

# U.S. Department of Labor

Office of Inspector General—Office of Audit

**MINE SAFETY AND HEALTH  
ADMINISTRATION**



## **MSHA CAN IMPROVE ITS SECTION 110 SPECIAL INVESTIGATIONS PROCESS**

Date Issued: September 30, 2013  
Report Number: 05-13-008-06-001

## **BRIEFLY...**

Highlights of Report Number 05-13-008-06-001, issued to the Assistant Secretary for Mine Safety and Health.

### **WHY READ THE REPORT**

The purpose of the Mine Safety and Health Administration (MSHA) is to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the Nation's miners. The Federal Mine Safety and Health Act of 1977, §110(c), gives MSHA the authority to propose penalties against agents of mine operators who knowingly fail or refuse to comply with any citation or order MSHA issues or violate mandatory health or safety standards.

MSHA's Technical Compliance and Investigations Office (TCIO) within the Office of Assessments, Accountability, Special Enforcement and Investigations is responsible for the overall administration of the National Special Investigations Program which governs investigations under §110. This includes overseeing investigations conducted by the Districts, reviewing case files, coordinating with the Office of the Solicitor, providing initial and refresher training to Special Investigators, and assisting the U.S. Department of Justice with criminal prosecution that may result from investigations.

### **WHY OIG CONDUCTED THE AUDIT**

The Office of Inspector General (OIG) as part of our audit oversight responsibility, performed work to answer the following question:

Is MSHA appropriately initiating and completing §110 special investigations?

Our audit work covered all §110 special investigations initiated and completed during Fiscal Years (FY) 2010 through 2012. We reviewed and analyzed MSHA's policies and procedures; interviewed key officials; reviewed case files and training records; analyzed data; and reviewed MSHA's Standardized Information System (MSIS) documentation.

### **READ THE FULL REPORT**

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

<http://www.oig.dol.gov/public/reports/oa/2013/05-13-008-06-001.pdf>.

**September 2013**

## **MSHA CAN IMPROVE ITS SECTION 110 SPECIAL INVESTIGATIONS PROCESS**

### **WHAT OIG FOUND**

In our sample of §110 special investigations initiated and completed during FYs 2010 through 2012, we found:

- MSHA did not meet its timeframe goals in 70 percent of the cases reviewed;
- One or more documents required by MSHA's policy were missing from 8 percent of the case files;
- MSHA did not document why it did not initiate an investigation for 6 percent of the cases reviewed; and
- TCIO failed to record credential issuance and expiration dates for 23 percent of Special Investigators.

Each of these weaknesses was compounded by an Information Technology system that did not allow TCIO to easily track data related to special investigations.

In its response, MSHA disagreed with one of the OIG's three findings and conclusions. MSHA stated that the §110 special investigations timeframes were general management goals, and were not statutory or regulatory requirements. The primary cause for not meeting the timeframes was the need to conduct thorough investigations and prioritizing work of Special Investigators. MSHA agreed that a review of the documentation requirements would be beneficial and its information systems need to be enhanced to manage all aspects of investigations.

### **WHAT OIG RECOMMENDED**

The OIG recommended the Assistant Secretary for Mine Safety and Health: (a) reevaluate its §110 activities or goals so as to better measure the program's performance; (b) assess and revise documentation guidance; and (c) take steps to consolidate information into a single source to facilitate the management of all aspects of investigations.

MSHA disagreed with the OIG's first recommendation. MSHA stated that the special investigators' need to balance demands and prioritize other work assignments impacts §110 timeframes. MSHA agreed with the recommendation on documentation guidance and information for managing special investigations.

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**U.S. Department of Labor**

Office of Inspector General  
Washington, D.C. 20210



September 30, 2013

**Assistant Inspector General's Report**

Joseph A. Main  
Assistant Secretary  
for Mine Safety and Health  
U.S. Department of Labor  
1100 Wilson Blvd.  
Arlington, VA 22209

The purpose of the Mine Safety and Health Administration (MSHA) is to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the Nation's miners. §110(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) gives MSHA the authority to propose penalties against individuals – agents of mine operators – who knowingly fail or refuse to comply with any citation or order MSHA issues or who violate mandatory health or safety standards. In Fiscal Year (FY) 2012, MSHA completed 292 §110 special investigations, proposing \$861,620 in penalties against individuals.

MSHA's Technical Compliance and Investigations Office (TCIO) within the Office of Assessments, Accountability, Special Enforcement and Investigations is responsible for the overall administration of the National Special Investigations Program, which governs investigations under §110. This responsibility includes overseeing investigations conducted by the Districts,<sup>1</sup> reviewing case files, coordinating with the Office of the Solicitor (SOL), providing initial and refresher training to Special Investigators, and assisting the U.S. Department of Justice (DOJ) with criminal prosecution that may result from investigations.

When MSHA Inspectors issue a citation or order during the course of regular inspections, they must evaluate if any agent of the company knew of or willfully caused the cited condition using a "Possible Knowing/Willful Violation Review" (PKW) form. Districts initiate a §110 special investigation following the review of these forms to determine if the violations were "knowing," "willful," or any other situation in which the District Manager believes an investigation is necessary. When recommending a civil penalty or criminal referral, Districts send completed investigation reports to TCIO for review. Upon completion of its review, TCIO may send the case to SOL for action or close the case. SOL refers certain cases to the DOJ for criminal prosecution.

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<sup>1</sup> MSHA has 12 Coal Districts and 6 Metal/Non-Metal Districts.

The Office of Inspector General (OIG) conducted a performance audit to answer the following question:

Is MSHA appropriately initiating and completing §110 special investigations?

Our audit work covered all §110 special investigations initiated and completed during FYs 2010 through 2012. We reviewed and analyzed MSHA's policies and procedures; interviewed key officials; reviewed case files and training records; analyzed data; and reviewed MSHA's Standardized Information System (MSIS) documentation. Our objective, scope, methodology, and criteria are detailed in Appendix B.

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

## **RESULTS IN BRIEF**

In general, we found that once MSHA initiated a §110 special investigation, the investigation was conducted properly. However, in many cases, MSHA did not initiate investigations and review case files within established timeframe goals. Moreover, MSHA did not always document the rationale for not pursuing certain investigations. We also noted some investigative case files did not include all necessary documentation. Finally, MSHA was not ensuring Special Investigator credentials it issued were properly tracked. Each of these weaknesses was compounded by an IT system that did not allow TCIO to track sufficient data related to special investigations.

### *Timeliness*

MSHA's Districts did not always initiate investigations and submit cases to TCIO or SOL within established timeframes. Of the 93<sup>2</sup> case files we reviewed, Districts did not initiate 24 investigations within 60 calendar days and did not submit 37 cases to TCIO within 150 calendar days as stated in MSHA's policy. In addition, TCIO did not forward 29 cases to SOL within 210 calendar days as specified in MSHA's policy. This occurred partly because: MSHA did not consider its timeframes mandatory, but instead considered them "goals;" discrimination cases under §105 statutorily take priority; and TCIO had a significant number of cases pending review.

### *Documentation*

MSHA Districts did not include required documents in some investigation case files. Of the 93 case files we reviewed, 7 were missing one or more documents required by

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<sup>2</sup> MSHA initiated and completed 888 cases in FYs 2010 through 2012.

MSHA's policy. District Managers did not always document the rationale supporting why an investigation was not warranted. Five cases in our sample did not contain the documentation required to support a decision not to investigate. We had to review other documentation to understand (and agree with) MSHA's ultimate decision in those cases.

### *System Issues*

The MSIS did not allow TCIO to compile or track all data related to investigations. Specifically, the system did not associate event numbers with case numbers, issued citations, assessments, and settlements. To compensate, TCIO maintained some data related to the events and cases in an ad hoc database. However, this ad hoc system did not maintain sufficient information to make it useful in managing the process without requiring additional effort.

We found MSHA did not maintain an adequate process to track credentials issued to Special Investigators. The 93 investigations we reviewed were conducted by 80 Special Investigators, who we determined were properly credentialed. However, we found that TCIO failed to document credential issuance and expiration dates in an ad-hoc system for 18 of these Special Investigators. Without this information, MSHA may not be able to ensure expired credentials were renewed or properly disposed of when no longer needed.

We recommend that the Assistant Secretary for MSHA: (a) reevaluate its §110 activities or goals to better measure the program's performance; (b) assess and revise documentation guidance; and (c) take steps to consolidate information into a single source to facilitate the management of all aspects of investigations.

### **MSHA's Response**

MSHA disagreed with the OIG's first finding and recommendation, stating that the §110 special investigations timeframes were general management goals, and not statutory or regulatory requirements. MSHA indicated that the primary causes for not meeting the timeframes was the need to conduct thorough investigations and the need to prioritize special investigators work assignments. Specifically, meeting mandated deadlines imposed in §105(c) discrimination cases takes precedence over completing §110 special investigations. Also, during FYs 2010 through 2012, MSHA enforcement personnel were involved in the investigation of the Upper Big Branch mine explosion and the concurrent internal review.

MSHA agreed that it would be beneficial to review and assess the documentation in their Special Investigations Procedures Handbook. MSHA is currently updating this handbook and will revise the documentation requirements, as appropriate, and provide documentation training.

MSHA also agreed that its management information system needs to be enhanced to manage all aspects of the §110 special investigations program. However, MSHA did not agree with the all of the finding and took exception to a statement regarding information for tracking Special Investigators' credentials. MSHA maintains that even when credential information was not in the system, it was maintained and accessible at MSHA.

The Assistant Secretary's entire response is contained in Appendix D.

### **OIG's Conclusion**

We recognize that MSHA's §110 special investigation timeframe goals are not required by statute or regulation. However, agencies must establish performance goals whether or not required by statute in order to allow management to monitor and assess their operations, and to effectively and efficiently allocate resources. We continue to believe MSHA should reevaluate either the program's activities, the reasonableness of the timeframe goals, or both. Failing to establish performance measures robs an agency of the ability to determine and report its effectiveness and efficiency.

We stand by the statements in the report regarding Special Investigator credential information. While any agency may have all the information it needs stored in various places, having the information located in the system of record is more efficient. Maintaining this information ensures MSHA can efficiently and effectively protect Special Investigator credentials.

## **RESULTS AND FINDINGS**

### **Objective — Is MSHA appropriately initiating and completing §110 special investigations?**

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*MSHA did not always meet its timeframe goals, maintain required documentation, or have adequate systems to track special investigations.*

In general, we found that once MSHA initiated a §110 special investigation, the investigation was conducted properly. However, MSHA could improve its National Special Investigations Program by: (a) initiating investigations and submitting cases to TCIO or SOL more timely; (b) ensuring Districts always document the rationale when an investigation is not warranted and include all required documents in case files; (c) tracking all Special Investigator credentials issued; and (d) ensuring sufficient data is available to manage all aspects of the program.

### **Finding 1 — MSHA Did Not Always Meet §110 Timeframe Goals**

MSHA Districts did not always initiate and submit §110 special investigation cases to TCIO and TCIO did not always submit cases to SOL within its timeframe "goals." GAO

Standards for Internal Control in the Federal Government require agencies to establish and review performance measures and establish activities to monitor them. When monitoring measures, program managers need to determine if they are meeting the goals for effective and efficient use of resources. MSHA established goals for completing §110 special investigation in its Special Investigations Procedures Handbook (Handbook). According to the Handbook, Districts should conduct investigations of possible knowing and/or willful violations as quickly as possible, but MSHA stresses that its timeframes for §110 special investigations are goals and not statutory requirements. The timeframes begin from the date of the issuance of the citation or order, or from the date when MSHA had actual notice of the incident.

When MSHA Inspectors issue a citation or order during the course of regular inspections, they must evaluate if any agent of the company knew of or willfully knew of the condition using a PKW form. Districts initiate a §110 special investigation following the review of these forms if the facts support the need for an investigation. According to MSHA's goals, after the District Manager approves the start of an investigation and a case number and Special Investigator have been assigned, Districts should initiate cases within 60 calendar days and submit completed cases for which a civil penalty is recommended to TCIO within 150 calendar days. TCIO should submit cases to SOL for legal opinions, when required, within 210 calendar days. When MSHA pursues civil penalties, TCIO should refer the case to the Office of Assessments within 220 calendar days. Districts should forward potential criminal investigative case files to TCIO within 120 days of the date of the underlying violation. TCIO and SOL will review and analyze the case, and if warranted, should refer it to DOJ within 240 calendar days.

In our sample of 93 cases, we found 90 instances in 65 cases (70 percent) where MSHA did not meet its timeframe goals.<sup>3</sup>

- MSHA Districts did not initiate 24 (26 percent) §110 special investigations within 60 calendar days after the citation/order date. The Districts initiated these investigations between 3 to 219 calendar days after the 60-day timeframe (with an average of 58 calendar days).
- MSHA Districts did not submit 37 cases (26 percent) to TCIO within 150 calendar days of the citation/order issuance date.<sup>4</sup> Districts submitted these cases to TCIO between 1 to 406 calendar days after the 150-day timeframe (with an average of 132 calendar days).
- TCIO did not submit 29 cases (31 percent) to SOL within 210 calendar days. The cases were submitted to SOL between 1 to 638 calendar days after the 210-day timeframe (with an average of 224 calendar days).

There were many reasons why these timeframes were not always met. For example:

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<sup>3</sup> During FYs 2010 through 2012, MSHA initiated and completed 888 §110 special investigations.

<sup>4</sup> In one case, the District Manager submitted an extension request but did not complete the case timely.

- §105(c) discrimination investigations are statutorily required to start within 15 days of the Secretary's receipt of the complaint. §110 special investigations have no such mandated timeframes. Therefore, investigators postpone §110 investigative work to conduct §105(c) discrimination investigations. MSHA initiated 166 §105(c) discrimination investigations in FY 2010, 157 in FY 2011, and 213 in FY 2012.
- Special Investigators must carefully develop all investigation cases that could potentially result in civil penalties or criminal prosecution.
- TCIO did not have enough staff available to timely review the cases submitted by the Districts. According to MSHA, in April 2010, there were 97 cases in TCIO for review. In April 2011, there were 93 but by April 2012 and April 2013, this grew to 105 and 142 cases respectively. Over the past two years, MSHA has hired 5 compliance specialists in TCIO and filled the vacant Deputy Director position in July 2013 to ensure cases were reviewed timely.

Although there are no statutorily prescribed timeframes for completing §110 special investigations, MSHA should make its best efforts to meet the standards it has implemented. Established standards are tools government agencies use to measure and improve their performance. Given that MSHA was meeting its §110 special investigation timeframe goals only 30 percent of the time, the agency should reevaluate either the program's activities, the reasonableness of the timeframe goals, or both. Without knowing if the timeframe goals are reasonable, MSHA cannot properly evaluate the performance of its §110 special investigations program or make informed decisions regarding the resources devoted to the program.

## **Finding 2 — MSHA's §110 Case File Documentation was Inconsistent**

Although in general we found that MSHA properly included necessary materials in its case files, we found some instances in which it did not include all documentation required or document the rationale for not conducting an investigation on PKWs. Without complete information, MSHA cannot ensure the investigations adequately supported conclusions they reached or that all investigations warranted were initiated.

### *Case Files*

MSHA Districts did not maintain consistent documentation in §110 special investigation case files because the Handbook did not clearly address all documentation requirements. The Handbook states only that a case file will be established for every special investigation and for each case file, the completed MSHA Form 7000-20 (PKW),<sup>5</sup> copies of the citation or order, modifications (if issued), Legal Identity Report

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<sup>5</sup> MSHA Form 7000-20 and inspection notes are only required when the PKW review resulted in the opening of an investigation.

Form, inspector’s notes, and “any other supporting documentation” should be included. MSHA’s guidance was not sufficient to identify all documents that investigators should include in case files. While each case may need different supporting documentation, all cases should have a minimum sufficient core of common documentation so as to ensure cases are consistently developed.

Special Investigators are responsible for conducting §110 special investigations, which involve interviewing individuals, reviewing pertinent records, documents, and files, and writing the final investigative report. Supervisory Special Investigators are responsible for assigning cases, reviewing PKWs, and reviewing and approving work products completed by Special Investigators. District Managers are responsible for the overall operation of the Special Investigations Program in their Districts. TCIO provides guidance to promote consistent application of the program; and reviews and analyzes investigation case files for quality, substance, and validity of conclusions.

Of the 93 case files we reviewed, 7 (8 percent) were missing one or more documents. These 7 case files were missing the 12 documents listed in the table below. In 6 of the 7 case files, the memorandum of investigation or closure letter was included enabling us to conclude that MSHA conducted these investigations adequately. The remaining case file did not contain critical documentation, such as the memorandum of investigation or closure letter. Consequently, we could not determine if MSHA conducted this investigation appropriately.

<b>Missing Documentation</b>	
<b>Document</b>	<b>Instances</b>
Memorandum of Investigation	1
Transmittal/Closure Letter or Memorandum	3
Mine Status Report Form	2
Legal Identity/Articles of Incorporation	3
Interview Statements/Memorandums of Interview	1
Citation/Order History	1
Interviewee Contact Information	1
<b>Total</b>	<b>12</b>

All these case files were reviewed at either the District and TCIO levels, but the missing documentation indicates these reviews were not adequate. Absent sufficient documentation, MSHA cannot demonstrate that investigators adequately supported the conclusions they reached.

*Investigations Not Initiated*

In a few cases, MSHA did not document its rationale for not initiating investigations. Adequate support was lacking in 6 percent (5 out of 85) of the cases we reviewed in which MSHA did not initiate a §110 special investigation.

If an inspector issues a citation or order that meets criteria for a possible knowing or willful violation, he or she completes a “PKW” form. The form is reviewed by a Field Office Supervisor, Assistant District Manager, and Supervisory Special Investigator for evidence of a possible knowing or willful violation. After the Assistant District Manager and Supervisory Special Investigator have completed their review, the form is forwarded to the District Manager. With the assistance of the Supervisory Special Investigator, the District Manager determines whether to initiate an investigation or take no further action, and documents this decision on the form. If the determination is not to initiate an investigation, a memorandum to the file is distributed to all persons involved in the review documenting the reasons for not initiating an investigation. A copy of the PKW, along with a copy of the citation or order and supporting documentation justifying the action taken is sent to TCIO.

We noted that while MSHA’s Handbook requires Districts to document their rationale, MSHA had not developed or implemented specific controls, such as a review by TCIO, to ensure that Districts have adhered to this requirement. Without documentation to support why the District did not initiate an investigation, MSHA cannot demonstrate it conducted all investigations it should.

### **Finding 3 — MSHA Did Not Maintain Adequate §110 Data Systems**

MSIS does not allow TCIO to compile or track all data related to investigations. To compensate, TCIO maintains some data related to the events and cases in an ad hoc database. However, this ad hoc system made it cumbersome to manage all aspects of the investigation process.

In 2003, MSHA identified MSIS deficiencies, which included not capturing all the necessary data to compile and track §110 cases. When a Special Investigator enters an investigation into MSIS, the system assigns it an event number. The event number is the unique identifier by which investigations are tracked in MSIS. However, we found that MSIS did not associate event numbers with case numbers, issued citations, assessments, and settlements, making it difficult to query the investigation data.

MSHA also assigned each investigation a case number, which was not a data field in MSIS. TCIO used the case number to track all §110 cases. In order to be able to track its data by case number, TCIO established an ad-hoc database to record data related to each §110 case. However, this database was not adequate for MSHA to link information to the MSIS information or to compile data that allowed TCIO to easily track all data related to §110 investigations.

#### *Credentials*

MSHA did not maintain an adequate system to track the credentials. TCIO failed to record in its system credential issuance and expiration dates for 18 of the 80 investigators in our sample cases.

The Government Accountability Office's *Standards for Internal Control in the Federal Government* require that agencies establish physical controls to secure vulnerable assets. This guidance goes on to state that federal assets should be periodically counted and compared to control records. Credentials issued to Special Investigators are a valuable asset that MSHA needs to control.

Although MSHA developed a draft standard operating procedure (SOP) and a prototype database for tracking credentials, neither had been completed nor implemented. The draft SOP states that TCIO will enter credential numbers, issuance dates, and expiration dates for credentials issued into a credential database. The database is an enhancement to the MSIS scheduled for implementation in 2015. Pending completion of the MSIS enhancements, TCIO tracked credentials in an ad hoc database using one or more compliance specialists whose collateral duties included entering credential information into the database.

Without implemented SOPs and complete information in its database, MSHA may not be able ensure all Special Investigators were credentialed, expired credentials were renewed, or credentials that were no longer needed due to departure or retirement were properly disposed of in accordance with Department of Labor requirements. Also, without adequate data or management reports, MSHA cannot ensure it initiates investigations and reviews case files within established timeframes; documents the rationale for not pursuing an investigation; includes all required documentation in case files; and tracks Special Investigator credentials.

## **OIG CONCLUSION**

In general, MSHA could improve its National Special Investigations Program to complete work within timeframe goals, obtain or document all needed or required information, and implement changes to ensure TCIO has all data needed to manage the program effectively and efficiently. All federal agencies must establish measures to determine if their programs are effective and efficient. These goals, while not necessarily set by statute, allow an agency to effectively manage its resources. Likewise, guidance on minimum or common documentation requirements is necessary to ensure those conducting §110 investigations are held to consistent documentation standards.

## RECOMMENDATIONS

We recommend that the Assistant Secretary for Mine Safety and Health:

1. Review goal monitoring activities and assess the validity of established §110 special investigations goals and implement either revised activities or goals to ensure MSHA initiates and submits cases on a more timely basis;
2. Review and assess the documentation requirements in the current Handbook, revise it as appropriate, and provide documentation training for Special Investigators and TCIO personnel;
3. Pending planned enhancements to MSIS, take steps to consolidate information from various systems (ad hoc and MSIS) into a single source to facilitate the management of all aspects of investigations.

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



Elliot P. Lewis  
Assistant Inspector General  
for Audit

## **Appendices**

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**Background**

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The purpose of MSHA is to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the nation’s miners. Under §110(c) of the Mine Act, each MSHA District conducts investigations of corporate operators that violate mandatory health or safety standards or knowingly violate, fail, or refuse to comply with any citations or orders MSHA issues. §110(c) of the Mine Act gives MSHA the authority to propose penalties against individuals – agents of mine operators – who knowingly fail or refuse to comply with any order MSHA issues or who violate mandatory health or safety standards. MSHA’s TCIO is responsible for the overall administration of the National Special Investigations Program, which governs investigations under §110(c). TCIO provides guidance, oversight, and program evaluation. The evaluations are designed to measure the effectiveness of the program by conducting field audits, technical reviews, and management surveys.

When a citation or order is issued, MSHA proposes penalties using a standard formula based on six broad factors outlined in the Mine Act. Inspectors who issue a citation or order must complete a PKW if the citation or order meets certain criteria. Districts initiate a §110 special investigation following the review of these forms to determine if the violations were “knowing,” “willful,” or any other situation in which the District Manager believes an investigation is necessary. Districts send completed investigation reports to TCIO for review. Upon completion of its review, TCIO may send the case to SOL for action or close the case. SOL refers certain cases to the Department of Justice for criminal prosecution.

§110 special investigations are conducted by Special Investigators who receive training in order to be credentialed and must meet annual refresher training requirements. These Special Investigators prepare case files in accordance with MSHA’s Special Investigations Procedures Handbook (PH05-I-4).

In FYs 2010 through 2012, MSHA initiated and completed 888 §110 special investigations, proposing \$1,651,490 in penalties against individuals.

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**Objective, Scope, Methodology, and Criteria**

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**OBJECTIVE**

The OIG conducted a performance audit to answer the following question:

Is MSHA appropriately initiating and completing §110 special investigations?

**SCOPE**

The OIG reviewed §110 special investigations initiated and completed during FYs 2010 through 2012. We used a stratified sampling approach to select a sample of 93 §110 special investigations from a universe of 888 investigations started and completed during FYs 2010 through 2012. We selected a random statistical sample of investigations stratified by fiscal year.

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

**METHODOLOGY**

To gain an understanding of the §110 special investigations process, we reviewed MSHA's policies and procedures, interviewed key Headquarters and District personnel; flowcharted the key processes and identified decision points; and reviewed information provided by MSHA officials.

To determine if MSHA initiated, completed, and reviewed §110 special investigations within established timeframe goals, we reviewed a random statistical sample of case files. Specifically, we used documentation in the case file to identify: (1) when the citation(s) or order(s) was issued; (2) the date the District submitted the case to TCIO; and (3) the date TCIO submitted the case to SOL (if applicable). We used these dates for our calculations.

To determine if MSHA adequately documented §110 special investigations, we reviewed a random statistical sample of §110 special investigation case files. Specifically, we reviewed MSHA's Special Investigations Procedures Handbook and obtained guidance from MSHA officials to identify which documents are required to be included in the case file.

To determine if MSHA used a consistent selection methodology for initiating §110 special investigations, we reviewed a sample of PKWs. Specifically, we reviewed a

random statistical sample of PKWs<sup>6</sup> for cases in which a §110 special investigation was initiated and another judgmental sample of 85 PKWs (55 from Coal Districts and 30 from Metal/Non-Metal Districts) for which a §110 special investigation was not initiated. We reviewed the PKWs to determine: (1) how the Districts were selecting citations or orders for special investigations; (2) if the selection process was consistent; and (3) if reasons for not initiating an investigation were documented.

To determine if MSHA had established training criteria for staff conducting special investigations and if that staff had received the required training, we reviewed the Procedure Instruction Letter (PIL I12-III-02) to determine MSHA's training criteria for Special Investigators. We also interviewed TCIO and District personnel regarding training criteria required to obtain Special Investigators credentials. We reviewed training records for 80 Special Investigators to determine whether they received all required training. We also compared each of the 80 credentials issued to Special Investigators to MSHA's tracking system to ensure new, transferred, or separated Special Investigators' status had been entered into the database.

#### *Data Reliability*

To determine the reliability of MSHA's §110 special investigations and penalty data, we: 1) identified specific data elements from MSIS that were critical to supporting our audit analyses; 2) obtained data for all §110 special investigations initiated and completed during FYs 2010 through 2012 and penalties assessed for agents during FYs 2010 through 2012; 3) developed and completed steps to assess the completeness and accuracy (i.e., reliability) of the data; 4) traced data to source documents; and 5) followed up with MSHA to clarify the meaning of the data and address discrepancies identified. We determined that the §110 special investigations data was sufficiently reliable for our testing purposes. However, we determined the agent penalty data contained misclassified Federal Mine Safety and Health Review Commission decision types and was not reliable to use in classifying the reduction in agent penalties by decision type.

#### *Internal Controls*

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

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<sup>6</sup> Possible Knowing/Willful Violation Review" form.

*Criteria*

- Federal Mine Safety and Health Act of 1977, Section 110
- Title 30 Code of Federal Regulations, Part 100
- MSHA Special Investigations Procedures Handbook (PH05-I-4), August 2005
- Procedure Instruction Letter (PIL-I11-V-11), December 20, 2011
- Procedure Instruction Letter (PIL I12-III-02), August 22, 2012
- Civil Penalties Overview
- MSHA Program Policy Manual, Vol I & III
- MSHA General Coal Inspection Handbook (PH08-V-1) , January 1, 2008
- MSHA Accident Illness Investigations Procedures Handbook (PH11-I-1), June 2011
- MSHA Citation and Order Writing Handbook (PH08-I-1), March 2008
- General Accounting Office, Standards for Internal Control in the Federal Government, November 1999

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**Appendix C**

**Acronyms and Abbreviations**

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DOJ	Department of Justice
FY	Fiscal Year
Mine Act	Federal Mine Safety and Health Act of 1977
MSHA	Mine Safety and Health Administration
MSIS	MSHA's Standardized Information System
OIG	Office of Inspector General
PKW	Possible Knowing/Willful
SOL	Office of the Solicitor
SOP	Standard Operating Procedures
TCIO	Technical Compliance and Investigations Office

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MSHA's Response to Draft Report

U.S. Department of Labor

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



SEP 26 2013

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General for Audit

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

A handwritten signature in black ink, appearing to read "Joseph A. Main".

SUBJECT: MSHA Response to OIG Draft Report "MSHA Can Improve  
Its Section 110 Special Investigations Process"  
No. 05-13-008-06-001

Thank you for the opportunity to review the OIG Draft Report titled, "MSHA Can Improve Its Section 110 Special Investigations Process." The Mine Safety and Health Administration (MSHA) acknowledges the OIG's recommendations for improving MSHA's Special Investigations (SI) process.

At the OIG entrance conference, MSHA staff briefed your staff on MSHA's SI Program to help the OIG refine its audit objectives. We outlined the significant changes MSHA had made to improve the program, the reorganization of the Office of Assessments to better manage and support our special enforcement programs, including the 110 program; enhanced section 105(c) discrimination work; coordination with the FBI to provide training for SI staff and accident investigators; and training of additional field investigators and hiring of additional staff in headquarters.

MSHA informed the OIG that the management of the 110 program is hindered by the lack of a comprehensive tracking and monitoring system. MSHA provided the OIG information demonstrating the agency's plans to develop this system prior to 2013; however, limited Information Technology (IT) funding prevented MSHA from achieving this goal.

We appreciate the work that the OIG has conducted on this audit and the opportunity to review the draft report. Attached are MSHA's specific comments on the OIG's findings and recommendations.

Attachment

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Special Investigations Program Background:

The SI Program oversees section 110 special investigations of knowing or willful violations by mine operators and section 105(c) discrimination complaint investigations of complaints made by miners or applicants for employment. When decisions must be made about the allocation of limited resources, statutory responsibilities, such as meeting the timeframes in the Mine Act for 105(c) cases, take precedence over 110 special investigations which have no statutory timeframes. Under Section 110, MSHA has the authority to propose civil penalties against individuals, agents or employees of mine operators, who knowingly fail or refuse to comply with any citation or order MSHA issues or who violate mandatory health or safety standards. These cases may also lead to criminal prosecution.

Due to DOL's increased focus on providing workers a voice in the workplace, discrimination complaints that miners filed with MSHA increased, as did the number of temporary reinstatement requests and complaints that MSHA filed with the Federal Mine Safety and Health Review Commission on miners' behalf. In 2012, MSHA filed more 105 (c) complaints and more reinstatement requests on behalf of miners than in any other year. As a result, MSHA shifted its SI resources to address discrimination complaints since they have mandatory timelines.

Impact of Upper Big Branch disaster on the Special Investigations Program:

Following the Upper Big Branch disaster in April 2010, the worst coal mine tragedy in 40 years, MSHA began more aggressive enforcement of, and education about, the anti-discrimination provisions of the Mine Act. Miners and families had testified to Congress about how workers at the Upper Big Branch mine feared reprisals if they reported unsafe conditions at the mine, and this testimony was confirmed by subsequent investigations into the tragedy. MSHA also confirmed that, despite the conditions identified by the various investigations, in the four years prior to the disaster, the Agency had not received a single hazard complaint from the mine.

General Comments:

MSHA's approach has made a difference in accomplishing the Agency's mission. In 2011, and again in 2012, mining deaths and injuries were reduced to the lowest rates ever. The number of chronic violator mines, identified by our Pattern of Violations screenings, has substantially decreased. The actions taken by MSHA have improved the health and safety of the nation's miners. However, mandatory activities have taken precedence, resulting in MSHA not always meeting the 110 program timeframes.

Findings and Recommendations:

**OIG Finding 1 – MSHA Did Not Always Meet 110 Timeframe Goals**

MSHA Districts did not always initiate and submit §110 special investigation cases to Technical Compliance and Investigations Office (TCIO) and TCIO did not always submit cases to SOL within its timeframe “goals.”

**OIG Recommendation 1**

Review goal monitoring activities and assess the validity of established §110 special investigations goals and implement either revised activities or goals to ensure MSHA initiates and submits cases on a more timely basis.

**MSHA Response**

MSHA disagrees with this finding and recommendation. Although this finding is factually accurate, MSHA does not believe that the timeframes in the SI Handbook need to be changed.

The timeframes are general management goals – not statutory or regulatory requirements. The primary causes for not meeting the timeframes for Section 110 investigations are the need to conduct thorough investigations and the need to prioritize the work of special investigators whose work assignments includes statutorily mandated inspections of all mines, discrimination investigations (which have statutory timeframes), accident investigations, internal reviews, and litigation support for contested citations. Balancing these demands and prioritizing special investigator work assignments impact the timeframes within which special investigations can be completed. MSHA believes the Agency needs flexibility to redirect scarce SI resources, as necessary, to accomplish statutorily mandated activities.

**OIG Finding 2 – MSHA’s 110 Case File Documentation was Inconsistent**

Although in general we found that MSHA properly included necessary materials in its case files, we found some instances in which it did not include all documentation required or document the rationale for not conducting an investigation on PKWs. Without complete information, MSHA cannot ensure the investigations adequately supported conclusions they reached or that all investigations warranted were initiated.

**OIG Recommendation 2**

Review and assess the documentation requirements in the current Handbook, revise it as appropriate, and provide documentation training for Special Investigators and TCIO personnel.

**MSHA Response**

MSHA agrees that it would be beneficial to review and assess the documentation requirements in the current handbook.

As the OIG is aware, MSHA is updating the SI Procedures Handbook and will revise, as appropriate, documentation requirements. Upon completion of the handbook, MSHA will provide appropriate documentation training for special investigators and TCIO personnel.

**OIG Finding 3 – MSHA Did Not Maintain Adequate 110 Data Systems**

MSIS does not allow TCIO to compile or track all data related to investigations. To compensate, TCIO maintains some data related to the events and cases in an ad hoc database. However, this ad hoc system made it cumbersome to manage all aspects of the investigation process.

MSHA did not maintain an adequate system to track the credentials. TCIO failed to record in its system credential issuance and expiration dates for 18 of the 80 investigators in our sample cases.

**OIG Recommendation 3**

Pending planned enhancements to MSIS, take steps to consolidate information from various systems (ad hoc and MSIS) into a single source to facilitate the management of all aspects of investigations.

**MSHA Response**

MSHA agrees that the MSIS system needs to be enhanced to manage all aspects of investigations.

MSHA disagrees with the statement in the report, “Without implemented SOPs and complete information in its database, MSHA may not be able to ensure all Special Investigators were credentialed, expired credentials were renewed, or credentials that were no longer needed due to departure or retirement were properly disposed of in accordance with Department of Labor requirements.” The OIG found no instances of investigations being conducted by investigators without the proper credentials or any cases of lost, unaccounted for, or expired credentials, or personnel who inappropriately possess credentials. MSHA has tracked and can account for all special investigator credentials the Department has issued. Although the OIG found a few instances where credential issuance and expiration dates were not updated in the database, all of this information was maintained and accessible by TCIO staff.

**Appendix E**

**Acknowledgements**

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Key contributors to this report were Nicholas Christopher (Audit Director), Robert Swedberg (Audit Manager), Ronald Larry, Charmane Miller, Kathleen Mitomi, Fernando Paredes, and Ajit Buttar.

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