

APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

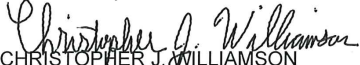
U.S. Department of Labor

Mine Safety and Health Administration
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October 5, 2023

MEMORANDUM FOR: CAROLYN R. HANTZ
Assistant Inspector General for Audit

FROM: 
CHRISTOPHER J. WILLIAMSON
Assistant Secretary of Labor for Mine Safety and Health

SUBJECT: Response to the Office of the Inspector General (OIG) Draft
Report, *COVID-19: MSHA Did Not Complete or Accurately Report
Mandatory Inspections*

The Mine Safety and Health Administration (MSHA) appreciates the opportunity to comment on the OIG's evaluation of mandatory inspection completion rates before and during the coronavirus (COVID-19) pandemic.

Below are MSHA's specific responses to the OIG recommendations regarding *COVID-19: MSHA Did Not Complete or Accurately Report Mandatory Inspections*.

OIG RECOMMENDATIONS:

OIG Recommendation 1: Report transparently each year on the number of idle mine visits (E28) and attempted inspections (E27) used to eliminate mandatory inspections each fiscal year.

MSHA can report the number of E27 and E28 events that occur each fiscal year. To clarify, MSHA's internal coding of events is not used to eliminate required inspections and MSHA requests this clarification in the final report language. MSHA conducts mandatory (E01) inspections at mines where inspections are required. An E27 event denotes a mine visit for enforcement purposes hindered by direct or indirect entry denial. An example of an indirect entry denial is when access to the mine is blocked by a locked gate or other means of blockage. Moreover, an E28 event signifies a mine visit intended for enforcement but unfulfilled due to the mine's inactivity. These distinctions are critical for maintaining transparency and ensuring that the reporting accurately reflects MSHA's inspection efforts while adhering to the Mine Act, regulatory requirements, and MSHA policy.

OIG Recommendation 2: Update MSHA policies to: (1) define a schedule for verifying mine statuses; (2) specify when visual verifications (e.g., E28 idle mine visits) are necessary; (3) limit deviations from the mine status criteria to defined exceptional situations; (4) define how "primary mine type" changes apply during calculation of inspection requirements; (5) define timeliness

metrics for certification of E01 inspections; (6) require mandatory inspections start and end in the same fiscal year; and (7) define how to calculate the mandatory inspection completion rate annually.

MSHA agrees with this recommendation and will update the mine status criteria and corresponding mine status tool. The mine status tool is used to determine the status of coal and metal and nonmetal mines by characterizing the mine type, reportable hours, and Part 50 data. This tool will be integrated into the Inspection Application System, which is a software that authorized representatives use in the field to complete mandatory inspections. MSHA will provide training for Mine Safety and Health Enforcement managers, supervisors, and inspectors.

Training will include instructions that:

1. A requirement that the mine information form (MSHA form 2000-209) be reviewed to ensure accuracy and completeness when a mandatory inspection is conducted. This review will encompass important information such as mine status and primary mine type.
2. The reporting of any mine status criteria deviations will be approved by the field office supervisor. Such approved deviations will be documented in the inspection report for transparency and accountability.
3. Mandatory (E01) inspections must start and end in the same fiscal year.
4. Mandatory (E01) inspections should be certified within 30 days after the inspection is complete. This could occur after the end of the fiscal year.

MSHA will calculate its annual completion rate by determining the number of required inspections completed. The number of required inspections varies throughout the fiscal year.

MSHA will continue to utilize the E28 idle mine visit event code, as needed. The Agency will not conduct multiple E28 events at the same mine during a fiscal year.

OIG Recommendation 3: Redesign monitoring processes to check Part 50 data reporting for mines on a quarterly basis and verify timely certification of mandatory inspections and accuracy of activity codes and inspection dates.

MSHA agrees with this recommendation. MSHA will continue to update the mine status criteria and corresponding mine status tool. The mine status tool will be integrated into the Inspection Application System. The mine status criteria will be reviewed during every mandatory (E01) inspection. Mandatory (E01) inspections should be certified within 30 days after completion of the inspections. To ensure accuracy, the supervisor will evaluate all inspection reports and work products generated by inspectors and specialists related to an assigned field activity. The selection of activity codes and inspection dates are considered internal work products.

OIG Recommendation 4: Update supporting tools based on revisions to the mine status criteria.

MSHA will update the mine status criteria and corresponding mine status tool. The mine status tool will be integrated into the Inspection Application System. The mine status criteria will be reviewed during every mandatory (E01) inspection.

OIG Recommendation 5: Develop a process to verify if: (1) mines in “temporarily idle” status for extended periods need a change to “abandoned” status and (2) mines with underground openings are being timely sealed when their “primary mine type” is not listed as “underground.”

MSHA believes that the Agency’s response to recommendation 2 helps address this recommendation. In addition, MSHA’s inspection policies and procedures will be revised to require on-site confirmation of appropriate mine status as an enforcement event each fiscal year. Notably, underground openings are timely sealed for mines that transition from underground to surface because an operator is still onsite.

OIG Recommendation 6: Verify all underground coal mines in abandoned status for more than 90 days are either sealed (and its status updated in MSHA’s system), in the process of sealing and are issued a violation for non-compliance with the regulation, or has a remark in MSHA’s system indicating why it will not be sealed. This may include verifying the mine was identified for future reclamation in the Abandoned Mine Lands program inventory.

MSHA is requesting that the recommendation be modified to eliminate the language “*identified for future reclamation in the Abandoned Mine Lands program inventory or has a remark in MSHA’s system indicating why it will not be sealed*” in light of 30 USC 877(k) and 30 CFR section 75.1711, *Sealing of mines*.

§ 75.1711 Sealing of mines. - On or after March 30, 1970, the opening of any coal mine that is declared inactive by the operator, or is permanently closed, or abandoned for more than 90 days, shall be sealed by the operator in a manner prescribed by the Secretary. Openings of all other mines shall be adequately protected in a manner prescribed by the Secretary to prevent entrance by unauthorized persons.

MSHA authorized representatives issue Mine Act 104(a) citations for violations of mandatory standards, including this standard, and issue Mine Act 104(b) withdrawal orders for failure to abate the 104(a) citation.

MSHA is not authorized to manage the Abandoned Mine Lands (AML) Program. The AML Program is administered by the U.S. Department of the Interior Bureau of Land Management, <https://www.blm.gov/programs/aml-environmental-cleanup/aml/about-aml>. Program funding comes from a federal reclamation fee on coal that has been mined in the United States since the late 1970’s. The AML Program funds States and other programs to eliminate existing and potential public hazards that result from abandoned surface and underground coal mines. The State AML Program was approved by the U.S. Department of the Interior in 1981 under the authority of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87, Title IV).

Additionally, MSHA notes the following definitions prescribed in 30 CFR section 57.2, relating to underground non-coal mines:

- “Abandoned mine” means that all work has stopped on the mine premises, and an office with a responsible person in charge is no longer maintained at the mine.
- “Abandoned workings” means the deserted mine areas in which further work is not intended.

OIG Recommendation 7: Communicate to staff on: (1) the current version of mine status criteria, (2) MSHA reports and tools available for the mandatory inspection program, and (3) leadership’s expectations on districts correcting activity codes and when Part 50 data should be available to districts (including follow-up and violations for operators not reporting timely).

MSHA believes that the Agency’s response to recommendation 2 helps to address this recommendation. In addition, training will emphasize that every mandatory (E01) inspection incorporates a thorough examination of Part 50 data to ensure accuracy and completeness.

OIG Recommendation 8: Add a system control to verify the “primary mine type” field is populated.

MSHA plans to integrate a system control within the Inspection Application System, mandating the completion of the “primary mine type” data field.

OIG Recommendation 9: Update policy or procedures to: (1) clearly define when an inspection starts and ends and (2) ensure the inspection dates for an E01 mandatory inspection include any inspection work done on other events (e.g., E16 spot inspection) to make the E01 inspection an “entire mine” inspection adhering to requirements in the Mine Act.

Mandatory (E01) inspections should start and end in the same fiscal year that the inspection completion is counted. MSHA emphasizes that event codes are part of MSHA’s internal processes. The Mine Act requires that inspections take place where miners are working; it does not require that internal event codes be used to fulfill the mandate.

OIG Recommendation 10: Revise business rules used in MSHA reports for the mandatory inspections program to align with the Mine Act and MSHA policy, or update MSHA policy accordingly and consider raising the number of E28 idle mine visits and E27 denial of entry attempts used in MSHA reports to eliminate an inspection requirement.

MSHA believes that the Agency’s response to recommendation 1 helps to address this recommendation.

OIG Recommendation 11: Improve the design and execution of MSHA’s internal control system for the mandatory inspections program to align with the GAO Standards for Internal Control in the Federal Government, specifically by identifying key risks through a programmatic risk assessment and collecting MSHA workforce concerns to verify or improve the integrity of the program.

MSHA has taken steps to address this recommendation by developing and implementing policies and procedures aimed at enhancing the internal control system for conducting mandatory inspections. By incorporating elements from the GAO Standards for Internal Control

in the Federal Government, MSHA is proactively working to identify key risks through programmatic risk assessments and soliciting feedback from its workforce to ensure program integrity. MSHA has incorporated ongoing monitoring of mandatory (E01) inspection completion rates by using an automated tool to monitor the number of inspections completed and required during a fiscal year. This approach, coupled with regular training for Mine Safety and Health Enforcement personnel, to stay updated on relevant policies and procedures, reflects MSHA's commitment to maintaining the accuracy and integrity of its mandatory (E01) inspection program, thus bolstering the Agency's regulatory oversight and safety objectives.