

MSHA Handbook Series

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Coal Mine Safety and Health
Metal and Nonmetal Mine Safety and Health

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**HAZARD COMPLAINT
PROCEDURES HANDBOOK**

PREFACE

This handbook sets forth procedures for the processing of safety and health complaints at mines inspected by the Mine Safety and Health Administration (MSHA). Express approval of the Administrator for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health is needed to authorize any modifications to this manual. The procedures in this handbook replace previously issued directives on this subject. Compliance related instructions in the MSHA Program Policy Manual remain in effect.

Administrator for Coal
Mine Safety and Health

Administrator for Metal and Nonmetal
Mine Safety and Health

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A. Purpose

This handbook establishes guidelines for receiving, evaluating, responding to, and processing safety and health complaints received from miners, representatives of miners, and others. It also establishes procedures to process appeals by miners or their representatives when they disagree with a decision by an Authorized Representative (AR) to not issue a citation or order as a result of a written Section 103(g) complaint.

B. Authority

The guidelines in this handbook are in accordance with the requirements of the Federal Mine Safety and Health Act of 1977 (Mine Act), Title 30 Code of Federal Regulations (30 CFR) Part 43, and Agency policy and procedures.

C. Responsibility

The Administrators for Metal and Nonmetal Mine Safety and Health and Coal Mine Safety and Health have primary responsibility for enforcing the Mine Act, the 30 CFR, and ensuring that hazard complaints are responded to in a timely manner and appropriately documented and processed.

D. Introduction

With passage of the Mine Act, Congress included provisions in Section 103(g) for miners and representatives of miners to formally express complaints to MSHA regarding safety or health hazards at mines confidentially and without reprisal. Miners or their representatives filing complaints under Section 103(g) have the right to appeal enforcement decisions made by MSHA regarding their complaint. Specifically, that section provides that:

Section 103(g)(1) - Whenever a representative of the miners, or a miner in the case of a coal or other mine where there is no such representative, has reasonable grounds to believe that a violation of this Act or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title. If the Secretary

determines that a violation or danger does not exist, he shall notify the miner or representative of the miners in writing of such determination.

Section 103(g)(2) - Prior to or during any inspection of a coal or other mine, any representative of miners or a miner in the case of a coal or other mine where there is no such representative, may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act or any imminent danger which he has reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the representative of miners or miner requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

E. Types of complaints

A complaint is any communication from a miner, representative of miners, or other party describing an alleged imminent danger, violation of a mandatory safety or health standard, or a violation of the Mine Act at a mine. Complaints fall into two categories:

1. 103(g) Complaints

Section 103(g) complaints are those made **only** by a miner or representative of miners describing or alleging an imminent danger, violation of a mandatory safety or health standard, or a violation of the Mine Act. They must be in one of the following formats:

- (a) Handwritten (or typed) and signed notes or letters;
- (b) Electronic mail (email) messages that include a signature or email messages that are unsigned but are clearly identifiable as being made by a miner or a representative of miners. If the email does not have a signature, the complaint must include the person's name or a valid email address. Email messages without a name or valid email address are not considered a 103(g) complaint but may be processed as an "Other Complaint";
- (c) Handwritten (or typed) and signed facsimiles; or
- (d) Code-A-Phone messages clearly identifiable as being made by a miner or a representative of miners.

2. Other Complaints

Complaints not meeting the specific requirements of Section 103(g) of the Mine Act are considered "Other Complaints." Written or verbal safety and health complaints received by MSHA representatives not meeting the above requirements are also considered "Other Complaints." Other complaints include:

- (a) Signed, written letters, facsimiles, or notes originating from someone other than a miner or representative of miners;
- (b) Unsigned letters, facsimiles, or notes not originating from a miner or representative of miners;
- (c) Unsigned email or messages from invalid email addresses not from or not identifiable as originating from a miner or representative of miners;
- (d) Anonymous e-mail or Code-A-Phone messages that can not be identified as originating from a miner or representative of miners; or
- (e) Verbal communications made in person or by telephone by a miner, representative of miners, or other party.

F. Confidentiality of Complainants

Protecting the identity of all complainants is of the utmost concern to MSHA and is a statutory requirement found in Section 103(g) of the Mine Act. Authorized Representatives shall take all reasonable steps to maintain and assure this confidentiality. In addition to the mandatory removal of the name of claimants, these actions may include rewriting a complaint to remove references to a specific work area, equipment, or work shift so that the complainant's identity is not disclosed. Should circumstances warrant, except for those complaints alleging potential imminent danger, Authorized Representatives should not conduct an inspection immediately if an immediate inspection would divulge the identity of the miner who lodged the complaint.

G. Receiving Complaints

MSHA representatives should consider all claims from any person which allege the existence of violations of the Mine Act, mandatory health or safety standards, imminent dangers, or general safety or health hazards. It is critical that Agency personnel determine if the complainant is alleging that conditions are hazardous, constitute an imminent danger, or constitute a violation of a mandatory standard or the Mine Act.

H. Evaluating Complaints

An Authorized Representative will evaluate the seriousness of all complaints so that an appropriate decision may be made regarding whether a special MSHA inspection should be conducted. That evaluation will include a review of the mine file (if possible) and every condition alleged by the complainant.

Complaint evaluations fall into these categories:

1. Imminent Danger

When an Authorized Representative 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. 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. After the operator has been notified regarding the alleged imminent danger, an on-site inspection of the area, equipment, or practice(s) shall be conducted as soon as possible.

2. Serious Hazard

When an Authorized Representative concludes that a serious hazard to the safety or health of miners may exist at a mine, an inspection will be conducted as soon as possible without prior notification to the mine operator.

3. Not a Serious Hazard

When an Authorized Representative concludes that safety or health concerns in a complaint are not serious hazards or are of a technical nature not affecting the safety or health of miners, such as the failure to report an accident or update fire extinguisher records, the area or equipment noted in the complaint will be included in the next inspection. The determination to delay the investigation of such a complaint shall be approved by the AR's immediate supervisor.

4. Violation Does Not Exist

When an Authorized Representative concludes that alleged safety or health concerns are not an imminent danger, not hazardous, or on their face are not a violation of a mandatory safety or health standard or the Mine Act, an inspection is not required to be conducted. The determination not to investigate such a complaint shall be approved by the District Manager.

I. Investigating Complaints

After a complaint is evaluated and a decision is made to conduct an inspection, the complaint shall be rewritten prior to being delivered to the mine operator. The original complaint shall not be given to, shared with, or shown to another miner, representative of miners, mine operator or his agent. Rather, the original complaint shall be placed in a file designated for that purpose and maintained at the district office only. All names will be removed from the rewritten complaint along with any other information that could tend to identify the complainant. Further, potentially inflammatory accusations or language, as well as unique writing styles found in the original complaint, shall be appropriately edited.

If the complaint constitutes a 103(g) complaint, upon arrival at the mine site an Authorized Representative shall provide the rewritten complaint to the mine operator and the representative of miners. The AR should then assemble an inspection party and proceed to the area or equipment specified in the complaint. AR's should make every reasonable effort to thoroughly investigate the alleged hazards or violations without compromising the identity of the complainant. These efforts may include investigating the complaint under an event other than a hazard complaint, or inspecting other areas of the mine prior to inspecting the area referred to in the complaint. It should be noted that, at times, the location of the equipment that is the subject of the complaint could identify the complainant, especially at a small mining or milling operation.

Personal or area health samples taken as a result of the complaint must be analyzed to determine whether there is a violation of a mandatory standard. Applicable parties will be contacted and informed that they will be notified of the results when the analysis is received. These contacts should be documented in the Authorized Representative's field notes. Once that analysis is received and it is determined that a health or safety standard has been violated, a citation or order will be issued to the mine operator, with a copy forwarded to the representative of miners. If the complaint is a 103(g) complaint, the complainant will also be notified of the actions taken.

If no citations or orders are issued as a result of 103(g) inspection, the Authorized Representative will notify the mine operator and the representative of miners or miner in writing that no violations were found ("negative findings") at the completion of the MSHA inspection.

A separate inspection event, not a complaint inspection, will be conducted if violations of the Mine Act, imminent dangers, or violations of mandatory safety and health standards are found during the complaint investigation which are not related to conditions or practices alleged in the complaint.

If appropriate, Authorized Representatives will verbally discuss their inspection findings with the 103(g) complainant, if their identity is known, either by telephone or

personal meeting as soon as possible after the conclusion of the complaint inspection. Relevant information regarding the inspection should be provided to the complainant during this discussion. This discussion with the complainant is not required if the complaint filed is an "Other Complaint."

An Authorized Representative is not required to provide written notice of negative findings at the completion of a complaint inspection if the complaint has been determined to be an "Other Complaint."

J. Referring Complaints

Safety and health complaints raising concerns about conditions at work sites where MSHA does not have jurisdiction should be referred to another regulatory agency or the appropriate entity as soon as practicable. Even at mine sites under MSHA jurisdiction, other federal, state, or county agencies may exercise jurisdiction in matters of safety and health and other purposes. MSHA representatives should be aware of the role of these agencies. It is appropriate that we share information with them to the extent possible to assist them in achieving their statutory goals. However, in providing information to other government agencies, MSHA must ensure that the agency, to the extent possible, maintains the confidentiality of the miner or representative of miners who have sought our assistance. If that confidentiality cannot be assured, MSHA representatives may either refer the complaint with the complainant's identity stricken or the complainant should be advised that he or she may directly contact the appropriate agency.

Example: A signed and written complaint from a miner was received by MSHA. The complaint alleges that the miner was allowed 20 minutes for lunch but company rules stated that 30 minutes should have been given. While the complaint was in writing, signed, and originated from a miner, it did not allege an imminent danger, a violation of a mandatory safety or health standard, or a violation of the Mine Act. It is, therefore, neither a 103(g) complaint as defined by the Mine Act nor is it an "Other Complaint." In this instance, the miner should be informed that his or her complaint does not meet the criteria for a Section 103(g) complaint and that an inspection will not be conducted. Further, in this example, the MSHA district manager may decide to contact the regional Solicitor's Office and ask them to review the allegations to determine whether other federal labor laws were violated. If so, the complaint should be forwarded to the appropriate government agency.

K. Processing Complaints

1. Verbal Complaint Procedures

The MSHA representative receiving the verbal complaint is responsible for promptly documenting the conversation on the form shown in Appendix A at the

back of this Handbook. Items “e” through “h” are not to be recorded for complainants who wish to remain anonymous.

The form seeks the following items:

- (a) Name of MSHA person receiving the complaint
- (b) Date the complaint was received
- (c) Time the complaint was received
- (d) Field or district office where the complaint was received
- (e) If volunteered, complainant name
- (f) If volunteered, complainant mailing address
- (g) If volunteered, complainant telephone number
- (h) If volunteered, complainant job title
- (i) Mining or contractor company name
- (j) Mine name
- (k) MSHA ID number for the mine or contractor
- (l) Complaint - relevant statements made by the complainant regarding unsafe or unhealthful conditions, violations of the Mine Act, violations of mandatory standards, or imminent dangers at a mine.

2. Code-A-Phone Complaint Form

On receipt of a Code-A-Phone, email, or “Other Complaint” at MSHA headquarters, relevant information will be entered into a complaint tracking system. A completed Notification of Hazardous Conditions form, shown in Appendix B of this Handbook, and a partially completed Complaint Allegations and Findings form, shown in Appendix C of this Handbook, will be forwarded to the appropriate district office for their review and action. If the complaint is determined to be a Section 103(g) complaint, the district or field office will follow the requirements provided in the Mine Act and 30 CFR Part 43 regarding the providing of written notice, in the event of negative findings, to the complainant.

The complaint should be timely and appropriately processed by the district and action taken as required by this Handbook. The Complaint Allegations and Findings form may serve as the written complaint to be given to the mine operator and representative of miners, assuming the confidentiality of the complainant is maintained. Once a complaint inspection is concluded, a completed Complaint Allegations and Findings form will be forwarded to the appropriate program area in the national office.

3. Complaint Tracking System

A complaint tracking system will be established and maintained in each district office and headquarters to record information received and actions taken to resolve

hazard complaints. Oversight of the district system will be maintained by the District Manager to ensure that the information entered is correct, that it is entered in a timely manner, that it is kept confidential and secure, and that complaints are resolved appropriately. Information will be entered into the system as soon as practicable when a complaint is received and when final disposition is made regarding the complaint.

L. Procedures for Informal Appeal to MSHA

Miners or representative of miners who have filed a Section 103(g) complaint or a request for a special inspection may appeal determinations by MSHA not to issue citations or imminent danger orders at the conclusion of special inspections conducted as a result of their complaint. They should send their written request for an informal review of MSHA's findings to the appropriate District Manager within ten (10) days of the closing date of the inspection or notice of negative finding. That request should be accompanied by appropriate supporting information. After receipt of the request, the District Manager may hold, at his or her discretion, an informal conference where the person requesting review may present his or her views on the matter. After reviewing the information, the District Manager may:

- (a) Affirm the finding that there were no violations justifying the issuance of a citation or order;
- (b) Require that an additional or new 103(g) inspection be conducted; or
- (c) Direct that a citation or order be issued.

In reaching one of these three determinations, the District Manager may wish to consult with the national or regional Solicitor's Office for legal guidance. The District Manager will furnish the person requesting a review with a written decision regarding their informal appeal as soon as possible after the review is concluded. This decision, assuming the identity of the complainant is not jeopardized, will also be furnished to the mine operator, the representative of miners or miner, the district mine file, the appropriate field office supervisor and Authorized Representative. The District Manager's determination in the matter is final.

The appeal procedures in 30 CFR Part 43 do not apply for "Other Complaints."

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