

**APPENDIX D**  
**AGENCY RESPONSE TO DRAFT REPORT**

U.S. Department of Labor

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



MAR 27 2006

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General  
for Audit

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

SUBJECT: Draft Report No. 05-06-003-06-001

Thank you for the opportunity to respond to your draft report entitled "Allegations of Unfair Enforcement in MSHA's District 1."

Recommendation:

*We recommend that the Acting Assistant Secretary for Mine Safety and Health evaluate whether the existing Petitions for Modification process provides an efficient method of addressing the applicability of existing regulations to varying mining techniques or whether any existing regulations require revision in light of anthracite mining methods.*

MSHA Response:

As indicated in Exhibit E of your report, Petitions for Modification to mandatory regulations in District 1 have declined significantly since their peak in 1996. We also do not anticipate an increase in Petitions in the foreseeable future since the anthracite coal mining industry is contracting severely. However, we agree that there is merit in reviewing and evaluating the work product developed by an earlier internal workgroup charged with the responsibility of examining existing regulations and their impact on anthracite mine operators. As part of this initiative, the Agency will also review and evaluate the state of Pennsylvania's current anthracite coal regulations.

MSHA does have in place a regulatory review protocol that evaluates the number of petitions vis-à-vis a particular standard. When warranted, this has resulted in the requirements stated in those petitions forming the bases for the promulgation of a new or revised standard. In fact, the Agency has proposed a direct final rule, currently under review at the Department, that eliminates the need to file petitions to use fire

extinguishers at temporary electrical installations in lieu of rock dust. MSHA will continue to review the issuance of petitions and, when warranted, take the appropriate action to eliminate the need to file petitions for regulatory relief. As indicated in your report, this could result in a more efficient and effective use of both operator and Agency resources.

cc: Ray McKinney  
John Langton  
Melinda Pon  
Ken Bullock