



**AUG 19 2010**


**MEMORANDUM FOR ANTHONY GULEY**

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Coal Mine Safety and Health District 2

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FROM:

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SUBJECT: Part 100 Pilot Safety and Health Conferences

This Part 100 Pilot Safety and Health Conference program applies to all safety and health conferences held pursuant to 30 C.F.R. Part 100.6 that will be conducted by the above Mine Safety and Health Administration (MSHA) districts between August 31, 2010, and November 30, 2010. The normal conferences required by PIL I09-III-3 and PIB P09-05 will be discontinued for the above districts during the 90 day pilot program.

This pilot conference program establishes procedures for conducting 30 C.F.R. Part 100.6 pilot safety and health conferences in MSHA Coal Mine Safety and Health Districts 2 and 6, and the Metal and Nonmetal Safety and Health Southeast District. The memorandum provides guidance in scheduling the pilot conferences, i.e., parameters in acceptance of a conference request or denial, and the conduct of these safety and health conferences.

Effective August 31, 2010, pilot safety and health conferences will be held pursuant to 30 C.F.R. Part 100.6 in the MSHA districts specified in this memorandum. As part of these pilot conferences all parties shall be afforded the opportunity to review with MSHA each citation and order issued during an inspection prior to the assessment of a penalty.

As specified in 30 C.F.R. Part 100.6, it is within the sole discretion of MSHA to grant a request for a conference. When a conference is requested it must be in writing (e-mail/fax is acceptable) and must include the specific reason(s) that each citation or order is being conferenced. A copy of the operator's submittals will be provided to the field office supervisor and issuing inspector via email or hard copy for review and response to Designated MSHA Representative (DMR). Once a conference has been granted MSHA maintains discretion in determining the nature, scope, and number of participants. The District Manager will forward the request to the DMR or Conference Litigation Representative (CLR) assigned to conduct Part 100 safety and health conferences for scheduling.

The purpose of these conferences will be to review MSHA information relevant to citations and orders issued at mines along with the mine operator's specific reason(s) for requesting the conference. The conference is limited to hearing mitigating circumstances provided by the operator and/or additional supporting documentation such as photos, maps, plans, etc. Citations or orders can only be modified or vacated based on factual documented evidence. Estimated penalty amounts will be discussed along with the effects of any modifications; however, penalty settlements are not part of this conferencing process. The following procedures must be followed when conducting these pilot safety and health conferences:

### **ACR – Pilot Safety and Health Conferences**

The Safety and Health Conference provides the mine operator and the miners' representative an opportunity to hear MSHA's interpretation of regulations and to discuss and resolve all issues relating to violations PRIOR to the civil penalty assessment and litigation.

#### **1. Scheduling Conferences.**

- a. Request for safety and conference shall be submitted to the District manager or his designee within 10 days of the closeout conference with the mine operator.
- b. The request shall be in writing (e-mail/fax is acceptable). The request shall include a brief statement of the specific reason(s) why each citation/order should be conferenced.
- c. It is within the sole the discretion of MSHA to grant the request for a conference and to determine the nature of the conference.
- d. The district shall notify the mine operator and miners' representative (if applicable) of the decision regarding the denial or granting of the conference request.

- e. Once a conference is granted, the MSHA representative shall ensure that the citation(s)/order(s) that are being conferenced are placed on hold and not processed by the Office of Assessments to prevent a civil penalty from being issued until the completion of the conference and a decision is rendered.
- f. The designated MSHA representative shall provide a date, time, and location of the conference to the designated district personnel to process.
- g. The designated district person will notify all interested parties in writing (e-mail/fax is acceptable) which should include the mine operator, miners' representative (if applicable), issuing inspector, and the inspector's supervisor of the conference, date, time, and location of the conference. MSHA maintains the right to limit the conference participants.
- h. The designated district personnel will provide the MSHA representative with the following information and if necessary request it from the field office:
  - i. documentation of the notification of conference
  - ii. copy of the citation(s)/order(s) to be conferenced
  - iii. issuing inspectors notes for the day the citation/order was written
  - iv. citation and order documentation; and
  - v. any other relevant information regarding the citation/order.

## **2. Records of Conferences.**

The designated MSHA representative shall enter and maintain a record/log of all citation(s)/order(s) conferenced in ACR data computer system.

- a. Conference number assigned by the ACR data system
- b. Mine Identification Number
- c. Date the citation was issued
- d. Citation/Order number(s)
- e. 30 CFR/Mine Act cited
- f. Issuing AR number
- g. Request date of the conference
- h. Date of the conference
- i. Date of Conference decision
- j. Date the decision was forwarded to the appropriate District manager for approval or disapproval
- k. Date the district manager approved or disapproved
- l. Disposition of the Citation/Order

## **3. Preparation for Conference.**

- a. The designated MSHA representative will create a Safety and Health Conference File containing the following:

- i. A copy of the request for a safety and health conference and any documents submitted with the request;
- ii. A copy of the conference letter sent to the requester and all interested parties (such as miners' rep, etc) regarding the date, time, and location of the conference or the denial of the conference;
- iii. A copy of the citation(s)/order(s) being conferenced and subsequent action(s)[if applicable];
- iv. Copy of the issuing inspector's general field notes and the citation/order documentation for the day the citation(s)/order(s) were issued;
- v. Approved plans [if applicable];
- vi. Other relevant information including but not limited to closeout conference information, program policy, 30 CFR, Mine Act & MINER Act, photograph(s), previous history, maps, procedures, case law, health samples, etc.

b. **Final Preparation for the Conference.**

The designated MSHA representative will review all of the available information regarding the citation(s)/order(s) that are being conferenced. This includes documented interview(s) with the issuing inspector to answer any questions and determine if any additional information is relevant to the conference/ citation(s)/ order(s). The MSHA representative will review in detail.

- i. Citation(s)/Order(s) being conferenced.
- ii. Applicable areas of 30 CFR/Mine Act/MINER Act
- iii. Applicable Safety and Health Standards
- iv. Applicable MSHA handbooks – Citation and Order Writing handbook, General Inspection Procedures, health inspection handbook, Haul road inspection handbook, etc.
- v. Program Policy Manual
- vi. Case Law and applicable decisions (Commission & ALJ's)
- vii. Directives
- viii. Compliance guides
- ix. Applicable Federal Registers

4. **Conference Procedure.**

The safety and health conference is a pre-penalty conference and is not to include any negotiations/settlement agreements. The conference is conducted to determine the merits of the citation(s)/order(s) only and if they were appropriately issued by the inspector.

The following actions should be followed during the health and safety conference:

- a. Explain the conference procedure in detail to the participant(s) prior to commencing the conference and determine a spokesperson for each party.
- b. Review each of the citation(s)/order(s) which are being conferenced in detail.
- c. Permit the spokesperson for the operator/contractor who requested the conference state his/her position fully without interruption. The information should also include what the operator/contractor is requesting such as; vacate, reduce negligence, number of persons affected, likelihood of injury, injury expected to be, or type of action.
- d. If other parties are present and will present information which is relevant to the citation(s)/order(s) being conferenced, they will be permitted to state their position also without interruption.
- e. The issuing inspector will not generally attend or participate in the conference; however, in instances where MSHA determines that the he/she can contribute valuable information or technical expertise that could affect the decision regarding the citation(s)/order(s) being conference, the inspector will be given an opportunity to participate in that conference. At no time will the inspector be permitted to be cross-examined by anyone in attendance.
- f. Following the operator/contractor stating his/her position, the MSHA representative may ask questions to clarify statements, conditions, or other pertinent items.
- g. Following the completion of the conference, the MSHA representative will inform the participants that he will review the additional information provided and render a decision as to uphold the citation(s)/order(s) or make any appropriate modification(s).
- h. If additional facts or circumstances are provided during the conference warrant additional clarification and/or research, the MSHA representative will gather such information and also contact the issuing inspector and supervisor for additional information and/or discussion. Prior to finalizing any decision, the MSHA representative must detail the inspector's position and the MSHA's proposed conference decision in writing. This written position shall be routed through the District management for approval. The MSHA representative will notify all participants, issuing inspector and his/her supervisor, and miner's representative [if applicable] of the conference results in writing following the approval process. (For mines under the Pattern of Violations, the District Manager and Assistant District Manager must review the citations and conference results prior to finalization of the actual conference.)
- i. Conference results will not be determined on settlement basis or for the purpose of settlement of a group of citation(s)/order(s). The

basis for any changes (modifications, vacates, or interpreting the standard) of the citation(s)/order(s) will be supported by MSHA's guidelines/handbooks/policy/procedures/directives.

- j. If changes are necessary to correct errors and to ensure appropriate issuances, the MSHA representative will issue all subsequent actions resulting from the safety and health conference.
- k. The MSHA representative must communicate the reasons for actions taken to modify or vacate citations/orders, based on current Commission decisions, recurring evidence deficiencies, etc. to the enforcement personnel in order to achieve uniform application of regulations. The MSHA representative must provide a written Monthly Summary Report that briefly describes conference decisions that result in changes to the citations/orders to management, supervisory and enforcement personnel in the District.
- l. Following the completion of the safety and health conference, the MSHA representative will release the hold on the citation(s)/order(s) to permit the Office of Assessments to process the citation(s)/order(s) and determine the appropriate civil penalty assessment for the operator/contractor.
- m. It is also required that the DMR communicate the justifications for actions taken to modify or vacate citations/orders to the District Manager and enforcement personnel in order to achieve uniform application of regulations. The DMR will provide a written Monthly Summary Report briefly describing conference decisions that result in changes to the citations/orders to management, supervisory and enforcement personnel in the district.

##### **5. Record Keeping Requirements.**

On completion of a safety and health conference, the DMR will make a record of the conference results and ensure prompt filing with the Conference Litigation Officer (CLR). If a conference request is denied, that request and subsequent denial will also be filed. These conferences will be plainly marked and labeled to identify the contents as health and safety conferences. The following information will be maintained in this file:

- a. conference request date.
- b. date of the conference.
- c. date of conference decision.
- d. citation/order number(s) conferenced.
- e. basis and reasoning for decisions rendered.
- f. comments received from issuing inspector prior to final disposition.
- g. final disposition of the citation/order.

- h. date the decision was forwarded to the appropriate district manager with the district manager' acceptance and/or recommendations.
- i. an electronic data base will be used for capturing the following information: mine id number, event number, conference date request, date of conference, total number of citation/orders issued during event, citation/order numbers conferenced, and final disposition to include sustained, modifications or vacates.

At the conclusion of the pilot, an analysis of the results will be conducted. Based on this analysis, the affected districts will be provided further guidance on the future conduct of safety and health conferences in conformance with PIL 109-III-3 and PIB P09-05 or other revised directive(s).

30 C.F.R. Part 100.6(a) allows MSHA to exercise its sole discretion in deciding whether to grant an operator's request for a safety and health conference on any citation or order issued. The procedures outlined in this pilot program constitute an exercise of this discretion in an effort of give District Managers the appropriate flexibility to effectively manage the increasing CLR caseload.