

**North Carolina Department of Labor
Occupational Safety and Health Division**

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 144A

Subject: In-compliance Letters and Certificates

A. **Purpose.**

This operational procedure notice (OPN) establishes the N.C. Department of Labor, Occupational Safety and Health (OSH) Division policy for issuing in-compliance letters and certificates to employers when compliance inspections result in no citations. The issuance of in-compliance letters and certificates applies only to qualifying employers. This OPN provides guidance for in-compliance qualifications.

B. **Discussion.**

Compliance Safety and Health Officers (CSHOs) conduct compliance inspections in which some inspections result in no citations being recommended. In many of these instances, employers have implemented effective safety and health programs. However, there are also instances when no citations are recommended because the OSH Division is not able to meet the legal threshold required for issuing citations. The elements needed for citation issuance include employer knowledge, employee exposure within the past six months, an applicable standard and a hazard. In instances where the legal threshold is not met, the lack of citation issuance does not necessarily mean that an employer's on-site safety and health programs were effective. In-compliance letters and certificates will only be issued when employers have effective safety and health programs, otherwise recommendation letters will be sent.

C. **Scope.**

This policy will apply to all compliance safety and health inspections.

D. **Action.**

1. *An in-compliance letter will not be issued for fatalities, catastrophes or accidents investigated as the result of a referral or complaint.*
2. For other inspections, the CSHO will decide whether to recommend citations.
 - a. When citations are recommended and issued, no in-compliance letter or certificate will be issued.

- b. When a determination is made that no citations will be issued, the CSHO will follow the conditions listed in paragraph E regarding in-compliance letters, in-compliance certificates and recommendation letters.
3. After each inspection resulting in no citations, a letter will be sent to the employer, whether it is an in-compliance letter or a recommendation letter.
4. *The in-compliance letters, certificates, or recommendation letters will be processed and mailed by the OSH information processing assistant once the case file has been reviewed and signed by the district supervisor. The district supervisor or CSHO will write what was sent to the employer on the Case File Summary. At no time will an in-compliance certificate be given to an employer prior to supervisor review and approval of the case file. Each certificate will be mailed to the employer in an 8 ½" x 11" envelope to ensure it arrives in a condition suitable for display.*

E. Letter and Certificate Guidelines.

1. Evaluation of the employer's safety and health program.
 - a. The CSHO will evaluate the employer's safety and health program, documenting this evaluation in the inspection narrative. CSHOs should evaluate the comprehensiveness of the program, the ways the employer communicates and enforces the program, any training provided to employees, methods for incident investigation, and whether the employer appropriately utilizes a designated competent person, where applicable.
 - b. Employers with effectively implemented safety and health programs should be recognized for the effort they are making to protect employees. This recognition comes through in-compliance letters and certificates.
 - c. Those employers with no program, either written or verbal, should not be recognized with an in-compliance letter or certificate. The CSHO should recommend that employers with no verbal or written employee safety and health program implement an effective program. This recommendation can be made by sending a recommendation letter. Recommendation letters put the employer on notice and show the hazard was addressed, even though no citations were issued due to legal reasons.
2. Scope of the inspection.
 - a. If the compliance inspection is classified as comprehensive in scope, results in no citations, and the CSHO has documented that the employer has implemented an effective occupational safety and health program, an in-compliance letter and in-compliance certificate will be mailed to the employer following supervisor review and approval of the case file.

- b. If the compliance inspection is classified as comprehensive in scope, but the inspection results in no citations because the legal threshold could not be met, a recommendation letter will be mailed to the employer following supervisor review and approval of the case file.
- c. Partial scope compliance inspections may not allow the CSHO to fully assess the employer's safety and health program and the decision to issue an in-compliance letter and certificate will require the professional judgment of the CSHO. Circumstances may be present where an in-compliance letter and certificate is not warranted, but a recommendation letter is more appropriate. Circumstances may include the following:
 - i. Inspections at multi-employer worksites where one or more downstream sub-contractors of the employer were cited.
 - ii. Inspections where non-serious violations were corrected during the inspection and not cited per the policy for focused inspections in construction or the SEP for food manufacturing.
 - iii. Inspections where hazardous conditions were identified, but could not be cited due to lack of employee exposure, employer knowledge, or applicable standard.
 - iv. Inspections where hazardous conditions were identified, but could not be cited due to no employee exposure in the previous six months.
 - v. Records only inspections.
- d. Other circumstances may require a discussion with the district supervisor, and if necessary the bureau chief, prior to issuing an in-compliance letter, in-compliance certificate or recommendation letter.

F. **Effective Date.**

This OPN is effective on the date of signature. It will remain in effect until revised or canceled by the director.

Signed on Original
Robby Jones
West Compliance Bureau Chief

Signed on Original
Allen Mc Neely
Director

12/02/2014
Date of Signature