



December 1, 2018  
Sheila A. McConnell  
Director, Office of Standards, Regulations and Variance  
Mine Safety and Health Administration  
201 12<sup>th</sup> Street South, Suite 401  
Arlington, Virginia 22202-5452

Regarding: Request to revise the 30 CFR Part 100 Safety and Health Citation/Order Conferencing Procedures

Filed via Email: [zzMSHA-OSRVRegulatoryReform@dol.gov](mailto:zzMSHA-OSRVRegulatoryReform@dol.gov)

Dear Ms. McConnell;

In February of 2017, Our President Donald Trump signed Executive order 13777, entitled “Enforcing the Regulatory Reform Agenda,” directing each agency to review existing regulations to assess compliance costs and reduce regulatory burden. Since that time the Mine Safety and Health Administration request stakeholders’ assistance in identifying those regulations which could be repealed, replaced, or modified without adversely affecting miners’ safety and health. Pursuant to the Order and MSHA’s request, Sunrise Coal LLC, respectfully request that MSHA revise the 30 Code of Federal Regulations Part 100, Safety and Health Citation /Order conferencing procedures to remove the District Manager as the final decision Maker.

The District Manager has ultimate responsibility for enforcing the provisions of the Mine Act in his or her district. As currently structured, the Conference Litigation Representatives in each district work directly for the District Manager. However, their function is much different than the enforcement-driven mandate of the District Managers. CLR’s should serve a more objective, fact-driven role consistent with the intent of the 30 CFR in providing operators an objective review of a citation prior to its assessment. Unfortunately, based upon District 8, that is not the case. It appears District Managers have stripped CLR’s of their ability to make an independent decision to modify a citation or order without first obtaining approval from the District Manager. In Many cases, a district Manager directly involved in the issuance or gravity and negligence determinations of a citation. At the very least, he or she has a strong incentive to uphold any citation or order issued by the inspectors. To then have that same person be the ultimate arbiter of the operator’s conference under 30 CFR Section 100.6 is a conflict of interest and undermines the intent of affording an operator the right to conference a citation/or order.



In some cases, CLR's are experienced miners and MSHA inspectors who are trained on the applicable law and judicial interpretation of it. However, as they currently report to District Managers, their ability to independently exercise their judgment is hindered. In fact, the District Manager is responsible for conducting the annual performance review of CLR's and the results of that review determine the amount of bonus money awarded to a CLR. Such a management structure does not create the level of independence and objectivity that should be present in the CLR program.

The Safety and Health conferencing process should be transparent and provide the mine operator opportunity to provide additional information which may not have been properly considered during the issuance of the citation or order. Most importantly, the process should provide an independent review of issuing inspector's decision. With the CLR's being directly supervised by the District manager, the current process does not allow for a fair, balanced, and unbiased decision. It is our recommendation that the effectiveness and objectivity of the conference process would be better served by CLR's reporting to a program area outside the district office, such as the office of Accountability or the Solicitor's office. Not only would this create more faith among operators in the conferencing process, but it would also provide better communication and improved consistency of enforcement between CLR's in different districts.

Thank you for your time to consider this recommendation. If you have any questions, or if you would like to meet further discuss the need to revise the current conferencing procedures, please do not hesitate to contact me.

Sincerely,

Terry M. Dowell  
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Sunrise Coal LLC.  
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