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MINE SAFETY AND HEALTH ADMINISTRATION



MSHA SHOULD CONTINUE TO REASSESS AND MAKE IMPROVEMENTS TO ITS ROLE IN MINE RESCUE CONTESTS

Date Issued: September 30, 2013
Report Number: 05-13-004-06-001

BRIEFLY...

Highlights of Report Number 05-13-004-06-001, issued to the Assistant Secretary for Mine Safety and Health.

WHY READ THE REPORT

MSHA held national mine rescue contests for each of its two major program areas, Coal and Metal and Non-Metal (MNM), every two years. These contests have been the backbone for training and preparing rescue teams to conduct rescue operations. MSHA held its last five MNM contests in Reno, NV, and its last coal contest in Columbus, OH.

MSHA elected to host and pay for significant parts of the contests even though it is not legally required to do so. MSHA's involvement is permissible given its mission.

WHY OIG CONDUCTED THE AUDIT

We received a series of complaints regarding MSHA's MNM mine rescue contests. The complaints alleged MSHA: (a) wasted taxpayer dollars with the contests; (b) wasted taxpayer dollars by holding planning meetings on-site instead of utilizing teleconferencing; (c) wasted taxpayer dollars by purchasing matching shirts for each day of the contests; and (d) inappropriately received upgraded and free hotel rooms, lavish receptions, after-hours parties, limousine rides, and free meals.

Additionally, MSHA informed us it had concerns about its use of a non-government bank account to hold coal contest fees. Therefore, we performed work to answer the following questions:

1. Did MSHA comply with federal laws and regulations and safeguard federal funds when providing MNM Mine Rescue Contests in fiscal years (FY) 2006, 2008 and 2010, and in planning the proposed 2012 contest?
2. Did MSHA comply with applicable laws and regulations when it charged fees for the coal and MNM contests, directed the coal contest funds be deposited in non-government accounts, and used the coal and MNM contest funds to pay for contest expenditures?

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/2013/05-13-004-06-001.pdf>.

September 2013

MSHA SHOULD CONTINUE TO REASSESS AND IMPROVE ITS ROLE IN MINE RESCUE CONTESTS

WHAT OIG FOUND

MSHA did not fully comply with a Federal Travel Regulation to minimize costs for its 2006-2010 MNM contests by performing required cost comparisons for at least 3 sites, resulting in its failure to identify an estimated \$100,000 in potential savings. It also spent \$33,438 on unnecessary clothing and \$13,800 for unallowable commemorative coins.

MSHA also violated the Federal Acquisition Regulation by not justifying its use of sole-source contracts with the Reno-Sparks Convention and Visitors Authority (RSCVA) in 2006 and 2010. It also entered into contracts with the RSCVA and the Peppermill hotel that included impermissible indemnification clauses. MSHA also guaranteed rooms for mine rescue teams with the Peppermill hotel in 2012. The contest was cancelled and the Peppermill may be entitled to collect a penalty of \$194,910. The majority of the penalty would be related to lodging costs associated with nongovernment personnel.

Additionally, MSHA lacked specific statutory authority to charge and retain fees for its coal contests, and it may have violated the Miscellaneous Receipts Act by collecting fees and not depositing them with the Treasury, but instead directing the funds be deposited into a non-government bank account and used to cover contest expenses. MSHA may be required to deposit with the Treasury some or all of the funds it spent and also the approximately \$326,000 that remained unspent after the 2011 coal contest.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Mine Safety and Health: (1) involve its contracting officials with all procurement actions from the outset; (2) ensure the contests are operated in compliance with laws and regulations or relinquish MSHA's role as organizer of the contests; (3) ensure the \$326,308 balance in the coal fund is secured until a decision has been made as to the disposition of those funds; and (4) request a decision from the Government Accountability Office on (a) whether MSHA could legally charge and retain fees for its contests pursuant to the Independent Offices Appropriations Act, or any other statute, and (b) the disposition of the existing coal fund balance.

The Assistant Secretary agreed with our recommendations and noted MSHA has already taken significant steps to address recommendations 1 and 2.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



September 30, 2013

Assistant Inspector General's Report

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The Mine Safety and Health Administration's (MSHA) mission is to prevent disease, death, and injury from mining and to promote safe and healthful workplaces for the nation's miners. To assist in achieving its mission, MSHA promotes miner training and encourages adaptation of new technologies and improved workplace practices.

The federal government has been the primary entity overseeing mine rescue contests (contest) since 1911, when the first contest was held by the U.S. Bureau of Mines. These contests have been the backbone for training and preparing rescue teams to conduct rescue operations. They are used to both train and test the skills and competency of the teams, which are made up of volunteers who risk their lives in some of the most treacherous and life threatening conditions. Rescue team members must be highly trained to respond to a range of situations, such as rescuing miners who might be stranded miles underground or stabilizing mines after fires, explosions, or roof collapses.

As a training tool to improve the skills required to respond to a mine rescue emergency and strengthen cooperation between mining companies, equipment manufacturers, and federal and state agencies, MSHA conducts mine rescue contests for each of its two major program areas (Coal and Metal and Non-Metal (MNM)) every other year. MSHA held its five most recent MNM National Mine Rescue Contests (MNM contests) in Reno, NV, and planned to hold its 2012 MNM contest there. MSHA held its most recent coal contest in Columbus, OH, in 2011.

The Office of Inspector General (OIG) received three hotline complaints concerning the MNM contests. Additionally, during the MNM contest audit, MSHA informed the OIG that it had concerns about its use of a non-government bank account to hold coal contest fees. We conducted an audit to answer the following questions:

1. Did MSHA comply with federal laws and regulations and safeguard federal funds when providing MNM Mine Rescue Contests in fiscal years (FY) 2006, 2008, 2010, and in planning the proposed 2012 contest?

2. Did MSHA comply with applicable laws and regulations when it charged fees for the coal and MNM contests, directed the coal contest funds be deposited in non-government accounts, and used the coal and MNM contest funds to pay for contest expenditures?

Our audit covered MSHA's controls when planning and providing the MNM contests in FYs 2006, 2008, 2010, and 2012.¹ We reviewed and tested almost \$1 million of expenses related to the MNM contests and reviewed applicable contracts, letters of agreement, purchase orders, invoices, and travel vouchers. We also performed analytical procedures related to the MNM contests' location and travel costs between the selected site of Reno, NV, and two other cities, Dallas, TX, and Denver, CO. Additionally, we interviewed key MSHA officials and officials with 2 hotels MSHA contracted with to provide lodging for contest participants.

For our second objective, we based our assessment on relevant criteria and guidance; our review of the 2006-2010 MNM contests; and MSHA-supplied narratives, facts, and documentation related to its coal contest fund. Our review of the coal contest fund included available information from the inception of the fund in 1985 to 2011, the year of the latest coal contest.

On September 28, 2012, we issued an interim report (number 05-12-004-06-001) related to our work on MSHA's planning for the 2012 MNM contest. Our report recommended that the Assistant Secretary for Mine Safety and Health: (1) design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval of required officials; (2) partner with its procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses; (3) determine contest fees and properly match fee amounts to expected costs to the Government; (4) review and approve all expected costs before they are incurred; and (5) account for all funds, whether derived from contest fees or MSHA funds, expended in connection with contests. MSHA has already taken appropriate actions to close all of the above recommendations. MSHA also took steps to limit its role in the contests. The 2013 MNM contest was hosted by the Nevada Mining Association and according to MSHA, it sent nearly half the number of employees to this contest than it did to the 2010 contest. See Appendix D for the entire interim report and MSHA's response.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit objectives, scope, methodology, and criteria are detailed in Appendix B.

¹ MSHA cancelled its 2012 Mine Rescue Contest before it collected any fees; therefore, our scope was limited to MSHA's planning efforts for that Contest. In addition, some records for the 2006 Contest were unavailable because the retention time for those records had expired.

RESULTS IN BRIEF

MSHA elected to plan, organize, host, and pay for significant parts of the contests even though it is not legally required to do so. Although MSHA's involvement is permissible given its mission, once MSHA elected to plan and organize these contests, it needed to comply with all federal laws and regulations, and implement adequate internal controls. Our audit found that MSHA failed to do so because:

- MSHA did not fully comply with the Federal Travel Regulation (FTR) requirement to minimize all MNM contest costs, incurred unallowable costs, and did not adequately account for contest fees.
- MSHA did not follow Federal Acquisition Regulation (FAR) requirements when contracting with the Reno-Sparks Convention and Visitors Authority (RSCVA) for the 2006 and 2010 MNM contests and entered into RSCVA and Peppermill Hotel contracts that included impermissible clauses. MSHA also used inappropriate contracting practices when signing hotel contracts for the 2010 and 2012 contests.
- MSHA lacked specific statutory authority to charge and retain fees for its coal contests and may have violated the Miscellaneous Receipts Act (MRA) and possibly the Antideficiency Act when it collected fees from coal mine rescue teams and vendors and used those funds to cover costs of the contests.

As a result, MSHA spent excessive, unnecessary, and unallowable funds, and unnecessarily exposed itself to liability.

Failed to Minimize Costs, Incurred Unallowable Costs, and Did Not Account for Fees

MSHA spent at least \$962,000 planning and operating the 2006, 2008, 2010, and 2012 MNM contests, including \$142,106 for floor space and setup.

MSHA failed to comply with FTR §301-74—*Conference Planning* by not comparing costs for at least 3 sites for the MNM contests and thereby potentially identifying opportunities to reduce costs. We compared travel costs for 3 cities: Dallas, TX, Denver, CO, and Reno, NV, the actual site of the contests. We chose those 3 cities because MSHA used them in an incomplete cost comparison it performed when planning the 2012 contest.² We estimate that holding the contests in Dallas may have saved MSHA more than \$100,000 in travel costs for the 2006-2010 contests.

Additionally, MSHA failed to minimize costs when it spent \$33,438 on unnecessary clothing costs; and \$13,800 on commemorative coins, an unallowable expense.

² MSHA compared the cost of hotels and M&IE expenses for each of these sites, but not the cost of airfare.

Also, as we reported in our interim report, MSHA failed to document its fee structure or account for the fees once they were transferred to the Silver Legacy hotel.

Poor Contracting Practices

MSHA did not comply with FAR Subpart 6.3—*Other Than Full and Open Competition* when contracting with the RSCVA for space during the 2006 and 2010 Contests. MSHA used a sole-source contract with the RSCVA for both contests, but did not justify its use by preparing the required *Justification for Other Than Full and Open Competition* form. In addition, MSHA entered into what appeared to be standard hotel contracts with the RSCVA for those contracts and one with the Peppermill hotel related to the 2012 MNM contest. The 2006 RSCVA and Peppermill contracts included impermissible indemnification clauses, which would violate the Antideficiency Act by agreeing to an unlimited and indefinite liability.

MSHA also entered into hotel contracts that guaranteed rooms for nonfederal contest participants. The contracts included cancellation penalties for the 2010 and 2012 MNM contests. The 2010 contract with the Silver Legacy hotel exposed the government to potential liability of more than \$163,000, and the 2012 contract with the Peppermill hotel exposed the government to more than \$194,000 in potential liability, most for costs MSHA did not intend to use appropriated funds to pay: the cost of rooms for nongovernment contest participants.

These deficiencies were caused by a lack of management oversight related to contest planning, lack of internal policies to ensure the planning met federal requirements, and the planning committee's failure to incorporate the procurement function early in the planning process. As a result, MSHA spent excessive, unnecessary, and unallowable funds on the planning and conduct of the contests, and exposed the agency to significant legal and financial liabilities.

Lack of Specific Statutory Authority to Charge and Retain Coal Contest Fees

MSHA lacked specific statutory authority to charge and retain coal contest fees, which were used, in part, to pay for the actual costs of the contest, and MSHA may have violated the MRA and possibly the Antideficiency Act when it collected fees and retained and used those funds to cover costs of the coal contests. The MRA requires an official or agent of the government who receives money for the government from any source to deposit the money with the U.S. Treasury without deduction. MSHA charged a fee for the coal contests, and utilized a non-government entity to operate its coal contest fund account, which as of the end of the 2011 coal contest maintained a balance of approximately \$326,000.

It is unclear if the Independent Offices Appropriation Act provides authority to charge fees under the circumstances related to these contests. Further, the MNM fees, and some of the coal contest fees, may be allowable pursuant to a Department of Justice,

Office of Legal Counsel opinion, which concludes that the MRA may not apply when fees are paid to a contractor and used to pay for items of “personal convenience.”

In addition to the recommendations we made in our interim report, we recommend the Assistant Secretary for Mine Safety and Health: (1) issue guidance requiring that MSHA’s contracting officials are involved with all procurement actions from the outset and throughout the process; (2) further develop policies and controls that ensure the contests are operated in compliance with laws and regulations or relinquish MSHA’s role as organizer and host of all future contests; (3) ensure the \$326,308 balance in the coal fund is secured and none of the funds are spent until a decision has been made as to the appropriate disposition of those funds; and (4) request a decision from the Government Accountability Office (GAO) on (a) whether MSHA could legally charge and retain fees for its mine rescue contests pursuant to the Independent Offices Appropriations Act, or any other statute, and (b) the appropriate disposition of the existing coal fund balance.

MSHA’S RESPONSE

In response to the draft report, The Assistant Secretary agreed with our recommendations. The Assistant Secretary noted MSHA has already taken significant steps to address recommendations 1 and 2 as a result of similar recommendations contained in the OIG’s interim report. The Assistant Secretary also stated MSHA will take appropriate steps in deciding how best to secure the coal funds and will seek an opinion from GAO. The Assistant Secretary’s entire response appears in Appendix E.

RESULTS AND FINDINGS

MSHA and its predecessor agencies have long been involved in mine rescue contests. Its involvement in coal mine rescue contests began in the early 1900s and its involvement in the Metal and Nonmetal (MNM) National Mine Rescue Contests began in the 1970s. The contests served both as a training tool to improve the skills required to respond to a mine emergency and to strengthen cooperation within the broader mining community.

The MINER ACT included a requirement for coal mine rescue teams to participate annually in two “local mine rescue contests.”³ The National contests fulfill a part of this requirement, and at other times, mine operators organize local contests through trade associations or state agencies. To meet the requirements of a local coal mine rescue contest, the contest must use MSHA recognized rules, but MSHA is not required to organize, host, participate or pay for any portion of the contests.

Beginning in 1985, MSHA began to charge fees for its coal contests. MSHA collected the fees and forwarded them to a nongovernment organization for deposit in its bank

³ The local mine rescue contests requirement is found in Section 4 of the MINER ACT (P.L. 109-236 (June 15, 2006)) and is implemented by 30 CFR §49.20 (a)(2) and §49.60.

account. MSHA officials maintained control of the funds, directing how and when to disburse the funds. Other than changes to the organization acting as the fund holder, MSHA maintained this basic system through its latest contest, which was held in Columbus, OH, in 2011.

There is no similar requirement for MNM rescue teams to attend contests. Yet, MSHA chose to plan, organize, host, and pay for significant parts of its MNM contests. The contests were significant logistical events that required a facility large enough to provide both isolated areas for written exams and a space large and open enough to construct mock mines. The contests were attended by an average of 36 mine rescue teams, spanned 3 days, and were capped off with awards banquets.

MSHA, in cooperation with a planning committee comprised of MSHA and industry officials, planned the MNM contests. MSHA sent more than 100 employees to each of the contests, but according to MSHA, in an effort to reduce costs for the 2010 contest, officials combined 2 contest events into 1 and thereby reduced the number of MSHA employees attending the event from 155 to 125. MSHA employees and a small number of volunteers filled all the roles MSHA considered necessary to operate the contests. In addition to administering the events, MSHA performed a variety of tasks, such as judging and scoring contest events, proctoring written exams, and maintaining mock mines. MSHA showed its willingness to take a reduced role in the contests when it allowed the Nevada Mining Association to host the 2013 MNM contest. The contest was held in Reno, NV, July 30—August 1, 2013, and according to MSHA, it sent less than 70 employees to the contest and relied on volunteers from industry and other stakeholders to assist with the administration of the contest.

MNM Contest Fees and Hotel Services

MSHA charged teams and vendors a registration fee. The team registration fee ranged from \$500 per team in 2006 to \$750 in 2010. Vendors were charged \$1,000 for their participation. The team fees included 10 awards banquet tickets. MSHA staff were expected to attend the awards banquet, but had to use personal funds to purchase their own tickets at a cost ranging from \$31 per ticket in 2006 to \$40 per ticket in 2010. MSHA directed that checks for fees and banquet tickets be made payable to the Silver Legacy Hotel. MSHA collected the checks and mailed them in installments to the hotel. The hotel credited an MSHA event account for the fees and ticket purchases and used the funds to cover the cost of receptions and an awards banquet for each contest. None of the fees were used to cover MSHA's costs for executing the contests.

MSHA did not account for the registration and banquet ticket funds, including how they were spent once they were transferred to the Silver Legacy Hotel. The Silver Legacy provided us with accounting records and banquet checks⁴ for the 2008 and 2010 MNM contests. The hotel's records documented the total amount credited to the MSHA event

⁴ The hotel banquet checks were used to account for food, beverage, audio/visual and entertainment services and the value placed on the services. The checks were not invoices and may have included services that were provided complimentary.

account and the services that were charged against the account for banquet-type services. Most of the costs were for food and beverages, but some were for audio-visual rental and entertainment for these same events. In 2008, \$2,611 of the \$69,985 charged to the account was for audio-visual rental, and in 2010, \$4,385 of the \$66,611 included audio-visual or entertainment costs. According to the Silver Legacy records, the total amount of services provided for each of the two years exceeded the amounts credited to the MSHA account. Because the Silver Legacy did not tie specific receipts to specific services, it is impossible to be certain what events were paid for using the fees and what services were complimentary. Hotel records for the 2008 contest show that the event account was credited with \$53,062 in deposits and the banquet expenses for that contest totaled \$69,985. The 2010 contest records show \$55,550 was credited to the event account and the banquet expenses for that contest totaled \$66,611. Silver Legacy Hotel officials explained that the hotel engages these conferences planning to credit the event account certain amounts based on capacity, but they were also willing to further subsidize some of these events to keep their clients satisfied.

MNM Mine Rescue Complaint Allegations

As previously mentioned, our audit was initiated as a result of three similar complaints related to the MNM contests. We later received additional complaints that included allegations regarding the contests. The complaints alleged MSHA: (a) wasted taxpayer dollars by holding contests it is not required by law to hold; (b) wasted taxpayer dollars by holding planning meetings on-site instead of utilizing teleconferencing; (c) wasted taxpayer dollars by purchasing matching shirts for its employees for each day of its contests; and (d) received upgraded and free hotel rooms, lavish receptions, after-hours parties, limousine rides, and free meals.

We found MSHA was not required to hold the contests, nor did it do enough to minimize the costs of the MNM contests. Additionally, MSHA made unnecessary purchases of matching shirts for its employees to wear at the contests. MSHA provided us with reasonable explanations for holding on-site planning meetings. The total cost for planning meetings for four contests amounted to about \$113,000, or an average of \$28,000 per contest, an amount we did not deem excessive.

We did not find that MSHA employees received inappropriate complimentary rooms or room upgrades. The Silver Legacy contracts provided for 32 no-cost room upgrades at each of its MNM contests, to be shared between MSHA and the mine rescue teams. Federal Travel Regulation (FTR) §301-53.3(b) generally allows for such benefits as long as they are used for official government business. The hotel did provide receptions at the contests that were either paid for using registration fees or provided free of charge by the Silver Legacy. The receptions were primarily for the mine rescue teams and consisted of 2 free drink tickets and snacks. We did not find any evidence that the hotel sponsored any after-hours parties or provided free meals to MSHA officials. The Silver Legacy did provide complimentary shuttle service to and from the airport to all of its guests, which may have included the use of a limousine if one was available.

Objective 1 — Did MSHA comply with federal laws and regulations and safeguard federal funds when providing MNM Mine Rescue Contests in FYs 2006, 2008, 2010, and in planning the proposed 2012 contest?

MSHA did not comply with federal laws and regulations or adequately safeguard federal funds when planning and organizing MNM contests.

MSHA elected to plan and organize the contests even though it was not required to do so. Although MSHA's involvement in the contests is consistent with its mission, once MSHA elected to plan and organize the contests, it needed to comply with all federal laws and regulations, and implement adequate internal controls. We found:

- MSHA did not fully comply with federal requirements to minimize all MNM contest costs, incurred unallowable costs, failed to obtain prior approval for its 2012 contest, and did not document its fee structure or account for the fees.
- MSHA did not comply with FAR requirements when contracting with the Reno-Sparks Convention and Visitors Authority (RSCVA) for the 2006 and 2010 MNM contests and entered into RSCVA and Peppermill Hotel contracts that included impermissible clauses. MSHA also demonstrated poor contracting practices when signing hotel contracts for the 2010 and 2012 contests.

As a result, MSHA spent excessive, unnecessary, and unallowable funds, and unnecessarily exposed the agency to liability.

Finding 1 — MSHA failed to adequately minimize MNM contest costs, incurred unallowable costs, and failed to adequately account for contest fees

MSHA did not comply with federal requirements to perform cost comparisons when planning its MNM contests and did not minimize all costs for 2006-2010 contests. Notwithstanding the fact that it was under no legal obligation to do so, MSHA historically agreed to pay some contests costs, for items such as floor space and setup, in an effort to keep fees reasonable, thereby encouraging more teams to participate.

In total, MSHA spent at least \$962,047 planning and operating the 2006-2012 MNM contests. Details of the costs follow:

Cost	2006	2008	2010	2012
Contest travel	\$172,561	\$233,622	\$205,024	
Convention Center	24,000	27,360	31,190	
Setup	14,580	22,545	22,431	
Trophies	4,740	17,116	1,600	
Clothing	13,087	10,842	9,509	
Coins	7,800	6,000		
Banquet equipment			3,312	
Planning travel	7,544 ⁵	34,742	46,206	\$24,993
Video	21,243			
Totals	\$265,555	\$352,227	\$319,272	\$24,993

We reviewed and tested almost \$1 million in expenses related to the MNM contests to determine if costs were necessary, reasonable, allowable, and adequately supported. This included travel vouchers for 419 MSHA personnel who attended the contests and 107 travel vouchers for the 20 planning meetings that MSHA held. We found that MSHA did not perform required cost comparisons for its MNM contests. As a result, we found its travel costs were not always reasonable. Additionally, MSHA spent \$33,438 for clothing that was not necessary, and \$13,800 for commemorative coins that were not an allowable cost.

MSHA Did Not Perform Required Cost Comparisons

MSHA did not perform cost comparisons as required by the FTR⁶ when planning the 2006-2010 MNM contests. The FTR⁷ requires that conference planners identify opportunities to reduce costs in their selection of a particular conference location and exercise strict responsibility to minimize costs. An adequate cost comparison should include, but not be limited to, the following: (1) adequate lodging at the established per diem rates, (2) overall convenience of the conference location, and (3) commuting or travel distance of attendees.

We performed a cost comparison between Reno (the selected site) and two other cities: Dallas and Denver for the 2006-2010 contests. We chose Dallas and Denver because MSHA had performed a limited cost comparison using these cities for the cancelled 2012 MNM contest. MSHA's cost comparisons included hotel, space costs, and M&IE expenses, but did not include airfare. Our cost comparisons included airfare, lodging at allowable government rates, published government allowances for meals and incidental expenses, and local transportation costs. We found that Dallas was the most cost effective choice for the 2006-2010 contests. In total, we estimate MSHA may have saved the government more than \$100,000 in travel costs had it selected Dallas as the site for the contests (see Exhibit 1). MSHA correctly argued that its contest planners

⁵ We were not able to determine the total travel cost for the 2006 planning meetings because records were no longer retained.

⁶ FTR §301-74.19 states in part "...you must maintain a record of the cost of each alternative conference site considered. You must consider at least three sites...."

⁷ See FTR §301-74.1(c), §301-74.4, and §301-74.5

were able to negotiate considerable discounts with the Silver Legacy hotel from the published lodging rates. MSHA may have had success negotiating similar discounts with hotels in Denver and Dallas, but the actual cost savings may have been less than our estimate. MSHA also argued that its 2012 comparison showed cost savings of approximately \$20,000 for convention rental costs due to a significant discount offered by the RSCVA; however, when we reviewed the Dallas documentation, we found a similar concession for the convention center and determined it was unlikely there would have been a material cost savings for the convention center between those two sites.

MSHA stated one reason it selected Reno for the MNM contests was its proximity to the mine rescue teams. However, when we compared the distance of the teams to each of the three cities, we found Dallas and Denver were actually more centrally located than Reno. In fact, the average mine rescue team was 169 and 417 miles closer to Dallas and Denver, respectively, than to Reno. Additionally, MSHA stated there were other factors which entered into its decision to choose Reno over other locations, including the proximity to the University of Nevada Reno Mining School and the assertion that this location was preferred by its mine industry planning partners. If there were overriding factors besides costs, MSHA should have provided written justification for the decision to hold the contests in Reno when other less expensive locations may have been available.

MSHA did not believe its mine rescue contests fit the definition of “conferences” under the FTR that are subject to FTR §301-74. MSHA believes the contests were more appropriately classified in the FTR under “mission (Operational)” and “training.” The definitions for these travel purposes are included in FTR §301 Appendix C. The “Mission (Operation)” defines activities that are part of an employee’s day-to-day operation activities. We do not agree that the contests met this definition. The definition for the “Training” stated in part:

...the process of providing for and making available to an employee, and placing or enrolling the employee in a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education...which will improve individual and organizational performance and assist in achieving the agency’s mission and performance goals.

We do not believe the mine rescue contests met this definition. Although it is true that training was provided at the contests, the training was held primarily for the benefit of non-federal attendees. The definition included in FTR §301 Appendix E for a “Conference” states: “[a] meeting, retreat, seminar, symposium or event that involves attendee travel.” We believe MSHA’s mine rescue contests fall within this definition. The contests, which were held in a convention center and involved receptions and an awards banquet, were primarily a competition designed to train and sharpen the skills of non-federal attendees and also to strengthen cooperation between mining companies, equipment manufacturers, and federal and state agencies to enhance mine rescue preparedness.

MSHA Did Not Adequately Minimize Contest Costs/Incurred Unallowable Costs

MSHA incurred unnecessary and unallowable costs for the 2006-2010 MNM contests when it spent \$33,438 on clothing and \$13,800 on commemorative coins.

MSHA purchased 3 shirts (one for each day of competition) and hats/visors for every official involved in operating the contests. The total cost for the clothing was more than the \$33,438 for the 2006-2010 contests. MSHA officials justified the clothing as necessary to help differentiate contest officials from participants. MSHA did not seriously consider more cost effective ways to accomplish this, such as reusable vests, armbands, or different colored name tags. In our opinion, these costs were unnecessary.

MSHA also purchased a total of 1,200 commemorative coins at a total cost of \$13,800 to hand out at their 2006 and 2008 MNM contests. MSHA claimed these coins were trophies (an allowable expense) but they were given as a memento of the event to every person involved in the contests. Federal conference guidance⁸ does not allow the use of federal funds to purchase mementos.

MSHA Did Not Obtain Prior Approval for Its 2012 Contest Before It Entered into Contracts, Did Not Document Its Fee Structure or Adequately Account for Contest Funds

As we reported in our interim report, we found MSHA had entered into contracts committing funds to its cancelled 2012 Contest prior to receiving DOL approval for the event as required by an October 12, 2011, memorandum from the Deputy Secretary. It should be noted, however, that MSHA had already begun planning for its 2012 MNM contest prior to the issuance of the Deputy Secretary's memorandum. Nonetheless, MSHA should have obtained approval once the policy came into effect, and before entering into contracts for the contest.

MSHA also did not document its fee structure methodology or fully account for the fee and banquet ticket sale revenues after it transferred the funds to the Silver Legacy Hotel. The fee amounts were estimates of what would be necessary to cover the costs of a reception for the miners and an awards banquet. Once the funds were transferred to the Silver Legacy, MSHA did not adequately account for how the funds were spent. The contest organizers were involved in planning some of the events, but they never requested documentation or made any effort to reconcile revenues with the services provided. Because MSHA took possession of the fees collected and transferred them to the Silver Legacy, MSHA accepted responsibility for the funds and should have accounted for their use. We reviewed the hotel's records and found the services provided by the hotel exceeded the fee revenues for the 2008 and 2010 contests. Records for the 2006 contest were no longer available for review.

⁸ Appendix E to FTR Chapter 301—Suggested Guidance to Conference Planning, under the sub-heading Mementos, states: "Appropriations are not available to purchase memento items for distribution to conference attendees as a remembrance of the event...."

In response to our interim report, MSHA implemented systems to help ensure it: (a) complies with the Deputy Secretary's memorandum; and (b) reviews, approves, and accounts for expected costs of participating in contests. Additionally, MSHA stated it does not have current authority to collect and retain contest fees, and that it will not establish, collect, or handle fees associated with any mine rescue training contests. As a result of MSHA's actions, we have closed all five interim report recommendations.

Finding 2 — MSHA violated the FAR and used poor contracting practices when entering into contracts

MSHA raised questions regarding whether or not it had a valid, signed contract with the Peppermill hotel for the 2012 contest. According to MSHA, the contract, as executed, may not have been valid. We disagree. We believe the contract was valid. The general requirements for a binding contract with the United States are identical for both express and implied contracts.⁹ These are: (1) mutual intent to contract, (2) offer and acceptance, (3) consideration, and (4) the government representative who entered into or ratified the agreement had actual authority to bind the United States. MSHA's argument that the agreement was not valid appears to be based on its belief that MSHA had no intent to contract in this instance.

We believe the evidence defies this assertion and supports the contention that MSHA did intend to enter into a valid agreement. For example, the former contracting officer's name and title were printed by hand on the contract signature line. The same contracting officer reviewed the signed contract and stated it looked like his printed name, but he could not be sure and did not remember printing his name on the document. However, we interviewed several individuals working with the contracting officer on that contract, two of which believed the contracting officer mentioned signing the contract and placing it under the door of MSHA's MNM Management Officer. That Management Officer remembered finding the signed contract and hand delivering it to one of the MSHA contest organizers, who then emailed it from a valid MSHA email address to the hotel. Peppermill officials countersigned the contract and emailed it back to MSHA.

MSHA further demonstrated its intent to contract with the Peppermill when it stated it had a signed agreement with the Peppermill in its memorandum to the Chief Financial Officer requesting permission to hold the 2012 contest. It also advertised on its website that the Peppermill was the host hotel for the 2012 MNM contest. The advertisement included the agreed upon room rate and the room block code. Furthermore, the Director of the Acquisitions and Management Division and the Acting Director of Administration and Management at the time the contract was cancelled stated that, despite the questions about the signature, it was their opinion that the contract was valid because MSHA had treated it as a valid contract and held it out as such. To our knowledge, at no time until this audit report did MSHA contest the validity of the contract.

⁹ An express contract is one where all the elements and terms of the contract are specifically stated. An implied contract is an agreement that is found to exist based on circumstances when to deny a contract would be unfair and/or result in the unjust enrichment to one of the parties.

Consequently, given the totality of facts and circumstances, we believe MSHA had a valid contract, express or implied, with the Peppermill hotel.¹⁰

MSHA violated the FAR and failed to use sound business practices when entering into contracts for the 2006, 2010, and 2012 MNM contests. Specifically, MSHA violated the FAR by using sole-source contracts when contracting with the RSCVA for space during the 2006 and 2010 contests because it did not justify its use of the sole-source contracts as required. Additionally, MSHA signed an RSCVA contract and, as reported in our interim report, a Peppermill Hotel contract that included impermissible clauses. MSHA also entered into hotel contracts containing cancellation penalties for the 2010 and 2012 contests. Consequently, MSHA violated federal regulations and opened the agency to significant legal and financial liabilities.

MSHA Did Not Comply With the FAR When Contracting for Space

MSHA did not comply with the FAR¹¹ when contracting for space with the RSCVA for the 2006 and 2010 MNM contests. MSHA used a sole-source contract for the 2006 and 2010 contracts, valued at \$24,000 and \$31,190, respectively. However, it failed to properly justify the use of sole-source contracts by preparing the *Justification for Other Than Full and Open Competition* form. The FAR requires a contracting officer not to commence negotiations for a sole-source contract without providing for full and open competition unless that contracting officer justifies the use of such actions in writing and certifies the justification is accurate and complete. MSHA also contracted with the RSCVA in 2008 and 2012, but in those instances MSHA justified the use of the sole-source contracts consistent with federal regulations.

MSHA Entered Into Contracts that Included Impermissible Clauses

MSHA accepted RSCVA's standard contract for the 2006 and 2010 MNM contests and the Peppermill Hotel's standard contract for the cancelled 2012 contest. The RSCVA contracts for the 2006 and 2010 contests were the same, but MSHA signed the 2010 contract only after numerous clauses, including an indemnification clause, had been stricken, yet signed the 2006 contract without any revisions. Also, MSHA accepted the Peppermill Hotel's standard contract for the canceled 2012 contest without any revisions. Significantly, both the RSCVA and Peppermill contracts included an impermissible indemnification clause. Such a clause is impermissible because it would violate the Antideficiency Act¹² by agreeing to an unlimited and indefinite liability to the government. The Antideficiency Act prohibits an officer or employee of the U.S. Government from making or authorizing an expenditure or obligation that exceeds the amount available in an appropriation or fund.

¹⁰ The Office of the Solicitor provided the OIG with several countervailing arguments regarding the validity of this contract. We have considered these arguments but are not persuaded that they support a change in our conclusion.

¹¹ FAR §6.303-1(a)

¹² 31 United States Code, §1341(a)(1)

MSHA Entered Into Hotel Contracts that Guaranteed Rooms for Non-Government Contest Participants

MSHA entered into contracts with the Silver Legacy Hotel in 2010 and the Peppermill Hotel in 2012, reserving rooms for both MSHA employees and non-government MNM contest participants. Each contract included a cancellation penalty, the maximum of which was equal to 100 percent of contracted guestroom revenue for event cancellation occurring within 90 days of the event. The Peppermill Hotel contract allowed for a waiver of the penalty if MSHA rescheduled an event of equal scope within 12 months of the original event date. The maximum penalty for each contract was as follows:

- The 2010 contract included 1,920 room nights at a nightly rate of \$85. The potential liability to the government was \$163,200.
- The 2012 contract included 2,190 room nights at a nightly rate of \$89. The potential liability to the government could be as much as \$194,910.

While cancellation penalties that are not indefinite do not violate the Antideficiency Act, they should be carefully reviewed prior to their inclusion in a government contract to ensure that any such cancellation penalties are reasonable and appropriate under the circumstances. The 2010 contest was held as scheduled, and therefore the cancellation clause was of no effect. However, the 2012 contest was not cancelled in time to avoid a potential penalty. As a result of MSHA's decision to guarantee the rooms of both MSHA and non-government contest participants, the Peppermill may be entitled to collect all or a portion of the \$194,910 penalty. Significantly, the majority of funds potentially owed to the Peppermill Hotel were for costs that MSHA would not have used appropriated funds to pay: the guestroom fees of non-government contest participants.

The deficiencies related to minimizing contract costs, charging and accounting for fees, and contracting practices occurred because MSHA neither ensured there was proper management oversight of the conference planning process¹³ nor developed and established internal policies to ensure conference planning standards were met.¹⁴ MSHA assigned overall responsibility for planning and directing the MNM contests to an MSHA District Director. MSHA neither provided him training related to conference planning or contracting nor internal policies to guide his efforts. Also, as we discussed in our interim report, MSHA did not involve its procurement team early enough in the planning process. As a result, MSHA spent excessive, unnecessary, and unallowable funds on the planning and conducting of the contests, and unnecessarily exposed the government to significant legal and financial liabilities.

¹³ FTR §301-74.3(a)

¹⁴ FTR §301-74.1(e)

Objective 2 — Did MSHA comply with federal laws and regulations when it charged fees for its coal and MNM contests, directed the coal contest funds be deposited in non-government accounts and used the coal and MNM contest funds to pay for contest expenditures?

MSHA may not have complied with federal laws when it charged fees for its coal contests, deposited those fees in non-government accounts, and used them to pay contest expenditures.

During the course of our audit of the MNM mine rescue contests, MSHA informed the OIG about MSHA's practice of assessing fees for its coal mine rescue contests and depositing them in a non-government bank account. According to MSHA, this practice originated in 1985, when MSHA began to charge fees for its coal contests. The fees were not deposited in a government bank account, but rather sent to a non-government entity to act as the fund holder. The name and location of the fund holder changed over the years, but the process remained basically the same. MSHA collected the contest fees and provided them to the fund holder in bulk. The fund holder would deposit the fees in its bank account, use the funds to pay contest expenses at the direction of MSHA, periodically account for the fund receipts and expenditures to MSHA, and maintain any fund balance until the next contest.

MSHA also charged fees for its MNM contests. The fees were deposited in a Silver Legacy Hotel event account and used to cover the costs of receptions and an awards banquet at the hotel. Most of the costs were for food and beverages, but some were for audio-visual rental and entertainment for these same events. In 2008, \$2,611 of the \$69,985 charged to the account was for audio-visual rental, and in 2010, \$4,385 of the \$66,611 included audio-visual or entertainment costs. The hotel did not act as agent to pay contest expenditures and no balance remained in the event account at the end of the contests.

Finding 3 — MSHA lacked specific statutory authority to charge and retain fees for its coal contests, and as a result may have violated the MRA and possibly the Antideficiency Act.

We found MSHA lacked specific statutory authority to charge and retain fees for its coal contests, and that it may have violated the MRA by collecting the fees and depositing them in non-government bank accounts. Additionally, MSHA may potentially have an Antideficiency Act violation if it is found MSHA spent funds it should have deposited with the Treasury and does not have sufficient funds currently available to deposit.

MSHA Lacked Specific Statutory Authority to Charge Fees for Its Coal Contests

Although we found the national mine rescue contests were official activities designed to further MSHA's statutory mission, MSHA did not have specific statutory authority to charge fees for the coal contests. An agency must have specific statutory authority to

charge and retain fees for meetings or programs.¹⁵ Moreover, an agency cannot augment its appropriations from outside sources without specific statutory authority.¹⁶

Additionally, MSHA may not avoid compliance with these principles by arranging with an outside entity to deposit the contest fees in a non-government bank account and pay for contest expenses from that account. According to GAO, if an agency lacks specific statutory authority to charge a fee at a conference and retain the proceeds then that agency may not cure its lack of authority by engaging a contractor to do so.¹⁷ However, MSHA could possibly use the Independent Offices Appropriations Act (31 U.S.C. §9701, the so-called “user fee” statute) to justify its charging of fees. The statute allows an agency may charge a fee to recipients of “special benefits or services.” However, GAO has not specifically addressed whether the user fee statute authorizes an agency to charge a fee for its conferences.

MSHA Lacked Specific Statutory Authority to Retain Coal Contest Fees

Even if MSHA had the authority to charge fees for its coal contests, it did not have specific statutory authority to retain them. MSHA charged various fees to coal mine rescue teams and vendors who wished to participate in its contests. Although MSHA directed that the fee checks be made payable to designated non-government entities, MSHA maintained effective control of the funds by directing how the funds were spent. According to MSHA, payments were not made from the coal fund without MSHA reviewing and approving those costs.

Without specific statutory authority, the funds MSHA collected for the coal contests may be subject to the MRA.¹⁸ The MRA requires that:

...an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.

If the coal contest fees are found to be “money for the Government,” MSHA may be required to deposit all the funds it collected and spent on contest-related expenditures and also the approximately \$326,000 that remained unspent after the 2011 coal contest.

MSHA May Have Violated the MRA and the Antideficiency Act

Because MSHA did not have specific statutory authority to retain and spend the fees it charged for its coal contests, MSHA may have violated the MRA by directing the funds be deposited in non-government bank accounts instead of the Treasury. For example, MSHA collected more than \$1.3 million for its last two coal contests, and spent more than \$1 million of those funds (see Table 2). If it is found that MSHA spent funds it

¹⁵ Government Accountability Office (GAO) decision B-300826, *National Institutes of Health – Food at Government-Sponsored Conferences* - March 3, 2005.

¹⁶ See GAO, *Principles of Federal Appropriations Law*, p. 6-162 (3rd Ed. 2006).

¹⁷ GAO decision B-306663, *Contractors Collecting Fees at Agency-Hosted Conferences*, January 4, 2006.

¹⁸ 31 USC §3302(b)

should have deposited with the Treasury and MSHA does not have sufficient funds currently available for deposit in the Treasury, MSHA may have violated the Antideficiency Act.

Table 2: Coal Contest Fees and Disbursements

Description	2009	2011	Total
Beginning Fund Balance	\$ 41,637	\$177,193	
Contest Fees Deposits	713,643	620,176	\$1,333,819
Funds Available	755,280	797,369	
Fee Expenditures	578,087	471,061	\$1,049,148
Ending Fund Balance	\$177,193	\$326,308	

MSHA’s Use of Fees for Its MNM Contests May Not Have Violated the MRA

MSHA also charged fees for its MNM contests. The MNM fees were sent to the Silver Legacy Hotel, which deposited them in an event account and used them to cover the costs of receptions and banquets provided by the hotel. A Department of Justice, Office of Legal Counsel opinion¹⁹ concluded that the MRA may not apply when fees are paid to a contractor and used to pay for items of personal convenience, since these fees would not constitute money “for the government.” Relying on that opinion, the MNM fees may be allowable, although we note that a small portion of these fees (\$2,611 in 2008 and \$4,385 in 2010) may have been used to cover audio-visual and entertainment expenses, which may not be “personal conveniences”. MSHA should consult with GAO to determine which, if any, contest fees (for both MNM and Coal) were not subject to the MRA.

CONCLUSION

Significantly, the deficiencies noted in this report need not have occurred. MSHA is not required to be involved in mine rescue contests, but because it chose to organize and host the contests, it spent federal funds and exposed the government to legal liability that the mining industry should have borne.

RECOMMENDATIONS

In addition to the recommendations we made in our interim report, we recommend the Assistant Secretary for Mine Safety and Health:

- (1) Issue guidance requiring that MSHA’s contracting officials are involved in procurement actions from the outset and throughout the process.

¹⁹ USDOJ, Office of Legal Counsel, Volume 30, Applicability of the Miscellaneous Receipts Act to Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences, November 22, 2006

- (2) Further develop policies and controls that ensure the contests are operated in compliance with laws and regulations or relinquish MSHA's role as organizer and host of all future contests.
- (3) Ensure the \$326,308 balance in the coal fund is secured and none of the funds are spent until a decision has been made as to the appropriate disposition of those funds.
- (4) Request a decision from the GAO as to (a) whether MSHA could legally charge and retain fees for its mine rescue contests pursuant to the Independent Offices Appropriations Act, or any other statute, and (b) the appropriate disposition of the existing coal fund balance.

We appreciate the cooperation and courtesies that MSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix F.



Elliot P. Lewis
Assistant Inspector General
for Audit

Exhibit

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Exhibit 1**Cost Comparisons – MSHA Travel Costs (2006—2010 MNM Contests)**

The population we used to compare travel costs included MSHA travelers who claimed airfare costs to Reno, NV, and for which there were comparable Dallas, TX, and Denver, CO, historical airfares available from GSA's "City Pair" databases. We calculated lodging and Meals and Incidental Expenses (M&IE) costs by multiplying our population by GSA's applicable lodging and M&IE rates. We assumed 4 nights lodging and 4.5 days M&IE. We added local transportation costs for the Dallas and Denver airports using published roundtrip shuttle rates (\$36 in Dallas and \$44 in Denver). Finally, we subtracted the travel costs of travelers who lived in Dallas or Denver, as applicable, since those travelers would not have incurred travel costs had the contest been held in their respective cities. We did not compare the costs of event space because such expenses are typically negotiated among the parties preceding each event, and we could find no published historical database of costs.

2010 MNM Mine Rescue Contest Cost Comparison			
	Reno (104 MSHA staff)	Dallas (96 MSHA staff)	Denver (96 MSHA staff)
Airfare	\$73,474*	\$46,288**	\$48,550**
Lodging	54,080	44,928	60,672
Meals and Incidental Expenses	23,868	30,672	28,512
Local Transportation Cost		3,456	4,224
Total	\$151,422	\$125,344	\$141,958
Potential savings		\$26,078	\$9,464

2008 MNM Mine Rescue Contest Cost Comparison			
	Reno (135 MSHA staff)	Dallas (119 MSHA staff)	Denver (127 MSHA staff)
Airfare	\$81,188*	\$48,848**	\$62,522**
Lodging	82,080	51,884	71,120
Meals and Incidental Expenses	29,768	31,595	28,004
Local Transportation Cost		4,284	5,588
Total	\$193,036	\$136,611	\$167,234
Potential savings		\$56,425	\$25,802

2006 MNM Mine Rescue Contest Cost Comparison			
	Reno (108 MSHA staff)	Dallas (100 MSHA staff)	Denver (98 MSHA staff)
Airfare	\$53,368*	\$32,338**	\$44,974**
Lodging	54,432	38,000	48,608
Meals and Incidental Expenses	23,814	26,550	21,609
Local Transportation Cost		\$3,600	\$4,312
Total	\$131,614	\$100,488	\$119,503
Potential savings		\$31,126	\$12,111

*Actual airfare paid for contest travelers.

** Historical GSA "City Pair" airfares.

In total, we estimate MSHA may have saved \$113,629 (\$26,078+\$56,425+\$31,126) in travel costs by selecting Dallas, TX, instead of Reno, NV.

Appendices

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Background

The Federal Mine Safety and Health Act of 1977 (Mine Act), as amended by the Mine Improvement and New Emergency Response (MINER) Act of 2006, governs the Mine Safety and Health Administration (MSHA). MSHA is responsible for enforcing Federal laws and regulations and implementing policies intended to protect the safety and health of the nation's miners. MSHA pursues its mission by: reducing hazardous exposures through enforcing compliance with mandatory safety and health standards; promoting effective training; encouraging adaptation of new technologies and improved work practices; and engaging stakeholders in order to promote improved safety and health conditions.

The federal government has been the primary entity overseeing mine rescue contests since 1911, when the first mine rescue contest was held by the U.S. Bureau of Mines. These contests have been the backbone for training and preparing rescue teams to conduct rescue operations. They are used to both train and test the skill and competency of the teams, which are made up of volunteers who risk their lives in some of the most treacherous and life threatening conditions. Rescue team members must be highly trained to respond to a range of situations, such as rescuing miners who might be stranded miles underground or stabilizing mines after fires, explosions, or roof collapses.

MSHA has two major program areas: (1) Coal Mine Safety and Health, and (2) Metal and Nonmetal Safety and Health (MNM). MSHA and its predecessor agencies, the Mining Enforcement and Safety Administration and the U.S. Bureau of Mines, have a decades-old history of participating in mine rescue contests. MSHA conducts biennial mine rescue contests for each major program area in alternating years. Coal mine rescue teams are required²⁰ to participate in two "local" mine rescue contests annually. Although MSHA is not required to organize mine rescue contests, it elected to organize national biennial coal and metal/nonmetal contests. MSHA held its five most recent MNM contests in Reno, NV, and had planned to hold the 2012 contest there before it decided to cancel the contest for that year. These contests serve as a training tool to improve the skills required to respond to a mine emergency and strengthen cooperation between mining companies, equipment manufacturers, and federal and state agencies to enhance mine rescue preparedness. The mining industry sent 34, 37, and 38 mine rescue teams to the 2006, 2008, and 2010 MNM contests, respectively. MSHA publishes the National Contest Rule Book which establishes procedures and rules to guide the rescue teams in actual situations.

MSHA's Directorate of Administration and Management plans and directs all MSHA administrative and management services. This directorate serves as MSHA's authority on financial and human resource requirements, overseeing MSHA's budget process,

²⁰ 30 U.S.C. § 825; 30 C.F.R. § 49.20(a)(2)

directing human resource development programs, and managing all property management, acquisition, contractual, and grant-related transactions. MSHA organized, planned, and entered into contracts for the 2006, 2008, and 2010 MNM contests and the planned 2012 contest.

Wasteful spending related to government conferences has recently received significant media attention due in part to two Offices of Inspector General (OIG) audit reports – one from the U.S. General Services Administration (GSA) and the other from the Department of Justice. We received three complaints regarding MSHA's MNM contests, which had allegations similar to the findings from the GSA report. In addition, MSHA informed the OIG of its use of a non-government bank account to hold coal contest fees.

On September 28, 2012, we issued a report (No. 05-12-004-06-001) on MSHA's planning of the 2012 MNM contest. We found MSHA did not follow proper approval and contracting procedures, document its fee structure methodology, or fully account for contest fees and costs. We recommended the Assistant Secretary for Mine Safety and Health: (1) design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials; (2) partner with its procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses; (3) determine contest fees and properly match fee amounts to expected costs to the Government; (4) review and approve all expected costs before they are incurred; and (5) account for all funds, whether derived from contest fees or MSHA funds, expended in connection with contests.

Coal Contest Fund

The National Executive Committee (NEC) organized the coal contests. The NEC consisted of a Contest Director appointed by MSHA, industry representatives from each MSHA district, and the President of the National Mine Rescue Association.²¹

In 1985, MSHA created a coal contest fund by entering into an agreement with the Louisville Convention and Visitors Bureau (LCVB). The LCVB was to collect participant fees and, subject to MSHA's approval of specific disbursements, pay contest expenses. In 1987, MSHA slightly altered the basic structure of its arrangement with LCVB by directing contest participants to make their checks payable to the LCVB but mail them to MSHA. MSHA collected the checks and mailed them in bulk to the LCVB, which deposited them in a LCVB bank account. LCVB continued to account for the funds and pay expenses as approved by MSHA. Other than changes to the contest location and the organization designated as the fund holder, this arrangement remained in effect through the latest contest, which was held in Columbus, OH, in 2011.

²¹ The Contest Director was always an MSHA employee and was appointed by MSHA's Administrator for Coal Mine Safety and Health. The Contest Director appoints each of the industry representatives.

MSHA officials maintained control of the fund by directing how and when to disburse the contest funds. When a balance remained in the fund, the fund balance was maintained by the designated fund holder²² until the next contest or until MSHA directed the funds be transferred to a new fund holder. The current fund holder is the Nashville Convention and Visitors Bureau (NCVB) and the current fund balance is approximately \$326,308.

The fees charged for and expenses associated with the coal contests varied considerably over the years. For example, the team fee for the 2007 contest was \$6,200 and included 25 lodging nights at the Gaylord Opryland Resort and Convention Center and a team food voucher. In 2011, the team fee was \$3,500 but did not include either lodging or a food voucher.

²² The LCVB was the fund holder for the 1985 – 2001 contests, the James A. Holmes Association for the 2003 contest, the LCVB became the fund holder again in for the 2005 contest, the Gaylord Opryland Hotel and Convention Center for the 2007 contest, and the NCVB became the fund holder for the 2009 and 2011 contests.

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Appendix B

Objectives, Scope, Methodology, and Criteria

Objectives

We performed our audit work to answer the following questions:

1. Did MSHA comply with federal laws and regulations and safeguard federal funds when providing MNM Mine Rescue Contests in FYs 2006, 2008, 2010, and in planning the proposed 2012 contest?
2. Did MSHA comply with applicable laws and regulations when it charged fees for its coal and MNM contests, directed the coal contest funds be deposited in non-government accounts, and used the coal and MNM contest funds to pay for contest expenditures?

Scope

This report reflects audit work conducted onsite at MSHA’s Headquarters in Arlington, VA, and MSHA’s Finance Branch in Denver, CO, and remotely with the Silver Legacy and Peppermill hotels in Reno, NV. Our scope covered MSHA’s controls when planning and providing the MNM contests in FYs 2006, 2008, 2010, and 2012. Our scope related to the planning meetings for the 2006 contest was limited because of the unavailability of documents due to the expiration of record retention requirements. Also, because MSHA canceled its 2012 contest, our scope was limited to planning activities for that contest.

We also assessed whether MSHA complied with applicable laws and regulations when it charged fees at both its MNM and coal contests and then used those fees to pay the costs of its contests. Our work related to the coal contests fund was limited to an assessment of narratives, facts, and documents supplied by MSHA and relevant criteria and guidance. Our review included available information from the inception of the coal contest fund in 1985 to 2011, the year of the latest contest.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology

To accomplish our audit objectives, we interviewed officials with MSHA and the Silver Legacy and Peppermill hotels to gain an understanding of how the MNM

contests were funded, planned, and executed. We also interviewed MSHA officials to identify and assess internal controls over the planning process, contracting for goods and services, and approval and documentation of contest expenditures. We also interviewed MSHA staff who attended the contests to gain a better understanding of the work they performed at the contests, whether the contests were properly staffed and whether they witnessed any fraud, waste or abuse during the conduct of the contests.

For the MNM contests, we reviewed all contracts, letters of agreement, purchase orders, and invoices to identify the nature and cost of all goods and services procured, and to ensure that the goods and services were allowable and necessary. We reconciled the contest funds MSHA received from teams, vendors, and individual attendees to ensure they matched the funds sent to the hotels to pay for contest services.

In addition, we reviewed and tested more than \$962,000 of expenses related to the MNM contests to determine if costs were necessary, reasonable, allowable, and adequately supported. This included travel vouchers for 419 MSHA personnel who attended the contests and 107 travel vouchers for the 20 planning meetings that MSHA held for the contests.

We also performed analytical procedures to compare the travel costs between Reno, NV, Dallas, TX, and Denver, CO. We prepared cost comparisons for the 2006, 2008, and 2010 MNM contests. Our estimates included comparing actual flight costs from MSHA travel vouchers with historical GSA contract fare for each MSHA traveler for which GSA "City Pair" data was available for both Denver and Dallas. We also calculated lodging, Meals and Incidental Expenses (M&IE), and roundtrip shuttle fares for each traveler in our population using applicable rates. We assumed 4 nights lodging and 4.5 days of M&IE for each traveler. Finally, we subtracted travel costs for MSHA employees who worked in Dallas or Denver, as those employees would not have incurred any travel costs if those sites had been selected.

We also performed an additional analysis regarding the location of the mine rescue teams to Reno, Dallas, and Denver. We performed this analysis by calculating the average driving distance between the teams attending each contest and each city in our analysis.

To determine the reliability and completeness of cost data, we compared lists of personnel assigned to the contests and who attended awards banquets with summary travel voucher data. We also conducted numerous interviews and reviewed contracts and other agreements to ensure that we obtained invoices for all federal expenses incurred for the contests. Based on these assessments and tests, we concluded the cost data was sufficiently reliable and complete to use in meeting our audit objectives.

After we initiated the audit of the MNM mine rescue contests, MSHA officials voluntarily provided us with information and concerns about its coal contest fund. Our work related to the coal contest fund was limited to an assessment of a narrative provided by MSHA that provided relevant history and facts related to the fund from its inception in 1985 through 2011, the year of the latest coal contest. We also reviewed available documents related to the fund and the coal contests to assist us in our understanding of the fund and how MSHA used the fund. Furthermore, we assessed relevant criteria to determine whether MSHA's actions related to the fund violated any laws or regulations.

In planning and performing our audit, we considered MSHA's internal controls that were relevant to our audit objectives by obtaining an understanding of those controls, and assessing control risk for the purposes of achieving our objectives. The objective of our audit was not to provide assurance on the internal controls. Therefore, we did not express an opinion on the internal controls as a whole. Our consideration of MSHA's internal controls relevant to our audit objectives would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal controls, noncompliance may nevertheless occur and not be detected.

Criteria

- Title 30, United States Code of Federal Regulations – Part 49, Subpart B – *Mine Rescue Teams for Underground Coal Mines*
- Antideficiency Act of 1982 - 31 United States Code, §1341(a)(1)
- Federal Mine and Safety Act of 1977
- Federal Travel Regulation – Part §301-74, *Conference Planning*
- Federal Travel Regulation – Appendix E to Chapter 301, *Suggested Guidance for Conference Planning*
- Federal Acquisition Regulation – Part 5, *Publicizing Contract Actions*
- Federal Acquisition Regulation – Part 6, *Competition Requirements*
- Government Accountability Office, decision B300826, National Institutes of Health – Food at Government-Sponsored Conferences, March 3, 2005
- Independent Offices Appropriations Act – 31 U.S.C. §9701
- Mine Improvement and New Emergency Response Act of 2006
- Miscellaneous Receipts Act – 31 U.S.C. §3302(b)
- U.S. Department of Justice, Office of Legal Counsel, Volume 30, Applicability of the Miscellaneous Receipts Act to the Personal Convenience Fees Paid to a Contractor by Attendees at Agency-Sponsored Conferences, November 22, 2006

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Appendix C

Acronyms and Abbreviations

DOJ	Department of Justice
FAR	Federal Acquisition Regulation
FTR	Federal Travel Regulation
FY	Fiscal Year
GSA	General Services Administration
M&IE	Meals and Incidental Expenses
MNM	Metal/Non Metal
MSHA	Mine Safety and Health Administration
OIG	Office of Inspector General
RSCVA	Reno Sparks Convention and Visitors Authority

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Interim Report and MSHA Response

U.S. Department of Labor

Office of Inspector General
Washington, DC. 20210



September 28, 2012

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for Mine Safety and Health
1100 Wilson Blvd.
Arlington, VA 22209

Interim Report: MSHA Needs to Strengthen Planning and Procurement for
Metal and Nonmetal Mine Rescue Contests
Report No. 05-12-004-06-001

Dear Assistant Secretary Main:

We received three complaints regarding the Mine Safety and Health Administration's (MSHA) Metal and Nonmetal Mine Rescue Training Contests (Contests). The complaints alleged MSHA wasted hundreds of thousands of dollars by sending employees to Reno, NV, for the Contests and further alleged MSHA's managers were upgraded to deluxe suites and provided complimentary cocktail parties, limousine rides, clothing, and other items.

MSHA held its five most recent Contests in Reno, NV, and had planned to hold the 2012 contest there. Since MSHA is primarily responsible for mine rescue standards and procedures, it organizes and hosts the Contest, makes the rules, provides judges, and charges entry fees to participants and vendors for the Contests.

Given the seriousness of the allegations and the recent congressional and media interest surrounding the General Services Administration's (GSA) conference in Las Vegas, we began an audit to investigate the validity of the complaints.

Interim Results and Findings

Although our audit of the 2012 Contest plans continues, we have found MSHA did not:

- 1) follow proper approval and contracting procedures,
- 2) document its fee structure methodology, or
- 3) fully account for contest fees and costs.

Two common threads ran through these findings: (1) MSHA did not work with its procurement staff from the outset, and (2) MSHA could not provide clarity regarding who actually organized the Contests. Although MSHA chose the venues and contracted

Interim Report: MSHA's Mine Rescue Contests

for space, it could not detail how it calculated the entry fees it charged participants. In addition, it passed these fees directly to the hotel instead of depositing them into a custodial account and using them to cover Contest costs. Moreover, MSHA did not have a structure in place to account for the fees after they were received by the hotel or to account for the costs related to those fees.

MSHA Did Not Follow Proper Approval and Contracting Procedures

MSHA did not comply with an October 12, 2011, memorandum from the Deputy Secretary that requires written approval of all conference-related activities and expenses prior to commitment of any funds. We found that MSHA entered into a contract with the Reno-Sparks Convention and Visitors Authority (RSCVA) on November 30, 2011. The OIG has also obtained a copy of a contract between MSHA and the Peppermill Hotel in Reno, NV, dated October 25, 2011. However, there is a question regarding the validity of the MSHA signature on this contract. If this contract is determined to be valid and enforceable, MSHA may have exposed itself to liability by using the hotel's standard contract, which included an impermissible indemnification clause stating that MSHA would indemnify and hold the hotel harmless against all losses and liabilities. Such a clause is impermissible because it would violate the Antideficiency Act by agreeing to an unlimited and indefinite liability. The OIG is continuing to review the circumstances surrounding the negotiation and execution of this contract.

Further, MSHA did not submit the required decision memorandum seeking approval of the 2012 Contest until April 11, 2012, which was more than 5 months after executing its first contract. The decision memorandum disclosed MSHA's contracts with the RSCVA and the Peppermill Hotel, as well as MSHA's efforts to reduce costs by reducing the number of employees attending the 2012 Contest from 117 for the 2010 Contest to 62. However, MSHA failed to disclose in this same narrative its plan to utilize 430 hotel rooms, 30 more than 2010. Because MSHA had not complied with the Deputy Secretary's directive, it committed the federal government to significant potential costs before its plans had been properly vetted and approved.

MSHA Did Not Document Its Fee Structure Methodology

MSHA invited teams and vendors to register for the 2012 Contest by completing registration forms and paying entry fees of \$750 per team and \$1,000 per vendor. Office of Management and Budget Circular A-25 requires the Government to recover the cost of its services in certain cases. MSHA could have incorporated the costs of organizing and supporting the Contest into its fee calculations; however, the way MSHA calculated the fees is unclear.

MSHA Did Not Fully Account For Contest Fees And Costs

MSHA asked teams and vendors to pay entry fees by check or money order made payable to the Peppermill Hotel. MSHA would then collect the payments and pass them

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to the hotel. MSHA expected the hotel to credit an event account and use the funds to pay for a vendors' reception and an awards banquet. Because MSHA did not plan to receive or approve a list of expected costs, it is unclear what costs were to be incurred and what the fees were meant to cover. As the Contest organizer, MSHA accepted a duty to ensure that costs and fees were appropriate, that the hotel properly accounted for all event funds, and that Contest funds were not used for unallowable or inappropriate expenditures.

Conclusions

These issues occurred because MSHA did not solicit the assistance of its procurement function early enough in the planning process for the 2012 Contest. Additionally, MSHA did not retain the entry fees, apply them to costs, or appropriately account for the use of funds. Addressing these issues will help ensure that MSHA plans its Contests consistent with the Department's goal of reducing conference costs, protects itself from potential liability, appropriately determines expected costs, and accurately accounts for Contest funds.

The preliminary results discussed in this interim report are based on our work to date related to the planned 2012 Contest. Audit fieldwork covering the Contests MSHA held in 2006, 2008, and 2010, as well as the 2012 Contest, continues and we will report separately when that work is completed. Please note that there may be additional findings related to the planned 2012 Contest.

Recommendations

We recommend the Assistant Secretary for Mine Safety and Health: (1) design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials; (2) partner with its procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses; (3) determine Contest fees and properly match fee amounts to expected costs to the Government; (4) review and approve all expected costs before they are incurred; and (5) account for all funds, whether derived from Contest fees or MSHA funds, expended in connection with Contests.

Agency Response

In response to the draft interim report, the Assistant Secretary of Labor for MSHA did not disagree with any of the recommendations. He stated that MSHA has already imposed greater internal funds controls and procedural improvements in connection with planning, approvals, contracting, and disbursement procedures so as to address identified shortcomings and to comply with all applicable laws and procedures. This will include assuring that MSHA adheres to the Department's conference approval policy.

Please see the attachment for MSHA's full response.

Interim Report: MSHA's Mine Rescue Contests

We appreciate the cooperation and courtesy MSHA has provided us during this audit.



Elliot P. Lewis
Assistant Inspector General
for Audit

Attachment

Attachment


U.S. Department of Labor

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



SEP 27 2012

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

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

SUBJECT: Response to Draft Interim Report: MSHA Needs to Strengthen
Planning and Procurement for Metal and Nonmetal Mine
Rescue Training Contests

Thank you for providing the draft interim report on the audit of the 2012 Mine Rescue Training contest. Prior to becoming aware of the audit, I directed that planning for the 2012 training contest be halted so that the event could be approved, planned and conducted in accordance with applicable government rules and policies. After you notified the Mine Safety and Health Administration (MSHA) of the audit, I requested that your office issue an interim report to assist MSHA in determining what steps it should take to ensure compliance with applicable rules as it moves forward with mine rescue training contests, a critical component of mine emergency operations preparedness. Based upon MSHA's review, I determined that we would not move forward with the metal and nonmetal national training contest until all issues are resolved. MSHA notified stakeholders of the decision on June 29, 2012. Because of MSHA's commitment to conduct this important and necessary training activity in accordance with law and policies, the event has been postponed until 2013.

I want to provide some context on the purpose and value of these training contests. These mine rescue training activities help prepare rescue teams for mine emergencies. The teams are made up of volunteers who engage in what likely is the most difficult and dangerous emergency response undertaken by rescue workers in the country. At times they are called upon to travel miles into underground mines following mine fires, explosions, roof falls, inundations, or other events to rescue trapped or missing miners. These team members both need and deserve the best training we have to offer to prepare them for this dangerous work. The federal government has been directly involved in the planning of these events for about 100 years, and some of the practices related to the planning of mine rescue events have been in place without any systematic examination for decades.

MSHA has already imposed greater internal funds controls and procedural improvements in connection with planning, approvals, contracting, and disbursement procedures so as to address identified shortcomings and to comply with all applicable laws and policies. This includes assuring MSHA adheres to the Department's

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Attachment

2

conference approval policy. We intend to continue our review process. We also plan to work closely with mine rescue stakeholders as we move forward.

As a factual matter, we disagree with the OIG's statement in the interim report that "MSHA failed to disclose its plan to utilize 430 hotel rooms." The approval package, which included a copy of the hotel's form contract, was sent to the Department on April 27. The form contract contained the provision which guaranteed 430 rooms to be used for all conference participants. We noted in that submission that "we are working with the Office of the Solicitor as we plan to negotiate a new contract, which will not include questionable clauses such as room upgrades and a guarantee of rooms for non-MSHA personnel."

We look forward to your ongoing efforts to assist MSHA. We will use your preliminary audit findings, and our own review observations, to improve the planning and execution of future MSHA training contests. If you have any questions concerning this response, please contact me.

U.S. Department of Labor

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



APR 10 2013

MEMORANDUM FOR ELLIOT P. LEWIS

Assistant Inspector General for 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 Interim Report No. 05-12-004-06-001: MSHA
Needs to Strengthen Planning and Procurement for Metal
and Nonmetal Mine Rescue Training Contests

Thank you for the recommendations in your interim report regarding the Metal and Nonmetal Mine Rescue Training Contests. It is important to note that the Mine Safety and Health Administration (MSHA) has imposed greater internal controls and procedural improvements in connection with the planning and execution of future training contests. MSHA's responses to your five recommendations are as follows:

- (1) Design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials.
 - On November 8, 2012, MSHA identified the Deputy Assistant Secretary for Operations as MSHA's senior travel and conference approval official for all events excluded from the Deputy Secretary conference approval memorandum (Attachment A). The Deputy Assistant Secretary for Operations will review all requests for travel or conference attendance prior to the commitment of government funds.
 - MSHA implemented the DOL conference approval processes as outlined in the Deputy Secretary's memorandum.
 - The Deputy Assistant Secretary for Operations issued a memorandum to MSHA senior leadership outlining MSHA Event Clearance Protocols (Attachment B).
 - MSHA submitted requests for blanket approval of training, local training, local conference, and state events through the DOL Conference Clearance Approval process. The Department granted approval of these requests.

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- (2) Partner with procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses.
 - MSHA's program areas and Acquisitions Management Division (AMD) are aware of the requirement to work collaboratively at the outset of the planning process for conferences to ensure that all contracts meet applicable legal and regulatory requirements. This requirement was announced to MSHA senior leadership and reinforced through MSHA's Event Clearance Protocols memorandum.
- (3) Determine contest fees and properly match fee amounts to expected costs to the Government.
 - MSHA does not have current authority to collect/retain contest fees. MSHA will not establish, collect or otherwise handle any funds/fees associated with any Mine Rescue Training Contests – this function is now the responsibility of the mining industry.
- (4) Review and approve all expected costs before they are incurred.
 - MSHA will review and approve all expected costs of MSHA employees participating in contests in collaboration with DOL's Conference Clearance Committee and MSHA's Events Clearance Protocols.
- (5) Account for all funds, whether derived from Contest fees or MSHA funds, expended in connection with the Contests.
 - MSHA will account for all federal funds. MSHA will have no future involvement with non-appropriated funds.

If you have any questions concerning this response, please contact me.

Attachments

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Appendix E

MSHA Response to Draft Report

U.S. Department of Labor

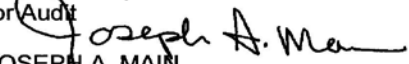
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SEP 27 2013

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM:


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

SUBJECT:

MSHA Response to OIG Draft Report – “MSHA Should Reassess and Make Improvements to Its Role in Mine Rescue Contests” No. 05-13-004-06-001

The Mine Safety and Health Administration (MSHA) reviewed the OIG Draft Report, *MSHA Should Reassess and Make Improvements to Its Role in Mine Rescue Contests* (05-13-004-06-001) and we appreciate the opportunity to provide our comments. MSHA concurs with the four recommendations, which are consistent with our ongoing efforts to reform this critical training tool for mine rescue and address the specific concerns MSHA first brought to your attention about past events.

For the benefit of both you and the public, our response includes background information on the critical role of training contests in preparing the miners, mine supervisors and civil servants that volunteer for one of the most dangerous types of rescue missions one can face. We have also included a brief synopsis of the historic role of the federal government in fostering and maintaining a competitive, national training tool for mine rescue.

As you know, MSHA and the industry have restructured the long-standing model for conducting national coal and metal nonmetal training contests. With MSHA support, industry sponsors held successful national mine rescue contests this year for both coal and metal and nonmetal teams at substantially lower cost to the government than in prior years.

We appreciate the work that the OIG has conducted on this audit and the opportunity to review the draft report. In the following attachment, MSHA has provided additional background on the mine rescue process and comment on specific areas of the report.

Attachment

Attachment

MSHA RESPONSE TO OIG DRAFT 05-13-004-06-001

Background

By law, MSHA is responsible for ensuring that each underground mine has a mine rescue capability available to respond rapidly and effectively to a mine disaster. MSHA implements and enforces standards related to mine rescue teams regarding their availability, training, and readiness to respond to mine emergencies. By judging a mine rescue team's performance during a mine rescue problem designed to simulate the real-life unexpected challenges and dangers a team would encounter, MSHA is able to evaluate the team's effectiveness and readiness, level of training, decision making skills, and the intangible but critical qualities of team cohesiveness under emergency conditions.

Also by law, mine operators are responsible for conducting mine rescue and recovery, operating under the oversight of MSHA. For this to work effectively, mine rescue requires MSHA/industry teamwork. The ability of MSHA and industry to work together is mission-critical when lives are at stake.

During rulemaking to implement the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), the record developed included information on the critical role of mine rescue contests in preparing those who serve on mine rescue teams. "Mine rescue contests are designed to sharpen skills and test the knowledge of team members who would be called on to respond to a mine emergency. Historically, mine rescue contests have provided individuals with practical, hands-on experience and are one of the most effective forms of training." 73 Fed.Reg. 7636, 7641 (2008). Mine rescue workers are generally volunteers who are miners, mine supervisors, and state and federal personnel, including MSHA personnel.

Mine rescue training contests began and have continued to be the product of a successful partnership between the federal government and the mining industry. The federal government has been directly involved in mine rescue for over a century. The first national mine rescue demonstration was held at Forbes Field in Pittsburgh, Pennsylvania in October 1911. To mark the significance of this collaboration between industry and government to protect miners, the President of the United States, William H. Taft, was in attendance, as was the U.S. Bureau of Mines Director, Joseph A. Holmes.

During the 1970s, the mining industry began to scale back participation in and support for mine rescue teams and training. Much of the responsibility for mine rescue fell to contractors and state teams. By the 1980s, the number and capacity of company-based mine rescue teams had diminished significantly. To fill this void, MSHA

expanded its responsibility for training contests in order to maintain the training and capacity necessary for the industry to respond to mine emergencies.

The Sago mine disaster in 2006 brought attention to weaknesses in mine rescue team preparedness. One of the motivations of Congress in passing the MINER Act was to promote and improve mine safety nationwide by strengthening mine rescue team preparedness.

Response to OIG Finding on MSHA Procurement Actions

Finding 2, at page 13, states that as a result of the cancellation of the 2012 contest, the Peppermill Hotel “may be entitled to collect” all or a portion of a significant cancellation penalty fee. As we notified the OIG, the Hotel has indicated that it has waived the fee so the potential for any liability is moot.

Response to Recommendations

The OIG acknowledged that MSHA has responded to the following five recommendations in the OIG’s Interim Report:

- (1) Design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials.
- (2) Partner with procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses.
- (3) Determine contest fees and properly match fee amounts to expected costs to the Government.
- (4) Review and approve all expected costs before they are incurred.
- (5) Account for all funds, whether derived from Contest fees or MSHA funds, expended in connection with the Contests.

The OIG closed all of these recommendations on September 10, 2013. MSHA imposed greater internal controls and procedural improvements related to planning and implementing mine rescue training contests. Those steps, which primarily address Recommendations 1 and 2 in this draft report, included improvements in connection with planning, approvals, contracting, and disbursement procedures to comply with all applicable laws and policies.

In addition to the recommendations in the Interim Report, the OIG has made four additional recommendations in its draft report:

- (1) Issue guidance requiring that MSHA's contracting officials are involved in procurement actions from the outset and throughout the process.**
- (2) Further develop policies and controls that ensure the contests are operated in compliance with laws and regulations or relinquish MSHA's role as organizer and host of future contests.**
- (3) Ensure the \$326,308 balance in the coal fund is secured and none of the funds are spent until a decision has been made as to the appropriate disposition of those funds.**
- (4) Request a decision from the GAO as to (a) whether MSHA could legally charge and retain fees for its mine rescue contests pursuant to the Independent Offices Appropriations Act, or any other statute, and (b) the appropriate disposition of the existing coal fund balance.**

MSHA agrees with the above recommendations. As previously noted, the Agency has already taken significant steps to address recommendations 1 and 2 as a result of similar recommendations contained in the OIG's interim report. In regard to recommendations 3 and 4, MSHA will take appropriate steps in deciding how best to secure the funds and will seek an opinion from the GAO.

Appendix F

Acknowledgements

Key contributors to this report were Nicholas Christopher (Audit Director), Mark Sanderson (Audit Manager), Cory Grode (AIC), Aaron Talbert, Richard Bryan, and Mary Lou Casazza.

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