MEMORANDUM FOR PATRICIA W. SILVEY  
Deputy Assistant Secretary for  
Mine Safety and Health Administration  

THROUGH: KEVIN G. STRICKLIN  
Acting Administrator for  
Metal and Nonmetal Mine Safety and Health  

FROM: THOMAS W. CHARBONEAULT  
Director, Office of Assessments  

SUBJECT: Mine Safety and Health Administration (MSHA)  
Office of Accountability Review, Metal and Nonmetal  
South Central District, Carlsbad, New Mexico Field Office,  

Introduction  

This memorandum summarizes the Office of Accountability's review of the South Central District, Carlsbad, New Mexico Field Office. The review focused on enforcement activities at the South Central District, Carlsbad, New Mexico Field Office. This review included MSHA field activities, level of enforcement, conditions and practices at the mine, Field Accompanied Reviews, and Office Reviews and MSHA supervisory and managerial oversight.  

Purpose  

The purpose of this accountability review is to determine whether MSHA enforcement policies, procedures and guidance are being followed consistently and whether mission critical enforcement activities are accomplished effectively. The accountability review also identifies areas for improvement and the subsequent implementation of effective corrective actions to address any identified issues.
Overview

Office of Accountability (OA) Supervisor Ted Smith and Specialists Mark Odum and Jerry Kissell (Review Team) conducted the review in accordance with the annual accountability review plan schedule. The review concentrated on two Regular Safety and Health Inspections (EO1) of the Event Nos. The mine was selected because it is a large underground and surface operation. Mr. Smith and Mr. Odum conducted the on-site review from through The review focused on enforcement activities during FY 2017 and included review of supervisory oversight activities.

Mine Visit

The Review Team accompanied the Field Office Supervisor and inspector to the mine on as part of a Spot Inspection (E16).

The mine is an underground operation located in that produces approximately tons per day. It employs miners working a twelve-hour production shift per day, four days per week. The is mined by use of a continuous mining machine. Material is loaded onto shuttle cars and dumped onto conveyors that transport the to the surface for further processing to be made ready for commerce. During the visit, the Team evaluated general conditions at the mine; assessed whether conditions at the mine are commensurate with enforcement levels documented in the inspection reports reviewed; and observed work practices at the mine site.

The mine visit included inspections and observations of the following:

- examination records
- underground development working section area
- primary escape and travelway
- mining cycle and work practices
- 2nd South 100 conveyor belt head and transfer area
- refuge chamber area near mine bottom
- surface pellet plant and disc deck
- check in/check out system

The inspector issued one enforcement action. (See Attachment B)

Review Results

This accountability review revealed positive findings in several areas, including the following:

1. The inspection reports reviewed were organized and notes were clear and concise.
2. Reports included pictures of violations.
3. Inspectors documented observations of mining cycles and work practices.
4. This accountability review did not identify any issues that required a corrective action plan.

(See Attachment A for Office of Accountability Checklist Items)

The Review Team identified and discussed with District personnel inspection and procedural best practices as described in the Metal and Nonmetal General Inspection Procedures Handbook. A general outline of discussion topics is included in an attachment to this memorandum. (See Attachment C)

As a part of the review, the OA compared enforcement levels of the mine with the Field Office, District, and national averages. The mine had a Significant and Substantial (S&S) rate of 18 percent during the FY 2017 compared to the Field Office S&S rate of 23 percent; a District S&S rate of 24 percent; and the national S&S rate of 23 percent. While the S&S rate for the mine was lower than the average S&S rates of the Field Office, District and nation, the enforcement levels were appropriate with existing mining conditions and work practices based on the review and observations made during the mine visit.
Attachments

A. Office of Accountability Checklist

B. Citation issued during the mine site visit

C. Discussion Topics
**Attachment A – Office of Accountability Checklist**

1. Determine if complete and thorough E01 inspections are being conducted and/or if policies and procedures were properly followed.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []

2. Determine if documentation for inspections is complete and thorough.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []

3. Determine if citations and orders issued during previous inspections were properly evaluated for gravity, negligence, level of enforcement, number of persons affected, and supported by documentation.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []

4. Evaluate inspector(s) examination of required records and postings for compliance with applicable standards.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []

5. Evaluate the inspector(s) physical examination of the active working areas of the mine and inspection of all mining cycles.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []

6. Evaluate the inspector(s) on-site contaminant assessment and documentation.
   - Adequate [X]
   - Corrective Action Needed []
   - Comments Below []
7. Evaluate inspector(s) examination of electrical equipment, transformer stations, and/or electrical circuits.
   Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

8. Determine if adequate close-out conferences are being conducted at the end of each inspection.
   Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

9. Determine if Possible Knowing/Willful (PKW) Forms are documented and processed according to agency policy and procedures.
   Adequate [ ]  Corrective Action Needed [ ]  Comments Below [X]

Attachment C

Evaluate 103(i) spot inspection (E02) reports for the office/district being reviewed for compliance with agency policies and procedures, including compliance with time frames and separating E02 inspections from other events.
   Adequate [ ]  Corrective Action Needed [ ]  Comments Below [X]

Not Applicable - The Field Office does not have any mines in a 103(i) status.

11. Determine if Hazard Complaint inspections/investigations are being conducted according to policy and procedures.
    Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]

12. Determine if supervisors are monitoring inspector time and activity to ensure proper use of time, including off-shift and weekend work, by all inspectors.
    Adequate [X]  Corrective Action Needed [ ]  Comments Below [ ]
13. Are required Field Accompanied Reviews (FARs), Office Reviews (ORs) and supervisory follow-up reviews being conducted and documented according to agency policy and procedures?
(ORs - One E-01/Inspector/every six months/FY - minimum; FARs - one/inspector/year - minimum)

14. Determine if a 104(d) tracking system is in place and being kept current at the office being reviewed.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

15. Determine if the Mine Files are legible, up to date, and reviewed by supervisors.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

16. Determine if supervisors are visiting active mines.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

17. Review documentation of staff meetings/safety meetings to determine their effectiveness and relevance to current issues and the Agency's mission.
Adequate [X] Corrective Action Needed [ ] Comments Below [ ]
18. Determine if Assistant District Manager is conducting the required second level reviews and holding supervisors accountable for oversight of Office Reviews and Field Accompanied Activity Reviews.

19. Determine if district management personnel are reviewing work products and reports for accuracy and completeness.

   Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

20. Determine if managers and supervisors are using required standardized reports to review critical data relevant to inspections and investigations.

   Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

21. Determine if Districts, when required, are conducting in-depth accountability reviews in compliance with agency policy and procedures including follow-up to determine the effectiveness of corrective actions.

   Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

22. Is information (mine status, methane liberation, number of employees, etc.) being entered into the MSHA Standardized Information System (MSIS) accurately and in a timely manner?

   Adequate [X] Corrective Action Needed [ ] Comments Below [ ]

23. Determine if inspectors have sufficient equipment and supplies to conduct thorough inspections.

   Adequate [X] Corrective Action Needed [ ] Comments Below [ ]
United States Department of Labor  
Mine Safety and Health Administration  
Office of Accountability

### District  
South Central  
Field Office  
Carlsbad, NM  
Mine ID  
Date

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<tr>
<td>24. Evaluate the overall condition of the mine relative to the level of enforcement documented in previously completed inspections.</td>
<td>Adequate</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>25. Determine if inspectors have an understanding of when a violation of Section 103(a) for Advance Notice occurs and whether appropriate citations are issued for Advance Notice.</td>
<td>Adequate</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>26. Determine if the management resource tracking tool is being used to track resources regarding Special Investigations.</td>
<td>Adequate</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<td>27. Determine if retraining of supervisors, inspectors, and specialists is being tracked.</td>
<td>Adequate</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
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<tr>
<td>28. Determine if supervisors are rotating the mine assignments annually among inspectors assigned to their Field Office.</td>
<td>Adequate</td>
<td>Corrective Action Needed</td>
<td>Comments Below</td>
<td></td>
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</table>
### Mine Citation/Order

<table>
<thead>
<tr>
<th>Mine Citation/Order</th>
<th>U.S. Department of Labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1: Violation Date</td>
<td>Mine Safety and Health Administration</td>
</tr>
<tr>
<td>1. Date</td>
<td>Mo Da Yr</td>
</tr>
<tr>
<td>2. Time (24 Hr. Clock)</td>
<td></td>
</tr>
<tr>
<td>3. Citation/Order Number</td>
<td></td>
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<tr>
<td>4. Served To</td>
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<td>5. Signed</td>
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<td>6. Mine ID</td>
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<td>7. Mine ID</td>
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<td>8. Mine ID</td>
<td></td>
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<tr>
<td>9. Mine ID</td>
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**Loose material ranging in size existed on four areas of the rib located in the Power room of 500 Area between BT31 and BT29. This condition contributes to a struck-by hazard to miners. The area is accessed as needed by miners for equipment and fire extinguisher examinations/maintenance. Should an incident occur lacerations or broken bones could result.

**Photos taken:**

### Section 2: Inspector's Evaluation

<table>
<thead>
<tr>
<th>Violation</th>
<th>A. Health Safety Other</th>
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<tbody>
<tr>
<td>B. Section of Act</td>
<td></td>
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<tr>
<td>C. Paragraph of Title 30 CFR</td>
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</table>

- **Category:** Other
- **Citation:** 57.3200

### Section 3: Inspector's Evaluation

<table>
<thead>
<tr>
<th>Gravity</th>
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</thead>
<tbody>
<tr>
<td>A. Injury or Illness (last 12):</td>
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<tr>
<td>B. Injury or illness could reasonably be expected to be</td>
</tr>
<tr>
<td>C. Significant and Substantial:</td>
</tr>
</tbody>
</table>

- **Likelihood:** Reasonably Likely
- **Number of Persons Affected:** 0

### Section 4: Initial Action

<table>
<thead>
<tr>
<th>Type of Action</th>
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<tbody>
<tr>
<td>A. Citation</td>
</tr>
<tr>
<td>B. Order</td>
</tr>
<tr>
<td>C. Safeguard</td>
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<tr>
<td>D. Written Notice</td>
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### Section 5: Termination Action

The loose material was scaled down. This citation is hereby terminated.

### Section 6: Termination Action

<table>
<thead>
<tr>
<th>Terminated</th>
<th>A. Date</th>
<th>Mo Da Yr</th>
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<tbody>
<tr>
<td>B. Time (24 Hr. Clock)</td>
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</table>

### Section 7: Automated System Data

<table>
<thead>
<tr>
<th>Type of Inspection (activity code)</th>
<th>E16</th>
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<tbody>
<tr>
<td>Event Number</td>
<td></td>
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<tr>
<td>Primary or Minor</td>
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**Note:**

- In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, the Small Business Administration has established the National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MSHA, you may call 1-888-REG-FAX (1-888-734-3294), or write the Ombudsman at Small Business Administration, Office of the National Ombudsman, 1425 Jefferson Drive SW, Washington, DC 20410. Please note, however, that your right to file a comment with the Ombudsman is in addition to any other rights you may have, including the right to contest citations and proposed penalties and obtain a hearing before the Federal Mine Safety and Health Review Commission.
Attachment C – Discussion points

- Enforcement Action Review – Discussed in general documentation and justification of gravity and negligence of citations reviewed in previous E01 events.

- Discussed Office Reviews / Field Accompanied Reviews requirements.

- 4000-49 form – Discussed documenting accurate information for petition for modifications and miners’ representatives.

- Photo mounting sheet – Form 4000-125 – Discussed using the current form dated June 2009.

- Attachment A, See Checklist #9 - PKW detail – time frames – Corrective actions from the Office of Accountability review conducted in 2017 were continuing to be evaluated for effectiveness at the time of this review.