

U.S. Department of Labor

Office of Inspector General—Office of Audit

MINE SAFETY AND HEALTH ADMINISTRATION



**MSHA HAS TAKEN STEPS TO DETECT AND
DETER UNDERREPORTING OF ACCIDENTS AND
OCCUPATIONAL INJURIES AND ILLNESSES, BUT
MORE ACTION IS STILL NEEDED**

Date Issued:
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March 31, 2014
05-14-001-06-001

BRIEFLY...

Highlights of Report Number 05-14-001-06-001, issued to the Assistant Secretary for Mine Safety and Health.

WHY READ THE REPORT

MSHA collects and analyzes accident and injury data reported by miners to mine operators. Reports of accidents and injuries help MSHA focus its resources on mines that have elevated accident and injury rates to better protect miners.

This report highlights actions MSHA should take to expand upon and enhance its knowledge of underreporting and to develop and implement policy guidance on operator programs relating to the reporting of work-related injuries or illnesses.

WHY OIG CONDUCTED THE AUDIT

Because mines with high injury rates may receive additional attention from MSHA, some mine operators may adopt policies that could be perceived as discouraging injury and illness reporting, potentially resulting in adverse consequences for miners who file injury reports. Therefore, our audit objective was to answer the following question:

Did MSHA take appropriate actions to detect and deter underreporting of accidents and occupational injuries and illnesses at coal and metal/nonmetal mines?

READ THE FULL REPORT

To view the report, including the scope, methodologies, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2014/05-14-001-06-001.pdf>.

March 2014

MSHA HAS TAKEN STEPS TO DETECT AND DETER UNDERREPORTING OF ACCIDENTS AND OCCUPATIONAL INJURIES AND ILLNESSES, BUT MORE ACTION IS STILL NEEDED

WHAT OIG FOUND

MSHA can do more to strengthen its process for detecting and deterring underreporting of injuries and illnesses in the mining industry.

MSHA uses three primary methods to detect and deter underreporting: civil penalties, enhanced scrutiny and enforcement, and publication of the names of violators. Two recently decided court cases enhanced MSHA's ability to review medical and personnel records in mine operators' custody during targeted audits. However, MSHA should expand upon and enhance its knowledge of underreporting to better target its efforts to identify which mines are the most likely to underreport and which types of injuries are the most likely to be underreported.

MSHA has not issued guidance on mine operator practices, which may discourage reporting of injuries and illnesses by miners. Some mine operators have implemented a variety of policies, programs, and practices related to injury/illness reporting, such as progressive discipline measures for repeated reports of injuries, post-injury drug testing, and incentive programs. Some miners perceive such programs as disincentives to reporting injuries and illnesses because they introduce potentially adverse consequences for miners who are involved in and who report accidents and injuries.

WHAT OIG RECOMMENDED

The OIG recommended the Assistant Secretary for Mine Safety and Health direct MSHA to expand upon and enhance MSHA's knowledge of underreporting by deriving better estimates of its overall occurrence. OIG also recommended the Assistant Secretary develop and implement policy guidance on operator programs relating to the reporting of work-related injuries or illnesses, addressing retaliation against miners for reporting, and encouraging miner reporting of work-related injuries or illnesses.

The Assistant Secretary agreed with our recommendations and stated that MSHA will use the audit results to continue addressing the underreporting of accidents, injuries, and illnesses in the mining industry.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31 2014

Inspector General's Report

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The Office of Inspector General's (OIG) Office of Audit conducted a performance audit of the Mine Safety and Health Administration's (MSHA) actions to detect and deter underreporting of accidents and occupational injuries and illnesses during calendar years (CY) 2010 to 2012.

MSHA is charged with preventing death, disease, and injury from mining and with promoting safe and healthful workplaces for the nation's miners. MSHA collects and analyzes accident and injury data reported by miners to mine operators. Because mines with high injury rates may receive additional attention from MSHA, some mine operators may adopt policies that could be perceived as discouraging injury and illness reporting, potentially resulting in adverse consequences to miners who file injury reports.

Because of ongoing concerns with this issue, we conducted an audit to answer the following question:

Did MSHA take appropriate actions to detect and deter underreporting of accidents and occupational injuries and illnesses at coal and metal/nonmetal mines?

We conducted audit work at MSHA's headquarters located in Arlington, VA. We also interviewed key stakeholders, including representatives from MSHA's districts, the Department of Labor's (DOL) Chief Evaluation Office (CEO), Occupational Safety and Health Administration (OSHA), industry organizations representing the interests of mine operators, a mine operator, labor unions, and miners.

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

Background

Title 30 of the Code of Federal Regulations (30 CFR), Part 50, authorized by The Federal Mine Safety and Health Act of 1977, implemented MSHA's authority to obtain and utilize information pertaining to accidents, and occupational injuries and illnesses occurring or originating in mines.

MSHA's policies and procedures require inspectors to conduct an evaluation of a mine's compliance with the Part 50 reporting requirements during every regular safety and health inspection. Inspectors are required to issue a citation for each separate instance of a failure to report an accident or occupational injury or illness. Most Part 50 citations for violations result in a nominal penalty averaging approximately \$100.

More than 25 years ago, the Government Accountability Office (GAO) issued two audit reports dealing with MSHA's actions to detect and deter underreporting in the mining industry. Specifically, in March 1987, GAO issued a report titled *Inspector Hiring, Penalty Assessments, and Injury Reporting*, in which it found that MSHA assessed \$31,388 in penalties against mine operators for failing to report injuries in 1986. The increase in the 1986 assessments of \$3,600 over the previous 4 years combined was due to a policy change requiring a citation for each instance of a failure to report an injury, rather than citing multiple instances of underreporting as one instance. In addition, GAO issued another report in September 1987 titled *Federal Efforts to Improve Inspections and Injury Reporting*, in which it found that the compliance audits MSHA used to verify the accuracy of reported injury data had limited effectiveness in detecting underreporting by mine operators. This was the case because only 1 in every 39 mines was audited each year, audit quality varied, and inspectors seldom reviewed all available information.

Results

MSHA has taken steps to detect and deter underreporting of accidents and occupational injuries and illnesses in the mining industry. Specifically, MSHA has identified underreporting during audits, inspections, and other non-audit activities it conducts. During 2000-2012, MSHA found over 9,000 underreporting violations, resulting in over \$1 million in proposed civil penalties. MSHA uses 3 primary methods to detect and deter underreporting: civil penalties, enhanced scrutiny and enforcement, and publication of the names of violators. Two recently decided court cases enhanced MSHA's ability to review medical and personnel records in mine operators' custody during targeted audits. Finally, at MSHA's request, a private contractor conducted a program evaluation to examine the level of accuracy and completeness of injury/illness reporting in the mining industry and to identify approaches that MSHA could implement to better target underreporting.

Notwithstanding these efforts, MSHA can do more to strengthen its process for detecting and deterring underreporting of injuries and illnesses. MSHA needs to

enhance its current knowledge of underreporting by deriving better estimates of the overall prevalence, magnitude, and distribution of underreporting, which we will refer to collectively as ‘occurrence of underreporting’ in the rest of this report. MSHA should also issue policy guidance designed to address safety policies, programs, and practices that may discourage reporting of injuries and illnesses by miners.

Objective — Did MSHA take appropriate actions to detect and deter underreporting of accidents and occupational injuries and illnesses at coal and metal/nonmetal mines?

MSHA has taken several steps to detect and deter underreporting, but more action is needed.

MSHA attempts to detect underreporting of injuries and illnesses in three ways:

- Regular safety and health inspections and other non-audit activities,¹
- Part 50 audits,² and
- Pattern of Violations (POV) audits.³

Using these methods, MSHA detected 9,292 Part 50 underreporting violations that occurred from CYs 2000 to 2012, resulting in over \$1 million in proposed civil penalties. MSHA also uses 3 primary methods to deter underreporting of accidents and occupational injuries and illnesses:

- Assessment of civil penalties,⁴
- Audits conducted during a POV screening,⁵ and
- Publication of violators.⁶

MSHA has publicized that the mining industry has had the lowest fatality and injury rates since it began calculating these rates in 1983. In 2012, 36 miners died on the job

¹ Regular safety and health inspections include an evaluation of a mine’s compliance with the employee and injury reporting requirements under 30 CFR, Part 50. During these inspections, MSHA has issued citations for violations of not reporting or underreporting injuries and illnesses.

² Part 50 audits are conducted to assess the accuracy of a mine’s accident, injury, illness, and employment records in compliance with 30 CFR, Part 50. MSHA district managers have the authority to conduct Part 50 audits on a portion of mines assigned to their district. Part 50 audits may also be the result of district manager discretion or the result of miner complaints. Districts also conduct Part 50 audits at mines where a fatal accident occurred if they have not conducted one in the previous 12 months.

³ MSHA has a POV process in place where mines with chronic and persistent violations of significant health and safety regulations can be selected for further review and ultimately a Part 50 audit. POV audits are Part 50 audits conducted by MSHA as part of its POV program to determine if mines are evading MSHA’s POV screening criteria by inaccurately reporting employee hours or the number of injuries.

⁴ While most Part 50 violations for underreporting have resulted in an average nominal penalty of approximately \$100, some of these citations for violations can result in significantly higher penalties if they were the result of what MSHA terms “high negligence.”

⁵ Mines in POV status receive heightened scrutiny and enforcement.

⁶ MSHA has issued news releases following the conclusion of its POV audits publicly identifying by name the mines and operators that engaged in the practice of underreporting.

and the fatality rate was .0110 deaths per 200,000 hours worked. This represented a 53 percent decrease in the fatality rate for both coal and metal/nonmetal mines since 2010. In addition, the rate of reported non-fatal injuries was 2.56 per 200,000 hours worked in 2012, which represented a 9 percent decrease for both coal and metal/nonmetal mines since 2010. Recently, MSHA has undertaken a number of actions related to its Part 50 audits, including revisions to its auditing process and training programs, better targeting, and enhanced penalties. On October 13, 2011, MSHA issued a news release reporting that it found 76 underreported or unreported injuries in 19 out of 39 mines it audited.

An integral part of detecting underreporting is MSHA's access to all available records, including those held by mine operators. In the past, mine operators sometimes refused MSHA access to employee medical and personnel records that related to accidents, injuries, and illnesses. Without these records, MSHA faced increased challenges in detecting underreporting. In April 2013, the United States Court of Appeals for the Seventh Circuit upheld a May 24, 2012 decision of the Federal Mine Safety and Health Review Commission (FMSHRC) that had affirmed citations and orders issued by MSHA to mine operators on November 9, 2010. These mine operators had refused to produce miners' payroll and personnel records in connection with a Part 50 audit.

United States Court of Appeals for the Seventh Circuit Rules MSHA May Require Production of Miner Medical and Personnel Records in Possession of Mine Operators

On April 26, 2013, the Seventh Circuit issued its decision in *Big Ridge, Inc. v. Federal Mine Safety and Health Review Commission*, 715 F. 3d 631 (7th Cir. 2013). The case concerned the refusal by two mines operated by Peabody Energy Company to turn over employee medical and personnel records that related to accidents, injuries, and illnesses occurring at the mines. Peabody challenged a FMSHRC decision requiring production of the disputed records on numerous grounds. Peabody argued, among other things, that: (a) MSHA was not authorized to demand production of materials and information relating to accidents, illnesses, and injuries that were not specifically required to be maintained by a mine operator pursuant to the Mine Act; (b) requiring such production violated the Fourth Amendment prohibition against unreasonable searches and seizures; and (c) MSHA's procedures for proposing and assessing penalties for non-compliance violated the Fifth Amendment right to due process.

In rejecting Peabody's arguments, the Court concluded, among other things: (a) under Section 103(h) of the Mine Act and 30 CFR, Part 50.41, MSHA may require mine operators to produce employee medical and personnel records to verify compliance with their reporting requirements, despite the fact that the Mine Act does not specifically require mine operators to maintain those records; (b) the requirements of 30 CFR, Part 50.41 do not exceed MSHA's authority under the Mine Act; (c) the requirement to produce the medical and personnel records does not violate mine operators' Fourth Amendment right against unreasonable searches and seizures; (d) the requirement that the mine operators produce the medical and personnel records does not violate the privacy rights of the employees; (e) the procedures by which MSHA

proposes and assesses penalties for failure to comply with an order to produce records, including daily penalties prior to judicial review of the underlying violation, does not violate the Fifth Amendment right to due process; and (f) MSHA's records request did not impermissibly conflict with other federal or state laws.

It should be noted that the Big Ridge case constitutes binding legal precedent only in the Seventh Circuit. If courts in jurisdictions other than the Seventh Circuit were to reach a different conclusion with respect to the scope of MSHA's authority, then different rules would apply in different parts of the country unless and until any conflicts between the jurisdictions are resolved by the United States Supreme Court. However, because FMSHRC ruled in MSHA's favor, and its rulings apply to all jurisdictions, MSHA expects the Administrative Law Judges who hear similar cases to follow the Commission's precedent in all cases before them.

Eastern Research Group (ERG) Study Results May Be Used to Better Target MSHA Audits

Notwithstanding its ongoing detection and deterrence activities, MSHA did not have knowledge of the occurrence of underreporting at the level of granularity needed to detect and deter underreporting across the mining industry. This was partly attributable to the lack of studies of the subject, complicated by the fact that data regarding underreporting were difficult to capture. Consequently, MSHA had only a rough estimate of underreporting, but no information on which mines were the most likely to underreport and which types of injuries were the most likely to be underreported. This type of data would allow MSHA to better target its enforcement efforts. Consequently, in its continuing efforts to enhance the methodology it uses to detect underreporting of accidents and injuries, MSHA commissioned a study that attempted to quantify the occurrence of underreporting and isolate indicators that MSHA could use to better target its detection efforts.

At MSHA's request, the Office of the Assistant Secretary for Administration and Management entered into a contract with ERG, a private contractor, to conduct a program evaluation. The purpose of this evaluation was to examine the level of accuracy and completeness of injury/illness reporting in the mining industry and to identify feasible improvement approaches that MSHA could implement.

ERG proposed that MSHA expand its knowledge of underreporting by recommending it perform random audits to capture reliable injury and illness information from mines, and further perform detailed analyses of audit results to better target future audits. MSHA acknowledged that the difficulties it encountered in completing the ERG evaluation have persuaded the agency that the only way to obtain a relatively reliable estimate of underreporting would be to conduct audits across all sectors of the mining industry. However, MSHA is concerned that this approach is too resource-intensive to be feasible. Specifically, MSHA officials state that while the question of the extent and magnitude of underreporting is an important one, the cost of obtaining the answer through auditing of mines randomly selected through sampling cannot be justified in the

current budgetary climate. The National Institute for Occupational Safety and Health told the OIG that it has offered to provide part of the funding needed to support the development of an intensive audit-focused effort for determining the occurrence of underreporting in one sector of the mining industry (underground metal mines).

MSHA should consider expanding upon and enhancing its knowledge of underreporting to better target its efforts by deriving better estimates of its overall occurrence. This could help reveal which mines are the most likely to underreport and which types of injuries are the most likely to be underreported. It could also help explore whether MSHA can glean any indicators or red flags of underreporting from Part 50 disclosures that could guide and focus future enforcement.

MSHA has not issued guidance on mine operator practices which may discourage reporting of injuries and illnesses by miners.

MSHA has taken a number of actions to protect miners from discrimination for exercising their rights and to assist miners and their representatives in understanding their rights under the Mine Act, such as investigating discrimination complaints by miners who claim retaliation for reporting accidents and hazards and establishing new review policies for discrimination complaints to ensure consistency. In addition, MSHA has conducted education, training programs, and outreach efforts during inspections, training program evaluations, and audits to educate miners about their rights under the Mine Act. This included providing miners with materials highlighting their statutory rights and noting MSHA's toll free hotline for miners to report violations, hazardous conditions, and imminent dangers.

MSHA has just begun to address operator programs that some miners and union representatives view as discouraging injury/illness reporting by miners. MSHA is currently engaged in developing a strategy in conjunction with the Office of the Solicitor of Labor to address operator programs and practices that MSHA believes may discourage reporting. MSHA agrees that a policy statement and outreach on this issue may be appropriate, but wants to ensure any such approach receives appropriate legal review. The OIG believes MSHA should make it a priority to develop policy in this area.

Some mine operators have implemented a variety of policies, programs, and practices related to injury/illness reporting, such as progressive discipline measures for repeated reports of injuries, post-injury drug testing, and incentive programs. Operators instituted these programs as incentives for miners to pay more attention to safety. However, some miners perceive such programs as disincentives to reporting injuries and illnesses because they introduce potentially adverse consequences for miners who are involved in and who report accidents and injuries.

The OIG conducted interviews with miners from several mines to gain insight into factors that may influence them not to report accidents or injuries, and approaches that mine operators take with respect to injury reporting. During these interviews, miners shared with us their personal stories, including examples of how they had been injured,

whether they felt comfortable reporting their injury, their reasons for not reporting, and the results of reporting work-related injuries and illnesses. They also provided their perspective on the design and operation of certain operator policies, programs, and practices related to injuries and the impact such policies, programs, and practices have on miners' willingness to report injuries and on miner morale. The miners, union officials, and MSHA staff members whom the OIG interviewed generally believed that some of these programs discourage miners from reporting incidents, accidents, injuries, illnesses, and hazards.

Mine operators benefit from having low rates of reported injuries/illnesses. High rates of injury or illness can increase workers' compensation expenses and may single out mines for increased enforcement by MSHA. The challenge facing MSHA is to ensure that lowered rates of reported injuries/illnesses result from improved safety practices rather than underreporting.

The OIG enlisted the assistance of the United Steelworkers to arrange anonymous one-on-one interviews with 50 union and nonunion miners in 5 local union offices located in Minnesota. We asked each of these miners to share their stories and experiences relating to any barriers they may have faced in terms of reporting work-related injuries or illnesses. This testimonial evidence indicates that a variety of mine operator policies and strategies may potentially discourage miners and mine operator employees from reporting injuries and illnesses. Information gathered during these interviews with miners and their representatives presented examples of how, absent guidance from MSHA, it can be unclear whether a mine operator's policies actually foster safety or merely encourage underreporting. For example:

- Injury discipline policies and practices with names like the "Accident Repeaters Program" may discipline miners who report work-related injuries or illnesses, not for conduct, but for the mere fact they became injured, thereby potentially discouraging them from reporting injuries and illnesses. Miners may perceive the discipline as punishment that serves to discourage injury/illness reporting. Mine operators, on the other hand, may believe such programs are an incentive for miners to be more careful on the job, thereby reducing the actual injury/illness rate.
- Mine operators' programs may also discipline miners for the "untimely" reporting of injuries/illnesses. Some miners indicated during our interviews that they were reluctant to report an incident unless and until an injury had manifested itself. It could be argued, however, that this mentality is counter-productive in that improving mine safety requires reducing the number of incidents that occur regardless of whether an injury occurs. If incidents that do not result in injuries are not reported, mines may appear safer than they actually are.
- Some safety incentive programs reward groups of miners for low or no reported injury/illness within the group. Programs such as this may be

seen as introducing an element of peer pressure from fellow miners not to report injuries because the incentives are awarded as a group. On the other hand, the result could be peer pressure to follow safe practices in the mines.

- At least one miner reported that post-injury drug testing had delayed treatment for his injury. MSHA's policies should ensure that legitimate post-injury drug testing may not adversely impact the availability of prompt medical care for injured miners.

The OIG spoke with organizations representing the mining industry, including the National Mining Association (NMA), which represented 278 coal and metal/nonmetal operators nationwide. The NMA representative told the OIG he believed progressive discipline programs are necessary where efforts at educating miners about safety have failed. He also indicated he did not know the degree to which production incentive programs have encouraged underreporting due to peer pressure among miners. The NMA representative noted that the mining industry is having discussions regarding the role of behavior in safety performance. In this regard, he said a number of operators have established behavior-based safety observation programs where safety managers working in collaboration with miners anonymously observe other miners while they are working (peer to peer observation) to identify and report potential hazards to management. According to him, these programs are intended to be educational, not punitive.

In addition, we attempted to reach mine operators to gain their insight and perspective on this topic. However, despite our efforts, we were able to interview only one mine operator. This national operator confirmed that the company had in place progressive discipline, safety incentive, and post-accident drug testing programs, and also shared with the OIG that he believed it was too early to judge the effectiveness of these programs in reducing injury/illness rates.

OSHA Memoranda

While MSHA's authority is not the same as OSHA's, it is useful to compare OSHA's actions with respect to programs that may discourage injury or illness reporting with MSHA's.

OSHA has recently begun to address programs that may discourage reporting. In response to the growing documentation of employer suppression of workers' injury reports, OSHA issued a memorandum in March 2012 titled, "Employer Safety Incentive and Disincentive Policies and Practices," that stated:

"Reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination."

This memorandum outlined OSHA's position regarding employer practices that discourage workers from reporting job injuries and illnesses. It explained workers' legal protections for reporting under Section 11(c) of the Occupational Safety and Health Act, other whistleblower programs (such as the Federal Railway Safety Act) and under OSHA's Recordkeeping Rule (Title 29 CFR, Part 1904). The OSHA memorandum provided examples of employer policies and practices that could violate OSHA Section 11(c), other whistleblower protections, or OSHA's Recordkeeping Rule. Some examples included:

- Policies of taking disciplinary action against employees who are injured on the job, regardless of the circumstances surrounding the injury;
- Employees who report an injury or illness are disciplined, and the stated reason is that the employees have violated an employer rule about the time or manner for reporting injuries and illnesses;
- Employees report an injury, and the employer imposes discipline on the grounds that the employee violated a safety rule, but this is only a pretext for retaliation. This can be the case where the employer does not impose discipline for violations of the rule where there is no injury, and particular concern arises when the employer disciplines the employee on the grounds that the injury resulted from the violation of a vague safety rule such as a requirement that employees "maintain situational awareness" or "work carefully." These vague standards may be manipulated and used as a pretext for retaliation; and
- Employers establish programs that unintentionally or intentionally provide employees an incentive to not report injuries, such as entering all employees who have not reported an injury or illness in the previous year in a drawing to win a prize. Similarly, a team of employees might be awarded a bonus if no one from the team has reported an injury or illness over some period of time.

OSHA also suggested in this memorandum that the potential for unlawful discrimination under all of these policies may increase when management or supervisory bonuses are linked to lower reported injury rates.

In addition, on June 29, 2011, OSHA Assistant Secretary David Michaels issued a memorandum to regional administrators, directorates, and freestanding offices administering OSHA's Voluntary Protection Program (VPP), which is an OSHA program providing official recognition for the outstanding efforts of employers and employees who have achieved exemplary occupational safety and health. That memo stated OSHA may not approve VPP application from employers that maintain "incentive programs containing provisions that could discourage injury and illness reporting." The memo further explained that acceptable incentive programs encourage or reward workers for reporting injuries, illnesses, near-misses, or hazards; or otherwise encourage worker

involvement in the safety and health system. This memorandum outlined both incentives that promote injury and illness reporting and worker involvement, and disincentives that discourage injury and illness reporting and worker involvement. The memorandum provided that:

- A positive incentive program encourages or rewards workers for reporting injuries, illnesses, near misses, or hazards; and/or recognizes, rewards, and thereby encourages worker involvement in the safety and health management system. Examples of such positive incentives include providing tee shirts to workers serving on safety and health committees; offering modest rewards for suggesting ways to strengthen safety and health; or throwing a recognition party at the successful completion of company-wide safety and health training; and
- An incentive program that focuses on injury and illness numbers often has the effect of discouraging workers from reporting an injury or illness. When an incentive program discourages worker reporting or, in particularly extreme cases, disciplines workers for reporting injuries or hazards, problems remain concealed, investigations do not take place, nothing is learned or corrected, and workers remain exposed to harm. Disincentives to reporting may range from awarding paid time off to a unit that has the greatest reduction in incidence rates to rewarding workers with a pizza party for achieving an injury/rate reduction goal or maintaining an injury- and illness-free worksite for a period of time.

The OIG believes MSHA needs to take more action to encourage employers to create a culture of reporting injuries/illnesses and to address retaliatory and injurious employer practices. Specifically, MSHA can introduce policy guidance that directly addresses operator policies, programs, and practices that discourage the reporting of injuries and illnesses and in so doing adversely affect the safety and health of miners.

Recommendations

We recommend that the Assistant Secretary for MSHA:

1. Expand upon and enhance MSHA's knowledge of underreporting by deriving better estimates of its overall occurrence.
2. Develop and implement policy guidance on operator programs relating to the reporting of work-related injuries or illnesses, addressing retaliation against miners for reporting, and encouraging miner reporting of work-related injuries or illnesses.

MSHA'S Response

The Assistant Secretary for Mine Safety and Health accepted the recommendations in the audit report and stated that MSHA will use the audit results to continue to address the problem of underreporting of accidents, and occupational injuries and illnesses in the mining industry. MSHA will consider sponsoring or participating in additional studies of underreporting based on resources, feasibility, and efficacy. Once MSHA has completed policy development and legal review, the agency will transmit appropriate guidance to the mining community on operator programs relating to the reporting of work-related injuries or illnesses. See Appendix C for MSHA's entire response.

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



Elliot P. Lewis
Assistant Inspector General
for Audit

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Appendices

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Objective, Scope, Methodology, and Criteria

Objective

We conducted an audit to answer the following question:

Did MSHA take appropriate actions to detect and deter underreporting of accidents and occupational injuries and illnesses at coal and metal/nonmetal mines?

Scope

We reviewed MSHA's actions, including policies and activities to detect and deter underreporting of accidents and occupational injuries and illnesses during CYs 2010 to 2012. We conducted audit work at MSHA's headquarters located in Arlington, VA.

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 results and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our results and conclusions based on our audit objective.

Methodology

We interviewed key stakeholders, including seven MSHA district managers, two CEO officials, three OSHA officials, four industry organization representatives, one safety manager representing a mine operator, three labor union representatives, five members of an independent technical working group comprising non-MSHA mine safety and health experts for the ERG evaluation, and 50 metal non/metal miners. We further reviewed the solicitation and contract administration documentation associated with the ERG report for the evaluation of Part 50 reporting of mine injuries and illnesses.

Data Reliability

To determine the reliability of MSHA's Part 50 data, we relied primarily on the results of data reliability testing performed during the OIG's audit of MSHA's POV authority (*In 32 Years, MSHA Has Never Successfully Exercised Its Pattern of Violations Authority*, Report No. 05-10-005-06-001, issued September 29, 2010). We concluded the data were sufficiently reliable to be used in meeting our objective.

Internal Control

In planning and performing our audit, we considered MSHA's internal controls that were relevant to our audit objective by obtaining an understanding of those controls, and assessing control risk for the purpose of achieving our objective. 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 whole. Our consideration of MSHA's internal controls relevant to our audit objective would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal controls, noncompliance may occur and not be detected.

Criteria

- Federal Mine Safety and Health Act of 1977
- 30 CFR, Part 50
- 30 CFR, Part 100
- Citation and Order Writing Handbook for Coal mines and Metal and Nonmetal Mines (March 2008)
- Metal and Nonmetal General Inspection Procedures Handbook (October 2009)
- Program Policy Manual, Volume III, Part 50 (February 2003)
- Program Policy Letter, No. P11-V-05 (effective March 16, 2011)
- Program Information Bulletin, No. P11-35 (issued on May 9, 2011)

Appendix B

Acronyms and Abbreviations

CEO	Chief Evaluation Office
CFR	Code of Federal Regulations
CY	Calendar Year
DOL	Department of Labor
ERG	Eastern Research Group
FMSHRC	Federal Mine Safety and Health Review Commission
GAO	Government Accountability Office
MSHA	Mine Safety and Health Administration
NMA	National Mining Association
OIG	Office of Inspector General
OSHA	Occupational Safety and Health Administration
POV	Pattern of Violations
Seventh Circuit	United State Court of Appeals Seventh Circuit
VPP	Voluntary Protection Program

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MSHA Response to Draft Report

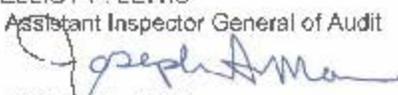
U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22201-3838



MAR 25 2014

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General of Audit

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

SUBJECT: Response to OIG Draft Audit Report: "MSHA Has Taken Steps to Detect and Deter Underreporting of Accidents and Occupational Injuries and Illnesses, But More Action Is Still Needed" (05-14-001-06-001)

Thank you for the opportunity to review your Draft Audit Report referenced above. The Mine Safety and Health Administration (MSHA) will use the audit results to continue to address the problem of underreporting of accidents, injuries, and illnesses in the mining industry.

We appreciate the OIG's recognition of the steps MSHA has already taken to determine the extent of underreporting of accidents, injuries, and illnesses in the mining industry, as well as our efforts to detect and deter underreporting. As the OIG points out, MSHA identifies potential underreporting through regular safety and health inspections, Part 50 audits, and Pattern of Violations (POV) audits. MSHA revised its auditing methods in 2010 to improve the effectiveness of POV audits, and incorporated those methods into its auditing procedures. MSHA also conducts education, training programs, and outreach efforts to educate miners about their rights under the Mine Act.

As we explained in our exit conference for this audit, MSHA is developing a strategic approach to addressing underreporting. In addition to the steps it has already taken, MSHA is preparing educational materials for both miners and operators on compliance with Part 50 reporting requirements, including best practices in ensuring accurate reporting and the rights of miners to report injuries. MSHA has also been working with the Occupational Safety and Health Administration (OSHA) to learn about OSHA's policies on injury and illness reporting and identify policies suitable for addressing the

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underreporting of mining-related accidents, injuries and illnesses. Finally, MSHA is collaborating with the Office of the Solicitor to ensure any policies it develops are grounded in the Agency's enforcement authority under the Mine Act.

Below are specific responses to your recommendations.

OIG Recommendation No. 1: *Expand upon and enhance MSHA's knowledge of underreporting by deriving better estimates of its overall occurrence.*

MSHA agrees with this recommendation. It is in the best interest of health and safety in mining to have accurate information on the incidence of accidents, injuries, and occupational illnesses. We also agree with the OIG that underreporting is difficult to study in large part due to the lack of verifiable data on the subject. MSHA will consider sponsoring or participating in additional studies of underreporting based on resources, feasibility and efficacy.

OIG Recommendation No. 2: *Develop and implement policy guidance on operator programs relating to the reporting of work-related injuries or illnesses, addressing retaliation against miners for reporting, and encouraging miner reporting of work-related injuries or illnesses.*

MSHA agrees with this recommendation. As you stated in your report, "MSHA is currently engaged in developing a strategy in conjunction with the Office of the Solicitor of Labor to address operator programs and practices that MSHA believes may discourage reporting." MSHA also is consulting with the Occupational Safety and Health Administration on OSHA's policies in this area. Once thorough policy development and legal review have been completed, MSHA will transmit appropriate guidance to the mining community. MSHA will also develop educational tools to assist mine operators with Part 50 reporting requirements.

I appreciate the opportunity to respond to this Draft Report.

Appendix D

Acknowledgements

Key contributors to this report were Nicholas Christopher (Audit Director), S. Marisela Sookraj (Audit Manager), Donald Evans, Eric Rann, Richard Bryan, Elizabeth Garcia, David Hutner, and Mary Lou Casazza.

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