

that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

[36 FR 17850, Sept. 4, 1971, as amended at 59 FR 66613, Dec. 27, 1994]

§ 1903.14a Petitions for modification of abatement date.

(a) An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond his reasonable control.

(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph (c)(1) of this section and a certification of the date upon which such posting and service was made.

(c) A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted or served pursuant to paragraphs (c) (1) and (2) of this section by the employer.

(d) Where any petition is objected to by the Secretary or affected employees, the petition, citation, and any objections shall be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c)(4) of this section.

[40 FR 6334, Feb. 11, 1975; 40 FR 11351, Mar. 11, 1975]

§ 1903.15 Proposed penalties.

(a) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection, the Area Director shall notify the employer by certified mail or by personal service by the Compliance Safety and Health Officer of the proposed penalty under section 17 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed

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penalty shall be deemed to be the final order of the Review Commission and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the Area Director in writing that he intends to contest the citation or the notification of proposed penalty before the Review Commission.

(b) The Area Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 17 of the Act.

(c) Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

§ 1903.16 Posting of citations.

(a) Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed (see § 1903.2(b)), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see § 1903.2(b)), the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other

material. Notices of de minimis violations need not be posted.

(b) Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under § 1903.17 shall not affect his posting responsibility under this section unless and until the Review Commission issues a final order vacating the citation.

(c) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

(d) Any employer failing to comply with the provisions of paragraphs (a) and (b) of this section shall be subject to citation and penalty in accordance with the provisions of section 17 of the Act.

§ 1903.17 Employer and employee contests before the Review Commission.

(a) Any employer to whom a citation or notice of proposed penalty has been issued may, under section 10(a) of the Act, notify the Area Director in writing that he intends to contest such citation or proposed penalty before the Review Commission. Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Area Director shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Commission.

(b) Any employee or representative of employees of an employer to whom a citation has been issued may, under section 10(c) of the Act, file a written notice with the Area Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 15 working days