) Multi-Employer Worksites:

- (1) At multi-employer fixed or regular location worksites, any employer required to establish a Safety and Health Committee pursuant to G.S. 95-252 shall notify the general contractor or equivalent of the requirements of this legislation and of the chairpersons of their committee.
- (2) The general contractor or equivalent shall designate a representative to attend the Safety and Health Committee meetings of the notifying employer(s).
- (3) The notifying employer shall work with the general contractor or equivalent to distribute information as required by G.S. 95-251(b)(9).

*History Note: Authority G.S. 95-252;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0606 TRAINING AND EDUCATION

(a) All safety and health committee members shall receive training and education based on the type of business activity in which the employer is involved and the scope of the committee's duties. At a minimum, employers shall provide training regarding the following:

- (1) Hazard identification in the workplace.
- (2) Principles regarding effective accident and incident investigations.
- (3) Employee and employer rights and responsibilities under the Safety and Health Programs and Committees Act (G.S. 95-250 et al.) and the Mine Safety laws or OSHANC.
- (4) Recordkeeping requirements of the North Carolina Workers' Compensation Act (G.S. 97-1 et seq.) and the Mine Safety laws or OSHANC.
- (5) The most common causes of on-the-job accidents.
- (6) The most frequently cited violations of either the Mine Safety laws or OSHANC.

(b) There shall also be established for employees whether or not a safety and health committee is required:

- (1) A system for training and education of all employees in occupational safety and health hazards at the worksite. The system shall contain specific requirements that new employees not be allowed to begin work, except when participating in carefully supervised on-the-job training, until thoroughly trained in the safe use of all applicable equipment and substances, and procedures relating to their workplace environment.
- (2) A system of training and education for any existing employee given a new work assignment.
- (3) A system of training and education for all affected employees when a new substance, process, procedure or piece of equipment is introduced into the workplace and presents a new hazard to safety or health.
- (4) A system of training and education for all affected employees when any new personal protective equipment or different work practice is used on existing hazards.
- (5) Training to comply with all applicable OSHA employee training requirements, including, but not limited within General Industry to Means of Egress; Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms; Occupational Health and Environmental Control; Hazardous Materials;

Personal Protective Equipment; General Environmental Controls; Medical and First Aid; Fire Protection; Materials Handling and Storage; Machinery and Machine Guarding; Welding, Cutting and Brazing; Special Industries; Electrical; Commercial Diving Operations; Toxic and Hazardous Substances, and Occupational Exposure to Hazardous Chemicals in Laboratories; including, but not limited within the Construction Industry to General Safety and Health Provisions; Occupational Health and Environmental Controls; Personal Protective and Life Saving Equipment; Fire Protection and Prevention; Signs, Signals, and Barricades; Tools - Hand and Power; Welding and Cutting; Electrical; Ladders and Scaffolding; Cranes, Derricks, Hoists, Elevators and Conveyors; Motor Vehicles, Mechanized Equipment, and Marine Operations; Excavations; Concrete and Masonry Construction; Underground Construction, Caissons, Cofferdams and Compressed Air; Demolitions; Blasting and Use of Explosives; Power Transmission Distribution; Stairways and Ladders; including, but not limited within Agriculture to Roll-Over Protective Structures, and Safety for Agricultural Equipment; and including, but not limited to the Process Safety Management Standard, the Confined Spaces Standard, Hazard Communication Standard, and the Bloodborne Pathogens Standard.

(c) The required safety and health training shall be provided by someone trained to recognize, evaluate and control safety and health hazards. The training may be provided on-site or off-site.

*History Note: Authority G.S. 95-254;
Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0607 REPORTS

The report forms required from employers within 60 days of notification by the Commissioner of Labor of inclusion in the program shall include the following information:

- (1) Name of the employer.
- (2) Address of employer.
- (3) Telephone number of employer.
- (4) Number of employees.
- (5) SIC Code.
- (6) Unemployment Insurance ID number of the employer.
- (7) Description of the manufacturing or work processes at this location.
- (8) Name and address of any authorized collective bargaining agent.
- (9) Date and Certification of compliance with G.S. 95-251 and, if applicable, G.S. 95-252.
- (10) A timetable for delivery of training to employees and committee members. In no case shall the timetable for delivery of training exceed an additional 90 days beyond notification to the Commissioner of Labor of compliance with these Rules.

*History Note: Authority G.S. 95-255;
Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

SECTION .0700 - RULES OF PRACTICE FOR VARIANCES: LIMITATIONS: VARIATIONS: TOLERANCES AND EXEMPTIONS

Editor's Note: 13 NCAC 7A .0701 - .0718 were recodified from 13 NCAC 7B .0401 - .0418 Eff. August 2, 1993.

13 NCAC 07A .0701 PURPOSE AND SCOPE

(a) This Section contains rules of practice for administrative proceedings to grant variances and other relief under section 95-132, Occupational Safety and Health Act of North Carolina as contained in Article 16, of Chapter 95 of the North Carolina General Statutes.

(b) These rules shall be construed to secure a prompt and just conclusion of proceedings subject thereto.

History Note: Authority G.S. 95-132;

Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0702 DEFINITIONS

As used in this Section, unless the context clearly requires otherwise:

- (1) "Act" means the Occupational Safety and Health Act of North Carolina.
- (2) "Commissioner" means the Commissioner of Labor of North Carolina.
- (3) "Director" means the Director of the Office of Occupational Safety and Health of North Carolina.
- (4) "Employer" means a person engaged in a business who has employees, including state or political subdivision of a state, but does not include domestic workers employed in the place of residence of his or her employer.
- (5) "Party" means a person authorized to participate in a hearing conducted in accordance with Rule .0712 to .0719 of this Section. An applicant for relief and any affected employee shall be entitled to be named parties. The Department of Labor, represented by the Office of the Attorney General shall be deemed to be a party without the necessity of being named.
- (6) "Affected employee" means an employee who would be affected by the grant or denial of a variance or any one of his authorized representatives, such as his collective bargaining agent.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0703 PETITIONS FOR AMENDMENTS TO THIS PART

Any person may at any time petition the Commissioner in writing to revise, amend, revoke, or suspend any provisions of this part. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefore and the effects thereof.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0704 AMENDMENTS TO THIS PART

The Commissioner may at any time revise, amend, revoke, or suspend in the interests of justice, any provisions of this part, on his own motion or upon the written petition of any person.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0705 EFFECT OF VARIANCES

All variances granted pursuant to this part shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or related issue concerning a proposed penalty or period of abatement is pending before the Occupational Safety and Health Review Board or appropriate state review authority until the completion of such proceeding.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. June 8, 1977;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0706 FORM OF DOCUMENTS: SUBSCRIPTION: COPIES

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings under this part. However, any applications and other papers shall be clearly legible. An original and the copies of any application or other papers shall be clearly legible. An original and two copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies, or printed or processed copies are acceptable copies.

(b) Each application or other paper which is filed in proceedings under this part shall be subscribed to by the person filing the same or by his attorney or other authorized representative.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0707 VARIANCES AND OTHER RELIEF UNDER SECTION 95-132(A)

(a) Application for a Temporary Variance. Any employer, or class of employers, desiring a temporary variance from a standard, or portion thereof, authorized by section 95-132 of the Act may file a written application containing the information specified in 29 CFR 1905.10(b) with the Commissioner of the North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

(b) Interim Order.

- (1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of facts and arguments as to why the order should be granted. The Commissioner may rule ex parte upon the application.
- (2) Notice of Denial of Application. If an application filed pursuant to Subparagraph (1) of this Paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include or be accompanied by, a brief statement of the grounds therefore.
- (3) Notice of the Grant of an Interim Order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

History Note: Authority G.S. 95-132; 95-136;
Eff. February 1, 1976;
Amended Eff. June 8, 1977; September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. May 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016;
Amended Eff. January 1, 2020.

13 NCAC 07A .0708 VARIANCES AND OTHER RELIEF UNDER SECTION 95-132(B)

Application for a Permanent Variance. Any employer, or class of employers, desiring a permanent variance authorized by G.S. 95-132(b) of the Act may file a written application with the Commissioner of the Department of Labor containing the information specified in 29 CFR 1905.11(b), which is incorporated by reference and shall automatically include any subsequent amendments thereto.

History Note: Authority G.S. 95-132; 95-136;

Eff. February 1, 1976;
Amended Eff. June 8, 1977; September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 1998; May 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0709 MODIFICATION: REVOCATION: AND RENEWAL OF RULES OR ORDERS

(a) Modification or Revocation

- (1) An affected employer or an affected employee may apply in writing to the Commissioner for a modification or revocation of a rule or order issued under section 95-132(a) or 95-132(b) of the Act. The application shall contain:
 - (A) the name and address of the applicant;
 - (B) a description of the relief which is sought;
 - (C) a statement setting forth with particularity the grounds for relief;
 - (D) if the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
 - (i) giving a copy thereof to their authorized representative;
 - (ii) posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
 - (iii) other appropriate means such as by first class mail, company newsletter or enclosed in employee pay envelopes.
 - (E) if the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
 - (F) any request for a hearing, as provided in Rule .0711 of this Section.
 - (2) The Commissioner may on his own motion proceed to modify or revoke a rule or order issued under section 95-132(a) or 95-132(b) of the Act. In such event, the Commissioner shall cause to be published a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take other action as may be appropriate to give actual notice to affected employees. The notice of hearing shall be published in the North Carolina Register. Any request for a hearing shall include a short and plain statement of:
 - (A) how the proposed modification or revocation would affect the requesting party, and
 - (B) what the requesting party would seek to show on the subjects or issues involved.
- (b) **Renewal.** Any final rule or order issued under section G.S. 95-132(a) or G.S. 95-132(b) of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

History Note: Authority G.S. 95-132; 95-136;
Eff. February 1, 1976;
Amended Eff. June 8, 1977; September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. May 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0710 ACTION ON APPLICATIONS

(a) Defective Applications

- (1) If an application filed pursuant to Rule .0707, or .0708, or .0709 of this Section does not conform to the applicable rule, the Commissioner may deny the application.
- (2) Prompt notice of the denial of an application shall be given to the applicant.
- (3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
- (4) A denial of an application pursuant to this Paragraph shall be without prejudice to the filing of another application.

(b) Adequate Applications

- (1) If an application has not been denied pursuant to Paragraph (a) of this Rule the Commissioner shall publish in the North Carolina Register a notice of the filing of the application and require posting of such notice by the applicant in a conspicuous place or places where notices to employees are customarily posted. Verification of the posting of this notice shall be provided to the Commissioner.
- (2) A notice of the filing of an application shall include:
 - (A) the terms, or an accurate summary, of the application;
 - (B) a reference to the section of the Act under which the application has been filed;
 - (C) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
 - (D) information to affected employers and employees of any right to request a hearing on the application.

*History Note: Authority G.S. 95-132; 95-136;
Eff. February 1, 1976;
Amended Eff. June 8, 1977; September 20, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. May 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0711 REQUESTS FOR HEARINGS ON APPLICATIONS

(a) Request for Hearing. Within the time allowed by a notice of the filing of an application, any affected employer or employee may file with the Commissioner, in quadruplicate, a request for a hearing on the application.

(b) Contents of a Request for a Hearing. A request for a hearing pursuant to Paragraph (a) of this Rule shall include:

- (1) a concise statement of facts showing how the employer or employee would be affected by the relief applied for;
- (2) a specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (3) any views or arguments on any issue of fact or law presented.

*History Note: Authority G.S. 95-132; 95-136;
Eff. February 1, 1976;
Amended Eff. June 8, 1977;
Readopted Eff. September 30, 1977;
Amended Eff. May 1, 1994;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0712 NOTICE OF HEARING

(a) Service. Upon request for a hearing as provided in this part, or upon his own initiative, the Commissioner shall serve, or cause to be served, a reasonable notice of hearing.

(b) Contents. A notice of hearing served under Paragraph (a) of this Rule shall include:

- (1) the time, place and nature of the hearing;
- (2) the legal authority under which the hearing is to be held;
- (3) a specification of issues of fact and law; and
- (4) a designation of a hearing officer appointed to preside over the hearing.

(c) Notification. A notice of hearing issued pursuant to Paragraph (a) of this Rule shall be served on the party applying for the limitation, variation, tolerance or exemption. Notice of the hearing shall be served on the employees by posting such notice in each establishment in a conspicuous place where notices to employees are customarily posted. This notice shall remain posted for a period of not less than five days prior to the date of the hearing. Verification of the posting of this notice shall be provided to the Commissioner.

History Note: Authority G.S. 95-132;

Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0713 MANNER OF SERVICE

Service of any document upon any party may be made by personal delivery, or by mailing a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0714 HEARING OFFICERS: POWERS AND DUTIES

(a) Powers. A hearing officer designated by the Commissioner to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

- (1) to administer oaths and affirmations;
- (2) to rule upon offers of proof and receive relevant evidence;
- (3) to provide for discovery and to determine its scope;
- (4) to regulate the course of the hearing and the conduct of the parties and their counsel therein;
- (5) to consider and rule upon procedural requests;
- (6) to hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) to make, or to cause to be made, an inspection of the employment or place of employment involved;
- (8) to make decisions in accordance with the Act, and this part; and
- (9) to take any other appropriate action authorized by the Act, this part or the Commissioner.

(b) Private Consultation. Except to the extent required for the disposition of ex parte matters, a hearing officer may not consult a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) Disqualification

- (1) When a hearing officer deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Commissioner of Labor.
- (2) Any party who deems a hearing officer for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Commissioner of the Department of Labor a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualifications. The Commissioner shall rule upon the motion.

(d) Contumacious Conduct; Failure or Refusal to Appear or Obey the Rulings of a Presiding Hearing Officer

- (1) Contumacious conduct at any hearing before the hearing officer shall be grounds for exclusion from the hearing.
- (2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing officer may make such orders with regard to the refusal as are just and appropriate including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) Referral to North Carolina Rules of Civil Procedure. On any procedural question not regulated by this part of the Act, a hearing officer shall be guided to the extent practicable by any pertinent provisions of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0715 PREHEARING CONFERENCES

(a) Convening a Conference. Upon his own motion or the motion of a party, the hearing officer may direct the parties or their counsel to meet with him for a conference to consider:

- (1) simplification of the issues;
- (2) necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
- (3) stipulations, admissions of fact, and of contents and authenticity of documents;
- (4) limitation of the number of parties and of expert witnesses; and
- (5) such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) Record of Conference. The director shall make an order which recites the action taken at the conference, the amendments allowed to any document which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

*History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0716 HEARINGS

(a) Order of Proceeding. Except as may be ordered otherwise by the presiding hearing officer, the party applying for a variance shall proceed first at a hearing.

(b) Burden of Proof. The party applicant shall have the burden of proof.

(c) Evidence

- (1) Admissibility. A party shall be entitled to present his case or defense by oral or documentary evidence to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but a presiding hearing officer shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
- (2) Testimony of Witnesses. The testimony of a witness shall be upon oath or affirmation administered by the presiding hearing officer.
- (3) Objections. If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross examination, or to the failure to limit such, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the presiding hearing officer may be relied upon subsequently in a proceeding.
- (4) Exceptions. Formal exception to an adverse ruling is not required.

(d) Official Notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice or concerning which the Department of Labor by reason of its functions is presumed to be expert: provided, that the parties shall be given adequate notice, at the hearing or by reference in the presiding hearing officer's decision, of the matters so noticed, and shall be given adequate opportunity to show the contrary.

(e) Transcript. Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement with the reporter.

*History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;*

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0717 DECISIONS

(a) Proposed Findings of Fact, Conclusions, and Rules or Orders. Within 10 days after receipt of notice that the transcript of the testimony has been filed, or such additional time as the presiding hearing officer may allow, each party may file with the hearing officer proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rules or order and supporting briefs, the hearing officer shall transmit his recommendations to the Commissioner.

(c) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, rule or order, and the hearing officer's recommendations, the Commissioner shall make and serve upon each party his decision, which shall become final upon the 20th day after service thereof, unless exceptions are filed thereto, as provided in .0718 of this Section. The decision of the Commissioner shall include:

- (1) a statement of findings and conclusions, with reasons and basis therefore, upon each material issue of fact, law, or discretion presented on the record; and
- (2) the appropriate rule, order, relief, or denial thereof; The recommendations of the hearing officer shall be based upon a consideration of the whole record and shall state all facts officially noticed and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

*History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0718 EXCEPTIONS

Within 20 days after service of a decision of the Commissioner, any party may file written exceptions thereto with supporting reasons. Such exceptions shall refer to the specific findings of fact, conclusions of law, or terms of the rule or order excepted to, the specific pages of transcript relevant to the suggestions, and shall suggest corrected findings of fact, conclusions of law, or terms of the rule or order. Upon receipt of any exceptions, the Commissioner shall fix a time for filing any objections to the exceptions and any supporting reasons.

*History Note: Authority G.S. 95-132;
Eff. February 1, 1976;
Amended Eff. September 20, 1976;
Readopted Eff. September 30, 1977;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

SECTION .0800 - INFORMAL CONFERENCE PROCEDURES

13 NCAC 07A .0801 PURPOSE

This Section sets forth the rules of procedure for implementation of G.S. 95-137(b)(1) regarding an employer's request for an informal conference following the issuance of a citation to that employer.

*History Note: Authority G.S. 95-133; 95-137;
Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0802 TIME LIMITATIONS

- (a) An employer has 15 working days from receipt of a citation to notify the Director in writing that the employer wishes to either contest under the provisions of G.S. 95-137(b)(1) or request an informal conference.
- (b) The Director shall attempt to schedule the informal conference within the 15 working day contestment period. However, if the receipt of the request for an informal conference does not allow for the scheduling of the informal conference within the 15 working day contestment period, an additional 5 working days may be allowed in which to hold the informal conference.
- (c) No more than 20 working days from the date of the employer's receipt of the citation shall be allowed in which to conduct an informal conference and notify the employer of the results.
- (d) If an employee contests a specific abatement date with the Occupational Safety and Health Review Board pursuant to G.S. 95-130(11), no pre-contestment informal conference may be held regarding that specific abatement date.

History Note: Authority G.S. 95-133; 95-137;
Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0803 PARTIES TO INFORMAL CONFERENCE

In addition to any employer representatives and any OSHA personnel, employees represented by a bargaining agent shall be notified of the informal conference and invited to attend. Employees not represented by a bargaining agent shall be notified through the posting of a notice of the informal conference, and representatives of such employees may be allowed to attend the conference at the discretion of the Director.

History Note: Authority G.S. 95-133; 95-137;
Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0804 RESULTS OF INFORMAL CONFERENCE

- (a) The results of an informal conference shall be a revised citation, a notice of no change or a settlement agreement.
- (b) Any settlement agreement reached pursuant to the informal conference must specify that the employer agrees not to contest the citation or agreed upon penalty.

History Note: Authority G.S. 95-133; 95-137;
Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

SECTION .0900 – ACCESS TO EMPLOYEE MEDICAL RECORDS

13 NCAC 07A .0901 SCOPE AND APPLICATION

- (a) The provisions of 29 CFR 1913.10 concerning OSH Division access to employee medical records do not apply. Rather, the rules in this Section apply to all requests by OSH Division personnel to obtain access to employee medical records in order to examine or copy personally identifiable medical information.
- (b) For the purposes of the rules in this Section, “personally identifiable medical information” means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title).
- (c) The examination of personally identifiable medical information shall, to the extent practicable, be performed on-site. OSH Division personnel shall only take medical information in a personally identifiable form off-site if such information is necessary for the investigation.
- (d) The rules in this Section do not apply to access to, or the use of, aggregate employee medical information or medical records on individual employees by OSH Division personnel which is not in a personally identifiable form.

(e) The rules in this Section do not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.1020(c)(5) or by specific occupational safety and health standards as exposure records.

(f) The rules in this Section do not apply where OSH Division personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard or with the employee exposure and medical record requirements of 29 CFR 1910.1020. An examination of this nature shall be conducted onsite and, if requested, shall be conducted under the observation of the record holder and the OSH Division personnel shall not record and take offsite any information from these medical records other than documentation of the fact of compliance or non-compliance.

(g) The rules in this Section do not apply to access to, or the use of, personally identifiable medical information obtained in the course of litigation.

*History Note: Authority G.S. 95-133;
Eff. March 1, 2010;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0902 RESPONSIBLE PERSONS

(a) The Commissioner is responsible for the overall administration and implementation of the procedures contained in the rules in this Section, including making the final determinations concerning:

- (1) Access to personally identifiable medical information; and
- (2) Inter-agency transfer or public disclosure of personally identifiable medical information.

(b) Medical Records Coordinator. The Commissioner shall designate an OSH Division employee to oversee the security procedures established in the rules in this Section.

(c) Medical Records Administrators. The Commissioner shall designate an OSH Division employee at each field location to maintain a log of uses and transfers of personally identifiable medical information for each file, including the name of each person accessing the information. The Medical Records Administrators shall also have primary control of the locked cabinet or vault where such records are stored and shall not allow access to the information contained in the cabinet to any person not authorized by the rules in this Section.

(d) Principal OSH Investigator. The Principal OSH Investigator shall be the OSH Division employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for ensuring that the examination and use of this information is performed in the manner prescribed by the rules in this Section.

*History Note: Authority G.S. 95-133;
Eff. March 1, 2010;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0903 SECURITY PROCEDURES; RETENTION AND DESTRUCTION OF RECORDS

(a) All medical information obtained pursuant to an investigation that contains direct personal identifiers shall be separated from the rest of the investigation file and coded with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be secured in a locked cabinet or vault.

(b) The photocopying or other duplication of personally identifiable medical information shall be limited to what is necessary to accomplish the purposes for which the information was obtained.

(c) The protective measures established by the rules in this Section apply to all worksheets, duplicate copies, or other documents containing personally identifiable medical information.

(d) Transfers of personally identifiable medical information shall be by hand delivery, certified mail, or other equally protective means.

(e) In accordance with the Department records retention schedule, personally identifiable medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained or when the case file is closed.

*History Note: Authority G.S. 95-133;
Eff. March 1, 2010;*

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0904 INTRA-AGENCY USE AND TRANSFER

- (a) The Medical Records Administrator at each field location shall ensure that personally identifiable medical information is secured in accordance with the rules in this Section.
- (b) The Principal OSH Investigator, the Medical Records Administrator, or the Director or his designee, may permit the examination or use of personally identifiable medical information by OSH Division employees who have a need for access. No OSH Division employee, other than the Principal OSH Investigator, shall examine or otherwise use personally identifiable medical information unless so permitted.
- (c) Medical records shall not be transferred to Department employees outside of the OSH Division unless authorized by the Director or his designee.
- (d) OSH Division employees and other Department employees are only authorized to use personally identifiable medical information for the purposes for which it was obtained, unless the written consent of the employee is obtained for a secondary purpose.

*History Note: Authority G.S. 95-133;
Eff. March 1, 2010;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0905 INTER-AGENCY TRANSFER AND PUBLIC DISCLOSURE

- (a) Personally identifiable medical information shall not be transferred to another agency except as noted in Paragraph (c) of this Rule, or disclosed to the public (other than the affected employee or the original record holder) except when required by law or approved by the Commissioner or his designee.
- (b) The Commissioner or his designee shall not approve a request for an inter-agency transfer or for the public disclosure of personally identifiable medical information which the affected employee has not consented to unless there are compelling circumstances affecting the health or safety of an individual or the public.
- (c) Upon approval of the Commissioner or his designee, personally identifiable medical information may be transferred to:
 - (1) The North Carolina Attorney General's Office; or
 - (2) The North Carolina Occupational Safety and Health Review Commission when an employee files a notice of contest pursuant to G.S. 95-137.

*History Note: Authority G.S. 95-133;
Eff. March 1, 2010;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*