

U.S. Department of Labor

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**REPORT TO MINE SAFETY AND
HEALTH ADMINISTRATION**



MSHA CAN IMPROVE HOW IT RESPONDS TO AND TRACKS HAZARDOUS CONDITION COMPLAINTS

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BRIEFLY...

September 30, 2016

MSHA CAN IMPROVE HOW IT RESPONDS TO AND TRACKS HAZARDOUS CONDITION COMPLAINTS

WHY OIG CONDUCTED THE AUDIT

Mine hazards contributed to 151 miner deaths and 30,350 injuries between January 2012 and December 2015. A 2006 OIG audit found MSHA had not evaluated or inspected a significant number of hazardous condition complaints in a timely way. These complaints included malfunctioning equipment, missing safety measures, and toxic gasses, any of which miners can encounter daily.

Effective management of the Hazardous Condition Complaints program is vital to ensuring appropriate and prompt action is taken to identify and abate hazardous mine conditions. This program is the crucial component of a comprehensive approach to improving mine safety. Miners and miners' representatives can file complaints if they believe there are violations of the Mine Act, health or safety standards, or if they believe an imminent danger exists. The Mine Act gives these complainants the right to obtain an MSHA inspection following a complaint.

WHAT OIG DID

We conducted this performance audit to determine the following: Did MSHA districts log, assess, and respond to complaints of hazardous mine conditions consistently?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2016/05-16-002-06-001.pdf>

WHAT OIG FOUND

MSHA districts did not log, assess, and respond to complaints of hazardous mine conditions consistently.

MSHA districts treated complaints inconsistently because each district had developed its own processes based on its own interpretation of the MSHA Hazard Complaint Procedures Handbook. For example, districts developed different criteria for when to notify mine operators of imminent dangers. Also, two of the six districts we visited had not established timeliness goals. Any delay in providing information about an imminent danger places miners' safety and health at unnecessary risk.

Call center staff sometimes did not ask important follow-up questions and thus some complaints sent to MSHA lacked critical information that would have better focused inspections.

MSHA did not follow its own policy when using its triage mechanism, which allows the timing of complaints investigations to be adjusted according to the perceived severity of the complaint. Some complaints did not address actual hazards. Time inspectors spend investigating complaints not involving actual hazards is time taken away from other safety and health inspections and enforcement, decreasing the chances of discovering actual hazards. In each case, MSHA has not provided appropriate oversight to ensure that this national program operates the same way in every district.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Mine Safety and Health implement consistent guidelines for handling complaints, establish standard completion goals for post-complaint inspections, provide additional training to district personnel, improve call center scripts and training for call center staff, and establish a stronger triage mechanism for incoming complaints.

The Assistant Secretary agreed with some, but not all, of the OIG's recommendations. MSHA believes its operating plan currently tracks investigation timeliness for 103(g) imminent danger complaints, the most serious hazard complaint, to ensure an investigation is started within one day of receipt.

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September 30, 2016

INSPECTOR GENERAL'S REPORT

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Mines are inherently dangerous. Malfunctioning equipment, missing safety measures, and toxic gasses are just a few of the dangers miners face every workday. 123 miners died and another 23,682 were injured in the workplace between 2012 and 2014. Even in 2015, the safest year on record, 28 miners died performing their jobs and an additional 6,668 miners were injured.

In response to the many dangers involved in mining, Congress passed the Federal Mine Safety & Health Act of 1977 (Mine Act). The Mine Act gave the Mine Safety and Health Administration (MSHA) tools to help improve the safety and health of miners. Section 103(g) allows miners and their representatives to formally communicate complaints to MSHA regarding safety or health hazards at mines confidentially and without reprisal. MSHA's Hazardous Condition Complaints (HCC) program is the key component of this comprehensive approach to improve mine safety. Between 2012 and 2014, MSHA investigated over 7,500 complaints filed by miners and others via this program.

Effective management of the HCC program is vital to ensuring appropriate and prompt action is taken to identify and abate hazardous conditions in the nation's mines. We conducted an audit of the program to answer the following question:

Did MSHA districts log, assess, and respond to complaints of hazardous mine conditions consistently?

RESULTS IN BRIEF

MSHA districts did not log, assess, and respond to complaints of hazardous mine conditions consistently.

MSHA districts treated complaints inconsistently, as each of the six districts developed its own processes based on its own interpretation of the MSHA Hazard Complaint Procedures Handbook. For example, MSHA districts developed different criteria for notifying mine operators of imminent dangers. Two districts had not established timeliness goals at all, one district required HCC inspections (from complaint receipt to resolution) to be completed within 10 business days, and three districts allowed up to 30 calendar days to resolve complaints. Any delays in communicating information about an imminent danger places miners' safety and health at unnecessary risk.

We also found some complaints lacked critical information that would better focus investigations. This occurred because call center staff lacked sufficient training in mine-specific terminology and an understanding of mining operations. As a result, staff sometimes did not ask important follow-up questions and complaints were routed to MSHA with insufficient information to identify issues with specificity, which could have increased the time hazards went unabated. Instead, time was spent investigating and clarifying complaints.

MSHA did not follow its own policy when using its triage mechanism. This mechanism allows the timing of complaint investigations to be adjusted according to the perceived severity of the complaint. Finally, some complaints did not address actual hazards. Time inspectors spend investigating complaints not involving actual hazards is time taken away from conducting other safety and health inspections and enforcement, decreasing the chances of discovering actual hazards.

BACKGROUND

MSHA's purpose is to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the nation's miners. The Federal Mine Safety & Health Act of 1977 (Mine Act) gives miners and miners' representatives, the right to file confidential, anonymous complaints whenever they have reasonable grounds to believe that a violation of the Mine Act or a mandatory health or safety standard exists or that an imminent danger exists at any mine.

Miners and miners' representatives can submit complaints via telephone or email through MSHA's contractor, or directly to an MSHA district or field office. The Mine Act gives these complainants the right to obtain an MSHA inspection following a complaint.

Generally speaking, complaints fall into two broad categories: those citing conditions which are imminent dangers to the safety and health of miners and those which, while potentially hazardous, do not pose an imminent danger to safety or health.

After completing an inspection, MSHA convenes a post-inspection conference with the mine operator and discloses the results of the inspection. MSHA issues citations/orders for violations or dangers, or a “notice of negative finding” if no citations or withdrawal orders are issued. Additionally, the mine operator posts MSHA’s findings on their mine bulletin board. If MSHA determines a violation or danger does not exist, the Mine Act and MSHA regulations at 30 Code of Federal Regulations (CFR) Part 43 give complainants the right to an informal review of MSHA’s refusal to issue a citation or order. MSHA may hold an additional conference with the complainant and, in any event, must notify the complainant of the reasons for the agency’s final disposition of the matter.

Hazardous condition complaints are an important part of both miner safety and a potential help when MSHA investigates accidents. For example, hours after a miner was killed, MSHA received a verbal complaint during the investigation of the fatal accident.

RESULTS

EACH OF THE SIX MSHA DISTRICTS TREATED HAZARDOUS CONDITION COMPLAINTS DIFFERENTLY

None of the six districts handled hazardous condition complaints in the same way. One district did not immediately notify mines of imminent dangers, two districts did not have timeline goals for completing inspections, and districts used different codes to record their inspection activities in MSHA’s complaint tracking system. Consistent complaint-handling procedures are required to ensure districts take appropriate and prompt action to identify and abate hazardous mine conditions.

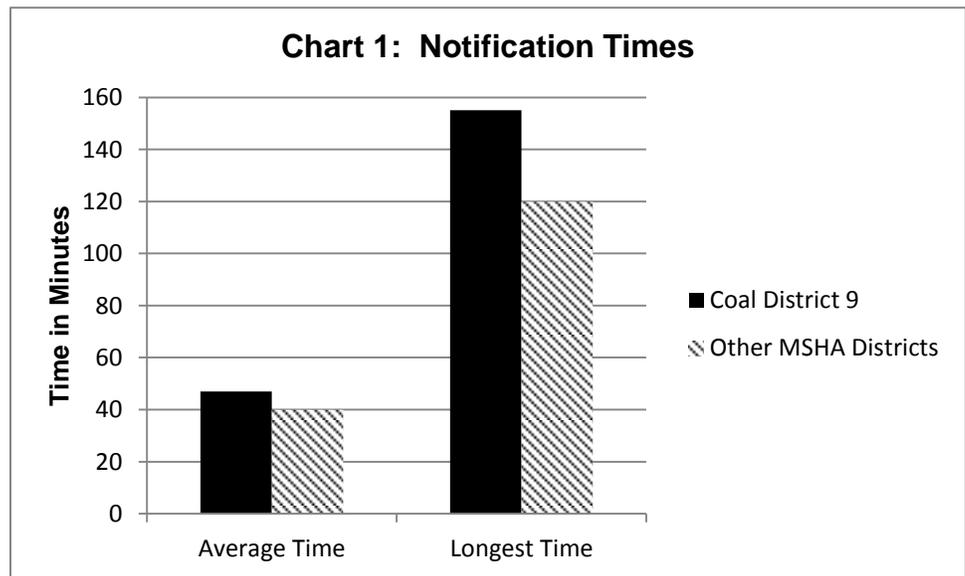
ONE DISTRICT DID NOT IMMEDIATELY NOTIFY MINE OPERATORS OF IMMINENT DANGER COMPLAINTS

Five of the six MSHA districts we visited during our audit notified mine operators immediately upon receipt of an imminent danger complaint. Coal District 9, however, did not. During business hours, this district relayed the complaint to the appropriate field office, which then notified the mine operator.

According to §3(j) of the Mine Act, an “imminent danger” is defined as “the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.”

We compared notification times for all coal and Metal Nonmetal Safety and Health (MNMS&H) districts¹ that had imminent danger complaints in our scope period and calculated two statistics: first, the average amount of time it took for a district to notify a mine operator, and second, the single longest span between the time a district received a complaint and the time the mine operator was notified. The longest span represented the worst performance for each district.

The districts that notified mine operators directly took 40 minutes on average from the time the call was received to the time the mine operator was notified. District 9 took, on average, 47 minutes to notify mine operators. Our analysis further revealed District 9 had the slowest performance in our second statistic. The



longest notification time in our sample for District 9 was 155 minutes versus an average high notification time in the other districts of 120 minutes. See Chart 1.

Adding an intermediate step in notifying mine operators of an imminent danger complaint potentially increases the risk that an accident could happen during the additional time the notification was pending. The remaining five districts we visited notified mine operators immediately of imminent danger conditions, without stopping first to relay the information to the relevant field office. This practice shaved potentially valuable minutes from the process, time which could be used by the mine operator to correct the imminent danger.

¹ In calculating and presenting our statistics, we excluded the following:

- Two districts that received one complaint each during our audit scope. One complaint was received prior to 6AM, which was outside of business hours, and the other appeared to be an error, because it indicated the mine operator was notified of the imminent danger prior to being notified by the district.
- Four outlier times because they were significantly longer than any other notification times, ranging from 285 to 2,700 minutes, and did not appear to be in context with the remaining times.

The guidance outlined in MSHA’s Hazard Complaint Procedures Handbook (Handbook), in effect at the time of our audit, was vague and did not require consistency across districts. For instance, the Handbook did not specify who should notify a mine operator of an imminent danger condition. Instead, it stated:

If an immediate inspection cannot be conducted, the mine operator shall be notified forthwith by an Authorized Representative of the alleged imminent danger and shall be directed to investigate the hazard prior to an MSHA inspection.

MSHA modified this language in the updated Handbook it issued in June 2015, during the course of our audit, to state, “The mine operator shall be directed to investigate the hazard immediately.”

The Coal Mine Safety and Health General Inspection Procedures Handbook (Coal Inspections Handbook) did not provide any clarification either, as it stated:

When an imminent danger is alleged, the mine operator shall be informed of the allegation and directed to investigate the hazard immediately.

§103(g)(1) of the Mine Act states:

The operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists.

MSHA DISTRICTS HAD ESTABLISHED DIFFERENT TIMELINESS GOALS FOR COMPLAINT INSPECTIONS

Two of the six districts we visited had not established specific timeliness goals for completing complaint inspections. Instead, they completed these inspections “as soon as possible.” The four other districts we visited, one required HCC inspections (from complaint receipt to resolution) to be completed within 10 business days, while the remaining three allowed up to 30 calendar days to resolve complaints. This lack of consistency occurred because MSHA had not established how long it should take to complete a complaint inspection or other performance measure for the process. Without established and consistent timeliness goals, MSHA could not measure the performance of the HCC process or ensure that inspections were taking place within a timeframe sufficient to perform quality inspections and address hazards that may have existed on a timely basis. Both districts told us they completed their inspections “as soon as possible.”

Government Accountability Office (GAO) Standards for Internal Control in the Federal Government require agencies to establish performance measures. Without concrete, consistent timeliness goals, MSHA cannot monitor the program or judge its effectiveness.

COMPLAINT INSPECTIONS WERE INCONSISTENTLY CODED

97 of the 317 inspections we reviewed were miscoded in MSHA's tracking system. Coal districts used the E03 code when recording complaint inspections, while Metal/Non Metal districts used the E04 code to record those same inspections. While both codes were valid, they indicated different types of complaints. The E03 code is used for a 103(g) written notification hazard complaint inspection alleging a violation or imminent danger exists at a mine. Section 103(g) complaints are made only by a miner or representative of miners. If MSHA does not identify any hazards related to the complaint, MSHA must notify the complainant of the inspections results when the complainant is known.

The E04 code is used for special inspections resulting from a verbal or written complaint where a violation or hazardous condition is alleged and is not a 103(g) request or a code-a-phone complaint. The E04 code is used for complaints not meeting the specific requirements of Section 103(g) of the Mine Act and considered "Other Complaints." Specifically, the E04 code is used when a complaint is filed by a non-miner or miner who wants to remain anonymous.

Although MSHA District personnel we spoke with were aware of the correct use of activity codes, the codes were still sometimes incorrectly used. One district manager told us the district had recently experienced high staff turnover and new staff taking calls may have been confused about the proper usage of the codes, and the 2002 HCC Handbook did not provide specific guidance on which code to use. The 2015 Handbook now includes the distinction between the two codes. Specifically, it states:

Activity codes E03 (for Section 103(g) complaints) and E04 (for "Other Complaints") are designated for hazardous condition complaint investigations.

Lack of consistency when recording inspection codes could make it difficult for MSHA to review trends and identify common issues. In addition, the E03 code identifies some complaints for which the Mine Act requires MSHA to respond to the complainant after the investigation is complete.

Training on the updated handbook would ensure better consistency across Districts.

COMPLAINTS HANDLED BY THE CALL CENTER DID NOT CONTAIN SUFFICIENT INFORMATION TO ALLOW TARGETED INSPECTIONS

241 of the 317 (76 percent) complaints we reviewed were routed to MSHA through the HCC call center. Of the 241, 30 of the complaints (12 percent) lacked sufficient detail, such as not specifying which equipment was malfunctioning or generally where the

hazard was located. Sufficiently detailed complaints are essential so MSHA inspectors can better target their inspections, thus reducing the time a hazardous condition persists.

We found some complaints lacked critical information that would have better focused inspections. One complaint mentioned “unsafe ... trucks,” but made no mention of which trucks (e.g. make/model, license tags) were unsafe. Another stated “bring about five or six inspectors and you will see for yourself” but provided no other information to assist an inspector in conducting their work.

Vague complaints may cause MSHA to expend additional, unnecessary inspection resources because the lack of specificity in the complaint requires expanded inspections to try to determine the exact nature of the hazard. MSHA inspectors typically handle both complaint inspections and regular, legally mandatory inspections of mines. MSHA field personnel informed us that because all hazardous condition complaints must be inspected they take precedence over regular inspections. This underlines the importance of clear, specific complaints that would enable inspectors to conduct efficient, focused inspections of hazards alleged in complaints.

The vagueness of these complaints was due, in part, to poorly trained call center staff and a lack of dynamic scripts for taking calls. For example, a dynamic script might prompt the operator to ask “which truck” when only told that the “trucks were unsafe.” During our audit, MSHA’s call center contractor conceded that its telephone representatives generally did not have mining experience, sometimes leading to difficulty in understanding the caller’s situation. Further, the contractor noted that mining terminology was challenging for call center staff. Moreover, in our test calls to the HCC hotline, we found that call center staff were not sufficiently diligent in asking follow-up questions when complaints were unclear. All of these conditions were also present during our 2006 audit of the complaint process, in which we found deficiencies in receiving and documenting telephone calls may have diminished the effectiveness of the call center as a mechanism for filing complaints.

We called the MSHA emergency hotline to test the call center process utilizing complaint scripts we created. We intentionally designed our scripts to be vague and require additional information in order to assess the call center staff’s ability to probe for additional information where required. We found that call center staff were not sufficiently diligent in asking follow-up questions when complaints were unclear. For example, in one script, we told the call center representative that “the boss was predated his runs on the date boards,” but we did not specify which boss or give the boss’s title. In another, we told the representative “there is a bad bearing on the right side of the snub roller,” but did not specify which bearing. We made our calls on various days and at various hours to reach all call center shifts (the call center is manned and operated 24 hours a day, 7 days a week). We limited our calls to a total of 12 to not overwhelm MSHA’s hazardous condition complaint system, as we provided MSHA with only 48 hours of advance notice of our calls.

We assessed: 1) how long it took for calls to be answered, 2) the questions asked by the contractor representatives, 3) whether and the degree to which the representatives confirmed back to us the information provided in the calls, and 4) any deviations from the approach required by MSHA's task order. In all our telephone calls, call center staff conducted themselves professionally and read from their designated script; however, we noted the following:

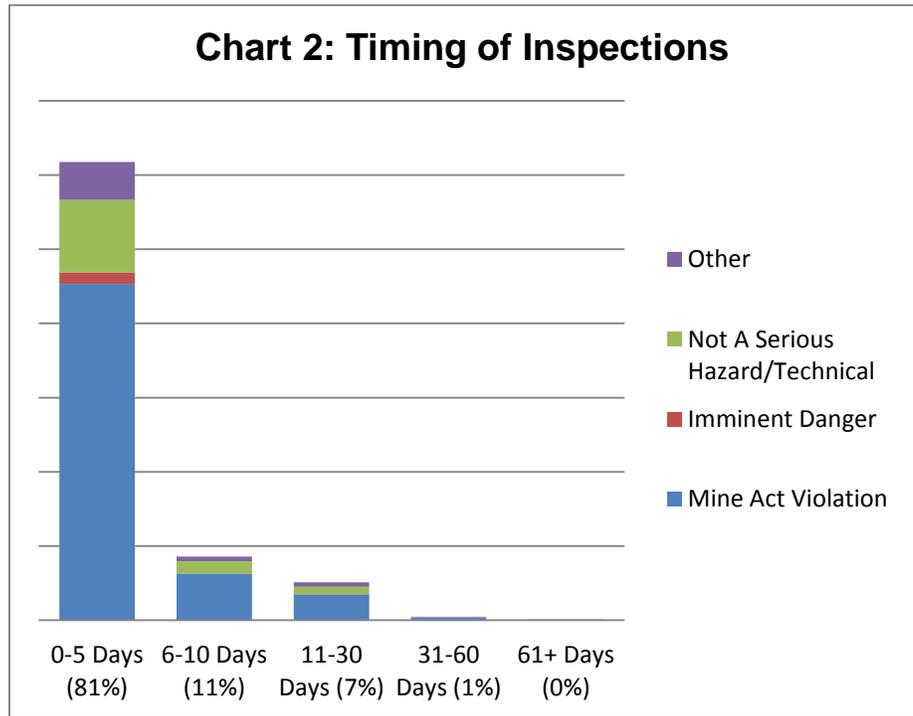
1. Ten representatives asked no follow-up questions.
2. Two representatives did not inform the caller of their right to remain anonymous. Instead, the caller had to specifically request this.
3. Two representatives missed critical items in the complaint. In one call, the representative did not capture the specific belt where the hazard was. In another call, the representative only read back some of what was provided to her and did not summarize the overall message at the close of the phone call.
4. One representative rushed our caller and:
 - a. Restarted the script of standard questions (e.g., mine name) approximately halfway through the description of the problem before allowing the caller to complete the complaint, repeating the same questions that the caller had already answered;
 - b. Did not ask if there was a fire, or if anyone was trapped or had been injured as required by the U.S. Department of Labor (DOL) National Contact Center [Mine Safety & Health Administration Standard Operating Procedures, FY2015];
 - c. Also, though required by that Standard Operating Procedures (SOP), did not state at the close of the call that this information would be conveyed to the nearest MSHA office for their attention; and
 - d. Only read back some of the information the caller provided and did not summarize the overall message at the close of the phone call.

The task order for the contract did not require call center personnel to have mining experience; however, the task order did require call center personnel to be trained in relevant federal laws and regulations, such as the MINE and MINER Acts and demonstrate "skills sufficient to facilitate clear and accurate information exchanges." Based on our telephone calls and our review of other complaints recorded by call center staff, we believe better call center scripts and further training are necessary.

MSHA DID NOT FOLLOW ITS OWN POLICY IN USING ITS TRIAGE MECHANISM TO SCREEN INCOMING COMPLAINTS

We found MSHA did not follow its own triage policy, in which complaints were investigated using different timeframes depending on their apparent severity. We found investigations for 92 percent of all investigated complaints in our scope period began within 10 days, and only 1 percent of investigations began 30 or more days after the complaint was received. Unless the vast majority of regularly scheduled inspections coincided with hazard complaints, this timing seems to indicate MSHA rarely waited for the next regularly scheduled inspection. See Chart 2.

In order to manage its workload, MSHA performed a high-level assessment of complaints to identify those that may not have required an immediate investigation. MSHA policy was to evaluate the severity of complaints and place them into four broad categories: “Imminent Danger,” “Serious Hazard,” “Not a Serious Hazard,” (also called “Technical” by MSHA) and “Violation Does Not Exist.” The



2002 HCC Handbook, in effect at the time we performed our fieldwork, did not require an investigation if MSHA concluded that a complaint was not an imminent danger, hazardous condition, or an obvious violation of a mandatory safety or health standard. In addition, the handbook specified that, with supervisory approval, MSHA could delay inspections of complaints not deemed to be imminent dangers or serious hazards until the next regularly scheduled inspection. This language was reiterated in the June 2015 HCC handbook, issued during our fieldwork.

Supporting MSHA’s position is the fact that it can sometimes be difficult to determine if a complaint addresses an actual hazard that could potentially endanger the health and safety of miners. Nonetheless, some cases in which no hazard existed seemed immediately apparent to us, such as when a miner called to report the termination of a

miner.² Some examples were less clear-cut, such as a complaint asserting “the bathhouse is dirty.”

OIG RECOMMENDATIONS

We recommend that the Assistant Secretary for Mine Safety and Health:

1. Implement organization-wide consistent guidelines for handling hazardous condition complaints;
2. Establish standard completion goals for post-complaint inspections;
3. Provide refresher training to inspection personnel to ensure consistency in coding inspections;
4. Improve the call center scripts and training to ensure customer service representatives capture sufficient complaint information; and
5. Establish a stronger triage mechanism for incoming complaints to better manage resources allocated to inspections.

MSHA RESPONSE

The Assistant Secretary for Mine Safety and Health agreed with some, but not all, of the OIG’s conclusions and recommendations. The Assistant Secretary, however, acknowledged MSHA can improve upon its successful Hazardous Condition Complaint Program through implementing organization-wide consistent guidelines for handling hazardous condition complaints, and by improving call center scripts and training to ensure customer service representatives capture sufficient complaint information.

Management’s response to our report is included in its entirety in Appendix C.

² Employment discrimination complaints are handled under section 105(c) of the Mine Act, which protects any miner, applicant for employment, or representative of miners who has been discharged or discriminated against because of their exercise of statutory rights under the Mine Act, including their right to make a safety or health complaint. It also protects them against interference with the exercise of their statutory rights.

We appreciate the cooperation and courtesies that DOL personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix D.



Elliot P. Lewis
Assistant Inspector General
for Audit

Appendices

APPENDIX A

**OBJECTIVE, SCOPE, METHODOLOGY, AND
CRITERIA**

OBJECTIVE

Did MSHA districts log, assess, and respond to complaints of hazardous mine conditions consistently?

SCOPE

Our audit worked covered all HCCs logged in by MSHA or its call center contractor from January 1, 2012, through February 28, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

METHODOLOGY

PRIOR OIG AUDIT

In 2006, the OIG issued an audit report disclosing timeliness and consistency issues with MSHA's HCC evaluation and inspection process. We reviewed the 13 recommendations made to determine the corrective actions MSHA took to address each one. Four of the 13 recommendations related to quantifying the timeliness for completing evaluations and identifying the reasons for systemic delays. To address these recommendations, MSHA updated its HCC handbook in June 2015 and currently uses the HCC application within MSHA's Standardized Information System (MSIS) to create and track complaints.

INTERVIEWS

We conducted interviews with MSHA staff located in Arlington, VA (MSHA HQ), Morgantown, WV (Coal Mine Safety and Health (CMS&H) District 3), Denver, CO (CMS&H District 9 and MNMS&H Rocky Mountain district), Birmingham, AL (CMS&H District 11 and MNMS&H Southeast district), and Vacaville, CA (MNMS&H Western district) to gain an understanding of MSHA's administration of the HCC process. We also conducted interviews with external parties to learn more about MSHA's HCC process. Specifically, we met with individuals from United Mine Workers of America,

mine operators and other mine personnel (e.g., safety manager, maintenance supervisor, utility operator, safety technician) to obtain their perspectives of the process to include its function, perceived challenges, and suggestions for improvement. In addition, we met with Computer Sciences Corporation (CSC) (call center contractor) staff to obtain an understanding of their role in receiving and processing HCCs.

DATA RELIABILITY

To determine reliability of MSHA HCC data, we: (1) identified specific data elements from MSIS that were critical to supporting our audit analyses; (2) obtained data for all HCCs MSHA logged in from January 1, 2012, through February 28, 2015; (3) developed and completed steps to assess the completeness and accuracy (i.e. reliability) of the data; and (4) traced specific data elements (i.e. complaint ID; complaint, initial evaluation, inspection and decision time and dates; event number, etc.). We determined the data was sufficiently reliable for our testing purposes.

SAMPLING

The audit universe, based on a spreadsheet provided to us by MSHA, consisted of 7,933 HCCs logged in from January 1, 2012, through February 28, 2015. We split the universe into two: imminent danger and non-imminent danger complaints.

For the non-imminent danger complaints, we randomly selected a sample of complaints based on four factors – program area (CMS&H and MNMS&H), geographic location of the district offices, number of complaints received, and frequency of prior audit site visits. Based on these factors, we selected three CMS&H and three MNMS&H district offices. The table below shows our sample of 152 non-imminent danger complaints by program area and district office.

Table 1. Audit Sample

Program Area - District Office	# of Non-Imminent Danger Complaints	Sample Size
CMS&H District 3 (Morgantown, WV)	437	20
CMS&H District 9 (Denver, CO)	423	19
CMS&H District 11 (Birmingham, AL)	295	13
MNMS&H Southeast (Birmingham, AL)	511	23
MNMS&H Rocky Mountain (Denver, CO)	827	37
MNMS&H Western (Vacaville, CA)	863	40
TOTAL	3356	152

We tested all 165 imminent danger complaints MSHA logged in from January 1, 2012, through February 28, 2015.

CASE FILE TESTING

We reviewed 317 HCC case files (152 non-imminent danger and 165 imminent danger) (see Table 2 below) to determine: (1) if CSC notified MSHA of a complaint within 15 minutes of receiving it; (2) how long it took (after complaint receipt) for MSHA to: (a) perform its initial evaluation to determine the severity of the complaint; (b) contact the mine operator (imminent danger complaints only); (c) conduct an inspection; and (d) make a decision (positive or negative findings). We also reviewed each case file for the following documents: (a) MSHA Escalation Report (form completed by CSC when notifying MSHA of a complaint); (b) copy of the sanitized complaint; (c) inspection report, including citations (if applicable); and (d) report of negative findings.

Table 2. Case File Testing

District Office	Universe	Total # of Complaints Reviewed	# of Non-Imminent Danger Complaints Reviewed	# of Imminent Danger Complaints Reviewed
CMS&H				
District 1	18	2	0	2
District 2	278	14	0	14
District 3	459	42	20	22
District 4	500	1	0	1
District 5	156	1	0	1
District 6	450	4	0	4
District 7	269	1	0	1
District 8	345	5	0	5
District 9	444	40	19	21
District 10	227	1	0	1
District 11	309	27	13	14
District 12	361	0	0	0
TOTAL	3817	138	52	86
MNMS&H				
Northeast	502	2	0	2
North Central	465	4	0	4
South Central	885	11	0	11
Southeast	529	41	23	18
Rocky Mountain	858	68	37	31
Western	877	53	40	13
TOTAL	4116	179	100	79
GRAND TOTAL	7933	317	152	165

OTHER TESTING

Of the 317 complaints we reviewed, MSHA conducted 301 HCC inspections (E03 and E04 inspections) (see Table 3 below) and 16 other enforcement inspections or investigations (regular safety and health inspection, non-fatal accident investigation, and non-injury accident investigation). For the 301 HCC inspections, we calculated the number of business days each inspection took and the amount of resources spent.

Using MSHA's Data Retrieval System, we obtained the inspection start and end dates, the number of inspectors, and the total hours spent. We obtained the hourly base rate for a GS-12, Step 5 for calendar years 2012 through 2015 from the Office of Personnel Management's website.

To calculate the number of business days between the inspection start and end dates, we used the 'networkdays' function in Microsoft Excel. This formula excludes weekends, Federal holidays and the October 2013 furlough days. To calculate the amount of resources spent, we multiplied the base hourly rate by the number of inspectors and total hours spent.

Table 3. HCC Inspections Testing

District Office	Total # of Complaints Reviewed	# of 103(g) Complaints Reviewed	# of 103(g) Complaints w/ Negative Findings	# of Non-103(g) Complaints Reviewed	# of Non-103(g) Complaints w/ Negative Findings
CMS&H					
District 1	2	0	0	1	1
District 2	14	4	1	4	3
District 3	42	23	16	0	0
District 4	1	1	0	0	0
District 5	1	0	0	0	0
District 6	4	0	0	2	1
District 7	1	1	0	0	0
District 8	5	2	0	1	1
District 9	40	20	6	5	3
District 10	1	0	0	0	0
District 11	27	6	2	0	0
TOTAL	138	57	25	13	9
MNMS&H					
Northeast	2	0	0	0	0
North Central	4	0	0	2	1
South Central	11	0	0	9	6

Southeast	41	12	7	18	12
Rocky Mountain	68	11	5	46	30
Western	53	4	1	0	0
<i>TOTAL</i>	<i>179</i>	<i>27</i>	<i>13</i>	<i>75</i>	<i>49</i>
GRAND TOTAL	317	84	38	88	58

For all 317 complaints, we reviewed the original complaint submitted for vagueness. Specifically, we reviewed each complaint to determine if the information provided was specific enough to allow an inspector to focus their inspection upon arrival at the mine. The table below shows the breakdown of complaints by program area and district office.

Table 4. Vague Complaint Testing

District Office	Total # of Complaints Reviewed	# of Complaints Submitted via CSC	# of Vague Complaints
CMS&H			
District 1	2	0	0
District 2	14	8	2
District 3	42	34	1
District 4	1	1	0
District 5	1	1	0
District 6	4	2	1
District 7	1	1	0
District 8	5	2	0
District 9	40	38	3
District 10	1	1	0
District 11	27	23	4
<i>TOTAL</i>	<i>138</i>	<i>111</i>	<i>11</i>
MNMS&H			
Northeast	2	1	0
North Central	4	0	1
South Central	11	10	1
Southeast	41	22	9
Rocky Mountain	68	57	4
Western	53	40	4
<i>TOTAL</i>	<i>179</i>	<i>130</i>	<i>19</i>
GRAND TOTAL	317	241	30

INTERNAL CONTROLS

In planning and performing our audit, we considered MSHA's internal controls that were relevant to our audit objective by obtaining an understanding of those controls, and assessing control risk for the purpose of achieving our objective. The objective of our audit was not to provide assurance on the internal controls. Therefore, we did not express an opinion on the internal controls as a whole. Our consideration of MSHA's internal controls relevant to our audit objective would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal controls, noncompliance may nevertheless occur and not be detected.

CRITERIA

- Federal Mine Safety and Health Act of 1977, Public Law 91-173 (Mine Act)
- Mine Improvement and New Emergency Response Act of 2006 (MINER Act)
- 30 Code of Federal Regulations (CFR) Part 43
- MSHA Hazard Complaint Procedures Handbook (November 2002)
- A Guide to Miner's Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977 (Revised 2010)
- MSIS User Manual Hazardous Conditions Complaint
- Coal Mine Safety and Health General Inspection Procedures Handbook (February 2013)
- Metal and Nonmetal General Inspection Procedures Handbook (April 2013)
- Hazardous Condition Complaint Procedures Handbook (June 2015)

APPENDIX B

ACRONYMS

CFR	Code of Federal Regulations
CMS&H	Coal Mine Safety and Health
CSC	Computer Science Corporation (Call Center Contractor)
DOL	U.S. Department of Labor
HCC	Hazardous Condition Complaints
Mine Act	Federal Mine Safety and Health Act of 1977
MINER Act	Mine Improvement and New Emergency Response Act of 2006
MNMS&H	Metal Nonmetal Safety and Health
MSHA	Mine Safety and Health Administration
MSIS	MSHA Standardized Information System
OIG	Office of Inspector General
SOP	Standard Operating Procedures

MSHA Response

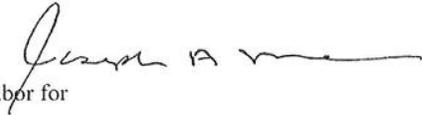
U.S. Department of Labor

Mine Safety and Health Administration
201 12th Street South
Arlington, Virginia 22202-5452



SEP 19 2016

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JOSEPH A. MAIN 
Assistant Secretary of Labor for
Mine Safety and Health

SUBJECT: Response to OIG's Audit of MSHA's Hazardous Condition
Complaint Process Draft Report No. 05-16-002-06-001

Thank you for the opportunity to review your Draft Audit Report referenced above. We appreciate the work the OIG has done to identify ways MSHA's Hazardous Condition Complaint Process can be improved and the ongoing dialogue allowing MSHA to provide feedback and context for the work performed.

MSHA is committed to the safety and health of miners and to supporting the voice of miners in the workplace, who, as the Mine Act recognizes, provide assistance to mine operators in preventing the existence of unsafe and unhealthy conditions and practices in the Nation's mines. Safety requirements, such as providing miners the right to report hazardous conditions, are included in the Mine Act and are vital to keeping workplaces safe. They have helped contribute to the record low number of mining fatalities reported in Calendar Year (CY) 2015 and thus far in CY 2016. In addition, MSHA initiated investigations of 100 percent of 103(g) imminent danger complaints within one day of receipt for FY 2016 (Quarter 3 year-to-date).

As we have explained, MSHA agrees with some, but not all, of the OIG's conclusions and recommendations. Below are specific responses to your recommendations.

OIG Recommendation No. 1: *Implement organization-wide consistent guidelines for handling hazardous condition complaints.*

MSHA agrees that it can improve upon its successful Hazardous Condition Complaint Program and has implemented this recommendation. As the OIG notes in its Draft Report, MSHA has updated the Hazardous Condition Complaint Procedures Handbook (PH15-I-08), effective June 29, 2015, to provide consistent guidance in complaint handling and processing.

Specifically, the Handbook now includes the following procedures for an Authorized Representative (AR) to follow when s/he identifies an imminent danger:

You can now file your MSHA forms online at www.MSHA.gov. It's easy, it's fast, and it saves you money!

When an AR concludes that an imminent danger to the safety or health of miners exists, an immediate inspection of the area or equipment in question shall occur. The mine operator shall be notified forthwith by an AR of the alleged imminent danger and shall be directed to investigate the hazard immediately. After the AR notifies the operator of the alleged imminent danger, an on-site MSHA investigation of the area, equipment, or

practice(s) shall be conducted as soon as possible” (Hazardous Condition Complaint Procedures Handbook, Chapter 8 (a)).

As such, MSHA has already implemented corrective action to address this OIG recommendation.

OIG Recommendation No. 2: *Establish standard completion goals for post-complaint inspections.*

MSHA’s operating plan currently tracks investigation timeliness for 103(g) imminent danger complaints, the most serious hazardous complaint, to ensure an investigation is started within one day of receipt. Specifically, MSHA’s stated goal in the Fiscal Year (FY) 2016 Operating Plan is to initiate investigations for 100 percent of 103(g) imminent danger complaints within one day of receipt¹. In the same FY 2016 Operating Plan, MSHA reports that 100 percent of 103(g) imminent danger complaints were investigated within one day of receipt for FY 2016 (Quarter 3 year-to-date). MSHA’s current guidelines, besides the above cited procedures for imminent dangers, provide for “as soon as possible” inspections consistent with the type of complaint that is received by MSHA. MSHA believes that this standard is consistent with the statute and purpose of the Mine Act and completion of post-complaint inspections vary based on the individual circumstances.

OIG Recommendation No. 3: *Provide refresher training to inspection personnel to ensure consistency in coding inspections.*

MSHA agrees with this recommendation. MSHA will include training on how to properly code inspections during the next cycle of journeyman retraining beginning on October 1, 2016. MSHA also wishes to reiterate that its first and foremost duty is to protect the identity of complainants, which sometimes requires investigators to conduct investigations under different codes. This responsibility takes precedence over the precise coding of hazardous complaints.

The Hazardous Condition Complaint Procedures Handbook states that, “should circumstances warrant, except for those complaints alleging a potential imminent danger, authorized representatives should conduct the investigation in a manner and at a time that will not divulge the identity of the miner or miner’s representative who lodged the complaint.” This policy gives MSHA the latitude to investigate ‘Other Complaints’ under alternative appropriate inspection codes such as E01², E15³, or E16⁴ if MSHA believes that an inspection and positive finding of a

¹ <http://labornet.dol.gov/workplaceresources/policies/strategic-plan/2016-operating-plans/msha-fy16-operating-plan.pdf>

² Regular Safety and Health Inspection: A mandatory Safety and Health Inspection of a mine, surface facility, or other entity having a mine I.D. number, in its entirety.

complaint on an E04⁵ would inform the operator that the violations were issued due to a complaint. If the operator was aware that a complaint had been made by observing the event code on the citation/order, that operator may also be able to determine the identity of the person in their operation that alleged the complaint. As such, MSHA must retain the flexibility to investigate complaints under an E01 or other inspection code if needed in order to protect the identity of a miner or miners' representative who wishes to remain anonymous.

OIG Recommendation No. 4: *Improve the call center scripts and training to ensure customer service representatives capture sufficient complaint information.*

MSHA agrees with this recommendation. In June 2016, MSHA began the use of a questionnaire tool to better capture complaint information. The tool prompts call center staff to ask a series of follow-up questions based on the type of complaint being received. The tool also includes a list of commonly used mining terms, mining equipment, and definitions. MSHA anticipates the tool will reduce call times and ensure call center staff captures sufficient complaint information. MSHA has already provided training to call center staff on the use of the tool.

As the OIG knows, the Department of Labor's Office of Public Affairs, not MSHA, operates the call center and provides services to a number of other DOL agencies. Effective September 30, 2016, a new contractor will assume operation of the call center. The new contractor will have the questionnaire tool embedded into the monitor screens of call center staff, thereby providing them with quick and easy access to the questions to be asked. In addition, the new call center will allow for the updating of the call tree in real time. This means that instead of MSHA districts having to send emails to the call center to make changes to the call tree, the new system will enable districts to make these changes instantaneously without any administrative work needed on the part of the call center. This improvement will help ensure the correct order is followed when communicating hazardous condition complaint information.

OIG Recommendation No. 5: *Establish a stronger triage mechanism for incoming complaints so as to better manage resources allocated to inspections.*

As mentioned earlier, MSHA firmly believes it has a duty to protect the safety and health of miners and to support the voice of miners using the hazardous condition complaint process as miners help identify any conditions and practices that they believe may cause illness, death, and serious physical harm. MSHA's current triage system was intentionally designed to be high-level so as to ensure that safety and health concerns which portray an imminent danger situation or are likely to result in injury or death are appropriately addressed. MSHA believes improving the quality of information collected through the call center will improve the triage process.

³ Compliance Follow-up Inspection: An inspection conducted for the primary purpose of ascertaining the abatement status of previously cited violations.

⁴ Spot Inspection: An inspection of a mine or part(s) of a mine to determine whether there is compliance with safety and health standards.

⁵ Verbal Hazard Complaint Inspection: A special inspection that results from a verbal or written complaint where a violation or hazardous condition is alleged and is not a 103(g) request.

Under the new process, the information collected through the call center is immediately provided to MSHA mine safety and health enforcement staff, who in turn take immediate steps to initiate the necessary action.

APPENDIX D

ACKNOWLEDGEMENTS

Key contributors to this report were: Nicholas Christopher (Audit Director), Fernando Paredes (Audit Manager), Donald Evans, Gerard Howe, and Kathleen Mitomi.

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