

THE
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Part 100 Conference Settlement Agreements

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Historically, the vast majority of contested citations and orders settle before a hearing. However, any contested matter represents litigation time and expense even if the parties settle the matter. MSHA is initiating a three-month pilot project in this MSHA district to determine whether regularly-assessed issuances that the parties otherwise might settle or litigate post-contest can be resolved pre-contest, at Part 100 conferences.

The logo for Dinsmore, featuring the word "Dinsmore" in a blue, sans-serif font. The letter "i" is lowercase and blue, while "nsmore" is uppercase and blue. The "o" has a small blue triangle above it.

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Part 100 Conferences

As you know, under 30 C.F.R. § 100.6, upon written request you have the opportunity to review with MSHA each citation and order issued during an inspection. MSHA has discretion to grant or deny a conference and to determine the nature of the conference.

A New Element

Effective April 1, 2019, for all citations that will be regularly assessed, MSHA will grant Part 100 conferences on the understanding that the goal of the conference is to reach a binding resolution on all citations being conferenced. You are encouraged to request a conference for all issuances you would consider contesting before the Federal Mine Safety and Health Review Commission. If you and MSHA come to an agreement, the parties will execute an agreement and contest waiver that will bind both parties to the agreement. Attached for reference is a blank copy of the agreement. The agreement may be signed at the time of the conference or later if the parties need to discuss additional issues prior to agreement. Issuances that are referred for special assessment are not a part of this pilot.

What Does This Mean?

If you choose to request a Part 100 conference, you and MSHA will negotiate in good faith in an attempt to resolve all citations and orders conferenced, recognizing that may not always be possible. As is currently the case, the negotiations will focus on the existence of the violation and the Part 100 penalty criteria, from which it will be possible to calculate the anticipated regular assessment for a citation. To the extent you and MSHA can agree on a resolution, both parties will sign the agreement. In exchange for MSHA resolving the issuances on terms with which you

agree, you also agree not to contest the issuances or the associated regular assessments you receive subsequently.

Do I Have to Sign? Why Would I Sign?

Any agreement is voluntary; you do not have to sign anything. However, by settling matters pre- contest, you will obtain a final resolution on terms with which you agree while also saving litigation time and expense.

What If I Sign and Change My Mind?

If you change your mind pre-contest, please contact your conferencing officer. If the district has not yet made any modifications needed to implement the agreement, it may be possible to void the agreement, in which case all citations and orders would remain as written. If, however, you contest a citation or order that you agreed not to contest, MSHA and its attorneys will enforce the agreement.

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