

# U.S. Department of Labor

Office of Inspector General—Office of Audit

**MINE SAFETY AND HEALTH  
ADMINISTRATION**



**COAL MINE HAZARDOUS CONDITION  
COMPLAINT PROCESS SHOULD BE  
STRENGTHENED**

Date Issued: September 29, 2006  
Report Number: 05-06-006-06-001

## **BRIEFLY...**

Highlights of Report Number: 05-06-006-06-001, to the Acting Assistant Secretary for Mine Safety and Health Administration

### **WHY READ THE REPORT**

The Mine Safety and Health Act of 1977 (Mine Act) gives miners and miner representatives the right to confidentially file a complaint and obtain an immediate inspection when there are reasonable grounds to believe that an imminent danger, or a violation of the Mine Act or a mandatory safety or health standard, exists. The OIG completed a performance audit of the hazardous condition complaint process managed by MSHA's Office of Coal Mine Safety and Health (CMS&H). The audit found that CMS&H's hazardous condition complaint process should be strengthened to ensure: the process is promoted consistently; complaints are evaluated and inspected timely, consistently, and in accordance with applicable requirements; and information used to manage the process or reported to the public is complete.

### **WHY OIG DID THE AUDIT**

CMS&H's hazardous condition complaint process is the mechanism in place to satisfy the statutory requirement for immediate inspections in response to complaints filed by miners or miner representatives. It is, therefore, critically important that the process work effectively in giving miners and their representatives a voice and a means to ensure appropriate and prompt action is taken to remove hazardous conditions from the nation's coal mines. Additionally, the recent increase in coal mine fatalities underscores the need to continuously improve processes that minimize safety and health risks in the coal mines. While there were 22 coal mine fatalities in all of 2005, there were 33 coal mine fatalities in the first 6 months of 2006.

### **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/2006/05-06-006-06-001.pdf>

SEPTEMBER 2006

## **Coal Mine Hazardous Condition Complaint Process Should Be Strengthened**

### **WHAT OIG FOUND**

We found that development of an overall strategy for promoting the process would help ensure promotional efforts by CMS&H's 11 districts are consistent and complete. Additionally, CMS&H had not ensured effective performance by the contractor used to receive complaints filed with MSHA headquarters.

A significant number of hazardous condition complaints filed with MSHA headquarters and directly with the districts were not evaluated or inspected timely. These delays may have subjected miners to prolonged hazardous conditions. Further, process improvements are needed to ensure complaint evaluations and inspections are thorough, consistent, and in accordance with the Mine Act and MSHA policy.

CMS&H management analysis relied on reports that were based on complaints filed solely with MSHA headquarters; about one-third of the total complaints. The reports did not include complaints filed directly with the districts. Additionally, information reported to the public on hazardous condition complaints was incomplete.

### **WHAT OIG RECOMMENDED**

We make 13 recommendations to the Acting Assistant Secretary for MSHA, summarized as follows:

- ensure efforts to promote the hazardous condition complaint process are planned, monitored and evaluated, and complaints are recorded accurately and completely;
- ensure the expectation of evaluation and inspection timeliness is quantified and that timeliness is monitored and systemic reasons for delays are identified and addressed;
- ensure complaint evaluations and inspections are consistent and in accordance with the Mine Act and MSHA policy; and
- ensure complaint information used by CMS&H to manage the process or reported to the public is complete.

MSHA initiated or planned corrective action to address 11 of our 13 recommendations. MSHA did not agree to implement corrective action for two recommendations.

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## **Executive Summary**

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The Office of Inspector General (OIG) completed a performance audit of the hazardous condition complaint process managed by the Mine Safety and Health Administration's (MSHA) Office of Coal Mine Safety and Health (CMS&H). The Mine Safety and Health Act of 1977 (Mine Act) gives miners and miner representatives the right to confidentially file a complaint and obtain an immediate inspection when there are reasonable grounds to believe that an imminent danger, or a violation of the Mine Act or a mandatory safety or health standard, exists. The recent increase in coal mine fatalities underscores the need to continuously improve processes that minimize safety and health risks in the coal mines. While there were 22 coal mine fatalities in all of calendar year (CY) 2005, there were 33 coal mine fatalities in the first 6 months of CY 2006.

CMS&H's hazardous condition complaint process is the mechanism in place to satisfy the statutory requirements for immediate inspections in response to certain alleged hazards. It is, therefore, critically important that the process work effectively in giving miners and their representatives a voice and a means to ensure appropriate and prompt action is taken to remove hazardous conditions from the nation's coal mines.

### **Results**

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While CMS&H had made efforts to improve the hazardous condition complaint process, further action is needed to ensure: the process is promoted consistently; complaints are evaluated and inspected timely, consistently, and in accordance with applicable requirements; and information CMS&H uses to manage the hazardous condition complaint process is complete.

We performed work to accomplish four specific audit objectives. The four objectives and our conclusions are summarized as follows:

**Objective 1** Is MSHA's hazardous condition complaint process promoted effectively to coal miners, coal miners' representatives, and other stakeholders?

Although we found that MSHA generally promoted its hazardous condition complaint process effectively, development of an overall strategy for promoting the process would help ensure that promotional efforts by the 11 coal districts are consistent and complete. In addition, CMS&H had neither provided effective training and operational guidance to, nor monitored the performance of, the contractor used to receive complaints filed with MSHA headquarters. Both CMS&H and union officials expressed concerns about the way complainant calls were handled. Actual or perceived deficiencies in initiating hazardous condition complaints could discourage individuals from using the process.

**Objectives** Does MSHA effectively ensure hazardous condition complaint

**2 and 3** evaluations are conducted timely, consistently, and in accordance with Federal law and MSHA policy? Does MSHA effectively ensure hazardous condition complaint inspections are conducted timely, thoroughly, consistently, and in accordance with Federal law and MSHA policy?

Fourteen percent of the hazardous condition complaints filed with MSHA headquarters between January 1, 2005, and March 30, 2006, were not evaluated timely, taking 2 days or more from the date they were received until they were assigned to a district office for action. Also, based on separate statistical samples of complaints filed with MSHA headquarters and the combined complaints filed with CMS&H's 11 districts between January 1, 2005, and March 30, 2006, we estimate that 32 percent and 15 percent, respectively, took 2 or more days before an inspection was initiated following district notification by headquarters or filing with the district office. These delays may have subjected miners to prolonged hazardous conditions.

Further, the assessment of the seriousness of complaint allegations (including whether an imminent danger existed) and the steps taken to protect the complainant's confidentiality were not always consistent with provisions in Federal laws, regulations or MSHA policies. Also, inspections were not always conducted immediately as required by the Mine Act for hazardous condition complaints alleging imminent danger. Finally, MSHA had limited assurance that inspections were thorough, consistent, and in compliance with CMS&H policy because supervisory review of inspector notes was not consistently documented.

**Objective 4** Does MSHA management effectively use complaint process results to direct oversight and enforcement responsibilities?

CMS&H management relied on reports that were based on hazardous condition complaints filed solely with MSHA headquarters, about one-third of the total complaints. The reports did not include complaints filed directly with the districts. In addition, information reported to the public on the number of coal mine hazardous condition complaints received in CY 2004 was significantly understated. The incomplete reporting may have impacted CMS&H oversight and enforcement decisions and public perception of CMS&H enforcement responsibilities.

Both prior to and during our audit, CMS&H made efforts to ensure its hazardous condition complaint process worked effectively to protect the safety and health of coal miners. Prior to our audit, MSHA significantly expanded the definition of a complaint requiring CMS&H action to include verbal, unsigned, and certain other complaints, and developed a new hazardous condition complaint tracking system. Additionally, during our audit, CMS&H initiated action to monitor the quality of services provided by the contractor receiving complaints filed through MSHA headquarters, track the timeliness of hazardous condition complaint evaluations and inspections, and use the MSHA Standardized Information System (MSIS) to record, track, and report headquarters- and district-generated hazardous condition complaints.

## **Recommendations**

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We make 13 recommendations to the Acting Assistant Secretary for MSHA. In summary, we recommend that the Acting Assistant Secretary establish management controls to ensure:

- CMS&H develops a written strategy to plan, monitor and evaluate the effectiveness of efforts to promote MSHA's hazardous condition complaint process to coal miners, coal miner representatives and other stakeholders. Additionally, MSHA should ensure personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology.
- The expectation of evaluation timeliness is quantified and that timeliness is monitored and systemic reasons for delays are identified and addressed. Additionally, management should ensure evaluation of the seriousness of complaints is documented, training and oversight is provided for appropriate determination of imminent danger complaints, and copies of complaints provided to mine operators are consistent with MSHA's guidelines to remove detailed information that could compromise a complainant's identity.
- Inspections for complaints filed with both headquarters and the districts are timely and that inspection timeliness is monitored and systemic reasons for delays are identified and addressed. Additionally, management should ensure the expectation of timeliness for starting inspections of imminent danger allegations is quantified and that inspector notes receive appropriate supervisory review.
- Complaints made directly to CMS&H's 11 districts are included in management reports used to direct oversight and enforcement. Additionally, management should ensure hazardous condition complaint data reported to the public are complete.

## **Agency Response**

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The OIG provided a draft of this report to MSHA management for review and comment. We made technical clarifications in the report where appropriate based on MSHA's response to the draft report including adding a footnote requested by MSHA to many of the report tables. For example, MSHA initiated or planned corrective action for 11 of our 13 recommendations. MSHA did not agree to implement corrective action for two recommendations as follows:

MSHA did not agree to quantify an expectation for evaluation timeliness in specific terms (e.g., number of hours). MSHA believed that placing time constraints on a safety

or health activity could have a detrimental effect on the evaluation and quality of the inspection and response. MSHA stated that, given that each circumstance is different, the proper response to a complaint requires ensuring that an appropriate number of resources with the right technical skills are deployed as soon as possible. Additionally, MSHA stated that focusing on timeliness instead of the overall need for response could result in a premature and uninformed decision and minimizes the ability for CMS&H to attack the root cause.

MSHA also did not agree to quantify the expectation of timeliness in specific terms for beginning inspections of “imminent danger” allegations. MSHA believed that the time requirements stated in the Mine Act and Federal regulations (“immediately” and “as soon as possible”) adequately established the expectation for inspection timeliness. MSHA stated that a performance metric for inspection timeliness was too binding, and may force abandonment of the current approach on accepting hazardous condition complaints beyond the 103(g) complaints filed in writing by miners and miner representatives.

See Appendix D for the agency’s complete response to our draft report.

## **OIG Conclusion**

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We consider 5 of our 13 recommendations resolved because MSHA has initiated specific corrective action. These recommendations will be closed after the corrective action has been fully implemented. MSHA is planning corrective action for six other recommendations. We consider these recommendations unresolved pending the receipt of specific implementation plans.

Regarding MSHA’s disagreement with our two recommendations that MSHA quantify the expectations for timeliness of complaint evaluations and the initiation of inspections for imminent danger allegations, we certainly do not advocate meeting standards of timeliness at the expense of appropriately addressing safety concerns. However, we are not convinced that a standard of “as soon as possible” is sufficient to drive evaluation and inspection performance and results. As such, we maintain our recommendations that MSHA quantify the expectations of timeliness in specific terms for evaluating complaints and starting inspections of imminent danger allegations.



U.S. Department of Labor

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## **Assistant Inspector General's Report**

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The Office of Inspector General (OIG), Office of Audit, conducted a performance audit of the hazardous condition complaint process managed by the Mine Safety and Health Administration's (MSHA) Office of Coal Mine Safety and Health (CMS&H). While MSHA operates hazardous condition complaint processes for both coal mines and metal/non-metal mines, this audit focused only on the process related to coal mines. Specifically, we performed work to address the following questions:

1. Is MSHA's hazardous condition complaint process promoted effectively to coal miners, coal miner representatives, and other stakeholders?
2. Does MSHA effectively ensure hazardous condition complaint evaluations<sup>1</sup> are conducted timely, consistently, and in accordance with Federal law and MSHA policy?
3. Does MSHA effectively ensure hazardous condition complaint inspections<sup>2</sup> are conducted timely, thoroughly, consistently, and in accordance with Federal law and MSHA policy?
4. Does MSHA management effectively use complaint process results to direct oversight and enforcement responsibilities?

We found that CMS&H's hazardous condition complaint process should be strengthened. CMS&H had made efforts to ensure its hazardous condition complaint process worked effectively. However, development of a more timely and consistent complaint process is needed.

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<sup>1</sup> The "evaluation" stage of the hazardous condition complaint process includes assessing (a) whether the complaint allegations involve a violation of the Mine Act or mandatory safety and health standards and (b) the potential seriousness of the alleged violation.

<sup>2</sup> The "inspection" stage of the hazardous condition complaint process includes actions taken by a mine inspector to determine the validity of the complaint allegations.

Prior to our audit, CMS&H had made efforts to ensure its hazardous condition complaint process worked effectively to protect the safety and health of coal miners. These efforts included:

- significantly expanding the Mine Act's definition of a "complaint" that required CMS&H action. In addition to signed written complaints, CMS&H also investigated verbal complaints, unsigned or anonymous complaints, and complaints originating from someone other than a miner or miner representative; and
- developing a new hazardous condition complaint tracking system to improve process oversight. The new tracking system was implemented in February 2006.

In addition to these efforts, CMS&H should take further action to strengthen its hazardous condition complaint process. We determined that information provided by CMS&H's 11 districts on the various methods to file complaints was neither consistent nor complete. Also, there were several process weaknesses that resulted in delays in evaluating and inspecting complaint allegations. These delays may have subjected miners to prolonged hazardous conditions. Finally, CMS&H's use of complaint process results to direct oversight and enforcement was not as effective as possible because the data were incomplete.

Section 103(g) of the Mine Act gives miners and miners' representatives the right to file a signed, confidential complaint in writing about a violation of the Mine Act, a mandatory health or safety standard, or an imminent danger at any mine. The Mine Act defines "imminent danger" 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 the condition or practice can be abated. Complaints can be submitted to MSHA headquarters or directly to a district or field office within CMS&H.

During our audit, CMS&H's policy required verbal complaints, unsigned or anonymous complaints and complaints originating from someone other than a miner or representative of a miner to be handled the same as 103(g) complaints. Once received, complaints were evaluated. This included (a) categorizing the complaint ("103(g)" or "other"); (b) assessing whether the complaint allegations involved a violation of the Federal Mine Safety and Health Act of 1977 (Mine Act) or a mandatory health and safety standard; and (c) assessing the potential risk to miners. For complaints filed with MSHA headquarters, these steps were completed by personnel in CMS&H's Division of Safety. For complaints filed directly with a district or field office, these evaluation steps were completed by a designated district official.

If the evaluation stage determined that an inspection was necessary, management in the responsible district assigned responsibility for the inspection to the appropriate field office. In turn, the field supervisor assigned responsibility for the inspection to a specific

coal mine inspector. The assigned inspector reviewed the complaint and related information and traveled to the mine site. At a pre-inspection conference, the inspector provided both the mine operator and miner representatives with a copy of the sanitized complaint.<sup>3</sup> The inspector then completed whatever observations, tests, or other tasks were needed to determine the validity of the complaint allegations.

At a post-inspection conference, the inspector issued citations/orders for violations found. If there were no violations, the inspector issued a Notice of Negative Findings to be posted on the mine bulletin board. The inspector then completed supporting field notes and submitted them to the field supervisor for review.

After the inspection was completed, the District Manager (DM) or designee signed off on a report that documented the findings for each allegation in the complaint. If the complaint originated at headquarters, a copy of the investigation report was forwarded to the CMS&H Administrator for review and approval within 30 days after the date the complaint was filed. Reports related to complaints initiated in a district office were maintained in the district.

Additional background information is contained in Appendix A.

We conducted the audit in accordance with generally accepted government auditing standards for performance audits. Our audit scope, methodology, and criteria are detailed in Appendix B.

**Objective 1** – Is MSHA’s hazardous condition complaint process promoted effectively to coal miners, coal miners’ representatives, and other stakeholders?

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## **Results and Findings**

Yes. MSHA generally promoted its hazardous condition complaint process effectively. Coal miners and coal miners’ representatives were generally aware of their right to file a complaint. However, development of an overall strategy for promoting the process would help ensure that promotional efforts by the 11 coal districts are consistent and complete. In addition, the performance of the contractor used by MSHA to receive complaints filed through MSHA headquarters was deficient. The headquarters complaint receipt process should be monitored and improved to reduce the risk that individuals will be discouraged from filing complaints.

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<sup>3</sup> A sanitized complaint is a version of the complaint that has been edited to protect the complainant’s identity. The complainant’s name and other information (e.g., specific machinery or mine areas) that can be used to identify the complainant are removed.

## **MSHA's Promotion of Its Hazardous Condition Complaint Process Was Effective, But Can be Improved**

CMS&H effectively promoted its hazardous condition complaint process to coal miners, coal miners' representatives, and others in a variety of ways. However, these efforts were unstructured. CMS&H can (1) more effectively and consistently promote its hazardous condition complaint process and (2) remove barriers that may limit the filing of hazardous condition complaints.

As required by the Mine Act, CMS&H provided a process for miners, miners' representatives, and other parties to report hazardous conditions related to coal mines. Nationally, complaints could be reported to CMS&H headquarters through a toll-free hotline (referred to as the Code-A-Phone). These calls were answered around-the-clock by a contractor. Complaints could also be reported to CMS&H headquarters online via MSHA's website at [www.msha.gov](http://www.msha.gov). The website automatically routed complaints received online to appropriate MSHA personnel based on the information provided. Locally, complaints could be filed directly with any of CMS&H's 11 district offices and 45 field offices by phone, email, fax, or in person.

While miners and miners' representatives were aware of their right to file hazardous condition complaints, information provided by the 11 coal districts on the various methods available to file complaints was neither consistent nor complete. In addition, deficiencies in the initial receipt and documentation of complaints at the national level may have discouraged potential complainants from using the process. These conditions occurred because CMS&H management had not placed sufficient emphasis on the promotion process. Specifically, management had not (1) established a formal strategy to promote its hazardous condition complaint process and (2) provided effective oversight of the Code-A-Phone contractor to identify and correct poor performance. CMS&H management should correct these process weaknesses to minimize the risk that dangers or violations exist in coal mines, but are not reported and corrected. CMS&H took corrective action during the audit to address some of the process weaknesses we identified.

### Inconsistent Promotion of CMS&H's Hazardous Condition Complaint Process

CMS&H used various methods to raise awareness of its hazardous condition complaint process to coal miners, coal miners' representatives, and other stakeholders. Based on our process review and stakeholder interviews, we found that coal miners and coal miner representatives were aware of their right to file a complaint. However, we also found that information provided by the 11 coal districts about the methods available to file complaints was neither consistent nor complete. As a result, the risk that existing violations or dangers were not reported and corrected was increased.

According to officials at the 11 district offices, promotion of the hazardous condition complaint process is generally conducted through national and district websites, printed materials, and training sessions. For example, MSHA's website and some district

websites include links to MSHA's national hazard reporting page. In addition, MSHA publishes *A Guide to Miners' Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977* which includes information on how to report a hazardous mine condition using the Code-A-Phone, the national website, or by contacting the appropriate district or field office. Also, MSHA publishes and distributes posters that publicize the Code-A-Phone and business cards that include emergency contact information for district personnel. According to DMs, miners are also instructed on how to report a hazardous condition complaint to CMS&H (a) during the required orientation training provided by all mine operators, (b) by union representatives at unionized mines, and (c) by CMS&H inspectors during health and safety talks that they conduct for miners at each of their assigned mines. At the four mines we visited, miners generally told us that they were aware of CMS&H's process to file hazardous condition complaints as a result of at least one of these efforts.

While CMS&H had an assortment of methods to promote its hazardous condition complaint process, the practices used in individual district offices varied significantly. For example:

- At two coal mines we visited in one district, no MSHA promotional materials were posted. At two coal mines we visited in another district, MSHA's Code-A-Phone poster and miners' rights booklets were visibly posted on the mines' bulletin boards. Management at 6 of 11 districts told us they used Code-A-Phone posters at their mines.
- Four districts' websites did not provide any information on how to report a hazardous condition complaint to CMS&H. The websites for three other districts included information and links on how to file a hazardous condition complaint online, using the Code-A-Phone, and directly to the districts. The websites for the remaining four districts provided information on one or more, but not all, of these reporting mechanisms.
- Two districts' websites publicized an obsolete national toll-free telephone number to report coal dust related problems. CMS&H management stated it no longer operated a separate line to report dust problems and that all calls should be reported through the Code-A-Phone.
- Management at five districts stated that they promoted CMS&H's hazardous condition complaint process during meetings with members of the mining community and the public.

Some promotional materials provided confusing information. For example, MSHA's Code-A-Phone posters provided two toll-free telephone numbers, one for reporting hazardous condition complaints and the other for reporting mine emergencies and accidents. However, both reached the same answering service contractor and calls to either number were screened using the same call script. As such, there was no procedural difference between the two telephone numbers. Management from one

district stated that using the same contractor and process to answer calls to hotlines that were identified in promotional materials as having different purposes had caused some confusion among miners.

Other promotional materials were incomplete. For example, MSHA's national website did not indicate that hazardous condition complaints reported after normal business hours (including weekends and holidays), through the Code-A-Phone or website, would not have been addressed by CMS&H until the next business day. Nor did it instruct potential complainants that complaints could have been made directly to CMS&H's district offices.

Officials from nine district offices stated that MSHA could improve efforts to promote its hazardous condition complaint process. Suggestions included the use of public service messages and newspaper advertisements to increase awareness.

CMS&H took corrective action during the audit to address some of the process weaknesses we identified. This action included:

- revising promotion posters; and
- establishing consistency between MSHA and CMS&H district websites.

#### Performance Deficiencies by Code-A-Phone Contractor

Since October 2005, calls to MSHA's Code-A-Phone were received, documented, and forwarded to MSHA personnel by a contractor.<sup>4</sup> However, CMS&H management had not provided effective operating guidance to the contractor or monitored the contractor's performance. As a result, both CMS&H and union officials expressed concerns about the way complainant calls were handled. Actual or perceived deficiencies in initiating hazardous condition complaints could discourage individuals from using the process.

A contractor provided telephone answering services for two toll-free telephone hotlines – one for reporting hazardous condition complaints and another for reporting mine emergencies and accidents. Contractor personnel answered calls using a script provided by MSHA; transcribed complainants' responses verbatim; and electronically transmitted transcripts of the complaints to appropriate MSHA personnel. The contractor received \$4,000 annually for providing these services.

United Mine Workers of America (UMWA) officials stated that miners had complained to them about the contractor's lack of professionalism and unanswered calls to the Code-A-Phone line. When we called to observe the contractor's performance, the call taker's greeting did not mention the Code-A-Phone, hazardous condition complaints, or

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<sup>4</sup> Before October 2005, Code-A-Phone callers were provided automated menu options to record their initial complaints. The digitized recordings of the complaints were automatically routed to appropriate MSHA personnel based on the information provided.

MSHA. When we asked whom we had reached, the call taker stated the MSHA call center. The call taker then incorrectly informed us that our call was routed to the call center because it was made after business hours. In fact, all Code-A-Phone calls are routed to the contractor operated call center regardless of the time of day.

Management from four district offices and officials from the UMWA also expressed concerns about the contractor's lack of mining knowledge. For example, management from one district office stated that "there have been issues where the contractor does not understand mining 'jargon' and had a difficult time relaying the gist of the complaint to the district." We reviewed the contract, as well as the statement of work (SOW), and noted that there were no requirements for contractor personnel to have any mining knowledge. The contract and SOW also contained no provisions for measuring or monitoring the contractor's performance.

The call scripts provided by CMS&H and used by the contractor contained deficiencies concerning complainant confidentiality and disclosure of CMS&H's time frames for responding to complaints. The call scripts did not instruct the contractor to inform callers that they could remain anonymous. UMWA officials told us that they were aware of situations where miners did not report a hazardous condition complaint because the contractor insisted that the complainants identify themselves. We also noted that the call scripts did not include notifications to callers that (1) hazardous condition complaints reported after business hours, including weekends and holidays, would not be addressed by CMS&H until the next business day and (2) hazardous condition complaints could be made directly to the districts.

Deficiencies in receiving and documenting telephone calls may have diminished the effectiveness of the Code-A-Phone as a mechanism to file complaints because individuals may be discouraged from filing. In addition, these conditions adversely affected CMS&H's ability to properly conduct hazardous condition complaint inspections required under the Mine Act and MSHA policy.<sup>5</sup> MSHA needs to improve oversight of the contractor or find alternate mechanisms for receiving complaints filed with MSHA headquarters. Implementing corrective action will help minimize the risk that a violation or danger exists, but is not reported or corrected.

CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- revising the contractor's script to include a notification to callers that they can file a complaint anonymously and that complaints can be made directly to the districts;
- developing a protocol for periodical testing and monitoring of the quality of the contractor's service by CMS&H's Division of Safety personnel; and

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<sup>5</sup> See Results and Findings for Objectives 2 and 3.

- identifying deficiencies and initiating corrective action related to the contractor's service.

CMS&H is also evaluating alternatives to using the contractor.

## **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls that ensure:

1. CMS&H management develops and implements a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process to coal miners, coal miners' representatives and others. This includes ensuring promotional materials (i.e., websites, publications) describe the methods for filing complaints with both headquarters and the districts, and how quickly complaints will be addressed by CMS&H.
2. Code-A-Phone complaints are recorded accurately and completely. This includes ensuring personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology.

## **Agency Response**

For recommendation 1, MSHA is evaluating options for promoting the hazardous condition complaint process in the mining community. According to MSHA, once MSHA has made a decision regarding the options, CMS&H will implement a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process. Additionally, MSHA is developing a standardized template for CMS&H district websites to provide consistent content on hazardous condition complaint process information and the appropriate points of contact at the district and headquarters levels. MSHA noted that mine operators are not required to post promotional material and MSHA has no authority to force the operator to post promotional material.

For recommendation 2, MSHA stated it will implement a process in October 2006 that will allow complainants to speak with a live person or leave a voice mail message for CMS&H mining professionals. CMS&H said it will also continue to periodically test and monitor the quality of the contractor's service according to the protocol established during the audit. MSHA noted that locating an answering service that can provide personnel knowledgeable about coal mining terminology will be difficult and that it is reviewing alternatives.



## **OIG Conclusion**

Recommendation 1 is unresolved pending receipt of a written strategy to plan, monitor, and evaluate CMS&H's efforts to promote its hazardous condition complaint process. Recommendation 2 is unresolved pending receipt of a final plan to ensure Code-A-Phone complaints are recorded accurately and completely.

**Objective 2 -** Does MSHA effectively ensure hazardous condition complaint evaluations are conducted timely, consistently, and in accordance with Federal law and MSHA policy?

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## **Results and Findings**

No. A significant number of hazardous condition complaints filed with MSHA headquarters were not evaluated timely, taking 2 days or more from the date they were received until they were assigned to a district office for action. These delays may have subjected miners to prolonged hazardous conditions. In addition, the assessment of the seriousness of complaint allegations (including whether an imminent danger existed) and the steps taken to protect the complainant's confidentiality were not consistent with provisions in federal laws and regulations or MSHA policies. Management should better define and monitor evaluation timeliness and implement controls to ensure compliance with laws, regulations, and policies.

### **Timeliness of Hazardous Condition Complaint Evaluations Needs Improvement**

Improvements to CMS&H's hazardous condition complaint process are needed to ensure evaluations of complaints are conducted timely. Federal laws, regulations, and MSHA policies convey a sense of urgency in acting on hazardous condition complaints, but do not define a clear timeliness benchmark (i.e., number of hours or days) between the receipt and evaluation of a complaint. Of the 410 hazardous condition complaints made to CMS&H headquarters from January 1, 2005, through March 30, 2006, 14 percent took 2 days or more from the date the complaint was received to the date a district office was notified to conduct an inspection (referred to in this report as the evaluation period).

This occurred because CMS&H management had not (1) monitored evaluation timeliness and (2) addressed systemic reasons for delays. Evaluation delays increase the risk that a prolonged hazardous condition may lead to accidents, injuries, or fatalities. The majority of these delays could be reduced or avoided through improved procedures and management oversight. CMS&H took corrective action during the audit to address some of the process weaknesses we identified.

#### Evaluation Timeliness for Hazardous Condition Complaints Made to Headquarters

Federal laws, regulations, and MSHA policy all convey a need to act expeditiously in assessing and resolving complaints. However, a significant number of hazardous

**Coal Mine Hazardous Condition Complaint  
Process Should Be Strengthened**

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condition complaints made to MSHA headquarters took 2 or more days to be evaluated and assigned to a district office for action, and may have subjected miners to prolonged hazardous conditions.

The time requirements for MSHA to respond to hazardous condition complaints under the law, regulations, and its policies were imprecise. But all convey a desire for prompt action. The Federal Mine Safety and Health Act of 1977 (Mine Act) calls for an “immediate inspection” when there are reasonable grounds to believe that a violation of the Mine Act, or a mandatory health or safety standard, or an imminent danger exists. Federal regulations (30 C.F.R 43.5), require an inspection “as soon as possible” after notice of an alleged violation or imminent danger is received. Furthermore, MSHA’s *Hazard Complaint Procedures Handbook* states that an “immediate inspection” will occur when MSHA concludes that an imminent danger to the safety or health of miners exists and that an inspection will occur “as soon as possible” when a serious hazard to the safety or health of miners may exist at a mine. These benchmarks are not quantified in terms of a number of hours or days. We summarized evaluations that took 2 days or more from complaint receipt by headquarters to district notification to support that the timeliness of CMS&H’s hazard complaint evaluations needs improvement. We analyzed all 410 hazardous condition complaints made to headquarters from January 1, 2005, through March 30, 2006. Fifty-six, or 14 percent, of these complaints took 2 days or more from the date the complaint was received to the date the complaint was transmitted to a district office for action, and may have subjected miners to prolonged hazardous conditions. Table 1 summarizes our results.

**Table 1**

**14 Percent of Headquarters Hazardous Condition Complaints  
Took Two Days or More from  
Complaint Receipt to District Notification  
January 1, 2005 through March 30, 2006**

<b>Complaint Receipt to District Notification</b>	<b>Number of Complaints<sup>a</sup></b>	<b>Percent of Total</b>	<b>Two Days or More</b>
Same day	245	60	
Next day	109	27	
2 days	<b>26</b>	<b>6</b>	<b>56 or 14 percent<sup>c</sup></b>
3 days	<b>18</b>	<b>4</b>	
> 3 days <sup>b</sup>	<b>12</b>	<b>3</b>	
<b>Total</b>	<b>410</b>	<b>100</b>	

Source: OIG analysis of data provided by CMS&H

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

<sup>b</sup> Delays for complaints in this category ranged from 4 to 11 days.

<sup>c</sup> Percent of Total does not add up to 14 due to rounding.

Based on information provided by CMS&H, we summarized the reasons for the delay for 52 of the 56<sup>6</sup> hazardous condition complaints taking 2 days or more from complaint receipt to district notification, and may have subjected miners to prolonged hazardous conditions.

- Forty-one evaluations were delayed because the complaint was received on a Friday, weekend, or holiday. For example, complaints made on Saturday resulted in a 2-day delay because headquarters personnel generally do not work weekends, so the complaint would not be evaluated until the next business day (Monday).
- Eleven evaluations were delayed because a temporary, but undetected, problem in headquarters' email system prevented hazardous condition complaint messages from being transmitted from the contractor to MSHA personnel for evaluation.

#### Increased Management Emphasis Needed to Improve Headquarters Timeliness

CMS&H management had not placed adequate emphasis on ensuring timely hazardous condition complaint evaluations. The lack of management emphasis resulted in several process weaknesses including:

- There was no process in place to measure or monitor how quickly hazardous condition complaints were evaluated or assigned to a district office for action.
- CMS&H personnel were not available to evaluate hazardous condition complaints received after normal business hours or on weekends and holidays.

CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- issuing a policy to track the timeliness of hazardous condition complaint evaluations and include performance information in CMS&H management reports;
- issuing a policy to require headquarters management to monitor and evaluate hazard complaints received through MSHA's Code-A-Phone and website during weekends and holidays and notify the districts when imminent danger complaints were alleged; and
- implementing a plan to test the complaint routing system on a weekly basis and ensure that it is operational.

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<sup>6</sup> CMS&H was not able to provide an explanation for the remaining four complaints.

## **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls to improve the timeliness of hazardous condition complaint evaluations made to headquarters. These policies and controls should ensure:

3. The expectation of timeliness for completing evaluations of hazardous condition complaints under the Mine Act, 30 C.F.R. 43, and MSHA policy are consistent and quantified in specific terms (e.g., number of hours).
4. Hazardous condition complaint evaluation timeliness is measured, monitored, and systemic reasons for delays are identified and addressed. This includes ensuring processes are developed to improve evaluation timeliness for complaints made to headquarters after normal business hours and during weekends and holidays.

## **Agency Response**

MSHA agreed that the expectation of timely and consistent hazardous condition complaint evaluations could be improved. However, MSHA did not agree with the part of recommendation 3 that stated that MSHA needs to quantify an expectation for evaluation timeliness in specific terms (e.g., number of hours). MSHA believed that placing time constraints on a safety or health activity could have a detrimental effect on the evaluation and quality of the inspection and response. MSHA stated that, given that each circumstance is different, the proper response to a complaint requires ensuring that an appropriate number of resources with the right technical skills are deployed as soon as possible. Additionally, focusing on timeliness instead of overall need for response could result in a premature and uninformed decision.

For recommendation 4, MSHA initiated corrective action during the audit. CMS&H will track evaluation timeliness and include performance information in management reports; monitor and evaluate hazard complaints received by headquarters during weekends and holidays; and test the complaint routing system on a weekly basis. [The corrective action is discussed more fully on page 17 of this report.]

## **OIG Conclusion**

Recommendation 3 is unresolved. Regarding MSHA's disagreement regarding quantifying the expectation for timeliness of complaint evaluations, we certainly do not advocate meeting standards of timeliness at the expense of appropriately addressing safety concerns. However, we are not convinced that a standard of "as soon as possible" is sufficient to drive evaluation and inspection performance and results. Additionally, it is our opinion that hazardous condition complaint evaluations should be based on the substance of the complaint rather than the availability of the appropriate number of district resources with the right technical skills. As such, we believe district

notification should occur as soon as headquarters determines that a special inspection should be conducted.

Recommendation 4 is resolved and will be closed after the corrective action has been implemented.

### **Hazardous Condition Complaint Evaluation Consistency and Compliance with Laws and Policies Needs Improvement**

Improvements to CMS&H's hazardous condition complaint process are needed to ensure complaints are evaluated consistently and in accordance with Federal law and MSHA policy. In some instances, CMS&H practices varied and departed from the Mine Act and MSHA policy related to (1) evaluating the seriousness of hazardous condition complaints; (2) determining complaints that allege imminent danger; and (3) protecting complainant confidentiality. This occurred because CMS&H management had not established adequate management controls. Inconsistencies and lack of compliance could result in different treatment and disposition of similar complaints and increase the risk that dangers or violations exist but are not addressed in a timely manner, or at all. Moreover, miners may not report hazardous conditions if their confidentiality is not protected. CMS&H took corrective action during the audit to address some of the process weaknesses we identified.

#### Assessing the Seriousness of Hazardous Condition Complaints

MSHA's *Hazard Complaint Procedures Handbook* requires that an Authorized Representative (AR)<sup>7</sup> assess the seriousness of a hazardous condition complaint to determine whether a special inspection should be conducted. The handbook requires the AR to classify the complaint according to one of four categories:

- *Imminent Danger*, requiring immediate inspection;
- *Serious Hazard*, requiring inspection to be conducted as soon as possible;
- *Not a Serious Hazard*, allowing inspection to be conducted during the next regular inspection; and
- *Violation Does Not Exist*, not requiring an inspection.

CMS&H records usually did not contain documentation that an assessment according to the four categories had been performed. We reviewed a statistical sample of 127 out of the 336 hazardous condition complaints filed with headquarters during January 1, 2005,

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<sup>7</sup> Authorized Representatives are located in MSHA headquarters and CMS&H district and field offices. MSHA personnel receive their Authorized Representative credentials after completing 18-24 months of instruction at MSHA's Mine Academy and on-the-job training with experienced mine inspectors. Individuals with these credentials also meet MSHA's requirements for certified underground Coal Mine Inspectors.

through March 30, 2006, and 149 out of the 656 hazardous condition complaints filed directly with district offices during the same period. We determined that 126, or 99 percent, of the headquarters complaints and 144, or 96 percent, of the district complaints did not have evidence that the required assessment had been performed.

*Standards for Internal Control in the Federal Government* states that all transactions and other significant events need to be clearly documented, and documentation should be readily available.<sup>8</sup> Without evidence of an AR's assessment, CMS&H management had no assurance that district offices were complying with its policy. In turn, if ARs were not performing the complaint evaluations, there was an increased risk that improper evaluations were made, including the urgency with which complaints should have been handled.

This condition occurred because CMS&H's policy did not require that complaint records contain documentation of assessments made according to the four categories noted in MSHA's *Hazard Complaint Procedures Handbook*.

#### Determining Whether Hazardous Condition Complaints Involve an Imminent Danger

An "imminent danger" is the most serious hazardous condition and requires an immediate response from MSHA. The Mine Act defines "imminent danger" 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 the condition or practice can be abated. We found several instances where the determinations of whether a hazardous condition complaint involved an imminent danger were inconsistent.

Guidance described in CMS&H's *Coal General Inspection Procedures Handbook* (April 2000) provided instructions to review the content of hazardous condition complaints for key words such as "methane," "gas," or "percent of" that may indicate the existence of an imminent danger. CMS&H personnel generally relied on this approach to determine how urgently complaints should be handled. CMS&H management and inspectors stated that "electric," "exposed wires," and "roof conditions" were other key words that may constitute an imminent danger.

We reviewed a statistical sample of 127 out of 336 hazardous condition complaints made to MSHA headquarters from January 1, 2005, through March 30, 2006. Four of these complaints contained allegations of excessive methane accumulations, electrical hazards, exposed wires, and unsafe roof support, but were not assessed by CMS&H personnel as an imminent danger. Table 2 summarizes these complaints.

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<sup>8</sup> U.S. Government Accountability Office, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

**Table 2**

**Headquarters Hazardous Condition Complaints  
Not Considered an Imminent Danger  
January 1, 2005 through March 30, 2006**

<b>CMS&amp;H Description</b>	<b>Key Word</b>	<b>Complaint Receipt to Inspection Start</b>
(1) Excessive methane accumulations in the No. 10 section; 3 percent methane was found.	Methane	2 days
(2) Electrical hazards on miner, bolt machine does not stay up in the heads; hazards related to cable on electrical panel of bolter.	Electrical	2 days
(3) The energized high voltage in the high voltage tub behind the section power center has exposed wires covered by plastic tape.	Exposed Wires	2 days
(4) Roof support jacks on Alpine miner not always against the roof; jacks could fall and injure someone.	Roof	7 days

Source: OIG analysis of data provided by CMS&H

Other hazardous condition complaints in our statistical sample received differing assessments even though the allegations described were similar, as shown in Table 3.

**Table 3**

**Headquarters Hazardous Condition Complaints  
Similar Allegations Resulted in Different Categorizations  
January 1, 2005 through March 30, 2006**

<b>Categorized as Imminent Danger</b>	<b>Not Categorized as Imminent Danger</b>
(1) People in the preparation plant are using and distributing <b>drugs</b> .	(4) Miners allegedly smoking and using <b>drugs</b> underground; management is involved in hazardous activity.
(2) Continuous miners are frequently running in <b>methane</b> concentrations <b>above 1%</b> and without required air velocity.	(5) Excessive methane accumulations in the No.10 section; <b>3% methane</b> was found.
(3) Unsafe equipment, dusty roads, lack of <b>rock dust</b> , in general the place is a mess.	(6) Accumulations of <b>fine coal</b> and <b>float dust</b> at the belt drive and portal.

Source: OIG analysis of data provided by CMS&H

These inconsistencies could result in different treatment and disposition of similar complaints and increase the risk that dangers or violations exist but are not appropriately addressed. These conditions occurred because CMS&H did not provide adequate training for determining what mine conditions constituted an imminent danger.

### Protecting Complainant Confidentiality

We found that CMS&H practices to protect the confidentiality of complaints were not always consistent with its guidelines. MSHA's *Hazard Complaint Procedures Handbook* states that protecting the identity of all complainants is of the utmost concern to MSHA. In addition to certain actions required under the Mine Act, such as the mandatory removal of the complainant's name, the *Handbook* proposes that ARs take other actions to protect complainant confidentiality before providing a copy of the complaint to the mine operator. Suggestions 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.

We found several instances where the rewritten complaints provided to the mine operators did not remove references as suggested that could possibly identify the identity of the complainants. We noted 39 of the 127, or 31 percent, of statistically selected complaints filed with headquarters during January 1, 2005, through March 30, 2006, did not remove such specific references. We found the same conditions for 21 of the 149, or 14 percent, of statistically selected complaints filed directly with the districts during the same period. Examples of references to specific equipment, work area, and work shift included in the complaints provided to mine operators included the following:

- D11 cat dozer #1040,
- No. 3 entry of the 9A-6 North Section, and
- evening shift and owl shift.

CMS&H practice of providing copies of complaints to mine operators that contain information that could identify complainants was not consistent with CMS&H policy and increased the risk that violations or dangers will not be reported. These conditions occurred because CMS&H management did not believe that the identification of a piece of equipment or the location of a complaint was sufficient to endanger the complainant's anonymity. Moreover, they said this information was needed to allow the inspector to find the alleged hazard.

Including specific information in the inspector's copy of the complaint is needed to effectively target the inspection. However, including such detail in the mine operator's copy of the complaint raises the risk that the complainant would be identified. CMS&H should develop procedures that provide inspectors with the information they need to find



the alleged violation but do not provide the mine operator with information that may disclose the complainant's identity.

CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- issuing guidance related to evaluating the seriousness of hazardous condition complaints, and
- developing training to ensure CMS&H personnel are aware of established practices and requirements provided under the Mine Act and MSHA policy.

### **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls to improve hazardous condition complaint evaluation consistency and compliance with laws and policies. These controls should include processes to ensure:

5. Pre-inspection evaluations by ARs of the seriousness of complaints are documented.
6. Training and oversight is provided for appropriate determination of imminent danger hazardous condition complaints.
7. Copies of complaints provided to mine operators are consistent with MSHA's guidelines to remove detailed information that could compromise a complainant's identity.

### **Agency Response**

For recommendation 5, CMS&H issued policy during the audit to clarify and remedy the need for documentation of complaint evaluations by an AR. For recommendation 6, CMS&H developed and provided training to 10 of its 11 districts. Training for the 11<sup>th</sup> district was planned for completion by September 29, 2006. Further, MSHA said it will incorporate the training in the mandatory AR training program provided by the National Mine Safety and Health Academy. MSHA, however, disagreed with our characterization of some of the imminent danger examples we provided in Tables 2 and 3 to support the need for training and oversight. MSHA noted that imminent danger determinations are professional judgment calls that utilize the depth and breadth of AR mining knowledge.

For recommendation 7, MSHA said it will implement another level of complaint sanitization for mine operators where identification or references to specific equipment, work area and work shift could potentially disclose a complainant's identity.

## **OIG Conclusion**

Recommendations 5 and 6 are resolved and will be closed after the corrective action has been implemented. We acknowledge MSHA for implementing corrective action for recommendation 6 despite its disagreement with our characterization of some of the imminent danger examples.

We recognize that imminent danger determinations are professional judgment calls that utilize the depth and breadth of AR mining knowledge. Nevertheless, we continue to believe our conclusions regarding the imminent danger examples are appropriate. MSHA specifically questioned our example regarding "the energized high voltage in the high voltage tub behind the section power center has exposed wires covered by plastic tape." MSHA stated that "no miners were at risk on the best insulated, grounded and most barricaded and guarded cable in the underground mine environment." However, we maintain that unless and until MSHA actually inspects this equipment it is making suppositions as to the exact conditions. Further, whether or not we agree on this one example, MSHA did concur with the issue and that actions are needed.

Recommendation 7 is unresolved pending receipt of MSHA policy requiring another level of complaint sanitization for mine operators where identification or references to specific equipment, work area and work shift could potentially disclose a complainant's identity.

**Objective 3** – Does MSHA effectively ensure hazardous condition complaint inspections are conducted timely, thoroughly, consistently, and in accordance with Federal law and MSHA policy?

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## **Results and Findings**

No. A significant number of hazardous condition complaint inspections were not initiated timely, taking 2 days or more from the date they were received until an inspection was started. These delays may have subjected miners to prolonged hazardous conditions. Inspections were also not always conducted immediately as required under Section 103(g)(1) of the Mine Act for hazardous condition complaints alleging imminent danger. In addition, we could not determine whether inspections were thorough, consistent, and in compliance with CMS&H policy because a significant number of the inspector notes documenting inspection activities had no evidence of supervisory review. Management should better define and monitor inspection timeliness and implement controls to ensure compliance with laws, regulations, and policies.

### **Timeliness of Hazardous Condition Complaint Inspections Needs Improvement**

Improvements to CMS&H's hazardous condition complaint process are needed to ensure inspections are conducted timely. As previously discussed (see p. 16), the time

requirements for MSHA to respond to hazardous condition complaints under the law, regulations, and its policies are imprecise. However, all convey a sense of urgency. Terms such as “immediate” and “as soon as possible” are used to describe the expectation for initiating an inspection of an alleged imminent danger or violation of a mandatory health and safety standard.

To evaluate inspection timeliness, we examined separate statistical samples for hazardous condition complaints filed with MSHA headquarters and filed directly with CMS&H’s 11 districts. We estimated that 32 percent of hazardous condition complaints filed with CMS&H headquarters and had inspections completed during January 1, 2005, through March 30, 2006, took 2 days or more from the date headquarters notified the district to the date an inspection was started. Additionally, we estimated that 15 percent of the complaints filed directly with the districts took 2 days or more from the date the complaint was filed to the date an inspection was started. These inspection delays may have subjected miners to prolonged hazardous conditions.

The inspection delays occurred most often because inspectors generally did not work weekends and holidays, other resource limitations (e.g., scheduling conflicts), and inadequate management oversight. The inspection delays increased the risk that a prolonged hazardous condition may lead to accidents, injuries, or fatalities. CMS&H took corrective action during the audit to address some of the process weaknesses we identified.

#### Inspection Timeliness for Hazardous Condition Complaints Made to Headquarters

We assessed inspection timeliness for hazardous condition complaints filed with headquarters by measuring the period from district notification by headquarters to inspection start. In addition, we determined whether there were valid reasons for delays of 2 days or more. We considered a reason for delay valid if the delay did not potentially subject a miner to a prolonged hazardous condition. For example, delayed inspections for complaints citing record keeping issues or machinery temporarily out of service did not subject miners to prolonged hazardous conditions.

We analyzed a statistical sample of 127 out of 336 hazardous condition complaints that were filed with headquarters and had inspections completed during January 1, 2005, through March 30, 2006. Forty-one, or 32 percent, took 2 days or more from complaint receipt to inspection start, and may have subjected miners to prolonged hazardous conditions. Table 4 summarizes our results.

**Table 4  
District Notification to Inspection Start for  
Hazardous Condition Complaints Made to Headquarters  
January 1, 2005 through March 30, 2006**

<b>District Notification to Inspection Start</b>	<b>Number of Complaints<sup>a</sup></b>	<b>Percent</b>	<b>Two Days or More</b>
Same day	32	25	
Next day	45	36	
2 days	<b>10</b>	<b>8</b>	<b>41 or 32 percent</b>
3 days	<b>12</b>	<b>9</b>	
> 3 days <sup>b</sup>	<b>19</b>	<b>15</b>	
Valid Delay <sup>c</sup>	3	2	
No Inspection <sup>d</sup>	6	5	
<b>Total</b>	<b>127</b>	<b>100</b>	

Source: OIG analysis of data provided by CMS&H

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

<sup>b</sup> Delays for complaints in this category ranged from 4 to 84 days.

<sup>c</sup> Delays did not result in prolonged hazardous conditions at the mines. Examples included allegations relating to training provided by the mine operators and mine record keeping.

<sup>d</sup> CMS&H's evaluation determined that the allegations did not constitute a violation or were outside of CMS&H's jurisdiction.

Projecting the sample results to the 336 hazardous condition complaints filed with headquarters from January 1, 2005, through March 30, 2006, we estimated that 109<sup>9</sup> complaints took 2 days or more from district notification to inspection start, and may have subjected miners to prolonged hazardous conditions.

Based on information provided by CMS&H, we summarized the reasons for the delay for 35 of the 41 hazardous condition complaints made to headquarters that took 2 days or more from district notification to inspection start, and may have subjected miners to prolonged hazardous conditions.

- Thirteen inspections were delayed because the complaint was received on a Friday, weekend, or holiday. For example, complaints made on Fridays resulted in 3-day delays because MSHA personnel generally do not work weekends, so the complaint would not be acted on until the next business day (Monday).
- Fourteen inspections were delayed because of resource limitations. Examples included inspections requiring technical support that was not immediately

<sup>9</sup> At a 95 percent confidence level and a sampling error of +/- 3.11 percent, the value could fall within a range from 88 to 129.

available and inspectors not available due to illness or other commitments (e.g., regular scheduled inspections, training).

- Eight inspections were delayed because the district had not provided adequate management oversight. Examples included district management not being aware inspections had not started and district management deciding to delay inspections because prior complaints at the same mine had similar allegations with negative findings (no citations issued).

See Exhibit A for descriptions of the 10 hazardous condition complaints made to headquarters with the longest inspection delays that may have subjected miners to prolonged hazardous conditions. The delays ranged from 6 to 84 days.

#### Inspection Timeliness for Hazardous Condition Complaints Made Directly to Districts

CMS&H's 11 districts generally did not record the date hazardous condition complaint evaluations were completed. Therefore, we were not able to measure the period from evaluation completion to inspection start for complaints made directly to the districts. Instead, we assessed inspection timeliness by measuring the period from complaint receipt by the district to inspection start. In addition, we determined whether there were valid reasons for delays of 2 days or more. Again, we considered a reason for delay valid if the delay did not prolong a potential hazardous condition at the mine.

We analyzed a statistical sample of 149 out of 656 hazardous condition complaints made directly to the districts from January 1, 2005, through March 30, 2006. Twenty-two, or 15 percent, took 2 days or more from complaint receipt to inspection start. These delays may have subjected miners to prolonged hazardous conditions. Table 5 summarizes our results.

**Table 5**

**Complaint Receipt to Inspection Start for  
Hazardous Condition Complaints Made Directly to Districts  
January 1, 2005 through March 30, 2006**

<b>Complaint Receipt to Inspection Start</b>	<b>Number of Complaints<sup>a</sup></b>	<b>Percent</b>	<b>Two Days or More</b>
Same day	61	41	
Next day	50	34	
2 days	<b>3</b>	<b>2</b>	<b>22 or 15 percent</b>
3 days	<b>6</b>	<b>4</b>	
> 3 days <sup>b</sup>	<b>13</b>	<b>9</b>	
Valid delay <sup>c</sup>	8	5	
No inspection or insufficient information <sup>d</sup>	8	5	
<b>Total</b>	<b>149</b>	<b>100</b>	

Source: OIG analysis of data provided by CMS&H

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

<sup>b</sup> Delays for complaints in this category ranged from 4 to 10 days.

<sup>c</sup> Delays did not result in prolonged hazardous conditions at the mine. Examples included situations where the machinery cited in the complaint was out of service, the coal mine was idle, and blasting operations (the subject of the complaint) would not be conducted until a later date.

<sup>d</sup> CMS&H's evaluation determined that the allegations did not constitute a violation or were outside of CMS&H's jurisdiction, or the information was not available to verify dates of inspection.

Projecting the sample results to the 656 hazardous condition complaints made directly to the district offices from January 1, 2005, through March 30, 2006, we estimated that 97<sup>10</sup> took 2 days or more from district notification to inspection start, and may have subjected miners to prolonged hazardous conditions.

Based on information provided by CMS&H, we summarized the reasons for the delay for the 22 hazardous condition complaints made directly to the districts that took 2 days or more from district notification to inspection start, and may have subjected miners to prolonged hazardous conditions.

- Thirteen inspections were delayed because the complaint was received on a Friday, weekend, or holiday and inspectors were not authorized to work overtime. For example, complaints made on Fridays resulted in a 3-day delay because inspectors sometimes complete their 40-hour workweek Thursday or early Friday and are not authorized to work overtime.

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<sup>10</sup> At a 95 percent confidence level and a sampling error of +/- 2.55 percent, the value could fall within a range from 64 to 130.

- Five inspections were delayed because of inspector resource limitations. Examples include technical support that was not immediately available and inspectors not available due to other inspection commitments (e.g., accident investigation).
- Three inspections were delayed because the district had not provided adequate management oversight. Examples include districts deciding to delay inspections because prior complaints at the same mine had similar allegations with negative findings (no citations issued).
- One inspection was delayed because the district coordinated the investigation with the state mine agency in order to address allegations of drug use, which CMS&H does not regulate. However, the complaint also contained an allegation that two continuous mining machines were operating at the same time.

See Exhibit B for detailed descriptions of the 10 hazardous condition complaints made directly to the districts with the longest inspection delays that may have subjected miners to prolonged hazardous conditions. The delays ranged from 4 to 14 days.

#### Management Emphasis Needed to Improve Timeliness

The delayed inspections for complaints filed with both headquarters and the districts occurred because CMS&H management had not placed adequate emphasis on ensuring timely inspections. The lack of management emphasis resulted in several process weaknesses including:

- Neither headquarters officials nor management in the 11 districts had developed processes to measure and monitor how quickly inspections related to hazardous condition complaints were started.
- The after-hours phone messages at district and field offices provided a list of contacts to report emergencies but not hazardous condition complaints. Also, an alternative method for contacting MSHA was not provided for instances when the listed emergency contacts could not be reached.
- Hazardous condition complaints forwarded by headquarters or filed directly with the districts during weekends and holidays were not addressed by CMS&H until the next business day.
- District-wide reviews for hazardous complaint inspection timeliness were not performed. CMS&H's Accountability Program reviews of district and field office operations were limited to only one mine in the district or field office being reviewed. As such, no hazardous condition complaint process issues were identified during the reviews of district operations completed from January 1, 2005, through March 30, 2006, or during the field office reviews completed by the two district offices we visited during this audit.

- In one district we visited, hazardous condition complaints were not reviewed during field office operations reviews as required by CMS&H policy. This occurred because the individual leading the field office reviews was also the district's Hazardous Condition Complaint Coordinator. He believed that it was not necessary to perform this review because the task would involve reviewing his own work.

CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- Developing procedures to monitor hazardous condition complaint inspection timeliness and include performance information in CMS&H management reports. In February 2006, CMS&H started using the new hazardous condition complaint tracking system to record and track complaint information. The new system is a component of the existing MSIS. CMS&H management said that this new system will facilitate oversight of inspection timeliness.
- Developing a policy requiring district and field offices to ensure after hours messages provide for a calling tree three people deep and reference the availability of the toll-free hotline for filing hazardous condition complaints.
- Developing a policy requiring headquarters management to monitor hazardous condition complaints received through MSHA's Code-A-Phone and website during weekends and holidays and notify the districts when imminent danger complaints are alleged.
- Notifying district management that headquarters will expand the scope of its reviews to include monitoring the timeliness of hazardous condition complaint responses.
- Issuing a policy to district management stating that the persons responsible for hazardous condition complaints should recuse themselves from reviewing the effectiveness and efficiency of the district's complaint system during internal reviews.

## **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls to improve the timeliness of hazardous condition complaint inspections. These management controls should ensure:

8. Processes are developed to improve inspection timeliness for complaints made to both headquarters and the districts. This includes ensuring hazardous condition complaint inspection timeliness is measured, monitored, and systemic reasons for delays are identified and addressed.



9. Segregation of duties is maintained when individuals responsible for managing district hazardous condition complaint processes are included on headquarters or district review teams.

### **Agency Response**

CMS&H initiated corrective action during the audit. For recommendation 8, CMS&H is developing procedures to monitor inspection timeliness and include performance information in management reports. CMS&H also developed policy that will improve the monitoring of hazardous complaints received by headquarters and the districts after hours or on weekends and holidays. For recommendation 9, CMS&H issued a policy to district management stating that the persons responsible for hazardous condition complaints should recuse themselves from reviewing the district's complaint system during internal reviews. [The corrective action is more fully discussed on page 30 of this report.]

### **OIG Conclusion**

Recommendations 8 and 9 are resolved. The recommendations will be closed after the corrective action has been implemented.

### **MSHA Lacks Assurance that Hazardous Condition Complaint Inspections Are Thorough, Consistent, and Comply with the Mine Act and MSHA Policy**

Improvements are needed to ensure hazardous condition complaint inspections are conducted thoroughly, consistently, and in accordance with the Mine Act and MSHA policy. We identified instances where CMS&H practices were not consistent with the Mine Act or MSHA policy. These practices related to (1) conducting immediate inspections of complaints alleging imminent danger and (2) supervisory review of hazardous condition complaint inspections. These process weaknesses increased the risk that dangers or violations exist but are not reported or corrected.

These conditions occurred because CMS&H management had not placed adequate emphasis on oversight of hazardous condition complaint inspections.

#### Inspections of Imminent Dangers Not Always In Compliance with the Mine Act

CMS&H did not always conduct immediate inspections of imminent danger hazardous condition complaints as required under Section 103(g)(1) of the Mine Act. According to this provision of the law, whenever a miner or miner representative has reasonable grounds to believe that, “. . . an imminent danger exists, such miner or representative *shall have a right to obtain an immediate inspection.* [Emphasis added.]”<sup>11</sup> Imminent danger is defined as the existence of any condition or practice in a coal or other mine

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<sup>11</sup> Section 103(g) of the Mine Act.

which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

CMS&H judged 10 hazardous condition complaints received from January 1, 2006, through March 30, 2006, to involve a potential imminent danger.<sup>12</sup> Our review determined that an “immediate inspection”<sup>13</sup> was not performed in 4 out of 10 cases. For these four cases, the inspections were started from 1 to 5 days after the complaint was filed. Table 6 summarizes the results.

**Table 6**

**Imminent Danger Complaint Inspections  
January 1, 2006 through March 30, 2006**

<b>Number<sup>a</sup></b>	<b>Date Filed</b>	<b>Date of Inspection</b>	<b>Complaint Receipt to Inspection Start</b>
1	1/3/06	1/5/06	2
2	1/4/06	1/4/06	0
3	1/23/06	1/24/06	1
4	1/26/06	1/26/06	0
5	1/26/06	1/26/06	0
6	2/16/06	2/16/06	0
7	2/23/06	2/23/06	0
8	2/23/06	2/23/06	0
9	3/15/06	3/16/06	1
10	3/23/06	3/28/06	5

Source: OIG analysis of data provided by CMS&H

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

The Mine Act and MSHA policy stipulate that allegations of imminent danger merit prompt attention. Failure to conduct timely inspections of these imminent danger hazardous condition complaints could result in death or physical harm to a miner.

These conditions occurred because CMS&H did not have adequate controls in place to ensure complaints alleging imminent danger were inspected immediately after filing in accordance with the Mine Act. For example, CMS&H’s Accountability Program reviews of district and field office operations were limited to only one mine in the district being reviewed. District-wide reviews for compliance with laws and policy relating to hazardous condition complaints were not performed. As such, no hazardous condition

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<sup>12</sup> Prior to 2006, MSHA did not have a tracking mechanism in place to identify imminent danger complaints.

<sup>13</sup> For purposes of this audit, we defined “immediate inspection” as one which was started the same day as the complaint was received.

complaint process issues were identified during the district office reviews completed from January 1, 2006, through March 30, 2006, or during the field office reviews completed by the two districts we visited during this audit.

Supervisory Review of Inspector Field Notes Was Not Always Documented

CMS&H had limited assurance that hazardous complaint inspections were thorough, consistent, and in compliance with CMS&H policy because a significant number of the inspector notes documenting inspection activities had no evidence of supervisory review. Inspector notes and other supporting documents showed that each of the allegations was addressed for the complaints included in our statistical samples. However, because supervisory reviews of inspector notes were not consistently documented, there was no verification of the quality of the work performed.

Field supervisors review inspector notes to assess and ensure work quality. Field supervisors are particularly qualified to perform these reviews because they possess the experience, technical expertise and specific mine knowledge to evaluate an inspector's work quality. As such, we considered evidence of the field supervisor's review as an indication that hazardous condition complaint inspections were sufficient, consistent, and in compliance with CMS&H policy.

We analyzed statistical samples of 127 out of 336 hazardous condition complaints made to headquarters and 149 out of 656 hazardous condition complaints made directly to district offices from January 1, 2005, through March 30, 2006. We found that 67, or 24 percent, of the 276 total hazardous condition complaints in our 2 samples were not documented as reviewed by a supervisor. Additionally, 6, or 4 percent, of the 149 sampled hazardous condition complaints made directly to the districts did not have any documentation indicating that inspector's field notes were completed. Table 7 summarizes our results.

**Table 7**

**24 Percent of the Inspector Notes Were Not Signed By a Supervisor  
January 1, 2005 through March 30, 2006**

<b>Sample</b>	<b>Total Complaints<sup>a</sup></b>	<b>Sample Size</b>	<b>No Supervisor Signature</b>	<b>Percent of Sample</b>	<b>No Inspector Field Notes</b>	<b>Percent of Sample</b>
Headquarters Complaints	336	127	21	17	-	-
District Complaints	656	149	46	31	6	4
<b>Total</b>	<b>992</b>	<b>276</b>	<b>67</b>	<b>24</b>	<b>6</b>	<b>2</b>

Source: OIG analysis of data provided by CMS&H

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

This condition occurred because CMS&H management did not provide clear guidance regarding requirements for supervisory review. To illustrate:

- CMS&H's *Supervisor's Handbook* (August 1, 1997) requires supervisors to review a representative number of inspection or investigation reports and appropriate notes. Management from two districts told us that they did not document supervisory review of inspector notes for all inspections because of this provision.
- CMS&H's *Coal General Inspection Procedures Handbook* (April 2000) stated that, "the inspection supervisor is no longer required to date and initial each page of the notes reviewed." This policy implied that at least one page should be signed but did not specifically state that requirement. Management from one district stated that they performed, but did not document their supervisory reviews on inspector notes because it was not required. Instead, they documented their supervisory and managerial reviews on complaint tracking forms.
- Management from one district stated that the supervisor's initials on the final report and memo would evidence that the entire report, including the supporting inspector notes, was reviewed by the supervisor.

Without proper and consistent documentation of supervisory review, CMS&H had limited assurance that the quality of complaint inspections had been independently evaluated for thoroughness, consistency, and compliance with CMS&H policy.

During the audit, CMS&H was in the process of implementing a new computer-based inspection tracking system to track the progress of mine inspections and to provide a

higher degree of consistency in the completeness of each inspection. The system will require inspectors and field supervisors to complete a certification that acknowledges sufficient documentation, including inspector notes, have been completed and maintained to evidence that minimum inspection requirements have been completed. This certification increases assurance that hazardous condition complaint inspections are conducted thoroughly, consistently, and in accordance with the Mine Act and MSHA policy. This tracking system, if properly implemented and monitored, should improve CMS&H's ability to ensure that complaint inspections are thorough, consistent, and in compliance with Federal laws and MSHA policy.

### **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls to ensure:

10. The expectation of timeliness for beginning inspections of "imminent danger" allegations is quantified in specific terms (e.g., number of hours), and the subsequent inspections are started within those specific time frames.
11. Inspector notes receive appropriate supervisory review.

### **Agency Response**

MSHA did not agree with recommendation 10. MSHA believed that the Mine Act and CFR's time requirements ("immediately" and "as soon as possible") adequately established the expectation for inspection timeliness. MSHA stated that a performance metric for inspection timeliness was too binding, and may force abandonment of the current approach on accepting hazardous condition complaints beyond the 103(g) complaints filed in writing by miners and miner representatives. Additionally, MSHA disagreed with our conclusion that an immediate inspection was not performed in 4 out of the 10 cases that CMS&H categorized as "imminent dangers." MSHA considered the 1- to 5-day delays to be appropriate because the inspections were conducted as "soon as possible." Specifically, MSHA noted that two inspections were initiated in less than 24 hours after the call was received; one inspection was addressed on the day of the complaint when the mine operator was directed to investigate the alleged hazards prior to the MSHA inspection occurring 2 days later; and one inspection was delayed 5 days for multiple reasons including the need for multiple inspectors, the allegations related to the 3<sup>rd</sup> shift, and a 2-day weekend.

MSHA also did not agree with recommendation 11. MSHA believed the recommendation was redundant based on current practice. Specifically, MSHA's Inspection Tracking System requires field office supervisors to certify that inspector notes and minimum inspection requirements have been completed. The tracking system is discussed above. MSHA also believed that a more appropriate recommendation from the OIG is that "CMS&H management provides clear guidance on the requirements for supervisory review."

## **OIG Conclusion**

Recommendation 10 is unresolved. As noted earlier regarding MSHA's disagreement with our recommendations that expectations for timeliness be quantified, we do not advocate meeting standards of timeliness at the expense of appropriately addressing safety concerns. However, we are not convinced that a standard of "as soon as possible" is sufficient to drive inspection performance and results.

Additionally, we maintain that an immediate inspection was not performed in 4 out of the 10 cases that CMS&H categorized as imminent dangers. MSHA noted that two inspections were started in less than 24 hours after the call was received.<sup>14</sup> We believe that each hour is critical for complaints alleging imminent danger and that any delay should be avoided. For example, MSHA told us that one of the complaints addressed within 24 hours was received on a Monday morning and the inspection started Tuesday morning. CMS&H did not provide a reason why the inspection was delayed until the next morning. As such, we concluded that the inspection was not immediate. For the third delayed inspection, we did not consider CMS&H requiring the mine operator to investigate the complaint a valid reason for delaying the inspection. In this instance, the inspection conducted 2 days later resulted in five citations, two of which noted that the gravity of the safety violation was "Significant and Substantial" and injury or illness was "Reasonably Likely." For the fourth delayed inspection, we concluded that the reasons provided by CMS&H were not valid reasons for a 5-day delay (logistical problems associated with the need for two inspectors, allegations related to the 3<sup>rd</sup> shift, and a 2-day weekend).

Despite MSHA's disagreement with recommendation 11, it is resolved. Effective implementation of MSHA's Inspection Tracking System will meet the intent of the recommendation. MSHA was in the process of implementing the tracking system during the audit. As such, we did not test whether the system effectively ensured inspector notes received appropriate supervisory review. The recommendation will be closed after MSHA provides documentation supporting that implementation of the Inspection Tracking System is complete. As suggested in MSHA's proposed recommendation, this implementation should include providing clear guidance on the requirements for supervisory review.

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<sup>14</sup> Information provided by MSHA indicated that the actual times the complaints were received were not recorded. MSHA based the time of receipt for one complaint on the field office supervisor's recollection that complaints from the particular mine tend to be received in the morning. MSHA based the time of receipt for the other complaint on the time the complaint was entered into the complaint tracking system.

**Objective 4 –** Does MSHA management effectively use hazardous condition complaint process results to direct oversight and enforcement responsibilities?

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## **Results and Findings**

No. CMS&H management analysis relied on reports that were based on complaints filed solely with MSHA headquarters; about one-third of the total complaints. The reports did not include complaints filed directly with the districts. In addition, information reported to the public on hazardous condition complaints was incomplete. The incomplete reporting may have impacted CMS&H oversight and enforcement decisions and public perception of CMS&H enforcement responsibilities. CMS&H management should ensure that reports on the hazardous condition complaint process include information on all complaints, regardless of where or how they were filed.

### **Reporting on Hazardous Condition Complaint Results Was Based on Incomplete Data**

MSHA can strengthen oversight, enforcement, and public confidence by ensuring hazardous condition complaint data used for management decision making or public reporting are complete. CMS&H officials used complaint data summarized in management reports to analyze activity trends and direct oversight and enforcement. However, these reports were based on complaints filed solely with MSHA headquarters. The reports did not include complaints made directly to CMS&H's 11 districts. The district complaints represented 64 percent of the 813 total complaints received by CMS&H during CY 2005. The incomplete data may have adversely affected CMS&H's ability to (1) evaluate existing efforts to address hazardous condition complaints; (2) provide timely resources to direct oversight and enforcement responsibilities; and (3) develop strategies to effectively manage the overall CMS&H program.

Hazardous condition complaint information reported on MSHA's public website was also incomplete. MSHA reported that 402 coal mine hazardous condition complaints were received in CY 2004, the most current year reported. Documentation provided by CMS&H indicated that the reported number was understated by 285 complaints or 41 percent of the 687 total complaints received during the year. The incomplete reporting may have impacted public perception of mine safety and CMS&H enforcement responsibilities.

These conditions occurred because (1) CMS&H management had decided not to expend the resources needed to maintain a manual process to include the district data, and (2) MSHA management had not established a process to ensure complaint data reported to the public were complete.<sup>15</sup>

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<sup>15</sup> MSHA's Program Evaluation Information Resources (PEIR) group maintains the website and reports hazardous condition complaint information based on data entered into MSIS by inspectors.

The *Standards for Internal Control in the Federal Government* requires, in part, the following:

- Activities need to be established to monitor performance measures and indicators. Control activities help to ensure that all transactions are completely and accurately recorded.
- For an entity to run and control its operations, it must have relevant, reliable, and timely communications relating to internal as well as external events.

CMS&H initiated some corrective action during the audit which included issuing policy to incorporate district complaints in management reports.

#### Management Reports Did Not Include District Complaints

CMS&H management relied on management reports to analyze enforcement activities and make informed decisions. CMS&H staff compiled a series of electronic reports – referred to as a Digital Dashboard – management could access as needed. The *Digital Dashboard* included the following data relating to hazardous condition complaints:

- Number of coal mine complaints made to headquarters by month
- Number of coal mine complaints made to headquarters by district
- Percentage of positive (citation issued) and negative (no citation issued) complaint findings by district

We tested the number of coal mine hazardous condition complaints reported in the *Digital Dashboard* for CY 2005 to determine whether the reported data was (1) supported by documentation maintained by headquarters or the districts and (2) included complaints made to both headquarters and the districts. We found that the number of headquarters complaints reported in the *Digital Dashboard* was accurate. Each of the complaints reported was supported by documentation maintained by headquarters. However, we found that hazardous condition complaints made directly to CMS&H's 11 districts were not included in the *Digital Dashboard*. Table 8 shows that the district complaints represented 64 percent of the total coal mine complaints made to MSHA during CY 2005.



**Table 8**  
**65 Percent of Coal Mine Hazardous Condition Complaints  
Were Excluded From Digital Dashboard  
CY 2005**

	Number of Complaints <sup>a</sup>	Percent of Total
Headquarters complaints included in <i>Digital Dashboard</i>	290	36
<b>District complaints excluded from <i>Digital Dashboard</i></b>	<b>523</b>	<b>64</b>
Total coal mine complaints	813	100

Source: OIG analysis of CMS&H *Digital Dashboard* and complaint data provided by CMS&H's 11 districts

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

Not including hazardous condition complaints made directly to the districts was inconsistent with the *Standards for Internal Control in the Federal Government* because transactions were not completely recorded and because the data did not provide relevant, reliable, and timely communications relating to internal events. Moreover, incomplete data adversely effects CMS&H's ability to (1) evaluate existing efforts to address hazardous condition complaints, (2) provide timely resources to direct oversight and enforcement responsibilities, and (3) develop strategies to effectively manage the overall CMS&H program.

For example, CMS&H management analyzed *Digital Dashboard* complaint data to identify activity trends and determine whether follow-up within the districts was needed. If a specific district had a significant number of complaints and a high percentage had negative outcomes (no citations), district inspectors were directed to meet with mine management and miner representatives to determine and address the cause for the unsubstantiated complaints. According to CMS&H management, minimizing unsubstantiated complaints reduced the demand on limited inspection resources. Not including district complaints in the *Digital Dashboard* may have resulted in incomplete analysis and the misallocation of CMS&H inspection resources.

The district complaint data were not included in the *Digital Dashboard* because CMS&H management had decided not to expend the resources needed to maintain a manual process to include the district data. They, therefore, delegated responsibility for the district complaints to district management. Management should ensure that data on all complaints are included in the Digital Dashboard's management reports.

CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- issuing policy in July 2006 to incorporate hazardous condition complaints made directly to districts in the *Digital Dashboard*, and
- planning enhancements to the *Digital Dashboard* so that complaint process results can be used more effectively to direct oversight and enforcement responsibilities. These enhancements will include metrics for analyzing complaint data for timeliness, violation trends, and imminent danger complaints.

#### Hazardous Condition Complaints Reported on MSHA's Website Were Understated

MSHA's website, located at [www.msha.gov](http://www.msha.gov), provides the public with fact sheets detailing significant trends in the mine industry and MSHA enforcement. One such fact sheet, *Mine Safety and Health at a Glance*, reports the following data related to hazardous condition complaints:

- total hazardous condition complaints made to MSHA during CY 1995 through 2004 (CMS&H plus Metal and Nonmetal Mine Safety and Health);
- coal mine hazardous condition complaints made during CY 1995 through 2004; and
- metal and nonmetal mine hazardous condition complaints made during CY 1995 through 2004.

We tested the number of coal mine hazardous condition complaints reported for CY 2004 to determine whether the data was supported by documentation maintained by headquarters or the districts. The number of complaints reported was not complete. Hazardous condition complaint documentation provided by headquarters' Division of Safety and the districts significantly exceeded the 402 complaints reported in the website fact sheet. Table 9 shows that the number reported for CY 2004 was understated by 41 percent.

**Table 9**

**CMS&H Hazardous Condition Complaints  
Reported on MSHA’s Website for CY 2004  
Were Understated By 41 Percent**

	Number of Complaints <sup>a</sup>	Percent
Headquarters complaints with documented support	234	33
District complaints with documented support	453	66
<b>Total documented complaints</b>	<b>687</b>	<b>100</b>
Reported in website fact sheet	402	59
<b>Total understated</b>	<b>285</b>	<b>41</b>

Source: OIG analysis of MSHA website data and hazardous condition complaint data provided by CMS&H’s 11 districts.

<sup>a</sup> Number includes mandatory 103(g) evaluations and other complaint evaluations conducted according to CMS&H policy.

The understatement of hazardous condition complaints reported on MSHA’s public website was not consistent with the *Standards for Internal Control in the Federal Government* because internal controls did not provide reasonable assurance regarding the reliability of reports for internal and external use. The incomplete reporting may also impact public perception of mine safety and CMS&H enforcement responsibilities. For example, the difference between the number of complaints reported for CY 2003 (345) and CY 2004 (402) indicated an upward trend of 57 complaints, or 17 percent. Since at least CY 2004’s data were incomplete, any conclusions regarding the upward trend and its significance relative to mine safety and CMS&H enforcement responsibilities would also be inaccurate.

The understatement occurred because MSHA management had not established controls to ensure hazardous condition complaint data reported on MSHA’s public website were complete. CMS&H management explained that the number of complaints reported was based on the number of inspections entered in the MSIS and coded as “hazardous condition complaint inspections.” They said, however, that a complainant’s identity is sometimes protected by coding a hazardous condition complaint inspection as another type of inspection (e.g., a spot inspection) or including it as part of a regularly scheduled inspection. The data reported on the website did not include hazardous condition complaint inspections that were recoded for confidentiality purposes or included as part of another inspection activity.

MSHA’s Program Evaluation Information Resources (PEIR) group maintains the website and reports hazardous condition complaint information based on the inspection information entered in MSIS. MSHA should ensure that the number of hazardous condition complaints reported is based on actual complaints rather than inspections conducted.

### New Complaint Tracking System Will Facilitate Data Completeness

In February 2006, CMS&H started using the new Hazardous Condition Complaint Tracking System to record and track complaint information for both headquarters and district generated complaints. CMS&H management said that this new system will facilitate the inclusion of complaints made directly to the districts in their *Digital Dashboard*. They also said that the new system will provide a basis for reporting complete complaint information on MSHA's public website.

### **Recommendations**

The OIG recommends that the Acting Assistant Secretary for MSHA establish management controls to ensure:

12. Hazardous condition complaint data used to direct CMS&H oversight and enforcement are complete. This includes ensuring complaints made directly to the 11 coal districts are included in management reports.
13. Hazardous condition complaint data reported by MSHA to the public are complete.

### **Agency Response**

For recommendation 12, MSHA stated they initiated action during the audit to address some of the process weaknesses they identified. This action included incorporating hazardous condition complaints made directly to districts in the *Digital Dashboard*; and planning enhancements to the *Digital Dashboard* so that complaint process results can be used more effectively to direct oversight and enforcement responsibilities. [The corrective action is more fully discussed on pages 39-40 of this report.]

For recommendation 13, MSHA's PEIR group is evaluating the utility of the report on MSHA's public website given the shortcomings in the reporting. PEIR will also work with CMS&H to determine whether there are enhancements to its hazardous condition complaint database which can facilitate more accurate reporting.

### **OIG Conclusion**

Recommendation 12 is resolved. The recommendation will be closed after the corrective action has been implemented. Recommendation 13 is unresolved pending receipt of a specific plan to ensure hazardous condition complaint data reported by MSHA to the public are complete.



Elliot P. Lewis  
August 24, 2006

## **Exhibits**

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**EXHIBIT A**  
**10 Longest Delays from District Notification to Inspection Start**  
**For Headquarters Hazardous Condition Complaints**  
**January 1, 2005, through March 30, 2006**

The table below shows the 10 hazardous condition complaints made to CMS&H headquarters from January 1, 2005, through March 30, 2006, that had the longest delays from district notification to inspection start.<sup>a</sup> These delays may have subjected miners to prolonged hazardous conditions.

<b>No.</b>	<b>Allegation(s)</b>	<b>Notification date</b>	<b>Inspection start date</b>	<b>Delay (days)</b>
1	Miners consuming alcohol and operating equipment.	11/21/2005	2/13/2006	84
2	The main line belts are not being maintained properly.	9/29/2005	10/25/2005	26
3	Dozer has fumes coming out of vents. Heater has been modified. Defroster does not work. Wipers do not work.	3/11/2005	3/31/2005	20
4	Track is not being watered to control dust. Switches have coal and dirt buildup causing vehicles to drag and create dust.	2/3/2006	2/21/2006	18
5	Floor grating missing in plant. Refuse on floor of plant. Untreated mine water being discharged. Ponds overflowing.	2/18/2005	3/8/2005	18
6	Miners are using drugs at the working section.	2/3/2006	2/15/2006	12
7	Inadequate fire suppression on belt drive in bunker and in main north #1.	1/10/2006	1/20/2006	10
8	The operator is mining out of another plant and there are hazards with dropping cars.	6/21/2005	6/28/2005	7
9	Power center not being maintained in safe operating condition. The visual disconnect handle must be blocked or weighed down in order for the power to remain set on the belt power center.	1/17/2006	1/24/2006	7
10	Excessive coal dust accumulation at tipples. The welding truck safety inspections are being submitted but supervisors are not recording them.	12/29/2005	1/4/2006	6

Source: OIG analysis of data provided by Coal Mine Safety and Health

<sup>a</sup> Data includes mandatory 103(g) investigations and other complaint investigations conducted in accordance with CMS&H policy.

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**EXHIBIT B**  
**10 Longest Delays from Complaint Receipt to Inspection Start**  
**For District Hazardous Condition Complaints**  
**January 1, 2005, through March 30, 2006**

The table below shows the 10 hazardous condition complaints made direct to CMS&H's 11 districts from January 1, 2005 through March 30, 2006, that had the longest delays from complaint receipt to inspection start.<sup>a</sup> These delays may have subjected miners to prolonged hazardous conditions.

<b>No.</b>	<b>Allegation(s)</b>	<b>Receipt date</b>	<b>Inspection start date</b>	<b>Delay (days)</b>
1	Bed shifts side-to-side, raising front tire 6-8 feet off the ground.	11/22/2005	12/6/2005	14
2	The complaint cited problems at the long wall and with the phone, lock and start-up warning not working.	12/27/2005	1/5/2006	9
3	The mine has rusted and deteriorated beams and columns. There were improper repairs to the beams. A vent pipe is ready to fall.	9/19/2005	9/27/2005	8
4	There is drug use and the mine roof in bad condition.	9/15/2005	9/21/2005	6
5	There is drug use. Also, two continuous miners are operating at the same time.	1/12/2006	1/18/2006	6
6	The foreman is using drugs and smoking. The belt is shut off when MSHA is on site. There are no curtains. Coal is mined and bolted without air.	2/17/2006	2/23/2006	6
7	There is inadequate warning prior to shot being fired in pit.	4/27/2005	5/3/2005	6
8	Inby unsupported roof; improper seals; operator cheating on respirable dust	1/26/2006	1/31/2006	5
9	Smoking underground	7/22/2005	7/27/2005	5
10	Brakes out of adjustment on bulk trucks; one truck with broken cross member; no maintenance on equipment	5/20/2005	5/24/2005	4

Source: OIG analysis of data provided by Coal Mine Safety and Health

<sup>a</sup> Data includes mandatory 103(g) investigations and other complaint investigations conducted in accordance with CMS&H policy.

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## **Appendices**

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**Background**

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U.S. Coal Industry

Coal is used to produce more than 52 percent of the electricity generated in the United States. Because of increasing demand for electric power and higher natural gas and oil prices, the Energy Information Administration expects U.S. coal production to increase about 1.1 percent annually from 2004 to 2015.

The DOL's Annual Report for Fiscal Year (FY) 2005 states that the expected, continued increase in coal production will likely result in an increased number of smaller operators with less experience and generally less sophisticated safety and health programs than their larger industry counterparts. In addition, these new operators will likely employ many new and untrained miners who are vulnerable to safety and health risks.

In CY 2005, there were approximately 2,100 coal mines, located in 27 states, and employing a total of 116,000 workers on average. There were 22 fatalities and more than 5,100 non-fatal injuries during the year.

In the first 6 months of CY 2006, there were 33 coal mine fatalities and more than 2,400 non-fatal injuries.

Mine Safety and Health Administration (MSHA)

MSHA was established in 1978 by the Federal Mine Safety and Health Act of 1977 (Mine Act). The Mine Act transferred the Federal enforcement program from the Department of the Interior to the Department of Labor (DOL) and placed coal mines and metal/nonmetal mines under a single law.

As a result of the increase in coal mine fatalities in early CY 2006, the Mine Improvement and New Emergency Response (MINER) Act was signed into law on June 15, 2006. The MINER Act includes provisions for updated emergency response plans, increased training and availability of rescue teams, improved communication technology, and training programs for miners and mine inspectors.

MSHA is responsible for administering the provisions of both the Mine Act and the MINER Act. MSHA's primary goals are (1) enforcing compliance with mandatory safety and health standards to eliminate fatal accidents; (2) reducing the frequency and severity of nonfatal accidents; (3) minimizing health hazards; and (4) promoting improved safety and health conditions in the nation's mines. MSHA's budgeted operating costs totaled \$278 million for CY 2006 and \$279 million for CY 2005.

The Office of Coal Mine Safety and Health (CMS&H) is responsible for enforcing the Mine Act at coal mines. It administers 11 districts and 45 associated field offices with staff totaling approximately 1,000. Eight of its 11 districts are located in the Eastern

United States near coal seams located in or near the Appalachian Mountains. CMS&H's budgeted operating costs totaled \$117 million for CY 2006 and \$115 million for CY 2005.

### Hazardous Condition Complaints

Section 103(g) of the Mine Act gives miners and representatives of miners the right to file a confidential complaint about a violation of the Mine Act, a mandatory health or safety standard, or an imminent danger at any mine. The implementing regulations for this complaint process are contained in the Code of Federal Regulations (CFR), Title 30, Part 43. The Mine Act and Federal regulations require these complaints to be provided in writing and signed by the miner or representative of the miners. However, MSHA policy is less restrictive and accepts hazardous condition complaints originating from someone other than a miner or representative of the miners and verbal complaints.

### Hazardous Condition Complaint Process

Hazardous condition complaints can be submitted to MSHA headquarters (via toll-free hotline or website) or directly to a district or field office within CMS&H (via phone, fax, mail, or in-person). MSHA's *Hazard Complaint Procedures Handbook* describes procedures for headquarters and District staff to process and investigate hazard condition complaints. In general, MSHA personnel evaluate each complaint and, if appropriate, conduct an inspection to determine the validity of the allegations.

Complaint evaluations must be conducted by an Authorized Representative. The first step in the evaluation process is to categorize the complaint as either a "103(g)" (i.e., a written complaint filed by a miner or miner representative) or "other" (i.e., verbal complaint from a miner or a complaint submitted by a non-miner). Next, the evaluation assesses whether the complaint allegations involve a potential violation of the Mine Act or mandatory safety and health standards and the potential severity of the allegations as (1) a violation posing an imminent danger; (2) a violation posing a serious hazard; (3) a violation, but not a serious hazard; or (4) not a violation. For complaints filed with MSHA headquarters, the evaluation process is completed by personnel from CMS&H's Division of Safety. For complaints filed directly with a district or field office, the evaluation process is completed by a designated district official.

If the evaluation determines that the complaint involves a potential violation, an inspection is required. MSHA personnel create a "sanitized" version of the complaint by removing references that may identify the complainant. Complaints filed in headquarters are forwarded to the appropriate district office for inspection. Once received in the district office, whether through headquarters or directly from a complainant, a district official (generally the Assistant District Manager (ADM)) or DM reviews the complaint and assigns it to the appropriate field office (FO) supervisor for an inspection. The FO supervisor then assigns the complaint to a coal mine inspector.

The assigned MSHA inspector reviews the complaint and related information (i.e., the mine file and applicable “records books” at the field office) and travels to the mine site. At a pre-inspection conference, the MSHA inspector provides both the mine operator and miner representatives with a copy of the sanitized complaint. The inspector, who may be accompanied by representatives of the operator and miners, then proceeds to investigate the allegations specified in the complaint. As needed, the inspector may take air, dust, or other samples to determine if there is a violation of a mandatory safety standard.

At a post-inspection conference, the MSHA inspector informs all parties of the results of the investigation. The inspector issues citations/orders for violations found. If there are no violations, the inspector issues a Notice of Negative Findings to be posted on the mine bulletin board. After the inspection, the inspector returns to the field office to complete the field notes and submit them with supporting documentation (i.e., citations) to the field office supervisor for review.

MSHA policy requires that both headquarters and each district office maintain a tracking system to record how each complaint is handled and resolved. After the investigation is completed, the DM or his/her designee signs off on a report from the ADM that documents the findings for each allegation in the complaint. The report includes supporting documents such as citations and field notes. If the complaint originated at headquarters, the district office should forward a copy of the investigation report to the CMS&H Administrator for review and approval within 30 days after the date the complaint was filed.

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**Objectives, Scope, Methodology, and Criteria**

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**Objectives**

We performed audit work to accomplish four specific objectives. We answered the following questions:

1. Is MSHA's hazardous condition complaint process promoted effectively to coal miners, coal miners' representatives, and other stakeholders?
2. Does MSHA effectively ensure hazardous condition complaint evaluations are conducted timely, consistently, and in accordance with Federal law and MSHA policy?
3. Does MSHA effectively ensure hazardous condition complaint inspections are conducted thoroughly, timely, consistently, and in accordance with Federal law and MSHA policy?
4. Does MSHA management effectively use complaint process results to direct oversight and enforcement responsibilities?

**Scope and Methodology**

To accomplish our objectives, we obtained an understanding of CMS&H's hazardous condition complaint policies and procedures and of applicable Federal laws and regulations. We interviewed CMS&H officials at headquarters and two district offices; management and miners at four coal mines; and UMWA officials and representatives. We also sent a standard questionnaire to each CMS&H district office and reviewed CMS&H's hazardous condition complaint data. In addition, we statistically selected samples of hazardous condition complaints filed with MSHA headquarters and directly with CMS&H district offices and tested various attributes of the complaint process.

We only tested those controls necessary to address our objectives. We conducted fieldwork from March 2006 through August 2006, and performed our work in accordance with generally accepted government auditing standards for performance audits.

Site Visits

We made site visits to CMS&H headquarters in Arlington, Virginia; CMS&H District 2 in Hunker, Pennsylvania, including the Ruff Creek and Johnston field offices; and CMS&H District 3 in Morgantown, West Virginia, including the St. Clairsville field office. We judgmentally selected these locations from among the CMS&H's 11 districts and 45 field offices based on several factors that included the volume of hazardous condition

complaints and characteristics of mines in each district (i.e., number of miners, injury rates, and union presence). In addition, we judgmentally selected and visited two coal mines in each of these two districts that represented a combination of these factors. We used data provided by CMS&H for January 1, 2005, through March 30, 2006, to make our selections. See Table 10 below.

**Table 10**  
**Site Visits**

<b>Description</b>	<b>Location</b>	<b>Basis for Selection</b>
District 2 <sup>a</sup>	PA	Low complaint volume (66) High number of miners (6,209)
<i>Coal Mine 1<sup>b</sup></i>	PA	High complaint volume High number of miners High number of injuries Unionized
<i>Coal Mine 2<sup>b</sup></i>	PA	Low complaint volume Low number of miners High injury rate Non-union
District 3 <sup>a</sup>	WV	High complaint volume (115) High number of miners (7,743)
<i>Coal Mine 3<sup>b</sup></i>	WV	High complaint volume High number of miners Unionized
<i>Coal Mine 4<sup>b</sup></i>	OH	Low complaint volume High number of miners Non-union

Source: OIG analysis of hazardous condition complaint and coal mine data (i.e., coal production, number of miners, and union presence) provided by CMS&H headquarters.

<sup>a</sup> The low and high ranges were based on the levels of hazardous condition complaints and miners employed among the 11 districts.

<sup>b</sup> The low and high ranges were based on the levels of hazardous condition complaints, miners employed, and rate of injury among all coal mines in the corresponding districts.

At each district, we reviewed a statistical sample of complaint files and interviewed key personnel using a standard set of questions related to our audit objectives. At the selected coal mines, we interviewed mine management, miners, and union representatives to gain their feedback and perspective on CMS&H's hazardous condition complaint process. We also interviewed UMWA officials at their headquarters

in Arlington, Virginia, to obtain similar information. We conducted site visits from March 2006 through June 2006.

### Questionnaire

In addition to our site visits, we sent a standard questionnaire to management in 10 out of 11 CMS&H districts to obtain their perspective and feedback on the hazardous complaint process in their respective district and in headquarters. We used questions similar to our onsite interviews to obtain comparable information. We did not administer a questionnaire to District 3 and instead placed reliance on information collected during our on site interviews with district management and staff.

### Promotion of the Complaint Process

In addition to the interviews, questionnaire, and site visits discussed above, to determine whether CMS&H effectively promoted its hazardous condition complaint process to coal miners, coal miners' representatives, and other stakeholders, we reviewed headquarters and districts' promotion policies and practices and various tools (i.e., websites, printed materials) used to promote the complaint process. We also reviewed the contract and the contractor's performance related to receipt of complaints through the Code-A-Phone.

### Evaluation of Complaints

In addition to the interviews, questionnaire, and site visits discussed above, to determine whether hazardous condition complaint evaluations were conducted timely, consistently and in accordance with Federal law and MSHA policy, we obtained a walk-through of the process for evaluating hazardous condition complaints, analyzed the process, identified control points and deficiencies, and reviewed internal reports for any related issues.

We also selected two random stratified samples of hazardous condition complaints to test various attributes of CMS&H's processes for evaluating complaints at headquarters and all districts:

- 127 hazardous condition complaints from a list of 336 closed hazardous condition complaints made to headquarters from January 1, 2005, to March 30, 2006, and
- 149 hazardous condition complaints from a list of 656 closed hazardous condition complaints made to districts from January 1, 2005, to March 30, 2006.

Our testing included reviewing the amount of time it took for incoming complaints to be evaluated and whether evaluations were consistent and in accordance with the Mine Act or MSHA policy or practice. These included reviewing hazardous condition complaints for compliance with requirements for qualified personnel to evaluate the

seriousness of complaints of dangers or violations and protecting complainant confidentiality.

### Inspection of Complaints

In addition to the interviews, questionnaire, and site visits discussed above, to determine whether complaint inspections were conducted thoroughly, timely, consistently, and in accordance with Federal law and MSHA policy, we obtained a walk-through of the process for investigating hazardous condition complaints, analyzed the process, identified control points and deficiencies, and reviewed internal reports for any related issues.

Using our two statistical samples, we tested a number of attributes related to timeliness, thoroughness and compliance with confidentiality requirements. We also reviewed whether all allegations in a complaint were investigated. In addition, we reviewed whether inspector field notes contained evidence of review, as well as any efforts to protect the complainant's confidentiality during the inspection.

In addition to our statistical samples, we selected all of the hazardous condition complaints CMS&H personnel identified as imminent danger from January 1, 2006, through March 30, 2006, and reviewed these complaints to determine whether immediate inspections were conducted as required under Section 103(g) of the Mine Act and all of the allegations were addressed.

### Management's Use of Complaint Process Results

In addition to the interviews, questionnaire, and site visits discussed above, to determine whether MSHA management effectively used complaint process results to direct oversight and enforcement responsibilities, we obtained a walk-through of the process for directing oversight and enforcement activities, analyzed the process, and identified control points and deficiencies.

In addition, we reviewed CMS&H management and accountability reports and hazardous condition complaint data available on MSHA's website. We also tested the hazardous condition complaint data reported on the website for CY 2004 for completeness. CY 2004 was the most recent data reported during the period of our review.

### OIG Review of Management's Response to the Draft Report

We made technical clarifications in the report where appropriate based on MSHA's response to the draft report including adding a footnote requested by MSHA to many of the report tables.

## **Criteria**

We used the following criteria to perform this audit:

- GAO's Standards for Internal Control in the Federal Government, November 1999
- Federal Mine Safety and Health Act of 1977
- MSHA Title 30, Code of Federal Regulations, Part 43
- MSHA Program Policy Manual
- MSHA Hazard Complaint Procedures Handbook
- MSHA Coal General Inspection Procedures
- MSHA Coal Mine Safety and Health Supervisor's Handbook

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**APPENDIX C**

**Acronyms and Abbreviations**

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AR	Authorized Representative
ADM	Assistant District Manager
CFR	Code of Federal Regulations
CMS&H	Coal Mine Safety and Health
CY	Calendar Year
DM	District Manager
DOL	Department of Labor
FY	Fiscal Year
GAO	Government Accountability Office
Headquarters	MSHA CMS&H headquarters
Mine Act	Federal Mine Safety and Health Act of 1977
MINER Act	Mine Improvement and New Emergency Response Act of 2006
MSHA	Mine Safety and Health Administration
OIG	Office of Inspector General
Section 103(g)	Section 103(g) of the Mine Act

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Agency Response to Draft Report

U.S. Department of Labor

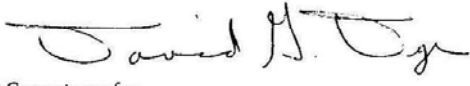
Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, Virginia 22209-3939



**INFORMATION**

**SEP 25 2008**

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: DAVID G. DYE   
Acting Assistant Secretary for  
Mine Safety and Health

SUBJECT: Full Response to Draft OIG Report "Coal Mine Hazardous  
Condition Process Should be Strengthened"  
[Draft Audit Report No. 05-06-006-06-001]

We appreciate the opportunity to comment on the Department of Labor's Office of the Inspector General (OIG) draft report entitled "Coal Mine Hazardous Condition Process Should Be Strengthened" [Draft Audit Report no. 05-06-006-06-001]. The open dialogue and cooperation of the team led by Chuck Allberry, Regional Inspector General for Audit and Ray Armada, Assistant Regional Inspector General, allowed Coal Mine Safety and Health (CMS&H) to understand the OIG perspective and your recommendations for improvement. As you are aware, this facilitated CMS&H's acknowledgement of some of the issues identified by the OIG and engaged the program area to initiate and complete many corrective actions during the course of the audit. We encourage the OIG to continue this practice during the succeeding MSHA audits to be completed.

In the draft report, the OIG recognizes that CMS&H significantly expanded the Mine Act's definition of a "complaint" (draft OIG Report, pages 8 and 48). Section 103(g) of the Mine Act, and the implementing regulations of 30 CFR Part 43, require that complaints citing violations of the Mine Act, a mandatory health or safety standard, or an imminent danger at any mine be reduced in writing and signed by the miner or miners' representative. CMS&H believes that requiring the mine or miners' representatives to reduce all complaints to writing and sign the complaint was too narrowly focused and placed an undue burden on the miner to report hazardous conditions. Accordingly, CMS&H made a reasoned decision to afford miners and miners' representatives greater health and safety protection by investigating verbal complaints, unsigned or anonymous complaints and complaints originating from someone other than the miner or miners' representative. It is clear that CMS&H's implementation of the HCC process is working beyond the requirements of the MINE Act. This policy is inherently beneficial to miners and others in the mining community

You can now file your MSHA forms online at [www.MSHA.gov](http://www.MSHA.gov). It's easy, it's fast, and it saves you money!

because it expands not only what is accepted and investigated as a hazardous condition complaint but who can file a complaint on behalf of miners.

From February 1, 2006, through July 31, 2006, a total of 529 hazardous conditions complaints were entered into the system. Of these:

- 262 complaints were categorized as 103(g) complaints in which 103 of them were given to CMS&H in some kind of written format (typed online, email or written via letter, fax or note);
- An additional 159 of these 103(g) complaints were communicated in some form of verbal communication (recording, TASCOS, telephone or verbal face-to-face); and
- An additional 24 complaints were given to CMS&H in some kind of written format that was not categorized as 103(g) and presumably was not identifiable as coming from a miner or miners' representative.

From an enforcement perspective, hazardous condition complaints generate a small portion of MSHA's inspection activities. During the period of February 2, 2006, and July 31, 2006, CMS&H received:

- 529 total complaints, of which 223 of these complaints contained one or more positive findings;
- We took a sample of 394 complaints whose investigations were readily identifiable. In this sample, a total of 521 citations and orders were issued in 175 of these hazard complaint events. If you extrapolate this for all 529 complaints, there would be an estimated 700 citations and orders issued;
- By comparison for the same period, CMS&H issued 37,455 citations and orders in 7,771 total inspections; and
- Hazardous condition complaints inspections account for roughly 6.8 percent of our total number of inspections and 1.9 percent of our total citations and orders issued.

The draft report also acknowledges that CMS&H had made efforts to ensure its hazardous condition complaint process worked effectively to protect miners' health and safety through the development and implementation of a new Hazardous Condition Complaint tracking system for management control and oversight purposes (draft OIG Report, pages 8 and 48). Early in the design phase, MSHA's CMS&H, Metal and Nonmetal Safety and Health (MNM) and Program Evaluation and Information Resources (PEIR) programs purposely developed the HCC system in phases so that improvements would be made over time to address additional requirements and oversight reporting mechanisms. This process is ongoing with the additional list of HCC enhancements already identified and prioritized for the next phase. These improvements should in part address the OIG's recommendations that "CMS&H should take further action to strengthen its hazardous condition complaint process." The OIG acknowledges on page 31 that "this tracking system, if properly implemented

and monitored, should improve CMS&H's ability to ensure that complaint inspections are thorough, consistent, and in compliance with Federal laws and MSHA policy."

The following are MSHA's specific responses to the OIG recommendations.

**Objective 1. Is MSHA's hazard condition complaint process promoted effectively to coal miners, coal miners' representatives, and other stakeholders?**

The OIG offers 2 recommendations in support of Objective 1.

1. CMS&H management develops and implements a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process to coal miners, coal miners' representatives and others. This includes ensuring promotional materials, such as websites and publications, describe the methods for filing complaints with both headquarters and the districts, and how quickly complaints will be addressed by CMS&H.

MSHA response:

A draft concept paper is being developed to evaluate MSHA's options in its promotion activities on the hazardous condition complaint process in the mining community. As part of this draft concept paper, an outline will be developed that describes the methods for filing complaints at the headquarters and district levels in order to bring consistency to the process. Additionally, we have reviewed all the CMS&H district websites and are developing a standardized template that would not only bring a consistent "look and feel" but also content, especially on the hazardous condition complaint process information and the appropriate point of contacts at the district and headquarters levels. Once these options are finalized, CMS&H will implement a written strategy to plan, monitor, and evaluate the effectiveness of efforts to promote its hazardous condition complaint process to coal miners, coal miners' representatives and others.

We noted that on page 11, the draft report states "While CMS&H had an assortment of methods to promote its hazardous condition complaint process, the practices used in individual district offices varied significantly. For example: At two coal mines we visited in one district, no MSHA promotional materials were posted." We reiterate that the mine operator is not required to post these materials and MSHA has no authority to force the operator to post promotional materials.

2. Code-A-Phone complaints are recorded accurately and completely. This includes ensuring personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology.

MSHA response:

Prior to the audit by the OIG, MSHA was already reviewing problems with TASCO, the messaging service provider for hazardous conditions complaints. Prior to October 2005, MSHA utilized the MATRIX system, a menu-driven voicemail system that delivers digital audio format over email. MATRIX permitted the complainant to leave a voice mail message in the system which was then delivered to personnel in CMS&H's Safety Division who are knowledgeable about coal mining. In October 2005, the Department of Labor (DOL) upgraded the email system and it was determined that the MATRIX system was incompatible with the new system. As an interim solution, TASCO was asked to add hazardous condition complaints to their statement of work. The TASCO system, for a number of reasons, could not effectively and accurately accommodate this additional work load.

MSHA will be reinstating the MATRIX option beginning in October 2006 and will provide options for the complainant to speak with a live person or leave a voice mail message in the system for delivery to CMS&H mining professionals. CMS&H will periodically monitor the effectiveness of this option and review deficiencies and corrective actions as necessary with the MATRIX solution. CMS&H will continue to periodically test and monitor the quality of the contractor's service according to the protocol established during the OIG's audit.

Also in your report, you elaborate further that "This includes ensuring personnel receiving and documenting hazardous condition complaints are properly trained and knowledgeable about coal mining terminology." It has been implied that we should provide 24/7 coverage for hazardous condition complaint evaluations and investigations utilizing MSHA personnel. In addition to the resource issues associated with manning a hazardous conditions complaint service 24/7 with MSHA personnel, we would have difficulty in locating an answering service that can provide personnel knowledgeable about coal mining terminology to receive and document these complaints. Alternatives continue to be reviewed.

**Objective 2 - Does MSHA effectively ensure hazardous condition complaint evaluations are conducted timely, consistently, and in accordance with Federal law and MSHA policy?**

The OIG offers 5 recommendations in support of Objective 2.

3. The expectation of timeliness for completing evaluations of hazardous condition complaints under the Mine Act, 30 C.F.R. 43, and MSHA policy are consistent and quantified in specific terms (e.g., number of hours).
4. Hazardous condition complaint evaluation timeliness is measured, monitored, and systemic reasons for delays are identified and addressed. This includes

ensuring processes are developed to improve evaluation timeliness for complaints made to headquarters after normal business hours and during weekends and holidays.

MSHA Response:

The draft OIG report states that 56 or 14% of 410 hazardous condition complaints made to CMS&H headquarters from January 1, 2005 through March 30, 2006 took 2 or more days from the date the complaint was received to the date a district office was notified. (draft OIG report, page 15). In its analyses, the OIG identified a delay in 41 of 56 (73%) of the evaluations because they were received on a Friday, weekend or holiday outside of normal business hours and another 11 of the 56 (20%) of the evaluations due to a temporary DOL email glitch. Further, the report erroneously concludes that this occurred because "CMS&H management had not (1) monitored evaluation timeliness and (2) addressed system reasons for delays." In actual fact, we were aware of the reasons for the delays (52 of the 56 (93%) evaluations were delayed because of other reasons i.e. no coverage during non-business hours and problem with the email system) and have taken steps to correct the deficiencies.

Table 1 on page 16 refers to Headquarters Hazardous Condition Complaints. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) evaluations and any other complaint evaluations conducted in accordance with CMS&H policy."

CMS&H agreed with the OIG that the expectation for timely and consistent hazardous condition complaint evaluations and responsiveness to complaints received during non-business hours could be improved. As noted on page 17, CMS&H took corrective actions during the course of the audit to remedy the process weaknesses. We are fully confident that the implementation of these procedures to address evaluation timeliness will greatly improve the percentage of HQ complaints being sent to the district for action on the same or next day from the 87 percent, as tabulated by the OIG draft (OIG report, Table 1, page 16).

We do not concur with the part of OIG's recommendation number 3 that states that MSHA needs to quantify an expectation for timeliness in specific terms (e.g. number of hours) for completing evaluations of hazardous condition complaints. We believe that tracking this performance measure through the upcoming enhancement to the HCC system is sufficient for oversight purposes. In actuality, placing time constraints on a safety or health activity could have a detrimental effect on the evaluation and quality of our inspection and response. Given that each circumstance is different, the proper response to a complaint requires ensuring that an appropriate number of resources with

the right technical skills are deployed as soon as possible. Focusing on timeliness instead of the overall need for response could result in a premature and uninformed decision and minimizes the ability for CMS&H to attack the root cause.

5. Pre-inspection evaluations by ARs of the seriousness of complaints are documented.

MSHA Response:

The OIG draft report (page 18) stated that “CMS&H records usually did not contain documentation (emphasis added) that an assessment according to the four categories had been performed.” These 4 categories included imminent danger, serious hazard, not a serious hazard and violation does not exist. The OIG correctly stated that “without evidence of an AR’s (authorized representative) assessment, CMS&H management had no assurance that district offices were complying with its policy.” CMS&H issued a policy memo on July 21, 2006, to clarify and remedy the need for documentation of complaint evaluations by an AR as a corrective action during the course of the OIG audit. As a point of clarification, the HCC complaint system can categorize complaints as imminent danger, violation or other. Since ARs conduct these inspections, their categorizations of these complaints, including imminent dangers, are evidence that some documentation does exist. Further enhancements to the HCC complaint system will include a field identifying the AR who performed the evaluation.

6. Training and oversight is provided for appropriate determination of imminent danger hazardous condition complaints.

MSHA Response:

The OIG report noted that “inconsistencies (in imminent danger determinations) could result in different treatment of and disposition of similar complaints and increase the risk that dangers or violations exist but are not appropriately addressed.” We concur with this finding and as noted in the OIG report on page 22, CMS&H initiated corrective action to develop “training to ensure CMS&H personnel are aware of established practices and requirements provided under the Mine Act and MSHA policy.” This training package has been completed in headquarters and is currently being deployed in CMS&H’s 11 districts. At this time, 10 of the 11 districts have conducted the training and the remainder by September 29, 2006. In addition, CMS&H will send the training package to the National Mine Safety and Health Academy and request that it be incorporated into the mandatory AR training program.

However, MSHA takes issue with the information presented in Tables 2 and 3 regarding HQ hazardous conditions complaints not considered as imminent danger and similar allegations resulted in different categorizations, respectively. During our

discussions and our follow-up correspondence, we stated that imminent danger determinations are professional judgment calls that utilize the depth and breadth of AR mining knowledge. Congress, in its wisdom, defined "imminent danger" in the Mine Act in descriptive terms, not according to a checklist. As properly noted, we provide "guidance" to the inspectorate on paying special attention on certain key words that may indicate the existence of an imminent danger. So it is not surprising that circumstances, miner exposure and environment would dictate if and when a hazardous condition is an imminent danger.

On pages 19 - 21 of the draft OIG report, the audit team persists in erroneously establishing several instances where determinations of hazardous condition complaints as imminent danger situations were inconsistent.

Table 2 describes item 3 -- involving "the energized high voltage in the high voltage tub behind the section power center has exposed wires covered by plastic tape" -- as an imminent danger. In our collective opinions as mining professionals, we disagree that the electrical 7200 high voltage cable is an imminent danger. No miners were at risk on the best insulated, grounded and most barricaded and guarded cable in the underground mine environment. Multiple authorized representatives and mining professionals were consulted and all agree that the miners were not at risk and this complaint was properly evaluated and categorized as a regular hazard complaint and did not meet the AR evaluation as an imminent danger. We disagree with the OIG's assessment that this complaint should be categorized as an imminent danger.

In our collective opinions as authorized representatives and mining professionals, we explained the rationale for the categorization of the 6 cases in Table 3. We stand by our position despite the misleading information presented in this table. Our inspection responsibilities at the mines require knowledgeable decisions on diverse and complex issues where safety and health is enhanced or minimized by the environment, existing safety equipment, behavior etc. Deferring to an inspector's experience and professionalism in making those decisions is paramount to an effective safety and health inspection program.

7. Copies of complaints provided to mine operators are consistent with MSHA's guidelines to remove detailed information that could compromise a complainant's identity.

MSHA Response:

To remedy the OIG concern that "CMS&H practices to protect the confidentiality of complainants were not always consistent with its guidelines," CMS&H will implement another level of complaint sanitization for mine operators where identification or references to specific equipment, work area and work shift could potentially disclose a



complainant's identity. CMS&H plans on utilizing a laptop-compatible, "fillable" version of an existing OMB-approved Complaint Allegations and Findings form (7000-35) and using this form for an additional level of hazardous condition complaint sanitization for the mine operator and assisting inspectors and others in getting the information into the HCC system.

**Objective 3 – Does MSHA effectively ensure hazardous condition complaint inspections are conducted timely, thoroughly, consistently, and in accordance with Federal law and MSHA policy?**

The OIG offers 4 recommendations in support of Objective 3.

8. Processes are developed to improve inspection timeliness for complaints made to both headquarters and the districts. This includes ensuring hazardous condition complaint inspection timeliness is measured, monitored, and systemic reasons for delays are identified and addressed.

MSHA Response:

The OIG is concerned about the inspection timeliness for hazardous condition complaints made to headquarters and directly to the district. On page 23 of the draft OIG report, the audit teams established the following:

As previously discussed (see p.15), the time requirements for MSHA to respond to hazardous condition complaints under the law, regulations, and its policies are imprecise. However, all convey a sense of urgency. Terms such as "immediate" and "as soon as possible" are used to describe the expectation for initiating an inspection of **an alleged imminent danger or violation of a mandatory health and safety standard** (emphasis added).

We agree that the timeliness of hazardous condition complaint inspections could be improved. CMS&H will not argue that there is a delay in inspection start when the complainant chooses not to contact the district directly. For this reason, CMS&H will emphasize the benefits of filing complaints directly with the district in the Agency's promotional campaign.

However, CMS&H takes the position that in cases of imminent danger and violations of a mandatory health and safety standard, the districts respond as soon as personnel can be deployed. In this section of the draft report, the OIG goes to great length to characterize delays in inspection starts by providing analyses of statistical samples and projected sample results for hazardous condition complaints filed with headquarters



and districts during the period from January 1, 2005, through March 30, 2006 (Tables 4, page 24 and Table 5, page 26).

On closer evaluation of these tables and the relevant text, we could not discern that the OIG made any distinction between hazardous condition complaints as imminent danger or other hazards in relation to the inspection starts. The only clarifying statement occurs on page 23: "In addition, we determined whether there were valid reasons for delays of 2 days or more" with no mention that perhaps the complaint was categorized as a serious hazard, not serious hazard or no violation exists. This would, in part, explain the delay to inspection start as opposed to OIG's determination that "we considered a reason for delay valid if the delay did not potentially subject a miner to a prolonged hazardous condition." Guidance in MSHA's *Hazard Complaint Procedures Handbook* requires that the AR assess whether a special inspection should be conducted based on the seriousness of a hazardous condition, including one for imminent danger requiring an immediate inspection. There is no category for "a prolonged hazardous condition."

Tables 4 and 5 on pages 24 and 26, respectively, refers to Inspection Starts for Headquarters and District Hazardous Condition Complaints. We believe that a footnote to each table is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy."

9. Segregation of duties is maintained when individuals responsible for managing district hazardous condition complaint processes are included on headquarters or district review teams.

MSHA Response:

As noted in the OIG report (page 28), CMS&H has issued "a policy to district management stating that the persons responsible for hazardous condition complaints should recuse themselves from reviewing the effectiveness and efficiency of the district's complaint system during internal reviews."

10. The expectation of timeliness for beginning inspections of "imminent danger" allegations is quantified in specific time frames (e.g., number of hours), and the subsequent inspections are started within those specific time frames.

MSHA Response:

The draft OIG report states on page 29 that “CMS&H did not always conduct immediate inspections of imminent danger hazardous condition complaints as required under Section 103(g)(1) of the Mine Act and MSHA policy.” The OIG determined that an “immediate inspection” was not performed in 4 out of 10 cases that CMS&H categorized as “imminent dangers.” Two of these 4 cases were initiated in less than 24 hours after the call was received.

In 1 of the other 2 cases, operator notification occurred because an inspection could not be conducted immediately by CMS&H and the operator was directed to investigate the hazard prior to the MSHA inspection. The inspection did occur on the 2<sup>nd</sup> day in accordance with the MSHA Hazard Condition Complaint Handbook for “an on-site inspection of the area, equipment, or practice(s) shall be conducted as soon as possible” (page 4 of the Handbook).

The delay of 5 days in the 4<sup>th</sup> case was due to 3 reasons: 1) the need for multiple inspectors to investigate the smoking allegation (smoking in and of itself is not an imminent danger. This mine was a relatively low methane liberator (11,300 cubic ft per 24 hour period) as compared to higher liberation ultra-gassy mines where several million cubic feet or more per 24 hour period are liberated.); 2) allegation of hazards occurring on the 3<sup>rd</sup> shift; and 3) a 2 day delay because of the weekend. This was in accordance with the MSHA Hazard Condition Complaint Handbook for “an on-site inspection of the area, equipment, or practice(s) shall be conducted as soon as possible” (page 4 of the Handbook). Again, it is important to understand that quality is as important as timeliness in a safety and health inspection. Responding to a complaint without the appropriate number of personnel or without personnel who possess the appropriate technical skills will no doubt get the box checked on timeliness by those who have that concern. But, these type responses do not serve the safety and health needs of the miners.

We do not concur with the OIG’s recommendation that MSHA needs to quantify an expectation for timeliness in specific terms (e.g. number of hours) for starting inspections of hazardous condition complaints. Congress already established the expectation for an immediate inspection – “upon receipt of such notification, a special inspection shall be made **as soon as possible** (emphasis added) to determine if such violation or danger exists in accordance with the provisions of this title.”

If the performance metric for inspection timeliness is too binding, it may force us to abandon our current approach on accepting hazardous condition complaints beyond the 103(g)s that are reduced to writing from parties outside the miners or miners representatives.

11. Inspector notes receive appropriate supervisory review.

MSHA Response:

We feel that the OIG's recommendation that inspector notes receive appropriate supervisory review is redundant based on current practice. Coal has multiple systems in place to assure that supervisors already review inspector notes. We do not feel that "CMS&H had limited assurance that hazardous condition inspections were thorough, consistent, and in compliance with CMS&H policy because a significant number of the inspector notes documenting inspection activities had no evidence of supervisory review" (draft OIG report, page 31). OIG further states "Inspector notes and other supporting documents showed that each of the allegations was addressed for the complaints included in our statistical samples. However, because supervisory reviews of inspector notes were not consistently documented, there was no verification of the quality of the work performed."

Much discussion was held on this topic between the OIG audit team and CMS&H staff on how supervisory review was notated, either through initialing the cover sheet and memo of the final inspection report, reviewing a representative number of inspection or investigation reports, or documenting their supervisory review on complaint tracking forms. The OIG "considered evidence of the field office supervisor's review as an indication that hazardous condition complaint inspections were sufficient, consistent, and in compliance with CMS&H policy" (draft OIG report, page 31). We agreed that signing or initialing each page of the inspector notes was not a feasible exercise, given all the other resource demands on the field office supervisor. CMS&H management accepts affirmation of the supervisor's review.

Additionally, the Inspection Tracking System requires inspectors and field office supervisors to complete a certification that acknowledges sufficient documentation, including inspector notes, has been completed and maintained as evidence that minimum inspection requirements have been completed. This certification process cannot be overridden and the supervisor reviews this documentation and accepts by policy. In this system, when a supervisor uploads the information into the system, this is a receipt that he/she has approved the inspection package. Controls are in place where a correction requires the intervention by IT personnel and an Assistant District Manager.

We believe that the more appropriate recommendation from the OIG is that "CMS&H management provides clear guidance on the requirements for supervisory review." The OIG concludes the section with this statement: "**Without proper and consistent documentation of supervisory review** (emphasis added), CMS&H had limited assurance that the quality of complaint inspections had been independently evaluated

for thoroughness; consistency; and compliance with CMS&H policy” (draft OIG report, page 32).

Table 7 on page 32 refers to inspector notes for total complaints. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads “Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy.”

**Objective 4 – Does MSHA management effectively use hazardous condition complaint process results to direct oversight and enforcement responsibilities?**

The OIG offers 2 recommendations in support of Objective 4.

12. Hazardous condition complaint data used to direct CMS&H oversight and enforcement are complete. This includes ensuring complaints made directly to the eleven coal districts are included in management reports.

MSHA Response:

As noted on page 36 of the OIG draft report, “CMS&H initiated corrective action during the audit to address some of the process weaknesses we identified. This action included:

- Issuing policy in July 2006 to incorporate hazardous condition complaints made directly to the districts in the *Digital Dashboard*, and
- Planning enhancements to the *Digital Dashboard* so that complaint process results can be used more effectively to direct oversight and enforcement responsibilities. These enhancements will include metrics for analyzing complaint data for timeliness, violation trends, and imminent danger complaints.”

It is true that during the period of the HCC audit, the *Digital Dashboard* had not yet contained the complaints made to both headquarters and the districts. On page 36, the OIG makes an erroneous conclusion that “the district complaint data were not included in the *Digital Dashboard* because CMS&H management had decided not to expend the resources needed to develop and maintain a process to include the district data.” During our discussions we assured the OIG team that it was our intention to include the district complaints once enhancements were made to the HCC system to enable these counts and statistics to be included in the *Digital Dashboard*. At the time of the issuance of the draft report, this shortcoming had already been remedied and the *Digital Dashboard* data now contains both headquarters and district complaints as well as the percentage of complaints that had one or more allegations with positive findings. Future HCC system enhancements will permit us to conduct trend analyses for oversight and enforcement purposes.

Table 8 on page 35 refers to hazardous conditions complaints excluded from the *Digital Dashboard*. We believe that a footnote is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) complaints and any other complaints evaluated and investigated in accordance with CMS&H policy."

13. Hazardous condition complaint data reported by MSHA to the public are complete.

MSHA Response:

The draft report contains a section titled "Hazardous Condition Complaints Reported on MSHA's Website Were Understated" (pages 36 & 37) and presents Table 9 which allegedly shows that the number of hazardous condition complaints reported for CY 2004 was understated by 41 percent. Again, we take issue with another misleading table without the appropriate notation and/or footnote.

As noted in your report, CMS&H management explained that due to concerns for complainant confidentiality, some hazardous condition complaint inspections were re-coded under MSIS as another type of inspection or rolled into part of another inspection activity. At this time, there is no mechanism, other than manual tracking, to distinguish these coded inspection activities as hazardous condition complaint inspections. MSHA's Program Evaluation and Information Resources (PEIR) is currently evaluating the utility of this report on MSHA's public website given the shortcomings in hazardous conditions complaint reporting. PEIR will also work with CMS&H to determine if there are enhancements to our HCC database which can facilitate more accurate reporting.

Exhibit B.

MSHA Response:

Exhibit B on page 43 lists the 10 longest delays in inspection starts to complaint receipt. We believe that a footnote to the table is appropriate to indicate that these complaints include 103(g) complaints and the other complaints, as mentioned on page 1 of this memo. Specifically, we suggest a footnote that reads "Data includes mandatory 103(g) investigations and any other complaint investigations conducted in accordance with CMS&H policy."