

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



Reply to the Attention of:

OCT 1 1998

Provided By The
Office of State Programs-OSHA
For Your Information
Date: 10-7-98

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
STATE PLAN DESIGNEES

FROM: 
EMZELL BLANTON, JR.
DEPUTY ASSISTANT SECRETARY

SUBJECT: Referrals in Exempt SIC Codes

There have been questions from field offices concerning referrals associated with small businesses that have certain exemptions under the annual Appropriations Act. Neither the OSH Act, the annual Appropriations Act riders nor CPL 2-0.51J use the term "referral," which is a category used administratively by OSHA. Pursuant to the FIRM, referrals are handled "in a manner similar to that of complaints," since they both involve alleged hazards in the workplace and differ only in the source of the allegation.

For many years the appropriations riders have authorized inspection of an employer in an otherwise "exempt" SIC in response to "an employee complaint." If Congress had used only the term "complaint," it might have been possible to construe the term broadly. Under the language actually used in the rider, however, OSHA is clearly limited to responding to complaints filed by employees. An employee complaint, however, need not be filed directly by the employee but may be filed by a representative or agent of the employee. This would usually include attorneys and collective bargaining agents, and may also include others such as members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees. The representational capacity of the person filing a complaint on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved of, the filing of the complaint on his or her behalf.

Referrals alleging safety hazards at places of employment exempt by an appropriations rider, will not be considered as a complaint and scheduled for inspection unless it can be determined and documented in the case file that the referral came from an agent of the employee with the employee's knowledge of the agent's intended action.

Any referral alleging imminent dangers, health hazards, fatalities, the hospitalization of two or more employees, or 11(c) discrimination against an employee, is to be treated as outlined in paragraph XI. B. of CPL 2-0.51J, as inspections in response to these situations are specifically authorized by the appropriations rider.