

U.S. Department of Labor

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



MAR 25 2010

The Honorable Tom Harkin
Chairman
Subcommittee on Labor, Health and Human Services,
Education, and Related Agencies
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Senator Harkin:

In a report accompanying the "Departments of Labor, Health and Human Services, Education and Related Agencies Appropriations Act, 2010," the Senate Committee on Appropriations requested that the Department of Labor (DOL) submit a written report to the Senate Appropriations Committee concerning issues within the jurisdiction of the Mine Safety and Health Administration (MSHA), as described on page 31 of Senate Report 111-66:

The Committee requests that MSHA prepare and provide a report to the Committee, no later than March 31, 2010, on staffing and budget resources expended or planned for fiscal years 2009 and 2010; findings and recommendations of [Office of Accountability] audits conducted to date; and corrective actions implemented.

Pursuant to this request, enclosed is the DOL response for MSHA's Office of Accountability. Should you need additional information or have further questions, please contact Charmaine Manansala, Senior Legislative Officer, at 202-693-4600 or via e-mail at manansala.charmaine@dol.gov.

Sincerely,

A handwritten signature in black ink that reads "Joseph A. Main". The signature is written in a cursive, flowing style.

Joseph A. Main
Assistant Secretary of Labor for
Mine Safety and Health

Enclosures

**Department of Labor
Mine Safety and Health Administration
Office of Accountability**

The Department of Labor is providing the following information to the Committees on Appropriations in response to a request in the report accompanying the FY 2010 appropriation. In that request, the Mine Safety and Health Administration (MSHA) was asked to report on the staffing and budgetary resources expended or planned for fiscal years 2009 and 2010 for the Office of Accountability; the findings and recommendations of the audits conducted by the Office to date; and corrective actions implemented.

Staffing and Budgetary Resources

The Office of Accountability (Office) is staffed by a Director, two Accountability Specialists, and one contract employee to provide program analysis, records management, and computer program support. These positions require extensive travel to the MSHA districts, field offices, and mining operations nationwide. During FY 2009, MSHA expended a total of \$564,000 for the Office, which included salaries, benefits, travel expenses and contractor costs. MSHA is projecting a total cost of \$582,000 for the Office in FY 2010.

Program Activity

The Office provides focused oversight and examination of Coal Mine Safety and Health (CMSH) and Metal and Nonmetal (MNM) enforcement program areas to provide reasonable assurance that MSHA's policies, procedures, handbooks, and guidance are being consistently applied and that critical enforcement activities are being accomplished. The accountability field audits include mine site inspections, review of inspection reports, mine plans and relevant mine files to ensure that effective management controls are in place that adhere to MSHA policies and procedures. This Office also ensures that corrective actions as implemented through internal reviews are followed. Importantly, the Office is not designed to conduct comprehensive MSHA-wide performance evaluations. Its role is to focus on Districts and field offices which screening indicators show have anomalous enforcement activity or results.

In mid 2009, the Office redefined its audit selection criteria with a goal of better focusing audits to achieve the MSHA goal of consistent and effective enforcement. A revised analysis of key enforcement indicators provides information on percentages of significant and substantial violations written; violations issued per inspection hour, gravity and negligence rates, and elevated enforcement actions. The data are then compared to determine variations in trends that are significantly above or below national and district averages. Onsite

evaluations at selected mines, and past and current levels of enforcement, are then evaluated to determine level of adherence to MSHA policy and procedure.

MSHA also developed and implemented a scoring matrix based on common deficiencies identified in its internal reviews. This matrix assigns a numeric value to the deficiency noted, with an overall score also reflecting the adequacy of management oversight.

During FY 2009, MSHA conducted a total of 24 reviews; 18 in CSMH and 6 in MNM. As of December 31, 2009, 6 audits have been conducted in FY 2010; 2 in CSMH and 4 in MNM.

Findings and Recommendations

Since implementation of new procedures including the scoring matrix, 7 full audits have been concluded.

The following were findings identified during the audits conducted in FY 2009 and FY 2010, with recommendations and corrective actions implemented. It should be noted that the improved targeting criteria has focused on anomalies in the enforcement programs, and findings are a result of selected field offices audited. Therefore, MSHA does not believe that these findings are an indication of a systemic problem across the 92 field offices, rather an expected result of successful targeting of audits to potential problem areas.

Following the completion of each audit, a comprehensive report is compiled and distributed to the enforcement program areas for corrective actions to be implemented for that particular field office/district. These audit reports are then shared with all MSHA districts and district management in order for them to examine their particular district and determine if similar deficiencies are occurring. While the reports are specific to the field offices audited, they do serve as guidance to other District offices in understanding the deficiencies that the Office of Accountability has identified in its audits.

Finding: In 21 of 25 field offices audited, the Office of Accountability found some indication of inadequate supervisory and second-level review of inspection documentation; for example, the supervisors failed to conduct an in-depth review of all inspection documentation to ensure enforcement levels and enforcement actions are in accordance with program handbooks, policies, procedures, and directives.

- ***Recommendation:*** Conduct training for managers and supervisors for complete and adequate Field Activity Reviews, Accompanied Activities, and second-level reviews, as included in the Supervisor's Handbook.

- **Corrective Action(s) Implemented:** Training was completed at the districts and field offices where the audits identified inadequate reviews were being conducted. The managers are continuing oversight through ongoing review of work products to ensure the effectiveness of the training. Additional training is also provided for enforcement personnel to address any deficiencies identified. A new Supervisory training program is being developed by the Mine Health and Safety Academy and MSHA will require all supervisors to attend the training beginning May 2010. Retraining for every supervisor will be conducted during each two year period. This training will incorporate findings and corrective actions identified in the audit program.

Finding: In 20 of 25 field offices audited, the Office of Accountability found inadequate evaluation of gravity and negligence of the citations issued at mining operations.

- **Recommendation:** Conduct training on citation and order writing and appropriate evaluation of gravity and negligence.
- **Corrective Action(s) Implemented:** - Training was conducted on the citation and order writing and proper evaluation of gravity and negligence of the hazards identified. Training was conducted by instructors from the Mine Health and Safety Academy and representatives from district management.

Finding: In 4 of the 18 field offices audited, the Office of Accountability found that outdated information on coal mines was not removed routinely from Uniform Mine Files – the retention schedule for records should to be revised. Only 18 of the 25 field offices audited required Uniform Mine Files.

- **Recommendation:** Conduct training on current Uniform Mine File Handbook to ensure all documentation properly maintained as required by the handbook. Upon revision of the handbook, training will be conducted for all personnel required to maintain the Uniform Mine File.
- **Corrective Action(s) Implemented:** - Training was conducted on current Uniform Mine File Handbook at the field offices audited. CMS&H Districts 3, 5, and 6 are pilot testing a digital Uniform Mine File program. A committee was formed to revise the retention schedule.

Finding: In 15 of the 25 field offices audited, the Office of Accountability found inadequate documentation of violations and inadequate documentation in inspection reports; for example, inspection notes were not sufficiently detailed and complete in order to support the enforcement actions taken.

- **Recommendation:** Retraining of managers, supervisors, and inspectors on citation and order writing, new Inspection Tracking System, proper documentation, and note-taking requirements.
- **Corrective Action(s) Implemented:** - Training was completed at the districts and field offices where the audits identified inadequate reviews were being conducted. Managers and supervisors are conducting oversight through ongoing review of work products to ensure the effectiveness of the training and documentation is completed according to the approved handbooks and agency policy.

Finding: Additional training is needed for MNMS&H inspection personnel relative to cement plants to ensure effective inspections and proper identification of hazards in unique processes.

- **Recommendation:** Develop and implement a training program as part of the Journeyman Inspector Training for MNMS&H inspection personnel.
- **Corrective Action(s) Implemented:** - A training program was developed and is currently included in the Journeyman Inspector Training curriculum for MNMS&H inspection personnel. During FY 2009 a total of 100 journeymen inspectors completed this training and 59 journeymen inspectors have completed the training in FY 2010.

Finding: In 4 instances during audits of 19 field offices, Section 103(i) Spot Inspections (i.e., required inspections at predetermined intervals to monitor mines liberating high amounts of methane gas) were not completed during the required time frame. There were only 19 offices where Section 103(i) Spot Inspections were required.

- **Recommendation:** Retrain the field office supervisors on the requirements of Section 103(i) spot inspections and develop a tracking system to ensure all spot inspections are conducted within required time frames.
- **Corrective Action(s) Implemented:** - Training was completed at the identified field offices/districts and a calendar system was developed and implemented to ensure that Section 103(i) spot inspections are conducted within required intervals.

Finding: Lack of comprehensive inspections of all areas of the mining operation and appropriate levels of enforcement issuances.

- **Recommendation:** Conduct District-wide meetings reviewing General Inspector Procedures Handbook and Citation and Order Writing Handbook.

- **Corrective Action(s) Implemented:** - District-wide meetings/training sessions were held at the identified locations reviewing requirements that constitute a complete inspection of a mine in its entirety. Training was conducted by district management personnel and instructors from the Mine Health and Safety Academy. Follow-up audits/reviews will ensure thorough inspections are being conducted.

Following each audit, the Office of Accountability generates a report outlining the positive findings, identifying deficiencies requiring attention, and incorporating recommended corrective actions. Reports are distributed to the Deputy Assistant Secretary of Operations, as well as MSHA senior management officials, district managers, and the Mine Health and Safety Academy. Findings and recommendations are also discussed with managers and supervisors during MSHA's quarterly district managers' meetings to ensure consistency and uniformity nationwide. Corrective action plans are submitted from the districts through the Office of Accountability to the Deputy Assistant Secretary of Operations for approval. The Office of Accountability and the Deputy Assistant Secretary for Operations review the plans and determine if the corrective actions are adequate for correcting the deficiencies. The plans are either approved or returned to the districts for additional information or additions that are necessary to correct areas identified in the audit report. Follow-up reviews of the audited field offices are conducted by the Office of Accountability to determine if corrective actions initiated by the districts have been successful in correcting the deficiencies identified. The follow-up reviews include a detailed assessment of the computer-generated statistics, a review of district/field office reports and records, and follow-up mine visits verifying the current statuses of the items identified in the audit report.