
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.

3

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.