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Hazardous Condition Complaint Procedures Handbook

PREFACE

This handbook sets forth procedures for the processing of safety and health hazardous condition 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 all previously issued directives on this subject. Compliance-related instructions in the MSHA Program Policy Manual remain in effect.

[s] 6/29/2015

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HAZARDOUS CONDITION COMPLAINT PROCEDURES HANDBOOK

1. Purpose

This handbook establishes procedures for addressing safety and health hazardous condition complaints received from miners, representatives of miners, and others. It also establishes procedures to process appeals from 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 Section 103(g) complaint investigation.

2. Authority

The guidelines in this handbook are in accordance with the requirements of the Federal Mine Safety and Health Act of 1977 (Mine Act) (as amended) and Title 30 Code of Federal Regulations (30 C.F.R.) Part 43.

3. 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 and MSHA's standards and regulations to assure that hazardous condition complaints are responded to in a timely manner and that they are appropriately documented and processed.

4. Background

Congress included provisions in Section 103(g) of the Mine Act for miners and representatives of miners to formally complain 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, the section provides:

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.*

5. Types of complaints

A hazardous condition complaint is any communication from a miner, representative of miners, or other person describing an alleged imminent danger, a violation of a mandatory safety or health standard, or a violation of the Mine Act at a mine. Such complaints must be investigated promptly, regardless of where, when, or how MSHA receives the complaint.

Complaints fall into two categories:

a. Section 103(g) Complaints

A Section 103(g) complaint:

- i. Is a reasonable belief that an imminent danger, a violation of a mandatory safety or health standard, or a violation of the Mine Act exists; AND
- ii. Is communicated to MSHA by a person identifiable as a miner or a representative of miners.
- iii. In addition to the name of the miner or representative of miners, for MSHA administrative purposes, the complaint should include at least one type of contact information, such as an e-mail address or a telephone number, if provided. If the complainant does not provide a name or contact information, see next paragraph ("Other Complaints").

b. Other Complaints

An "Other Complaint" of a hazardous condition is:

- i. Communicated to MSHA by someone other than a miner or a miners' representative; OR
- ii. Communicated to MSHA by a miner or miners' representative who has elected not to provide his name or any other personally identifying information; OR
- iii. Communicated to MSHA and does not allege an imminent danger, a violation of a mandatory safety or health standard, or a violation of the Mine Act at a mine.

The procedures for receiving, evaluating, investigating, and documenting hazardous condition complaints are the same for Section 103(g) complaints and Other Complaints, but only Section 103(g) complainants may obtain an informal review of MSHA's decision, as is discussed in Chapter 12 of this Handbook.

6. Confidentiality of Complainants

Protecting the identity of all complainants is of the utmost concern to MSHA and is a statutory requirement in Section 103(g) of the Mine Act. Authorized Representatives shall take all reasonable steps to maintain and assure this confidentiality. In addition to removing the name of the complainant from the complaint, these actions should 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 a potential imminent danger, ARs 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. Section 103(g) also requires that the identity of other miners discussed in the complaint be protected. For this reason, references to other individually identifiable miners should also be removed from the complaint.

7. Receiving Complaints

Any MSHA employee may receive a hazardous condition complaint. MSHA representatives must respond to all hazardous condition complaints, regardless of the means by which a complaint is communicated to MSHA.

When a hazardous condition complaint is communicated to MSHA verbally, whether in person or by other means, the MSHA representative receiving the complaint must reduce the complete content of the complaint to writing. The MSHA employee should record the complainant's words as closely as possible, the date and time the communication was received, and the name and contact information of the complainant

(if provided). MSHA personnel may use [MSHA Form 7000-33](#) (Verbal Complaint Information) to record this information; however, use of the form is optional. MSHA personnel shall use the information recorded at the time the complaint is received to create the official record of the complaint in the Hazardous Condition Complaint (HCC) system (see Chapter 14 below).

Safety and health complaints received online through MSHA's website (www.msha.gov) or via MSHA's National Contact Center (1-800-746-1553) are processed by an operator around the clock every day of the year. The National Contact Center Customer Service Representative (CSR) is required to record the complaint, and then contact the appropriate district office. Outside regular business hours (including holidays and weekends), the CSR uses the District calling tree to contact the appropriate personnel. District offices are responsible for keeping their calling tree current. After contacting the appropriate district office, the CSR forwards the written transcript of the complaint to the notification email group. On request, the CSR should also email a copy of the transcript to other MSHA recipients. Transcripts should be forwarded only to MSHA (DOL.gov) email addresses.

Not every call to the National Contact Center is a hazardous condition complaint. The procedures in this handbook relate only to hazardous condition complaints. Reports of immediately reportable accidents, allegations of discrimination by a mine operator, or other notifications should be dealt with appropriately. The MSHA Escalation Report (MER) created by National Contact Center staff serves as a written version of calls made to the National Contact Center. See Chapter 14 below for information on documentation of hazardous condition complaints.

8. Evaluating Complaints

An Authorized Representative (AR) shall promptly evaluate all hazardous condition complaints to determine if an imminent danger or violation of a mandatory standard or the Mine Act exists. Although any MSHA employee may receive a hazardous condition complaint, an AR's specialized knowledge and experience are necessary to perform an evaluation. The AR's knowledge and experience allows an evaluation to begin upon receipt of the hazardous condition complaint allegations. That evaluation must include a review of every condition alleged by the complainant.

A single complaint may consist of more than one allegation. MSHA must respond to allegations of a serious nature or of imminent danger as soon as possible. The AR should evaluate the allegations in the complaint and categorize them under one of the following categories:

a. Imminent Danger

"Imminent danger" means 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 abated¹. 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.

b. Serious Hazard/Violation

When an AR concludes that a violation of a mandatory health or safety standard or a serious hazard posing a danger to the miners may exist, the AR shall conduct an investigation as soon as possible, without prior notification to the mine operator.

c. Technical Violation or Not a Serious Hazard

When an AR 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 a minor accident or update fire extinguisher records, the AR may conduct an investigation as soon as possible, without prior notification to the mine operator. Alternatively, an investigation of the area or equipment noted in the complaint may be included in the next mine inspection. The District Manager or Assistant District Manager must approve a determination to include the investigation in the next mine inspection.

d. Violation Does Not Exist or Not Within MSHA Authority

No inspection is required when an AR determines, and the District Manager or Assistant District Manager concurs, that a hazardous condition complaint:

- Does not allege a safety or health hazard; and
- Does not constitute an imminent danger; and
- Does not state a violation of a mandatory safety or health standard or the Mine Act.

No inspection is required if the complaint is at a site not under MSHA's jurisdiction.

¹ Mine Act, Section 3(j)

The District Manager or Assistant District Manager must approve a decision not to investigate. In addition, the District Manager or Assistant District Manager shall promptly refer to appropriate federal, state, or local agencies any complaints that are not under MSHA's jurisdiction. See Chapter 13, Referring Complaints for further guidance.

9. Investigating Complaints

After a complaint is evaluated and a decision is made to conduct an investigation, an AR shall create a sanitized version of the complaint. This sanitized version must keep the identity of any miner or miners' representative confidential. The original complaint shall not be given or shown to another miner, representative of miners, the mine operator, or his agent. To create a sanitized complaint, the AR shall remove all names from the complaint along with any other information that could identify the complainant or other miners. In addition, the AR shall remove references to a specific work area, equipment, or work shift that would otherwise make the identity of the complainant or other miners obvious or easily identifiable. Further, the AR shall delete inflammatory accusations or language, as well as unique writing styles in the original complaint.

For Section 103(g) complaints only, the AR must provide the sanitized complaint to the mine operator and the representative of miners (if any). The Complaint Allegations Summary form generated by the HCC system may serve as the sanitized written complaint form to be given to the mine operator and representative of miners. Alternatively, MSHA Form [7000-34 \(Notification of Hazardous Conditions\)](#) may be used. For an "Other complaint," a copy of the complaint is not provided to the mine operator or any other party.

The AR should assemble all necessary individuals to conduct an inspection and proceed to the area or equipment specified in the complaint. ARs shall 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 hazardous condition complaint, inspecting other areas of the mine prior to inspecting the area referred to in the complaint, or conducting the investigation on a shift different from the one on which the complainant works. 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.

Activity codes E03 (for Section 103(g) complaints) and E04 (for "Other Complaints") are designated for hazardous condition complaint investigations. Investigation of all hazardous condition complaints shall be conducted by an AR. Based on the nature or

degree of the hazard(s) alleged, the District Manager, Assistant District Manager or other supervisor may assign a Mine Safety or Health Specialist to investigate the allegation(s).

Multiple hazardous condition complaints at a single mine may be investigated under one event; the individual complaints should be documented appropriately (see Chapter 14 below).

Any samples taken as a result of a hazardous condition complaint must be analyzed to determine whether there is a violation of a mandatory standard.

The AR shall cite all observed violations related to the allegations of the hazardous condition complaint. The AR shall cite on a separate event, violations observed during the investigation not related to conditions or practices alleged in the complaint.

A different situation exists when an inspector receives information about violations or hazards in a mine, and the information is given in an informal manner that does not meet the requirements of Sections 103(g)(1) or 103(g)(2) in that the notice is not in writing. In these situations, the inspector receiving the information must evaluate and determine a course of action, which in some cases may result in an immediate inspection, but in other cases may not.

Depending upon the circumstances, the inspector may make an immediate inspection, or may incorporate the area or practices into his or her inspection schedule for attention at a later date. Likewise, the inspector may determine that the area in question has been inspected since the alleged occurrence and, consequently, the situation does not warrant further investigation.

For investigations of Section 103(g) complaints only where no violations are found (negative findings), the AR must issue a written notice of negative findings prior to leaving the mine premises. Any such notice shall be issued to the representative of miners or the miner seeking the special inspection and a copy shall be served upon the operator. The AR may use the Hazardous Complaint Allegations and Findings Report found in the HCC system to provide written notice. [MSHA Form 7000-35 \(Complaint Allegations and Findings\)](#) may also be used. For "Other Complaints", the notice of findings is not issued.

If appropriate, the AR should discuss the inspection findings with the Section 103(g) complainant either by telephone or personal meeting as soon as possible after the conclusion of the complaint investigation. The AR should provide relevant information regarding the inspection to the Section 103(g) complainant during this discussion. Subsequently, the AR must provide a written report to the Section 103(g) complainant.

This discussion with the complainant is not required if the complaint filed is an "Other Complaint."

For an "Other Complaint", an AR is not required to verbally communicate or provide written notice of negative findings at the completion of a complaint investigation.

10. Fixed Prior to Arrival

The AR shall determine whether the hazard or violation alleged by the complainant was corrected (fixed) prior to the investigation and record that information as part of the investigation report. For each allegation, "Fixed Prior to Arrival" may have the following determination:

- a. No
 - The alleged hazard or violation was found when MSHA investigated;
or
 - The alleged hazard or violation was not found AND there was no evidence that it existed before the investigator arrived.
- b. Yes
 - The alleged hazard or violation was not found when MSHA investigated and MSHA determined that the operator corrected the hazard or violation before the investigation occurred.
- c. Could Not Be Determined
 - The alleged hazard or violation was not found when MSHA investigated and the investigator could not determine whether it existed previously.

Note: when the investigation of the allegation results in Positive Findings (see Chapter 11 below), the Fixed Prior to Arrival determination will be "No".

11. MSHA's Decision

MSHA's investigation of the allegations in a hazardous condition complaint has two possible outcomes:

- a. Positive Findings
A citation and/or order was issued for violations and/or imminent danger conditions during the investigation that were related to conditions, equipment, or practices alleged in the complaint.

b. Negative Findings

No citations and/or orders were issued as a result of the complainant's allegation. Either the condition or practice alleged by the complainant was not found or it did not constitute a hazard, an imminent danger, or a violation.

The findings for each allegation contained within the hazardous condition complaint shall be determined individually. If at least one allegation results in positive findings, the complaint as a whole has positive findings. If none of the allegations results in positive findings, the complaint as a whole has negative findings. The investigator's supervisor shall review the investigation report and work products to ensure and certify that the AR conducted a thorough investigation and that the findings are supported.

The District Manager or Assistant District Manager shall review the findings to ensure that the AR conducted a thorough investigation and that the investigator's determination for each allegation is appropriate.

12. Informal Review By MSHA

Miners or miners' representatives who have filed a Section 103(g) complaint are entitled to an informal review of negative findings on each allegation². Section 103(g) complainants who wish MSHA to review the decision(s) must contact the appropriate District Manager in writing within 10 days of the date of MSHA's decision of negative findings. The request must be accompanied by any supporting information the Section 103(g) complainant requesting the review wishes to submit. These review procedures do not apply to "Other Complaints."

After receipt of the request, the District Manager may hold an informal conference in which the Section 103(g) complainant requesting review may present their views. After reviewing the information, the District Manager may:

- Affirm the finding that the particular violations or dangers alleged will not be cited; or
- Require that an additional or new 103(g) investigation be conducted with respect to the particular alleged violation or imminent danger.

The District Manager may consult with the national or regional Solicitor's Office for legal guidance when reaching one of these determinations.

² See 30 C.F.R. § 43.7

The District Manager shall furnish the 103(g) complainant requesting a review with a written decision of the reasons for the final disposition as soon as possible after the review is concluded. This decision shall also be furnished to the mine operator without disclosing the identity of the complainant or other miners. The decision, assuming the identity of the complainant or other miners is not jeopardized, should be furnished to the representative of miners (if any), the district mine file, the appropriate field office supervisor, and the affected AR. The District Manager's determination in this matter is final.

If the review period has elapsed with no review received, then the initial decision is final.

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

13. Referring Complaints

Safety and health complaints stating concerns about conditions at work sites where MSHA does not have jurisdiction or about conditions at mines that do not involve MSHA standards or regulations, shall be referred to the appropriate regulatory agency or entity as soon as practicable. For allegations relating to drug sales and use, see Chapter 13(a) below. Even at mine sites under MSHA jurisdiction, other federal, state, or local agencies may exercise jurisdiction in matters of safety and health and other purposes. MSHA representatives should be aware of the role of these agencies. MSHA may share information with other agencies to assist them in achieving their statutory goals. In providing information to other government agencies, MSHA must ensure that the agency, to the extent possible, maintains the confidentiality of the individual who sought assistance. If that confidentiality cannot be assured, MSHA should refer the complaint with the complainant's identity stricken. MSHA may also advise the complainant that he or she may contact the appropriate agency directly. MSHA should NOT refer these complaints to the operator.

a. Referring Reports of Drugs Use

MSHA addresses drug-related complaints consistent with the procedures in this Handbook. When MSHA receives a complaint about drug usage on mine property or miners working under the influence of drugs (including prescription drugs) or alcohol, an AR will first evaluate to determine whether an imminent danger, other hazard, or MSHA hazard exists and respond accordingly. Generally speaking, an imminent danger may exist when the complaint indicates that a miner under the influence is currently working at the mine (See Example 1). Similarly, a hazard may exist when a complaint indicates habitual but not current, drug or alcohol use by a miner (See Example 2).

Example 1: A Coal District receives a complaint that John Doe is drunk and operating the shuttle car at Mine XYZ on MMU-001.

Example 2: A Metal/Nonmetal District receives a complaint that John and Jack Doe who work on the second shift at Mine XYZ are drug users and need to be tested.

MSHA also receives complaints of illegal drug-related activity that do not involve drug or alcohol use at a mine, or miners working under the influence, that likely do not constitute imminent dangers, hazards, or MSHA violations. Examples of these types of complaints may include allegations of drug sales, possession, or recreational (non-work) use. (For metal and nonmetal mines, however, note that §§ 56/57.20001 prohibit possession of alcohol or narcotics on mine property as well as usage and working under the influence.) For all complaints that allege illegal drug-related activity of any type, it is appropriate for MSHA to share these reports with the appropriate regulatory agency or entity. The AR should contact the local police department (state, county, or city) and the state mining authority if one exists or the appropriate State Agency. This can be done by providing the MSHA Escalation Report along with a statement explaining MSHA's confidentiality obligations. An example of a referral letter is provided as Appendix B (See Example 3). Once MSHA refers a complaint that does not include an imminent danger, hazard or violation to the appropriate agency or entity, MSHA should not continue to investigate the complaint. In addition, no MSHA personnel are to participate with the law enforcement authorities in any of their related activities or follow up as a result of the complaint or information that has been referred to them.

Example 3: A Coal District receives a complaint that a miner named John Doe who works at Mine XYZ has drugs in his locker and needs to be drug-tested. The district should forward this report, unredacted, along with a complete referral letter (See Appendix B) to the local police department (state, county, or city) and the state mining authority if one exists or the appropriate State Agency.

In most instances not involving imminent dangers or hazards, MSHA should not involve the operator of the mine. However, for allegations of miners using drugs or alcohol at the mine or working at the mine under the influence of drugs or alcohol, the operator should be notified. (Also, if MSHA issues a citation under 30 C.F.R. §§ 56/57.20001, obviously the operator would be notified.) In notifying the operator, the AR or other MSHA personnel must not disclose directly or indirectly either the identity (name, specific position, or other identifiers) of the complainant or the identities of the alleged drug users. Instead, the AR should provide a general description of where the problem may exist, identifying potentially affected miners only in the context of larger groups (See Example 4 & 5).

Example 4: We have received an allegation there may be miners at your mine who are working while under the influence of drugs, which may adversely affect the safety and health of miners. The allegation relates to shuttle car drivers.

Example 5: We have received an allegation there may be miners at your mine who are working while under the influence of drugs, which may adversely affect the safety and health of miners. The allegation relates to miners working on the second shift.

14. Documenting Hazardous Condition Complaint Allegations and Investigation Findings

The HCC system is a web-based application within MSHA's Standardized Information System (MSIS) designed to provide consistency and to standardize the hazardous condition complaint process. Printed material from HCC may be used in lieu of MSHA forms [7000-34](#) and [7000-35](#), as described above. An HCC user manual is available as part of the MSIS User Guide Library.

Every hazardous condition complaint received by MSHA must be promptly entered into the HCC system. The HCC system is the official record of hazardous condition complaints received by MSHA. The HCC system shall be used in each field and district office to record hazardous condition complaints and investigation findings. Findings from investigations and decisions made regarding complaint allegations shall also be entered in a timely manner. Although multiple complaints at a single mine may be investigated under one event, each hazardous condition complaint must be entered separately in HCC.

District and/or field office personnel shall use the HCC system to perform the actions described below.

- a. Entry of hazardous condition complaints in HCC, to include:
 - i. Full text of the complaint exactly as it was received by MSHA
 - ii. Date and time the communication was received by MSHA
 - iii. Service Report (SR) Number as recorded on the MSHA Escalation Report (MER) (applies only to calls made to the National Contact Center and online submittals)
 - iv. Source of the communication:
 - Hazardous Complaint (Online) - online submittals

Note: Although the National Contact Center will notify MSHA of these hazardous condition complaints by telephone, the MER will name email as the source of the complaint to show that it was submitted electronically.

- Telephone – phone calls made to the National Contact Center and made directly to MSHA personnel
 - Email – email communications sent directly to MSHA personnel (see above for online submittals)
 - Verbal (face-to-face)
 - Written (letter/ fax/ note)
 - v. Evaluation (*see Chapter 8 above*) (more than one selection allowed)
 - Imminent Danger
 - Serious Hazard/ Violation
 - Not a Serious Hazard/ Technical Violation
 - Violation Does Not Exist or Not Within MSHA’s Authority
 - vi. Name of the AR who performed the evaluation, evaluation date and time
 - vii. Mine and/or contractor information, as known³
 - viii. Complainant
 - Miner, Miners’ Representative, Contractor, or Other
 - Name and/or other contact information (if known)
- b. For complaints classified as Imminent Danger, enter date and time that MSHA contacted the mine operator.
- c. Create allegation(s)
 Each hazard or violation asserted by the complainant shall be recorded in a separate allegation. Created allegations may serve as the sanitized version of the complaint. The allegations must be written in a way that keeps the identity of individuals confidential. See Chapter 9 (above) for more information.
Note: When the entire hazardous condition complaint has been evaluated as “Violation Does Not Exist or Not Within MSHA Authority” and a decision to refer the complaint has been made, no allegations are created. The District shall document the referral in the HCC system.
- d. Assign complaint to a field office and/or an investigator (optional)
- e. Enter investigation information and findings for each allegation
- i. Investigator’s name and AR number
 - ii. Investigation date
 - iii. Event No. under which investigation was conducted (if applicable)
 - iv. Citations issued as a result of findings (if any)
 - v. Pending action (if any)
 - vi. Fixed Prior to Arrival determination

³ HCC allows edits to existing entries. Entry of a hazardous condition complaint in HCC shall not be delayed because the Mine ID and/or Contractor ID is unavailable. District personnel shall add that information to the HCC entry as it becomes available.

- vii. Findings (text describing what the investigator found)
- f. Enter Pending Action, if any (applies to unresolved allegations awaiting action to be completed)
 - i. Pending Inspection by a Specialist – the allegation needs investigation by a specialist (such as a ventilation specialist or health specialist) and that investigation has not been completed.
 - ii. Pending Next (E01) Inspection
Note: This action applies only to hazardous condition complaints evaluated as “Not a Serious Hazard/Technical Violation.” A hazardous condition complaint evaluated as an Imminent Danger or a Serious Hazard/Violation requires an immediate investigation.
 - iii. Pending Samples Analysis Results – a recommendation of positive or negative findings cannot be made until the results of samples taken during the investigation are known.
 - iv. Pending Investigation Report – the investigation has been conducted, but the investigator’s findings have not been entered into HCC.
- g. Enter the decision for each allegation (positive or negative findings)
- h. For 103(g) complaints with negative findings
 - Enter informal review and outcome, if any
 - or*
 - Enter final decision after expiration of review opportunity.

15. Hazardous Condition Complaints Received by MSHA Headquarters

Although selected Headquarters personnel receive email notice of calls to the National Contact Center and online hazardous condition complaints, this section applies only to hazardous condition complaints sent directly to MSHA headquarters personnel, such as letters, telephone calls, faxes or direct emails (not notifications generated by MSHA’s website). The instructions in this section relate only to hazardous condition complaints. Allegations of misconduct or malfeasance by MSHA employees, allegations of discrimination by a mine operator, or other notifications sent to MSHA Headquarters should be dealt with appropriately.

When a hazardous condition complaint is received directly by MSHA Headquarters, an AR in the appropriate program area will evaluate the complaint. Program area personnel will enter the initial complaint, including the AR’s evaluation, into the HCC system and then use the HCC system to assign the hazardous condition complaint to the appropriate district. The HCC system automatically generates an email to notify the affected district that a hazardous condition complaint has been assigned. The assigned

district will perform all other actions relating to the investigation and documentation of the hazardous condition complaint.

In the event that Headquarters personnel evaluate a hazardous condition complaint as an imminent danger, they will immediately notify the appropriate District Office by telephone. For hazardous condition complaints evaluated as a violation or hazard, immediate contact of district personnel is optional. The name of the MSHA employee notified and the time notification took place will be documented in the HCC system.

16. Examples

The examples shown in this section are for illustrative purposes only. Some examples are based on actual communications received by MSHA. The examples shown in this section do not supersede instructions in previous sections of this handbook.

a. *Imminent Danger*

A caller to the National Contact Center reported the presence of methane on the working section and miners working in the methane. MSHA evaluated the allegation as an imminent danger. The evaluating AR contacted the mine and directed the operator to investigate the hazard immediately. The AR then traveled to the mine site and conducted an investigation. The AR's actions and findings as well as MSHA's decision were documented in the HCC system.

b. *MSHA, and not the National Contact Center, evaluates whether a communication is a hazardous condition complaint*

- i. A caller to the National Contact Center stated that there was an inundation of water at a coal mine site that was reported to management and management did not respond. Although the National Contact Center classified this call as a report of an UNPLANNED INUNDATION - LIQUID/GAS, MSHA District personnel determined that the caller was making a hazardous condition complaint. The District investigated the caller's allegations and documented the findings in HCC.
- ii. A caller to the National Contact Center reported the methane conditions behind some mine seals. Although the National Contact Center classified this call as a HAZARDOUS CONDITION COMPLAINT, MSHA District personnel determined that the caller was not making a hazardous condition complaint. MSHA determined that the caller was reporting conditions at the mine seals as required by the mine's ventilation plan. The District took the appropriate steps to respond to the call. The District did not investigate this report as a hazardous condition complaint and did not document the call in HCC.

- c. *A single complaint may belong in more than one category*
- i. A caller to an MSHA District Office alleged a mine was not properly training the equipment operators and that the operator is falsifying documents saying they have had their training. The complainant also alleged that the man in charge was driving with a suspended driver's license. MSHA evaluated the hazardous condition complaint as containing allegations under MSHA's jurisdiction and an allegation outside MSHA's authority. MSHA investigated the allegations related to training violations. MSHA referred the allegation relating to driving with a suspended license to the local police authority. When documenting its actions in the HCC system, MSHA created allegations for the training allegations and entered a comment for the non-MSHA allegation.
 - ii. A caller to the National Contact Center reported there are hazardous chemicals at the mine without readily available Material Safety Data Sheets (MSDS). The caller was fired as a result of voicing his concerns. MSHA evaluated the caller's allegations as a technical violation and a potential discrimination complaint under 105(c) of the Mine Act. The District investigated the hazardous condition complaint and documented their findings in the HCC system. The District forwarded the allegation of discriminatory firing to the Special Investigation Supervisor. The special investigation was not documented in the HCC system.
- d. *MSHA refers complaints to other agencies*
- An online hazardous condition complaint alleged that a 15-year-old is working at a mine site. The minor received MSHA's required training, but is not old enough to work in a hazardous occupation. Although no violation of MSHA standards existed, MSHA notified Wage and Hour of the alleged violation of child labor laws. The complaint and MSHA's referral were documented in the HCC system.
- e. *Pending Actions*
- i. A letter sent to an MSHA Field Office stated that the mine operator did not update fire extinguisher records. The AR evaluated the allegation as a Technical Violation or Not a Serious Hazard. The Assistant District Manager determined that the allegation could be investigated as part of the next E01 inspection at the mine. The hazardous condition complaint was recorded in the HCC system. The allegation was marked as Pending Next (E01) Inspection. After the inspection was conducted, MSHA's findings and decision were documented in the HCC system.
 - ii. In conversation with an MSHA employee, an individual alleged the presence of a substance at a mine site that was making employees sick.

Upon investigation, an MSHA inspector determined the potential for hexavalent chromium exposure; the inspector requested the District Health Specialist perform sampling. MSHA marked the allegation as Pending Inspection by a Specialist in the HCC system to show an ongoing investigation of the allegation. Once the specialist conducted an investigation, the allegation status was changed to Pending Samples Analysis Results while the sample was analyzed. When the results were received, the investigation findings and MSHA's decision were documented in the HCC system.

f. Hazardous condition complaint received in MSHA Headquarters

A caller to MSHA Headquarters alleged respirable dust on a mine's haulage for the past 6 months and that black lung is occurring as a result of the respirable dust on the haulage. An AR in MSHA Headquarters evaluated the caller's statements as a hazardous condition complaint. Headquarters personnel entered the full text of the complaint in the HCC system and used the HCC system to assign the complaint to the appropriate District office. The District conducted an investigation and documented their actions and findings in HCC.

Appendix A - Links to Hazardous Condition Complaint forms

[7000-33 Verbal Complaint Information](#)

[7000-34 Notification of Hazardous Conditions](#)

[7000-35 Complaint Allegations and Findings](#)

Appendix B - Referral Letter

Date
Name
Address

Re: Report of Drugs

Dear

This letter is to inform your office of a report that the Department of Labor's Mine Safety and Health Administration (MSHA) received related to drug use at:

Mine Name:
Mine Address:
Mine Phone Number:

Drug or alcohol abuse at mines can create serious safety hazards for miners.

It is the Department of Labor's policy to cooperate with regulatory agencies to the extent possible under the law, subject to the general limitation that any such cooperation must be consistent with the Department's statutory obligations and enforcement efforts. It is the Department's view that an exchange of information regarding matters of mutual concern is to our mutual benefit. In such cases, the Department shares information with law enforcement agencies for law enforcement purposes, and for no other purposes.

We believe it would be appropriate and helpful for you to investigate this matter. For this reason, we are providing you with an unredacted copy of MSHA's Escalation Report and will provide additional related information to the extent that it does not conflict with legal requirements. Please note that federal law requires that the name of the person providing the complaint and the names of any individual miners referred to in the attached report must remain **confidential** under 30 U.S.C. § 813(g) (please refer to the attachment for an excerpt).

This disclosure is not a public disclosure under the Freedom of Information Act. Rather, this is a limited-purpose disclosure, and disclosures to you are conditioned upon the understanding that you will not disclose these documents to third parties without consulting first with us.

If a party not affiliated with your investigation requests access to these documents, we ask that you contact _____ before disclosing them. In addition, please

contact us before seeking to admit any part of the documents we provided in any public proceeding, such as a hearing.

Sincerely,

Appendix C - Excerpt from 30 U.S.C. § 813(g)*(g) Immediate inspection; notice of violation or danger; determination*

(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 chapter 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 subchapter. 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.

(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 chapter or of 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.