

# Conference and Litigation Procedures

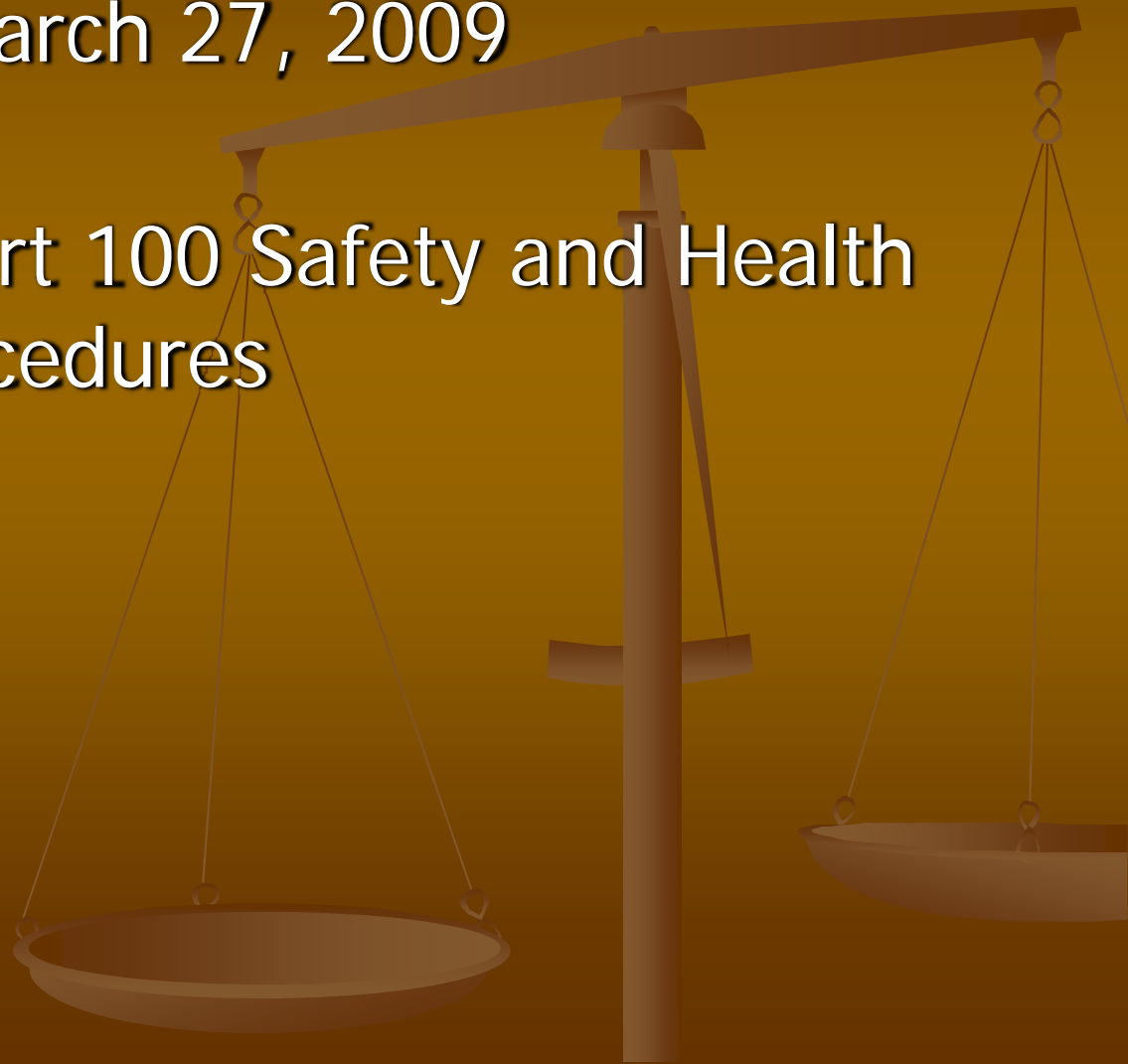


Hillary Smith

Rocky Mountain M/NM District  
Conference and Litigation Representative

# PROGRAM INFORMATION BULLETIN NO. P09-05

- ISSUE DATE: March 27, 2009
- SUBJECT: Part 100 Safety and Health  
Conference Procedures

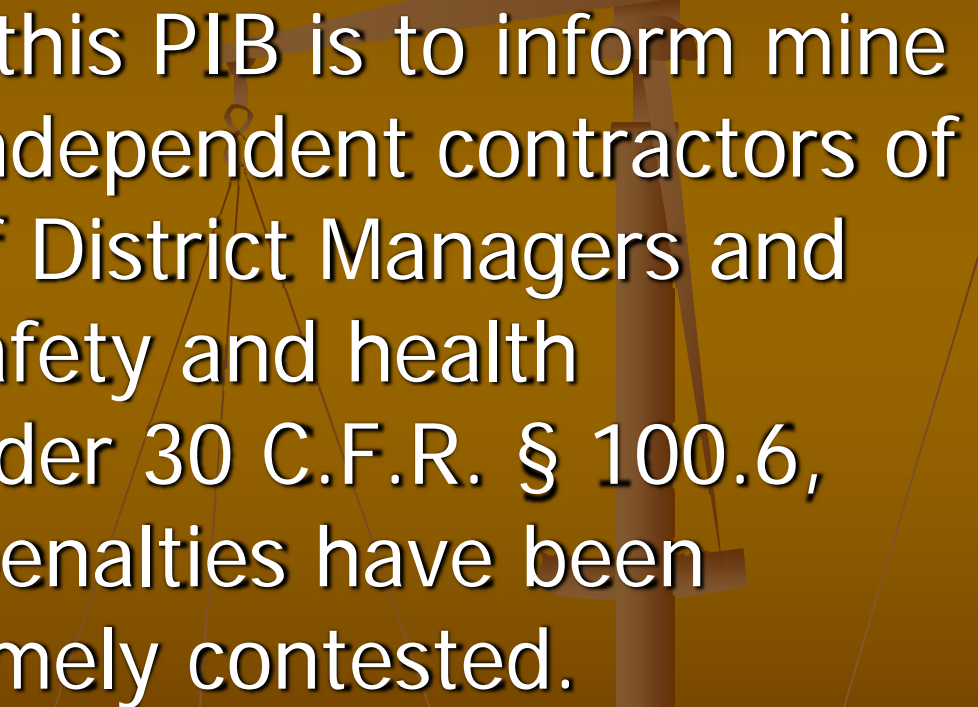


# PROGRAM INFORMATION BULLETIN

## NO. P09-05

### ■ Purpose

The purpose of this PIB is to inform mine operators and independent contractors of the discretion of District Managers and CLRs to defer safety and health conferences, under 30 C.F.R. § 100.6, until after civil penalties have been proposed and timely contested.



# PROGRAM INFORMATION BULLETIN

## NO. P09-05

- Requests for safety and health conferences under 30 C.F.R. § 100.6 must be in writing and must include a brief statement of the reason why each citation or order should be conferenced. Failure to provide the brief written statement is a basis for denying a conference request.
- A request for a safety and health conference will be granted at the discretion of the District Manager or his or her designee.

# PROGRAM INFORMATION BULLETIN

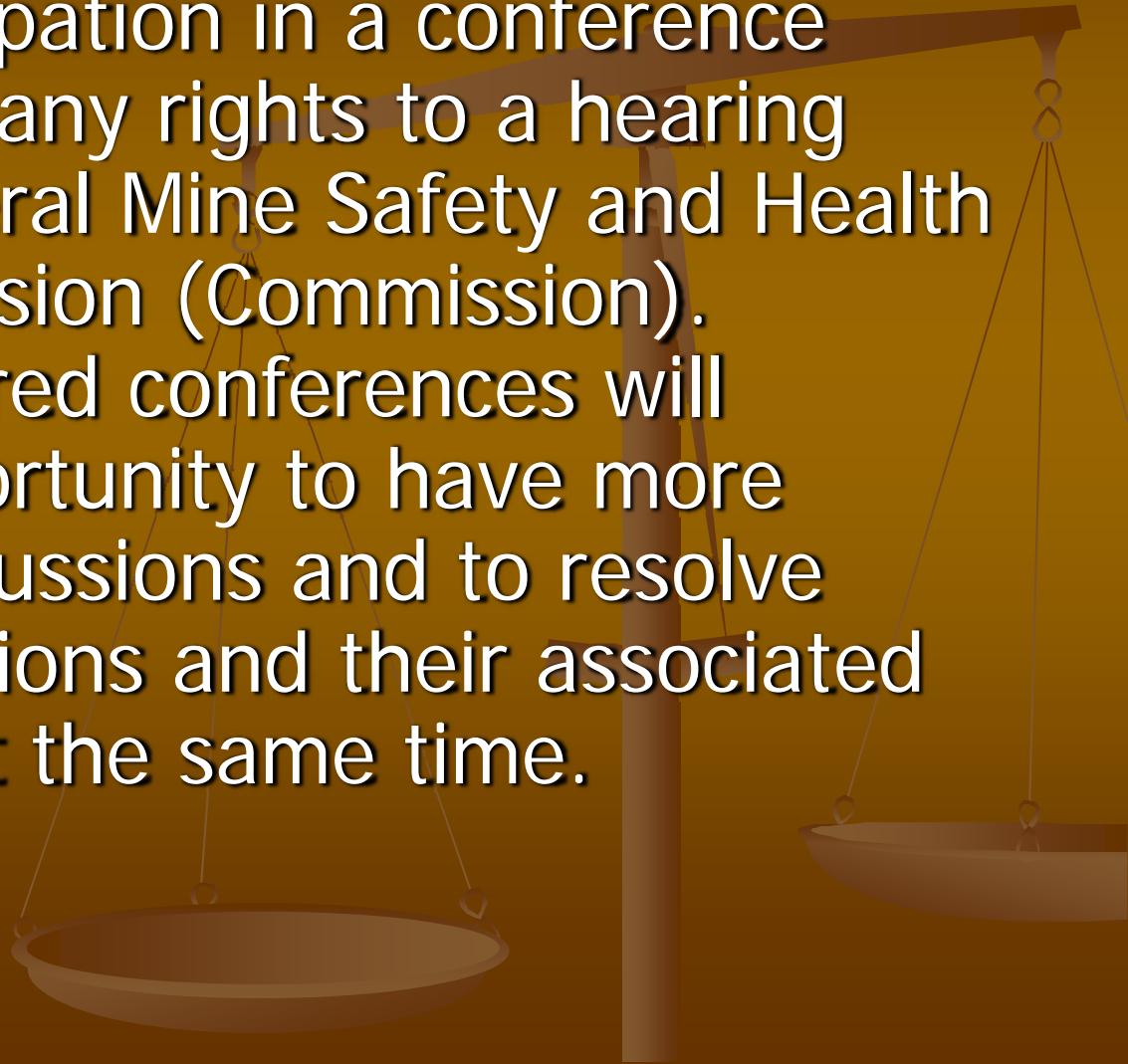
## NO. P09-05

- If granted, the conference will be scheduled in most cases after the civil penalties have been proposed and MSHA has received a timely notice of contest. Thereafter, the CLR assigned to the matter will notify operators and miners' representatives, if applicable, of the date, time, and location of the conference to discuss all contested violations and their associated penalties. Failure to timely contest the proposed penalties generally will result in the conference being cancelled.

# PROGRAM INFORMATION BULLETIN

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- Operator participation in a conference does not waive any rights to a hearing before the Federal Mine Safety and Health Review Commission (Commission). However, deferred conferences will provide an opportunity to have more meaningful discussions and to resolve contested violations and their associated civil penalties at the same time.





# PROGRAM INFORMATION BULLETIN

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- In order to allow sufficient time for the conference process and to save operators the burden and expense of filing an answer, the CLR will file a letter with the Commission requesting a 90-day extension of time from the original due date for filing a petition for the assessment of the civil penalty in this case. If a settlement is reached as a result of this conference, the CLR will file a Petition for Assessment of Civil Penalty and a Motion for Decision and Order Approving Settlement with the Commission.

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- The benefit of this new conference procedure is a savings to operators and MSHA of time and expense without engaging in litigation. With this in mind, operators should carefully consider the violations to be discussed in order to narrow the scope of the conference and facilitate a more meaningful and efficient conference.



# Conferences

- When the mine operator sends in a conference request, in most cases, they will receive a letter from MSHA stating that we intend to follow this PIB and delay the conference until after the Citation has been contested.
- Please send the assessment control sheets requesting an enhanced conference/contest back to assessments and not to the District Office



ROCKY MOUNTAIN DISTRICT  
Metal and Nonmetal Mine Safety and Health

April 16, 2009

New Company  
Attn: Joe Joey, Supervisor  
P O Box 1235  
Town CO 88888

Re: Portable Plant  
05-05005

Dear Mr. Joey:

Your request for a Safety and Health conference in accordance with Part 100, Title 30 C.F.R. was received by this office on April 14, 2009. A conference will be scheduled after you have contested the penalties associated with the violations, and your contest has been received. Failure to timely contest the proposed penalties will result in your conference request being cancelled. Once your contest has been received, you will be contacted regarding these violations.

If you do request a contest of the penalties, this conference will address all the citations you contest and, if successful, will lead to the filing of a motion to approve settlement with a Judge of the Federal Mine Safety and Health Review Commission. If the conference does not resolve all the disputed matters, those will proceed to a hearing before the Judge.

If you have any questions or concerns, please feel free to contact Hillary A. Smith at 303-231-5579.

Sincerely,

Hillary A. Smith  
Conference and Litigation Representative

Your request for a Safety and Health conference in accordance with Part 100, Title 30 C.F.R. was received by this office on April 14, 2009. A conference will be scheduled after you have contested the penalties associated with the violations, and your contest has been received. Failure to timely contest the proposed penalties will result in your conference request being cancelled. Once your contest has been received, you will be contacted regarding these violations.

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US Department of Labor  
Mine Safety and Health Administration  
Office Of Assessments  
PROPOSED ASSESSMENT



Certified Mail - Return Receipt Requested

Case Number: [REDACTED]  
Mine Name: [REDACTED]  
Served To: [REDACTED] (Contractor - [REDACTED])

Case Date: 02/24/2009  
Mine Location: [REDACTED]

Upon reviewing the violations cited in the citations and orders referenced below and the data supplied by the Secretary's Authorized Representative, and all other information supplied concerning these citations and orders, MSHA finds that the violations cited did in fact occur and applying that data to the assessment regulations described in 30 CFR 100, MSHA proposes the penalty specified.

Pursuant to 30 CFR 100.7, you have 30 days from receipt of this proposed assessment to either pay the penalty, or notify MSHA that you wish to contest the proposed assessment and that you request a hearing on the violations in question before the Federal Mine Safety and Health Review Commission. If you do not exercise the right herein described within 30 days of receipt of this proposed assessment, this proposed assessment will become a final order of the Commission and will be enforced under provisions of the Federal Mine Safety and Health Act of 1977.

For violations assessed under the formula described in 30 CFR 100.3, the points assigned for the size of the operator (Column A) are derived from applying Subsection 100.3(b) of 30 CFR 100 using the size of your company and the size of your mine. The points assigned for the history of previous violations (Column B) are derived from applying subsection 100.3 (c) of 30 CFR, that is, the number of violations assessed per inspection day. The points assigned for negligence (Column C) are derived from applying subsection 100.3(d) of 30 CFR, that is, finding either no negligence, low negligence, moderate negligence, high negligence or reckless disregard. The points assigned for gravity (Column D) are derived from applying Subsection 100.3(e) of 30 CFR, that is, the likelihood of occurrence of the event against which the standard is directed, the severity of the injury or illness if it occurred or were to occur, and the number of persons potentially affected if the event occurred or were to occur. The points or percentage reduction assigned for the demonstrated good faith of the operator charged in attempting to achieve rapid compliance or the effects thereof (Column E) are derived from applying subsection 100.3(f) of 30 CFR, that is, finding either good faith or a lack of good faith. Single Penalty Assessments and Special Assessments are developed in accordance with Subsection 100.4 and 100.5 of 30 CFR respectively.

Jay P. Mattos

Director, Office of Assessments

**Contest Information**

This is to advise you of your right to contest the Proposed Assessment, as provided under 30 CFR 100, for violations of the Federal Mine Safety and Health Act of 1977. 30 CFR 100.7 gives you 30 days to either pay the Proposed Assessment or contest the Proposed Assessment with the Federal Mine Safety and Health Review Commission.

If you wish to contest and have a formal hearing on just some of the violations listed in the Proposed Assessment, check the specific violation numbers in the first column and mail a copy to the following address:

Mine Safety and Health Administration  
Civil Penalty Compliance Office  
1100 Wilson Blvd., Room 2508  
Arlington, VA 22209-03939  
Telephone: (202)693-9700

**Payment Information**

To ensure that your payment is properly applied, please include the case numbers with all payments submitted. Please send all payments to the address shown at the bottom of this page.

This Proposed Assessment is Mailed To:

Attn: [REDACTED]

Payment Must Be Sent To:

Department of Labor / MSHA  
PO Box 790390  
St. Louis, MO 63179-0390



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Attn.: [REDACTED]

[REDACTED]

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Questions?

