APPENDIX B: AGENCY'S RESPONSE TO THE REPORT

U.S. Department of Labor

Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, Virginia 22202-5452

SEP 20 2019

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: DAVID G. ZATEZALO
Assistant Secretary of Labor for
Mine Safety and Health Administration

SUBJECT: Response to the Office of the Inspector General's (OIG) Draft Audit Report, *MSHA Needs to Better Manage Its Pre-Assessment Conferencing Program*

The Mine Safety and Health Administration (MSHA) appreciates the opportunity to comment on the work the OIG did evaluating MSHA's pre-assessment conferencing program. MSHA understands the importance of the program and has proactively taken steps to improve it. Some of these improvements already address the spirit of the OIG's recommendations.

MSHA offers the following comments in response to the OIG recommendations.

Recommendation 1: Provide training to Conference Litigation Representatives (CLRs) and district management on how to write specific supporting reasons for conference decisions in conference files and violation forms.

In October 2018, MSHA provided a two-day training that can address this recommendation. CLRs and their clerks attended this training. The training focused on three-years' worth of conference files, specific to attendees' field offices, emphasizing on ways in which documentation could be improved. Going forward MSHA will provide annual online refresher training.

Recommendation 2: Provide training to district management on how provide effective oversight over the pre-assessment conference program. The training should focus on reviewing the conference file and the system data for completeness and accuracy.

Although the two-day training, referenced under MSHA's response to recommendation 1, was provided to CLRs and their clerks, going forward MSHA will include district management in the online refresher training and include a module on review and oversight.

Recommendation 3: Review each district's process to ensure Conference Litigation Representatives consistently, in a way that does not create embarrassment or conflict, communicate the reasons they modify or vacate violations with supervisors and issuing inspectors and participate in staff meetings and at district training sessions for inspection personnel.

Prior to issuance of the OIG's report, MSHA started developing the requirements for a MSHA Standardized Information System (MSIS) report. This report will establish a process for districts and CLRs where reasons violations were either modified or vacated are consistently communicated. This report will summarize key data points in the conferencing process, emphasizing sections of the 30 CFR to which violations were either modified or vacated. By doing so, users of the report will be able to highlight trends or target emergent issues.

Recommendation 4: Develop MSHA Standardized Information System reports showing a summary of conference decisions that Conference Litigation Representatives can use as their monthly report and changes made to violation form attributes through conferencing decisions that MSHA can use to identify high-risk attributes and research the root causes for trends.

Prior to issuance of the OIG's report, MSHA started developing the requirements for a MSIS report. See MSHA's response to recommendation 3 for additional details.

Recommendation 5: Revise the Alternative Case Resolution Handbook to require districts to document reasons supporting conference decisions to uphold a violation. The reason for an uphold decision should explain why any new evidence presented by the operator at the conference did not persuade MSHA to change the violation.

MSHA will not revise the Alternative Case Resolution (ACR) Handbook to require districts to document reasons for upholding a violation. Chapter 2 – Part 100 Safety and Health Conferences, Section E of the Handbook already contains prescriptive documentation requirements. Specifically, Section E requires CLRs to document their decision on the conference worksheet, and maintain all documentation relevant to the case in the conference file. However, MSHA will incorporate a module about conference file documentation, emphasizing the need to document instances of violations being upheld, as part of the online refresher training referenced in MSHA's response to recommendations 1 and 2.

Recommendation 6: Revise the Alternative Case Resolution Handbook to clarify requirements for CLR monthly reporting. For example, the guidance should address the method(s) allowed and the minimum level of detail that CLRs should describe in the report.

MSHA will not revise the ACR Handbook to clarify requirements for CLR monthly reporting. The Handbook is prescriptive in its guidance by requiring CLRs in their 30-day report to *briefly* (emphasis added) describe conference decisions that result in

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MSHA will not revise the ACR Handbook to clarify requirements for CLR monthly reporting. The Handbook is prescriptive in its guidance by requiring CLRs in their 30-day report to *briefly* (emphasis added) describe conference decisions that result in

changes to violations. The Handbook also requires the information be communicated to management, supervisors and inspectors. The vessel in which this information gets communicated is immaterial as long as the information is communicated and documented, as per current requirements. Nonetheless, MSHA believes the MSIS report under development, as referenced in MSHA's responses to recommendations 3 and 4, will address the spirit of this recommendation by provisioning for the minimum level of detail that CLRs are to report.

Recommendation 7: Provide training on how to populate MSHA's Standardized Information System from the conference files and the importance of the importance of filling in all data fields. The training should focus on defining the required conferencing fields in MSIS to populate, identifying what documentation in the conference file to use when populating each field, and defining appropriate times to cancel a conference.

The MSHA provided in October 2018 addresses this recommendation, see MSHA's response to recommendation 1. Going forward MSHA will provide an annual online refresher training course.

Recommendation 8: Update MSHA's Standardized Information System with two system controls that require users to populate all required fields and prevent personnel from entering dates in the wrong order.

MSHA agrees with this recommendation and will develop data validation measures within the MSIS ACR Conference module.

Recommendation 9: Perform periodic reviews of MSHA's Standardized Information System data to ensure that districts are accurately populating it and marking conferences as completed in a timely manner.

MSHA agrees with this recommendation and will develop a report that identifies conferencing records needing to be corrected or marked as complete.

We appreciate the opportunity to comment on the report. If you have any questions or need further information, please contact Patricia W. Silvey, Deputy Assistant Secretary for the Mine Safety and Health Administration at (202) 693-9414.