

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

Field Operations Manual
Chapter IX – Complaints, Referrals and Accidents



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Chapter IX

Complaints, Referrals and Accidents

A. Complaints.

1. General. The discussion of complaints in this chapter primarily deals with receiving and processing complaints prior to an inspection. Some information regarding inspection activity is given, however the majority of the general inspection procedures are contained in FOM Chapter III, Inspection Procedures. Complaints both oral and written normally should be received by a compliance safety and health officer (CSHO) at the complaint desk. The CSHO will process the complaint and will assign it, no later than the next working day after receipt, to the appropriate district supervisor based on the location of the employer and whether the hazards are safety or health.
 - a. The Division's Response. The agency's response to a complaint may take a variety of forms, from an onsite inspection to investigation by letter, phone, or fax, depending upon the formality of the complaint, the seriousness of the alleged hazard and the response of the employer to complaint items.
 - b. Complainant Identity. The identity of formal and nonformal complainants will be kept confidential, pursuant to NCGS 95-136(d)(1).
2. Definitions. The following definitions apply in this chapter:
 - a. Complaint. A complaint is a notice of a safety or health hazard that threatens physical harm to employees or a violation of the act believed to exist in a workplace. The complaint can be filed by *an individual who was an employee at the time the complaint was filed, an individual who was a representative of employees at the time the complaint was filed*, or any other non-referral source, to the commissioner or his authorized representative. (Referral sources are listed in paragraph B.2.b.)
 - i. To constitute a valid complaint the notice must allege that a hazard exists or could recur in the workplace or that the act (meaning a standard, regulation, or general duty clause) is violated.
 - A. If the notice is so vague and unsubstantiated that the complaint desk or a CSHO is unable to make a reasonable judgment as to the existence of the alleged workplace hazard that threatens physical harm, there is no valid complaint. In such a case, however, every reasonable attempt should be made to contact the person giving the notice to obtain more specific information.
 - B. If, as a result of a recent inspection or on the basis of other knowledge of the worksite, it has been determined that the hazard which is the subject of the notice is not present; e.g., it has already been corrected, such a notice is not a valid complaint.
 - ii. The workplace must be one within the division's jurisdiction. For example, a notice may involve mine conditions, a federal worksite, wage and hour, or discrimination issues. These are not

within the jurisdiction of the division. In such a circumstance the notice is not a valid OSH complaint. Such written notices will be promptly transferred to the appropriate agency. If this notice is initially received by phone, the complainant will be asked to call the agency having jurisdiction directly especially in a case under federal OSHA's jurisdiction. If the complaint has already been entered into the state system before the jurisdiction issue arises, the complaint will be closed after being transferred to the appropriate agency.

- b. Employee. For purposes of submitting a complaint, an employee is identified by using the following:
 - i. An employee of the employer about whose establishment the complaint is being made.
 - ii. An employee of another employer if that employee is working at or near some other employer's workplace and is exposed to hazards of that workplace.

Note: Former employees are not usually considered employees for purposes of submitting a formal complaint, unless the employee alleges firing due to exercising rights under the act as described in paragraph A.3.d.

 - iii. Prisoners who are not on work release are not employees within the meaning of the act.
 - iv. Volunteers who receive no monetary or other compensation are not considered to be employees. However, volunteers working at an establishment, such as volunteer firefighters and paramedics, may submit a complaint for hazardous conditions affecting employees of the establishment.
- c. Representative of Employees. For purposes of submitting a complaint, a representative of employees is any of the following:
 - i. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization;
 - ii. An attorney or physician acting for an employee;
 - iii. Any other person acting in a bona fide representative capacity such as members of the clergy, social workers and a member of the employee's immediate family (e.g., spouse, parent, or child) or an elected official. In this situation, a complainant purporting to act as a representative of an employee is presumed to be so acting unless the CSHO obtains information that the complaint was not submitted with the knowledge of or on behalf of the employee. The affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.
- d. Formal Complaint. To meet the formality requirements outlined in NCGS 95-136(d)(1) a complaint will:
 - i. Be reduced to writing (either on an OSHA-7 or in a letter);
 - ii. Allege that an imminent danger, a violation of the act, or a violation of an OSHA standard exposing employees to physical

harm (e.g., a hazard covered by a standard or by the general duty clause) exists in the workplace;

- iii. Set forth with reasonable particularity the grounds upon which it is based. This does not mean that the complaint must specify a particular standard; it need only specify a condition or practice that is hazardous and, if uncommon, why it is hazardous; and
- iv. Be signed by at least one employee or employee representative.
- v. The following are examples of deficiencies that would result in the failure of an apparent formal complaint to meet the requirements of the definition:
 - A. A thorough evaluation of the complaint does not establish reasonable grounds to believe that the alleged violation can be classified as an imminent danger or that the alleged hazard is covered by a standard or, in the case of an alleged serious condition, by the general duty clause (NCGS 95-129(1)).
 - B. The complaint concerns a workplace condition that has no direct relationship to safety or health and does not threaten physical harm; e.g., a violation of a recordkeeping or other regulation.
 - C. The complaint alleges a hazard that violates a standard but describes no actual workplace conditions and gives no particulars that would warrant a proper evaluation of the hazard. In such a case the district supervisor or assigned CSHO should make a reasonable attempt to obtain such information.

e. Non-formal Complaint. Any complaint alleging safety or health violations that does not meet any or all of the formality requirements identified in paragraph A.2.d.v. and does not come from one of the sources identified under referral is a non-formal complaint and is to be handled in accordance with the procedures in paragraph A.8.

- i. Examples. Other examples of such complaints include the following:
 - A. Oral complaints filed by employees.
 - B. Unsigned written complaints filed by employees.
 - C. Written and oral complaints filed by non-employees (persons or groups other than employees or their representatives).
 - D. Complaints of hazards not covered by a standard or by the general duty clause (e.g., second hand tobacco smoke
See Appendix IX-B for more information on this issue.)
 - E. Complaints of violations of regulations, such as recordkeeping, (rather than standards).
- ii. Referrals from Other Agencies. Reports from sources listed in B.2.b, however, are referrals and are to be handled in accordance with the referral procedures in this chapter.

- f. **Complaint Inspection.** A complaint inspection is an inspection that is initiated as a result of a complaint, and is conducted by a CSHO at the employer's worksite.
- g. **Complaint Investigation.** A complaint investigation is conducted for other complaints and does not include an onsite inspection of the workplace. An investigation differs from an inspection in that in an investigation, the Occupational Safety and Health Division advises the employer of the alleged hazards by telephone, fax, email, or by letter if necessary. The employer is required to provide a written response by fax, email or letter. The Occupational Safety and Health Division will subsequently provide a written response of the disposition of the complaint to the complainant.
- h. **Electronic Complaint.** A complaint submitted via federal OSHA's public website, NCDOL's website or direct email to the complaint desk. The complaint desk manages an email inbox and processes electronic complaints according to internal processing procedures. The complaint desk inbox is monitored daily and every incoming complaint is reviewed for jurisdiction.

3. **Receiving Complaints.** An incoming notice of hazards or alleged violations will first be referred to a designated CSHO at the complaint desk. The CSHO will obtain all available information from the person reporting the hazard or alleged violation. If the complaint desk receives an electronic complaint from OSHA an N 11 code is required in the Optional Information (e.g. N-11 LOGXXXXXX). The N 11 indicates that the complaint was filed electronically and the digits following LOG are the unique complaint ID/log numbers assigned to the electronic complaint when processed by the Salt Lake Technical Center. The log number may vary and does not have to be exactly six digits. In entering the code, there is no space between the word LOG and the digits that follow. The notice will then be forwarded to the appropriate district supervisor to complete the evaluation. If the complaint is initially received in the district office, the information will be forwarded to the complaint desk for processing. The bureau chief must approve deviation from the procedures in this chapter.

- a. **Employee Rights.** When an oral notice is received from an employee or employee representative, that person making the complaint will be informed of the right to file a formal complaint in writing under NCGS 95-136 and of the right, as a matter of law and division policy, to have the complainant's identity held confidential, regardless of the formality of the complaint.
- b. **Workplace Inspections.** The person giving notice will be informed that formal complaints that allege violations of a safety or health standard that could result in physical harm to employees generally lead to workplace inspections while nonformal complaints usually initially result in letters requesting employers to undertake corrective action. A complaint alleging serious hazards that could immediately cause death or serious physical harm would result in an inspection whether formal or nonformal.
- c. **Formalizing Oral Complaints.** If the employee or employee representative has filed a notice orally and indicates a willingness to formalize the complaint, as reflected on the OSHA-7, the district supervisor will secure the complainant's signature either by mail or in person. An inspection need not be delayed for a signature if the

complaint alleges serious hazards that could cause death or serious physical harm immediately or during the period of time in which attempts are made to secure the signature. The response time on the "C" letter to the complainant, who gives them the options of signing the complaint, will be seven (7) working days.

- i. If a complainant indicates a willingness to formalize the complaint, the OSHA-7 will be sent out for signature. If the signed OSHA-7 is not returned within ten working days, the complaint will be treated as nonformal. If a signed complaint is received after ten working days but before the employer has been notified, the complaint is to be considered formal and evaluated.
- ii. If a complainant filing orally declines to formalize his complaint, the person receiving the complaint will attempt to obtain the complainant's name, address and telephone number.

d. Discrimination Complaint. The complainant will be advised of the protection against discrimination afforded by NCGS 95-241 and will be informed of the procedure for filing a discrimination complaint with the Employment Discrimination Bureau (EDB).

- i. Safety and/or health complaints filed by former employees who allege that they were fired for exercising their rights under the act will generally be processed as formal complaints. Such complaints will be recorded on an OSHA-7 with a copy referred to the EDB office.
- ii. Any discrimination complaint alleging an imminent danger will be handled in accordance with the instructions in paragraph A.6.

4. Evaluating Complaints. A careful exercise of investigatory techniques is necessary for complete evaluation of complaints.
 - a. Classification. Immediately upon the notification of a hazard or an alleged violation, the complaint desk will make an initial decision as to whether the notice meets the definition of a complaint. The complaint will be classified as nonformal until a signed notice has been received from the complainant.
 - b. Documentation. The district supervisor will evaluate all complaints, with all evaluation decisions documented in the establishment case file. Complaints will be classified as to their gravity in accordance with procedures contained in FOM Chapter IV, Violations.
 - c. Both Safety and Health Hazards Alleged. When a complaint alleges safety and/or health hazards, the complaint will be referred to the appropriate district supervisor for evaluation. If the complaint was initiated by letter, an electronic complaint forwarded from OSHA or received from NCDOL's website, or direct email received by the complaint desk, a copy of the original letter, electronic complaint, or email will be submitted to the district supervisor along with the OSHA-7. The district supervisor will coordinate the handling of the complaint. District supervisors will maximize the use of cross-trained CSHOs to conduct complaint inspections involving both safety and health issues to assure all hazards included in the complaint are addressed.
 - d. Response to Person Reporting. Whenever it is determined by the complaint desk intake CSHO that a complaint fails to meet all the

requirements indicated in A.2.a, and therefore will not be processed, attempts will be made by the intake CSHO to contact and inform the affected complainant. The person will be informed that they have the right to request further clarification of the decision from a district supervisor or bureau chief and, if still dissatisfied, to appeal this decision to the director's office for an informal review. *For complaints alleging unsafe/unhealthful working conditions that do not meet the criteria for a valid complaint, the complaint should be entered into OSHA Express and marked "No" in line 36 – "Valid?" and a comment entered in the optional information section if needed. For complaints that are not safety or health related or not within the jurisdiction of the OSH Division, or if sufficient information is not available to enter a form into OSHA Express (i.e. site address not provided), the intake CSHO will enter a record of the complaint onto the electronic complaint desk "Unprocessed Log" that is maintained on the f: drive. If the complaint desk processes the complaint and the district supervisor subsequently determines that the complaint is not valid, the district supervisor will contact the complainant and explain why the complaint is not considered valid and make a note on the electronic Complaint Log.*

5. **Information Needed for Complaint Evaluation.** The OSHA-7 will normally be used to record both formal and nonformal complaints. The complainant should be questioned, when possible, either for additional facts or to verify facts supplied. The evaluator must exercise professional judgment on the basis of the information available to decide whether or not there are reasonable grounds to believe that a violation exists and, if so, how it should be classified.
 - a. **Taking Complaints.** When the complaint desk receives a complaint, by letter, in person, by email or over the telephone, the OSHA-7 Form will be completed. Particular attention and review should be given to lengthy written complaints to assure that all information relating to work place hazards is recorded on the OSHA-7. If the complainant wishes to submit a formal complaint, the person taking the complaint will ask if the complainant is presently an employee or employee representative. If the complaint has been received in writing and has been signed, the complainant should be contacted, if necessary, for response to questions on the OSHA-7 although the form need not be sent for signature.
 - b. **Additional Information.** Additional information is usually needed to improve the quality of the complaints and to aid in determining their priority. Therefore, in completing the OSHA-7, an attempt will be made to obtain detailed answers to the questions found in Appendix IX-A.
6. **Responding to Complaints Alleging Imminent Danger Conditions.** Any complaint that constitutes an imminent danger, as defined in FOM Chapter VII will be inspected regardless of whether or not it meets the formality requirements in paragraph A.2.d. The complaint will be inspected the same day received, where possible, but not later than the employer's next working day after receipt of the complaint.
7. **Responding to Formal Complaints.** All formal complaints meeting the requirements in paragraph A.2.d. will be scheduled for workplace inspections unless the complainant agrees to allow the complaint to be investigated using nonformal complaint procedures. This method could result in more timely abatement than might be anticipated based on the complaint's likely inspection

priority in recognition of the division's limited resources and the severity of the complaint items.

- a. Determination. Upon determination by the district supervisor that a formal complaint will be inspected, the inspection will be scheduled in accordance with the priorities in paragraph A.7.b.
- b. Priorities for Responding by Inspections to Formal Complaints. Inspections resulting from formal complaints will be conducted according to the following priority:
 - i. Formal complaints, other than imminent danger, will be given a priority based upon the classification and the gravity of the alleged hazards as defined in FOM Chapter IV, Violations, and FOM Chapter VI, Penalties.
 - ii. Formal complaints, where there is an inspection, should be initiated within 15 working days of the complaint desk receipt of the complaint. Where a complaint makes reference to an accident and/or injury, the accident and/or injury will be investigated as a part of the complaint inspection.
 - iii. Formal complaints that are handled through investigation should be initiated within 5 working days of receipt from the complaint desk. Upon receipt and evaluation of a complaint to be handled through investigation, the district supervisor should, within 5 working days, prepare a letter to the employer advising them of the complaint. The employer will be asked to investigate the alleged conditions and respond to the division within a specified time no longer than 7 working days. Although the employer must respond within the above-mentioned time frame, the employer may not be able to complete abatement action, but is encouraged to do so. The letter to the employer will be sent by certified mail with return receipt requested or handled via the phone-fix-fax method referenced in paragraph A. 8. b. initiation of investigation includes: phone-fax-fix with accompanying letter, or "D" letter mailed to employer/complainant.
 - iv. If a complaint inspection is to be conducted after the established priority date, district office personnel should contact the complainant to ensure that the alleged hazards still exist.

8. Responding to Nonformal Complaints. All nonformal complaints will receive a response. The type of response whether letter, telephone call, or inspection may be dictated by the gravity of the specific complaint in question. *Prior to responding to the complaint, the district supervisor or the CSHO will contact any complainant who is an employee or an authorized representative of an employee (as defined in FOM Chapter IX, Section A.2). Information received from a complainant could clarify the complaint items. If the complainant is an employee, contact can also verify that the complainant does not want to sign the OSHA-7. The district supervisor or CSHO will document contact with the complainant on the Case File Summary. If the complainant cannot be reached, the district supervisor or CSHO will include an explanation on the Case File Summary.* The procedures described below include responses to nonformal complaints designed to ensure correction of hazards identified in the complaint: (A nonformal complaint that has resulted in an inspection will remain non-formal

on the OSHA-7). Names of employees, complainants and/or witnesses will not be used in correspondence or in conversation with the complainant, the employer or their representative. Details of conversations with or witness statements from employees will not be used in correspondence or in conversation with the employer or their representative.

- a. **Responding by Letter to Nonformal Complaints.** Upon receipt and evaluation of a nonformal complaint, the district supervisor, within 5 working days, should prepare a letter to the employer advising of the complaint. The employer will be asked to investigate the alleged conditions and respond in writing to the division within a specified time no longer than 7 working days. The employer will also be advised that a copy of their unredacted response will be forwarded to the complainant (as reflected in the D letter). Although the employer must respond in writing within the above-mentioned time frame, the employer may not be able to complete abatement action, but is encouraged to do so. The letter to the employer will be sent by certified mail with return receipt requested.
- b. **Responding by Telephone to Nonformal Complaints.** To ensure the timeliest abatement of hazardous conditions, the preferred method is to telephone the employer to notify them that a complaint has been filed. The notification, which should be faxed to the employer, should include the specific allegations contained in the complaint. The employer should be asked to respond in writing to the division within a specified time frame (no longer than 7 working days), and will be informed that action must be taken to address the complaint items. The employer will be advised that a copy of their unredacted response will be forwarded to the complainant (as reflected in the D letter). The employer will be encouraged to use the fax machine to respond to the complaint. This "phone, fax, and fix" method could reduce the abatement time in some cases but should be used in consideration of available district resources.
- c. **Nonformal Complaint Paperwork.**
 - i. **Posting.** The employer will be requested to post copies of the division notification referred to in the previous subparagraphs together with all subsequent correspondence dealing with the complaint items, including the employer's response, until such time as the district office closes the case.
 - ii. **Letter to Complainant.** Concurrent with the notification to the employer (D letter), a letter to the complainant (E letter) will be prepared explaining that the employer has been informed of the complaint. It will request the complainant notify the district supervisor if no corrective action has been taken or at least initiated within 7 working days (or less if so indicated in the notification to the employer) or if any adverse or discriminatory action or threats are made against the complainant. A copy of the notification to the employer (D letter) will be included with the letter to the complainant.
 - iii. **Employer Response.** All responses received from the employer should be reviewed within 5 working days of receipt and if it appears that appropriate corrective action has been taken or that no hazard is present, the case file will be closed. The

complainant will be informed in writing of the investigation results. A copy of the original letter received from the employer will be sent by the district office to the complainant. A complainant's request for any other file documents will be processed by the PSIM Bureau per the appropriate disclosure procedures. Any written dispute of the employer's response by the complainant must be submitted within 7 working days of the complainant's receipt of the response. It is the responsibility of the complainant to notify the OSH Division of any changes to their address. Disputes received after 7 working days will be discussed with the bureau chief.

- iv. Letter to the Employer. For all complaints handled through investigation, a letter should be sent to the employer (T letter) informing them that the file has been closed.
- v. Letter to the Complainant. For all complaints handled through investigation, a letter will be sent to the complainant (G letter) informing them that the file has been closed, that they can request a copy of the investigation file, and the method of disputing the results of the investigation.

d. **Responding by Inspection to Nonformal Complaints. (A nonformal complaint that has resulted in an inspection will remain nonformal)** When the employer fails to respond or submits an inadequate response within the period specified in the notification or when the complainant informs the division that no corrective action has been taken or the action taken is inadequate, district personnel will contact the employer to determine what further action they plan to take. If no action has been taken and none is planned, or contact cannot be made with the employer, the nonformal complaint will be assigned for inspection pursuant to the priorities in paragraph A.7.b.ii. The district supervisor may also proceed with an inspection of a nonformal complaint if the complaint alleges serious hazards that could cause immediate death or serious physical harm. Where a complaint makes reference to an accident and/or injury, the accident and/or injury will be investigated as a part of the complaint inspection. If the district supervisor determines that, due to severity, inadequate employer response or other factors, a nonformal complaint will result in an inspection, it should be initiated within 15 working days of the complaint desk's receipt of the complaint (or within 15 working days of past due response date, or within 15 working days of receipt of an inadequate response).

- i. Status of Corrective Action. Where an ambiguity exists or where the employer has a correction plan which he has not yet had time to implement fully, district personnel will communicate further, as appropriate, with the employer and/or the complainant to determine what interim protective steps have been taken until the corrective action can be completed and, later, whether the hazard has been adequately corrected. On the basis of information available, the district supervisor will decide whether an inspection is warranted.
- ii. Dispute by Complainant. If communication from the complainant disputes the corrective action indicated by the employer, the district supervisor will evaluate the dispute. The

employee is not required to put the dispute in writing. The district supervisor may clarify the disputed issues by telephone and discretion is allowed when, in the judgment of the district supervisor, the complaint does not warrant an on-site inspection. In such situations, the Occupational Safety and Health Division will notify the complainant that no inspection will be conducted and the reasons for the decision. If the district supervisor decides an inspection is warranted, it should be initiated within 15 working days of receipt of the complaint dispute.

9. **Scope of Inspection.** Complaint inspections will normally be limited to all specific hazards listed in the complaint. The courts have ruled that it violates the employer's Fourth Amendment right to unreasonable search to conduct a comprehensive inspection without evidence of hazards throughout the workplace. However, the CSHO will review all injury and illness records required by the OSH Act. The CSHO will also review the employer's general safety and health program. This may help the CSHO assess the conditions that form the basis of the inspection. Also, this review is necessary for considering potential penalty reductions.
 - a. **Items Brought to the Attention of the CSHO.** The CSHO has the authority to evaluate the following, without it being considered an expansion of the scope:
 - i. Any item brought to their attention by any employee or representative of an employee during the course of the inspection.
 - ii. Any "plain view" hazards, meaning hazards noted by any of the senses (e.g., sight, sound, smell, touch or taste).
 - b. **Expanding the Inspection Scope.** The district supervisor will determine, in conjunction with the CSHO, as to whether the inspection's scope will be further expanded. The district supervisor and CSHO should evaluate the following when considering expansion:
 - i. A multitude of serious "plain view" hazards.
 - ii. Areas where the employer consents to inspection.
 - iii. Available information that demonstrates the need for a comprehensive or expanded inspection due to the company's history, safety record, or the company being in a high risk industry and no comprehensive inspection during the past two years. Where it is not clear that probable cause can be established, the district supervisor will consult with the bureau chief for guidance and for securing a warrant (if necessary).
 - c. **Advising Participants of Extended Scope.** Whenever the scope of the inspection will be extended, the CSHO will advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.
 - d. The above guidance supersedes compliance directives for specific standards such as hazard communication and lock out/tag out that require evaluations on each inspection conducted.

10. **Procedures.** Inspection procedures included in this manual will be followed in conducting complaint inspections. Particular attention, however, is directed to the following special requirements for complaint investigations:
 - a. **Contact with Complainant.** The CSHO will attempt to contact the complainant prior to the inspection. Information from the complainant can enhance the efficiency of the inspection process, and the personal contact can reassure the complainant that appropriate action will result. Where a complaint references an accident and/or injury, the complainant should be asked about the referenced accident and/or injury. If contact is not made with the complainant, an explanation will be included in the case file. Once the complaint has been processed, it can be withdrawn by the complainant with no further action by the division. If the complainant indicates that the complaint items have been abated, this may be confirmed by means other than an inspection.
 - b. **Copy of the Complaint.** A copy of the complaint will be given to the employer at the opening conference.
 - i. In the case of a multi-employer worksite, such as a construction site, a copy of every complaint, including those against subcontractors, will, if possible, be provided to the general contractor as well as to the employer against whom the complaint has been filed.
 - ii. A copy of every complaint against the general contractor or against one or more of the subcontractors will be provided, if possible, to each subcontractor whose employees may be exposed to the alleged hazard.
 - c. **Identity of Complainant.** NCGS 95-136 requires that names be deleted from the employer's copy of the complaint. If handwritten, the complaint will be typed, and reworded if necessary, so that the identity of the complainant cannot be discerned by the employer. As a matter of general policy, names will be deleted from all complaints.
 - d. **Walk Around Rights.** In a complaint inspection, the walk around rights of an employer and an employee representative will be applicable in accordance with the division's general inspection procedures. The employee representative will be chosen according to established division procedures and the complainant will not necessarily be, and probably will not be, the employee representative for walk around purposes.
 - e. **Results of Inspection to Complainant.** After the completion of an inspection based on a formal or a nonformal complaint, the complainant will be informed of the results in writing as follows:
 - i. Each complaint item will be addressed with a reference to a result of the complaint inspection and/or with a sufficiently detailed description of the findings and why they did or did not result in a citation. Following confirmation of delivery of citations to the employer, the complainant will be provided with copies of all citations issued.
 - ii. The complainant will be told of their right to seek further clarification for the complaint findings from the district supervisor if any questions remain.

- iii. Citations may be modified as a result of an informal conference, a settlement agreement, or a decision of the OSH Review Commission or a court. This information is available to the complainant at their request. Any settlement agreement reached as a result of an informal conference is required to be posted by the employer in the workplace for at least 3 days or until all items are abated.
- f. **Communication to Complainant.** Written communications to a complainant will be sent to the home address unless specific instructions have been given that such mail may be sent to the place of employment.

11. **Transferring Complaints to Another Entity.**
If an entire complaint is transferred to another entity because it does not fall within the jurisdiction of the receiving office, the office transferring the complaint will complete processing as an "Invalid Complaint", complete the transfer action appropriately, and close the complaint.

12. **Handling Discrimination Complaints.**
Complaints that allege **only** employee discrimination, including those reported by federal employees, should **not** be entered on the computer. They should be handled in accordance with paragraph 3.d. Complaints received which, when classified, allege safety and/or health hazards AND discrimination should be reported to the IMIS with all applicable entries made in "Subject and Severity". All further IMIS reporting on the complaint should address both safety and health items. The complaint should then be handled in accordance with FOM procedures. For purposes of reporting, complaints sent to discrimination investigators under these circumstances should not be considered "transferred".

13. **Notices of Alleged Safety and Health Hazards from Federal Employees.**
Notices of unsafe or unhealthful working conditions filed against federal agencies by federal employees, their representatives, or safety and health committees are to be referred to the appropriate federal area office.

14. **Dates Required for Complaint Action.**
In order to reconstruct the course of events that occurred and to ensure timely servicing of complaints, it is critical that all complaint action dates are accurately entered into the computer. This allows for reports to be developed listing events in the sequence in which they occurred.

15. Special Complaints.

a. Tuberculosis.

Whenever an OSHA-7 is completed and the complaint alleges the presence of Tuberculosis, complete the OSHA-7 in the normal manner and enter the code "TB" in the "Optional Information" field, using the following format:

Type	ID	Value
N	2	TB

b. Ergonomics.

Whenever a complaint is processed and the applicable case file alleges the presence of an ergonomic hazard, include information in the, "Optional Information" field, regarding the nature of the hazard. Use as many of the codes below as appropriate, separating individual codes by commas with no spaces.

i. Upper Extremity Disorder.

When the complaint alleges a hazard causing upper extremity or cumulative trauma disorder, enter the code "**UED**" using the following format:

Type	ID	Value
N	3	UED

ii. Back Disorder.

When the complaint alleges a hazard causing a back disorder, enter the code "**BACK**" using the following format:

Type	ID	Value
N	3	BACK

iii. Other.

When the complaint alleges an ergonomic hazard not specified above, or when the specific nature of the ergonomic hazards cannot be determined from the narrative of the complaint, enter the code "**OTHER**" using the following format:

Type	ID	Value
N	3	OTHER

c. Indoor Air Quality.

When a complaint alleges indoor air quality issues, enter the appropriate value in the "Optional Information" field using the following list:

Type	ID	Value
N	5	IAQSMOKE (passive smoke)
N	5	IAQVENT (ventilation)
N	5	IAQPEL (PEL overexposure)
N	5	IAQOTHER (other condition)

d. Asbestos.

When a complaint alleges asbestos exposure, enter the code "**ASBESTOS**" in the "Optional Information" field, using the following format:

Type	ID	Value
N	16	ASBESTOS

e. Silica.

When a complaint alleges silica exposure, enter the code "**SILICA**" in the "Optional Information" field, using the following format:

Type	ID	Value
N	16	SILICA

f. Lead.

When a complaint alleges lead exposure, enter the code "**LEAD**" in the "National Emphasis Program" field, using the following format:

50. National Emphasis Program	
LEAD	Potential Exposure to Lead in All Industries

g. Hexavalent Chromium.

When a complaint alleges hexavalent chromium exposure, enter the code "**CHROME6**" in the "National Emphasis Program" field, using the following format:

50. National Emphasis Program	
CHROME6	Hexavalent Chromium

- h. In addition, when a complaint alleges exposures to substances included in the most current revision of Operational Procedure Notice 135, "Special Emphasis for Exposures to Health Hazards", enter the applicable codes in the "Strategic Plan Activity" field. These include exposures to lead, silica, asbestos, isocyanates and hexavalent chromium.
- B. **Referrals.** Any incoming or outgoing referrals will be coordinated through the affected district supervisors.
 1. **General.** Referrals will normally be handled in a manner similar to that of complaints, and initially received and processed by the complaint desk, except for CSHO referrals which should be processed at the district level. The referring CSHO will track the referral to assure that the referred items are satisfied.
 2. **Definitions.** For purposes of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard.
 - a. Notices of hazards or alleged violations originated by the sources listed in b. of this section will be considered as referrals except as noted in b.iii. All other notices of hazards will be considered as complaints. Formal and nonformal complaints received by other government agencies and forwarded to the division for action will remain as complaints since they do not originate with the agency or its employees. (See paragraph B.2.b.iv.)
 - b. Referrals may originate from the following sources:
 - i. **CSHO Referrals.** Serious hazards will normally be investigated by the CSHO who observes them. On occasion, however, special expertise may be needed to assess the hazard. This may be obtained through the referral process.
 - A. **Types of Referrals.** There are two types of CSHO referrals.
 1. Safety (health to safety or safety to safety).
 2. Health (safety to health or health to health).
 - B. **Subject of CSHO Referrals.** CSHO referrals should be limited to potentially serious hazards observed during an inspection or visible from or in public areas, such as streets, highways or the public areas of business premises. Such observed hazards will be documented on the OSHA-90 Form. Approval to inspect hazards observed in a public area will be secured from the district supervisor. These unprogrammed inspections should be coded as referrals on the OSHA-1 Form.
 - C. **Reinspection Referrals.** When a serious citation is withdrawn because of incomplete or erroneous inspection information, administrative error that cannot be corrected through an amendment to the citation, or some other legitimate reason, the district supervisor will handle the reinspection of such cases as CSHO referrals whenever there is reason to believe that the violative conditions continue to exist. If a reinspection is not to be

conducted, the reasons will be documented in the case file.

D. Circumstances. There are circumstances when a CSHO referral may be necessary or appropriate, such as the following:

1. The CSHO lacks the necessary expertise.
2. The CSHO observing the hazard is already assigned to an inspection of higher priority.
3. The CSHO observes specific evidence of imminent danger or serious hazards at a worksite not programmed for an inspection.
4. Equipment necessary for an inspection is not available at the time.
5. Efficient use of resources requires that a referral be made; e.g., the size of the workplace, the number of employees involved, the length of time likely to be required for an inspection, the extent of hazards observed, etc.
6. The observations occur outside the CSHO's normal working hours.

Note: For inspection classification purposes, if a CSHO lacks the expertise to handle all complaint items, to complete an imminent danger, PSM or fatality/catastrophe investigation or for some other reason requires assistance from another CSHO, such assistance, coordinated through the district supervisor, will be counted as part of the original complaint, imminent danger or fatality/catastrophe and not as a referral. Such assistance will not be counted as a separate inspection unless another discipline is involved (e.g., safety to health or health to safety).

ii. Safety and Health Agency Referrals. This category includes referrals from other department divisions, NIOSH, consultation programs, and discrimination investigators. Referrals from state or local health departments, medical doctors and safety and/or health professionals from other agencies are also included in this category when they involve potentially serious employee exposures directly within the professional expertise of the person making the referral.

Note: For purposes of assigning an inspection priority, referrals from these sources will be considered as equivalent to CSHO referrals, although not counted as such by IMIS.

iii. Referrals to and from Other Agencies.

A. Notifications of hazards observed and reported (referred) to the division by other federal, state or local government agencies or their employees; e.g., local

building inspectors, fire marshals, etc., are included in this category.

B. Reports by federal employees, their supervisors, or their representatives of unsafe or unhealthful working conditions within their own workplaces and to which they are exposed (as provided for in Executive Order 12196) will be referred to the director who will forward the information to OSHA.

C. The citation review process may identify certain employers who are “found recalcitrant or indifferent to its obligations under the OSH act.” The director will refer these employers who have additional worksites outside of the state to the OSHA regional administrator. (See also APN 16).

iv. Media Reports. The designation of the investigation type will be determined by the event, rather than by how the event was reported to the division. Therefore, reports from the media of accidents that have occurred involving serious injury will be investigated using guidelines contained in the FOM Chapter IX, Complaints, Referrals and Accidents. ("Reports" will be understood to include news items reported in the media as well as hazards reported directly to the division by media sources. Thus newspaper or magazine articles, photographs or news items reported over radio or television are examples of media reports as well as calls to department offices by reporters.)

v. Employer Reports. Similarly, employer reports of accidents, other than fatalities and catastrophes, or incidents, whether required by standard or regulation or not, will be considered for accident investigations as deemed appropriate by the district supervisor.

c. Referral inspections are unprogrammed inspections and, except for complaints received from discrimination personnel, will be recorded using the OSHA-90 Form.

3. Procedures. Each referral will be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints given in paragraphs A.4. and A.5, to determine whether there are reasonable grounds to believe that a safety or health hazard exists. The hazard will be classified as imminent danger, serious or nonserious. Referrals to be inspected will be assigned a priority by compliance personnel according to the severity of the alleged hazard.

a. When the CSHO observes an imminent danger situation under the circumstances outlined in paragraph B.2.b.i.D.3, a district supervisor or bureau chief should be contacted immediately. If immediate contact is not possible, an inspection will be conducted without delay and the district supervisor informed as soon as possible after the inspection has been initiated.

b. If, after evaluation, compliance personnel determine that a CSHO referral or a referral from a safety and health agency should be classified as nonserious, such a referral will be handled by letter or telephone in accordance with paragraph A.8.

- c. Other government agency referrals alleging serious violations should be handled by an inspection. Referrals alleging nonserious violations will be processed according to the instructions for nonformal complaints in paragraph A.8.
- d. For all referrals handled by letter or telephone, the following procedures apply:
 - i. The employer will be notified of the hazards alleged in the referral whenever a name, address, or phone number is given in the referral or is obtainable through reasonable effort. Letters similar to those used for complaints can be used for referrals.
 - ii. If no employer name, address or phone number is obtainable, the referring party will be notified by telephone of this fact and will be informed that the division can take no action without being supplied with additional information.
 - iii. The procedures in paragraph A.8. are applicable when a referral is handled by letter or telephone.
- e. In the case of media reports, reasonable efforts to corroborate the information contained in the report should be made whenever necessary. Specifically, the complaint desk should attempt to determine if the incident is related to an apparent violation of a standard. This may be done by carefully reviewing the facts as reported by the media, or when indicated by the particular circumstances, by contacting a third party such as the police, the ambulance service, or in rare cases, by calling the employer. After a review of the facts the district supervisor may schedule an inspection.
- f. Employer reports of incidents involving chemical spills or other releases to which employees may have been exposed should be scheduled for an inspection within five working days if the potential exposure is determined to have been sufficiently serious to warrant an inspection. Otherwise, such spill incidents will be handled by letter.
- g. A letter transmitting the investigation results will be sent to any referring safety and health agency or other government agency whenever a referral investigation is conducted. Results will also be communicated to a referring CSHO.
- h. The scope of referral inspections will be decided in accordance with the guidelines for complaints in paragraph A.9. At a minimum, the scope of referral inspections will include a complete investigation of the circumstances of the referral.
- i. A file will be set up for each referral as it is received. This file will contain a copy of the completed OSHA-90, all documentation supporting the evaluation and classification of the referral and subsequent action documents. If an inspection is eventually performed, all of the material will be absorbed into the inspection case file.

C. Accidents.

- 1. For accidents involving fatality/catastrophe investigations or for guidance associated with processing requests from the NC Industrial Commission's Fraud Investigations Unit of the Insurance Compliance and Fraud Investigation Section

(FIU) for information pertaining to accidents, see FOM Chapter VIII, Fatality and Catastrophe Investigations.

2. Accidents reported by the media or received directly in the field office.
 - a. The division does not limit its investigation of accidents to only those resulting in a fatality or catastrophe. Accidents reported in the media or accidents that receive significant publicity will be evaluated by the bureau chief and district supervisor, to determine if an investigation or inspection is warranted.
 - b. The district supervisor will assign the inspection to a CSHO. Upon notification, the CSHO will notify the complaint desk with information of the assignment. *The supervisor will ensure that the CSHO has completed the required Microsoft Word accident or fatality notification form and forward the form electronically to the complaint desk within 24 hours. The Word notification forms are located on the One Stop Shop in the Forms section. The complaint desk will enter the applicable form (i.e. OSHA-36, OSHA-7, OSHA-90 and serious injury/fatality report) in OSHA Express and forward the information via email to the fatality group. Instructions in the memo "Entering and Processing Accidents and Fatalities in OSHA Express" will be followed. This memo is located on the One Stop Shop in the Field Information System, Memo folder. (The CSHO may have to wait until opening the inspection to obtain all necessary information.)*
 - c. *The CSHO will inform the district supervisor about the status of the accident investigation as soon as possible after opening the investigation.*
 - d. Any public inquiries regarding an accident investigation will be referred to the Communications Division.
 - e. Newspaper articles and other media reports will be collected for possible inclusion in the case file.
 - f. If an accident involves a fatality, the CSHO must compile and send a letter to the victim's family within 5 working days of *identification of the victim. The letter will be sent to the person(s) listed as emergency contact on the victim's employment record. The contents of the letter will follow the guidelines set forth in FOM Chapter VIII, Fatality and Catastrophe Investigations.*
3. Accidents received at the complaint desk.
 - a. *The CSHO receiving the call will obtain all the pertinent preliminary information and will complete applicable forms and follow the instructions in the memo "OSHA Express - Accident and Fatality Processing." This memo is located on the One Stop Shop in the Field Information System, Memo folder. The CSHO will scan and email all completed forms to the appropriate district supervisor.*
 - b. *The district supervisor will assign the inspection to a CSHO. The CSHO is responsible for ensuring that all accident information is added to OSHA Express per the "OSHA Express - Accident and Fatality Processing" memo.*
 - c. The CSHO will inform the district supervisor about the status of the accident investigation as soon as possible after opening the investigation.

- d. Any public inquiries regarding an accident investigation will be referred to the Communications Division.
- e. Newspaper articles and other media reports will be collected for possible inclusion in the case file.

If an accident involves a fatality, the CSHO must compile and send a letter to the victim's family within 5 working days of identification of the victim. The letter will be sent to the person(s) listed as emergency contact on the victim's employment record. The contents of the letter will follow the guidelines set forth in FOM Chapter VIII, Fatality and Catastrophe Investigations.

D. Medical Records Received by Complaint Desk.

1. If medical records are received by the complaint desk, the complaint desk supervisor will review the documents upon receipt and shred them immediately if determined not to be relevant to an inspection or informal investigation. If the complaint desk responds by letter to the sender advising that no inspection or investigation will be conducted, the medical records will be returned and no copies will be maintained in the complaint desk files. The letter will include a statement that all medical records are being returned and that no copies have been retained by the N. C. Department of Labor. A notation will also be added to the "Unprocessed" log on the f: drive that medical records were received and that they were either shredded or returned to the sender.
2. If the records are relevant to an inspection or informal investigation, a copy of the medical records will be transferred via hand delivery or certified U.S. mail to the appropriate district supervisor with a request that the supervisor respond by email when the records are received. The complaint desk supervisor may fax the documents only if the district supervisor is in the office and is available to receive them at the time they are faxed. The original medical records received by the complaint desk will be locked in a cabinet with a copy of the OSHA-7, OSHA-36, etc., that they relate to until the district supervisor confirms receipt by email. Once notified, the complaint desk supervisor will shred the medical records.

APPENDIX IX-A: Questions for Complaint Evaluation.

Note: The following questions are written in technical jargon. Keep in mind that alternate wording may be necessary to get information from people who are not safety and health professionals.

A. For All Complaints.

1. Describe the alleged hazard resulting in unsafe or unhealthful conditions; identify the location. What is the nature and frequency of employee exposure?
2. What is the work being performed in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials such as chemicals being used, the process/operation involved, and the kinds of work being done near the hazardous area.
3. How often is work done at the task, which leads to the exposure? For how long at one time? How long has the condition existed as far as can be determined? Has it been brought to the employer's attention? Have any attempts been made to correct the condition?
4. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?
5. What personal protective equipment is required by the company? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.
6. How many people work in the establishment? How many are exposed to the hazardous conditions? What is their proximity to hazard?
7. Is there an employee representative in the establishment? Include the name, address, and telephone number of the union and/or of the employee representative(s).

B. For Health Hazards.

1. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What have been the results?
2. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any ventilation systems or acoustical insulation in the area, which may reduce exposure to the hazard?
3. What administrative or work practice controls has the employer put into effect?
4. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work-related disease or condition? What was it? Are there work practices in place that could result in exposure to hazardous substances?
5. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?
6. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees? Do employees receive audiograms on a regular basis?

C. For Safety Hazards.

- a. Under what adverse or hazardous conditions are employees required to work? (This should include conditions contributing to stress and "other" probability factors.)
- b. Have any employees been injured as a result of this hazardous condition? Have there been any "near-miss" incidents?

D. For Heat Complaints.

- a. Inside work vs. outside work?
- b. Type of business and machinery?
- c. What is the source of the heat? Process or environment?
- d. If inside, is the facility air-conditioned? Is the unit operating properly?
- e. Is water available?
- f. How many breaks are allowed?
- g. Have employees been sick due to excessive heat? Did a health care professional make a diagnosis of heat related illness?
- h. What is the shift schedule?
- i. How many employees are there per shift and total?

APPENDIX IX-B: Second Hand Tobacco Smoke Complaint

The complaint desk will handle the majority of complaints; however, calls may come to any district office. For second hand tobacco smoke complaints, get mailing addresses for the complainant and the company involved. Forward the complaint to the appropriate district supervisor.

1. Record the complaint on an OSHA-7 as a valid complaint.
2. Inform the complainant that the department has no standard that covers second hand tobacco smoke. However, we do take these complaints seriously. Explain to the employee that a letter will be sent to the company for them to look into the situation.
3. Forward the complaint to the appropriate district supervisor.
4. *Send the proper nonformal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The second hand tobacco smoke letters can be found in OSHA Express:*
 - *Retrieve the selected complaint*
 - *Click the Letters/Documents icon on the top menu*
 - *Document Selection – Complaint/Referral Letters*
 - *Form OS0152 (Comp-Secondhand Smoke Employer)*
 - *Form OS0153 (Comp-Secondhand Smoke Employee)*
5. Close the complaint.

APPENDIX IX-C: Workplace Violence Complaints

The complaint desk will handle the majority of complaints; however, calls may come to any district office. For workplace violence complaints (or any other imminent danger complaints), get as much information as possible and immediately forward the complaint to the appropriate district supervisor or the complaint desk.

1. *Record the complaint on an OSHA-7 as a valid complaint (if it is a valid workplace violence issue). Reference the "Workplace Violence Guidelines" memo, dated October 24, 2011, for guidance in evaluating workplace violence complaints. This memo discusses the use of CPL 02-01-052, Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents.*
2. Inform the complainant that the department has no standard that covers workplace violence. However, we do take these complaints seriously. Explain that if the employee feels threatened by any individuals (physically or otherwise) or if they have been assaulted by anyone, they should contact their local law enforcement. Indicate that OSH will also refer the matter to the appropriate law enforcement officers (should be done by the complaint desk in imminent danger situations and noted under "comments" on the OSHA-7.)
3. Forward the complaint to the appropriate district supervisor.
4. Send a nonformal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The workplace violence letters can be found in *OSHA Express*:
 - *Retrieve the selected complaint*
 - *Click the Letters/Documents icon on the top menu*
 - *Document Selection – Complaint/Referral Letters*
 - *Form OS0145 (Comp-Workplace Violence Comp). This is the letter to be sent to the employer.*
 - *Form OS0140 (Comp-Workplace Violence EE). This is the letter to be sent to the complainant.*
5. Follow complaint procedures.
6. If the employer fails to respond or provides an unsatisfactory answer, the district supervisor will review the response with the bureau chief and a decision will be made on how to proceed. The general duty clause may be applicable, as the employer has the responsibility to provide a workplace free from recognized hazards. Workplace violence covers a broad spectrum of items; therefore decisions will be made as to the best manner in which to proceed on a case-by-case basis.

APPENDIX IX-D: Mold and Mildew Complaints

The complaint desk will handle the majority of complaints; however, calls may come to any district office. For mold and mildew complaints, get mailing addresses for the complainant and the company involved. Forward the complaint to the appropriate district supervisor.

1. *Record the complaint on an OSHA-7 as a valid complaint.*
2. *Inform the complainant that the department has no standard that covers mold and mildew. However, we do take these complaints seriously. Explain to the employee that either an inspection will be conducted or a letter will be sent to the company for them to look into the situation.*
3. *Forward the complaint to the appropriate district supervisor.*
4. *If it is determined that an inspection will not be conducted, send the proper non-formal complaint letter to the employer and the proper letter to the complainant, as done for all complaints handled by mail. The mold and mildew letters can be found in OSHA Express:*
 - *Retrieve the selected complaint*
 - *Click the Letters/Documents icon on the top menu*
 - *Document Selection – Complaint/Referral Letters*
 - *Form OS0161 (Comp-Mold Mildew Complainant)*
 - *Form OS01151 (Comp-Mold Mildew Employer)*
5. *Follow complaint procedures.*
6. *If the employer fails to respond or provides an unsatisfactory answer, the district supervisor will review the response with the bureau chief and a decision will be made on how to proceed. The general duty clause may be applicable, as the employer has the responsibility to provide a workplace free from recognized hazards. Decisions will be made as to the best manner in which to proceed on a case-by-case basis.*