

APPENDIX D

AGENCY RESPONSE TO DRAFT REPORT

U.S. Department of Labor

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



SEP 25 2008

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
for Audit

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

SUBJECT: Response to Draft Report
No. 22-06-007-06-001
"MSHA Needs To Improve Controls
over Performance Data"

Thank you for the opportunity to comment on your draft report. Overall, we find this draft to be a significant improvement over the numerous discussion draft reports we have reviewed since your audit commenced in 2004.

However, this draft unfortunately also contains substantive factual and methodological errors. It also contains findings and recommendations which do not consider; 1) relevant Office of Management and Budget guidance concerning performance data, and 2) net costs versus benefits to our inspection program and the miners we serve. We address these issues in our response, and explain why we do not fully concur with your findings and recommendations.

If you have any questions concerning this response, please contact Brent Carpenter at 202-693-9782.

Attachment: MSHA's response to Draft Report No. 22-06-007-06-001

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**MSHA's response to OIG Draft Report No. 22-06-007-06-001
"MSHA NEEDS TO IMPROVE CONTROLS OVER PERFORMANCE DATA"**

OIG Finding 1: *"MSHA could not ensure mine operators and contractors provided all employment hours to support Performance Goal 3.1A."*

OIG Recommendation 1 per Finding 1: *"Mine operators report all hours worked for both employees and contractors to allow verification that all data needed to support the reported injuries and fatalities have been included."*

MSHA does not concur with this recommendation. It is correct that MSHA does not capture all work hours performed at all contractor operations. However, this does not negate the validity of MSHA's performance data pursuant to the Government Performance and Results Act (GPRA).¹ For example, in calendar year 2005 MSHA collected fatality and injury data from approximately 14,391 mine operators and non-exempt contractors — who reported over 59 million work hours. This tremendous volume of data provides MSHA management, the Congress, and the public with excellent feedback on the effectiveness of our enforcement and accident prevention efforts

Background

Since 1981, it has been MSHA's policy to exempt independent contractors from reporting employment and injury information relating to "low hazard" activities performed at mining operations. Consequently, mandatory reporting of employment and injury information now is limited to higher hazard contractor activities which involve: mine development; construction, reconstruction or demolition of mine facilities; construction of dams; excavation or earth moving, equipment installation, service or repair; material handling; drilling or blasting. Also, data collected for employment and hours worked in those activities reflect the contractor's aggregate total for all work locations and not the individual mine sites.

The General Accountability Office (GAO) issued recommendations in 2003 and 2006 that MSHA require independent contractors engaged in "high hazard" activities report hours worked per mine (rather than by the current national aggregate). The intent of GAO's recommendation was to ensure that MSHA would have the capability to compute fatality and injury incidence rates at the mine site level to

¹ We use the acronym "GPRA" to denote the full range of activities which require performance data. This includes those mandated under the Government Performance and Results Act of 1993 (e.g. performance planning, Annual Performance Reports, strategic planning), as well as related OMB requirements, including performance budgeting. OMB Circular A-11 provides federal agencies with guidance in these areas.

further monitor the effectiveness of our enforcement efforts. MSHA does not disagree that GAO's recommendations have merit from an *enforcement perspective*. In that vein, we are considering a study conducted by a private contractor on behalf of MSHA which offered a variety of options to collect additional work hour data from contractors. However, exactly how and to what extent MSHA may require contractors to report additional data in the future is undetermined at this point (we have shared the study with GAO and await additional feedback from them).² In any case, from a *GPRA perspective*, MSHA will continue to report on fatality and injury rates nationally, not by District or mine site.

Thus, while additional data on contractors in the future may serve to *enhance* MSHA's performance and enforcement data, it is not needed to evaluate goal performance for purposes of GPRA. You should note that the organization responsible for oversight of GPRA at the Department, OASAM's Center Performance Planning and Results (CPPR) has evaluated the quality of MSHA's performance data as "good." This rating was assigned by CPPR with full knowledge of GAO's outstanding recommendation to collect additional data on contractors.

One area in which MSHA can improve is to better inform stakeholders that our performance data is not comprehensive. Thus, when discussing GPRA goals and related performance data in publications such as the Department of Labor's *Annual Report on Performance and Accountability* MSHA proposes including the following statement:

"Limitations of Performance Data: Independent contractors are exempt from reporting employment and injury information relating to "low hazard" activities performed at mining operations. Mandatory reporting of employment and injury information is limited to contractor activities which involve: mine development; construction, reconstruction or demolition of mine facilities; construction of dams; excavation or earth moving, equipment installation, service or repair; material handling; drilling or blasting."³

² Substantive changes in contractor reporting requirements would require rule-making.

³ This language mirrors what the Department and MSHA already use in the *Mine Injury and Worktime, Quarterly* which reports on fatality and injury incidence rates.

OIG Recommendation 2 per Finding 1: "Mine operators submit or maintain, and mine inspectors review as part of their normal inspection process, documentation that supports the amount of hours worked by mine employees and contractors.

MSHA does not disagree with the above statement in general terms. Mine operators and contractors already submit and maintain, and inspectors review as part of the inspection process, documentation that supports the amount of hours worked by mine employees (as required by 30 CFR Part 50 and MSHA policy). However, we do not concur with this statement as a prescriptive recommendation when viewed within the context of your report findings and observations. Basically, your report is critical of: 1) the amount of time spent by an inspector during an inspection reviewing employment information for purposes of work hour verification; and 2) PART 50 audits as an adequate management control for purposes of work hour verification (presumably because there are too few PART 50 audits). Implicit in these criticisms is that such work hour verification is required for purposes of GPRA, a criticism which is not supported by the Office of Management and Budget (OMB).

Specifically, MSHA is in compliance with the data completeness and reliability requirements of OMB Circular A-11. Inexplicably, Circular A-11, which is the relevant Circular used by OMB to provide federal agencies with guidance regarding performance data pursuant to GPRA, is **not** featured in your report narrative. Rather, for reasons that are not made clear, your report instead relies on OMB Circular A-123 (which pertains in large part to financial management, not GPRA).

Thus, while your report notes imperfections in MSHA's performance data, it fails to note that OMB accepts such imperfections. To quote from Circular A-11;

"Performance data need not be perfect to be reliable, particularly if the cost and effort to secure the best performance data possible will exceed the value of any data so obtained."

Guidance provided in OMB's Circular A-11 acknowledges the limitations on Federal agencies' capacity to assure the quality of data received from non-Federal sources (e.g. mine operators and contractors). The Circular does not require an independent capacity for verifying or validating performance data received from third-party sources, and instructs agencies to be mindful of the costs and anticipated benefits of improving the quality of program information which meets decision-makers' needs.

Your report is also void of context in terms of noting the compelling reasons why MSHA does not dedicate more significant mine site resources towards work hour verification(s). As we discussed with your auditors, MSHA has finite resources to dedicate to inspections, and these resources must be prioritized. Our legal mandate is to inspect every underground mine at least four times per year, and every surface mine at least two times per year. In CY 2005, this meant roughly 22,000 "regular

inspections.” In addition, MSHA has other inspection mandates such as spot inspections, hazardous condition complaint investigations, and discrimination complaint investigations. MSHA also conducts supplementary full inspections apart from the Mine Act’s requirements. All told, MSHA conducted approximately 114,000 inspections in CY 2005. This inspection activity directly effects the safety and health of miners.

This is not to say that Part 50 audits, or mine site reviews by inspectors of related Part 50 documentation, do not play a role in our inspection program. However, Part 50 data verification must be balanced with our extremely important safety and health enforcement responsibilities. This is indeed why (as noted in your report) the Part 50 audits are discretionary.

OIG Finding 2: *“MSHA did not have complete and reliable data to support the testing to ensure noise exposure did not exceed established limits.”*

OIG Recommendation per Finding 2: *Controls be developed and put in place to adhere to procedures that require systematic and regular entry of noise sample data into both the Metal Nonmetal Management Information System (MNMIS) and into the Coal Mining Safety and Health Information System (CMIS).*

We concur in part with this recommendation to strengthen controls for noise sampling data. As noted in your report, MSHA is in the process of improving controls by revising the Metal and Nonmetal General Inspection Procedures Handbook. In the section titled “Off-Site Documentation,” MSHA has inserted a sentence that states: “Inspectors are responsible for verifying that the data they have reported has been entered into the MSHA database accurately and can be retrieved.” Inspectors will be held responsible for this verification by their supervisors and managers.

However, your report does not note what, if any, additional controls may be needed. It also does not identify with any precision the scope of any problems found. For example, what program area, Coal or Metal Nonmetal, needs additional controls and what deficiencies were found in each program? We would appreciate this type of information in your final report so that suitable controls can be developed and implemented, if necessary. Statements such as in “a number of cases” MSHA did not properly record noise sample results, or in “other cases” noise sample and inspections dates did not “match” simply are not adequate without more information and context.

Additional Commentary

In this section we will discuss additional issues in your draft report. In some cases, these involve basic factual errors, while in others we provide needed context and clarification regarding your findings and observations.

1. **OIG Commentary** (Executive Summary, p.3): *"The Office of Inspector General (OIG) conducted an audit to determine the completeness and reliability of calendar year (CY) 2003 data reported by the Mine Safety and Health Administration (MSHA) in the Department of Labor's (DOL) Annual Performance and Accountability Report (PAR). MSHA compiled the data, computed, and reported the final results in the DOL PAR as performance goals 3.1A and 3.1B."*

MSHA Response: MSHA does not report calendar year results for GPRA purposes. Performance goals 3.1A and 3.1B were reported by fiscal year in the Department's Annual Performance and Accountability Reports. Also note that performance goal 3.1A contained a fatality as well as an all-injury measure.

2. **OIG Commentary** (page 6): *"MSHA did not have adequate monitoring procedures in place concerning the employee hours worked data submitted by mine operators on MSHA Form 7000-2."*

MSHA Response: During the course of the audit, we repeatedly informed OIG auditors of additional controls and monitoring procedures which were not discussed in this draft report. These include audits of non-respondent lists, and end-of-year data mailer verifications.

3. **OIG Commentary** (page 6): *"MSHA did not have a complete universe of mine contractors, and mine operators were not required to report contractor hours..."*

MSHA Response: MSHA does have a complete listing of contractors, pursuant to contractor reporting requirements. The fact is that contractors who perform no work during a quarter are not required to report "0" hours. In addition, it is a requirement that contractors, rather than mine operators, report work hours.

4. **OIG Commentary** (page 6 footnote): *"During our audit, both Coal and Metal used a separate management information system (MIS) for data entry and reporting of MSHA Form 7000-1 and 7000-2 data. By the end of our audit, MSHA combined the data entry and reporting for its enforcement programs into one common information platform – the MSHA Standardized Information System (MSIS)."*

MSHA Response: To clarify, MSHA's Office of Injury and Employment Information (OIEI)⁴ performs the data entry for 7000-1 and 7000-2 data. Coal and Metal use MSIS as consumers of this information.

5. On various pages, the term "inspection" is used erroneously. For example, on page 7 the report states "*Since the MSHA District and Field Offices did not correctly record each noise inspection, MSHA could not validate that it provided the most accurate information used for the noise standards included in the performance goal.*" Please note that the word "sample" should be used in place of "inspection." Sampling is one aspect of an overall safety and health inspection.

⁴ Your report refers to this office as OIE. Please note that "OIEI" is the correct acronym.