

Agency Response

U.S. Department of Labor

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



INFORMATION

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MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: RICHARD E. STICKLER
Assistant Secretary for
Mine Safety and Health

SUBJECT: Response to OIG Draft Audit Report No. 05-08-002-06-001
"MSHA's Process for Determining the Chargeability of
Reported Fatalities Would Benefit from Additional
Controls"

Thank you for the opportunity to review your draft audit report. Your audit provides valuable context to our stakeholders regarding chargeability decisions made by MSHA officials, as well as actions MSHA can take to further enhance public confidence in the chargeability determination process. Most notably:

- None of the 152 chargeability decisions reviewed by your auditors during their review period of January 1, 2004 thru December 31, 2006 were identified as inconsistent or contradicted by available evidence. Similarly, none of the 24 chargeability decisions reviewed after MSHA revised its procedures for chargeability determinations in February 2007 were found to be inconsistent or contradicted by available evidence. This clearly validates MSHA's current process and procedures.
- Your audit did not find that *actual* chargeability decisions made by MSHA officials resulted from or were influenced by independence impairments, bias, or conflicts of interest. However, you did conclude that chargeability determinations, made by MSHA, or indeed any DOL official, could nonetheless be *perceived as* or *at risk of* independence impairments or bias.

Attached is further commentary on your audit findings within the context of your report recommendations. If you have any questions, please contact Ken Bullock (202) 693-9778 or Brent Carpenter (202) 693-9782.

Attachment

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Response to OIG Draft Audit Report No. 05-08-002-06-001

OIG Recommendation No 1: Develop and implement a standard protocol for first responders.

MSHA Response: Your audit did not demonstrate that MSHA’s first responders acted inappropriately to influence fatality investigations or chargeability determinations. However, to address potential risk and improve consistency, MSHA will amend the Accident/Illness Investigations Procedures Handbook and issue related policy guidance to more clearly define the roles and responsibilities of first responders. This will include a prohibition on making initial chargeability determinations by first responders (recommendation No. 2). In addition, pursuant to recommendations No. 5 and No. 7, this will also include appropriate evidentiary and documentation requirements.

OIG Recommendation No 2: Develop policies and procedures to require that the initial chargeability determination for all reported fatalities be made by an individual outside of the district in which the fatality occurred.

MSHA Response: Your audit did not attempt to quantify the degree of risk (likelihood) that District personnel would manipulate the chargeability determination process either in their own self-interest (performance appraisals), or because they are in the DOL/MSHA chain of command. We believe that this risk is quite low, a contention supported by your findings which did not find that any manipulation occurred. Nonetheless, to address this potential risk, District management will be instructed to transmit all available factual information and evidence to MSHA headquarters without making an initial chargeability determination or recommendation. This instruction will also be included in MSHA’s revised Accident/Illness Investigations Procedures Handbook.

OIG Recommendation No 3: Include a member on the Fatality Review Committee who is not a current or former employee of either the Department of Labor or a mine operator.

MSHA Response: Your recommendation is intended to address the perception that Fatality Review Committee members may act in a biased manner because they are DOL employees. While we do not believe members of the Fatality Review Committee are biased when making chargeability decisions (and your audit did not find evidence of actual bias) the idea of an outside party serving on the Fatality Review Committee has merit. Although not discussed in your report, a member from outside DOL with scientific and/or medical expertise could further improve the chargeability review process in those cases where the cause of death is particularly complex. MSHA would like to discuss options with the OIG as we explore inviting a party outside of DOL to participate on the Fatality Review Committee.

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OIG Recommendation No 4: Publish summary information on all reported fatalities, both chargeable and non-chargeable.

MSHA Response: Summary information on non-chargeable fatalities will be included on MSHA's web page. Additional options will also be considered.

OIG Recommendation No 5: Establish and require a standard investigative protocol for all reported fatalities.

MSHA Response: MSHA will amend the Accident/Illness Investigations Procedures Handbook to more clearly define a standard investigative protocol for all fatality investigations in a manner which addresses your findings. That said, the level of detail and complexity of a fatality investigation, whether chargeable or non-chargeable, may vary based on the nature of the fatality and the cooperation of outside parties over which MSHA does not have absolute control (e.g. family members, coroners offices, etc.)

OIG Recommendation No 6: Require that a chargeability determination be made only at the conclusion of a complete investigation and considering all pertinent evidence.

MSHA Response: Your audit did not demonstrate that investigations were incomplete to the extent that chargeability determinations were made either prematurely or in error, or that pertinent evidence was ignored during investigations. It did, however, suggest that there can be more standardization and uniformity in the investigative process.

Our corrective actions pursuant to recommendations No. 2 and No. 5 will address this recommendation

OIG recommendation No 7: Establish a system to assure that all facts and information used to reach a chargeability decision are supported by documentation.

MSHA Response: Documentation requirements will be addressed in our corrective actions pursuant to recommendations No. 5 and 6.