

MSHA Response to Draft Report

U.S. Department of Labor

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



SEP 27 2011

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General of Audit

FROM:

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

Handwritten signature of Joseph A. Main in black ink.

SUBJECT:

Response to OIG Draft Audit Report No. 05-11-004-06-001:
MSHA Must More Consistently Determine the Number of
Required Inspections and More Transparently Report Inspection
Results for Metal and Nonmetal Mines

Thank you for the opportunity to review your draft audit report. The Mine Safety and Health Administration (MSHA) will use the audit results to help the Agency improve the monitoring and completion of Metal and Nonmetal's (MNM) mandatory regular safety and health inspections. We are fully committed to addressing the issues identified in your report.

Below are specific responses to your recommendations.

OIG Recommendation No 1: *Design objective, national criteria for assigning a mine status and implement a system of controls to assure the consistent implementation of these criteria.*

AGREE

We agree with your recommendation, but it is important to note that the existing definitions for mine classification for MNM mines have been in effect for over 30 years. Since I became Assistant Secretary, we have been reviewing policies and procedures to update and improve them. As noted in your report, many mines work intermittently, some less than 1000 hours a year and several less than 200 hours a year. This creates a real challenge for MSHA because it is difficult for inspectors to find these intermittent mines in an operational status when miners are working and potentially exposed to safety and health hazards.

Consistent with our ongoing review of MSHA policies and procedures, MNM began an analysis in February 2011, to develop a plan for determining mine status classification based on objective criteria. As you recognize in your report, this effort began before the

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OIG audit. MSHA provided the OIG the draft "Mine Status Criteria" for review and appreciates the audit team's feedback on the draft criteria.

MNM is working with MSHA's Program Evaluation and Information Resources (PEIR) Directorate to develop a report (*Mine Status Review Report*) that identifies mine status using these objective criteria. The report will generate a list of mines and display the existing designated mine status as well as the revised status using the objective criteria. MNM senior management will review the report on a quarterly basis to determine appropriate mine status changes.

OIG Recommendation No. 2: *Design and implement procedures to assure that information on all new mines is communicated to the responsible field office in a timely manner.*

AGREE

MSHA is aware of minor issues in MSHA's Standardized Information System (MSIS) associated with mine identification numbers requested by mine operators online and with an internal report to identify mine operators that have not submitted legal identity reports. MNM is currently working with PEIR to correct these issues. Additionally, mines assigned New Mine status will be included in the planned Mine Status Review Report to assure that mines reporting hours will be included. Mines identified as a result of these changes will receive a status change, as appropriate, and be included in inspection calculations.

It is important to note that mines assigned an MSHA identification number may never begin operating or report hours. For example, a mine in the South Central District involved an operator who was unable to obtain financing and never began operation.

OIG Recommendation No. 3: *Examine and implement ways to increase the probability that inspectors will arrive for regular safety and health inspections on days that a mine is operational.*

AGREE

Existing MNM standard, 30 CFR §§56/57.1000 (Notification of commencement of operations and closing of mines) requires mine operators to notify MSHA of their mining operational status, whether temporary or permanent. MSHA will reiterate, to the metal and nonmetal mining community, an operator's responsibility under the existing standard. Many mine operators comply with the standard by contacting the district or field office directly via phone, fax, or mail. MSHA will provide additional alternatives for operators to notify the Agency of operating status changes. One alternative available to mine operators will be a web-based reporting interface. The other alternative will use MSHA's toll free number. This "One Call Does It All" approach will allow a mine

operator to call the toll free number and provide their start-up or shut-down information. A customer service representative at the National Contact Center will receive and process the information. MNM will explore other alternatives to assist the Agency in identifying operating mines, including collaborating with state and local entities. MSHA will conduct outreach activities to make the mining community aware of these alternatives.

OIG Recommendation No. 4: *More clearly and completely report the actual results of its efforts to conduct regular safety and health inspections, including the number of mines that reported miner work hours, but did not receive a regular safety and health inspection.*

AGREE

We believe that our responses to recommendations 1 through 3 help address this recommendation. However, MNM will report the number of completed inspections and the number of attempted inspections in order to present more transparency in the Agency's inspection completion rate.

OIG Recommendation No. 5: *Require supervisors to document their review and acceptance of each regular safety and health inspection report before it is included in MNMS&H's computation of its inspection completion rate.*

AGREE

While we agree with your recommendation, it is important that we clarify how we plan to change our existing procedure to respond to the recommendation.

In accordance with Agency policy and procedures, MNM supervisors review all inspection reports for compliance with policies and procedures; supervisors initial the reports to indicate that the review and inspection was conducted. MNM policy does not require supervisors to review these reports prior to the inspector's upload into the data base. Inspectors are authorized representatives of the Secretary of Labor and journeyman level professionals trained to conduct complete inspections as required by the Mine Act. Upon completion of the inspection, the inspector conducts a close-out conference with the mine operator and miners' representative, as appropriate, to review all enforcement actions. A submitted inspection report documents the inspection and the data are entered into MSIS.

In response to the recommendation of the IG, MSHA will consider inspection data preliminary until the supervisor can validate the inspection report. MSHA is exploring ways to expedite the supervisor's review and final data entry.

We appreciate your acknowledgement that MSHA officials had identified mine status classifications as an issue and have been working for the past 7 months to develop

more objective, data driven criteria for assigning a mine's status. This effort will promote consistency in mine status determinations and allow MSHA to more effectively allocate limited inspection resources.

Although we welcome the independent analysis provided by the OIG, we would like to clarify one statement in your report. The draft report stated that "MNMS&H performs these inspections to protect miner safety and health." Although all of MSHA's activities are taken to protect miner safety and health, Congress gave "mine operators, with the assistance of miners, the primary responsibility to prevent unsafe and unhealthful conditions and practices in mines." We are concerned that your characterization of MSHA's responsibilities may convey the wrong message relative to primary responsibility for miners' safety and health. MSHA cannot be in every mine, every day, on every shift. That is why miners are safest when operators take responsibility for anticipating, recognizing, and eliminating or controlling hazards. Operators cannot wait to correct hazards until after MSHA cites them. Operators' failure to recognize and eliminate or control hazards -- whether MSHA cites them or not -- is what puts miners at risk. A more appropriate statement would be: "MNMS&H performs these inspections to promote safe and healthful workplaces for the Nation's miners."

On page 7 in the second paragraph you identified the Southwest District, which should be corrected as South Central District.