

## Contesting Citations in the Close Out Meeting with Mine Inspector

During this meeting any citations you may want to contest should be discussed and documented, also take your own pictures, measurements, and drawings. This will be information used to contest any citation. Review the verbiage for the Condition or Practice as the inspector wrote up, is this correct, compare it with the Part/Section of Title 30 CFR in Section 9 of the citation?

## Contesting Citations

After the issuance of a citation or order under the Mine Act, a mine operator may within 30 days file a notice of contest with the Secretary of Labor at the Solicitor's Office, or an operator could wait until a civil penalty is assessed. At that point, the operator has 30 days in which to file a contest and request a hearing before an administrative law judge of the **Federal Mine Safety and Health Review Commission**. An operator may contest all or some of the penalties listed on the civil penalty assessment by placing a check next to the contested item and stating the reasons for the contest. A copy of the contested assessment must be returned to **MSHA's Civil Penalty Compliance Office** in Arlington, Virginia within 30 days of the operator's receipt.

An operator may also challenge the modification of a citation or order, as well as the reasonableness of the length of time for abatement. A notice of contest must contain: (1) a short and plain statement of the operator's position regarding each issue of law and fact and the relief requested and (2) a copy of the contested citation or order. An operator's failure to file notice of contest of a citation or order issued under Section 104 of the Mine Act will not preclude the operator from challenging, in a civil penalty proceeding, the fact of violation or any special findings contained in a citation or order, including the assertion in the citation or order that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard.

## Further Details on Contesting

To Facilitate the settlement of cases, MSHA, in cooperation with the Office of the Solicitor, developed the Alternative Case Resolution Initiative (ACRI) in 1994. This program created the position of Conference/Litigation Representative (CLR) – typically an experience mine inspector who is trained to represent the Secretary of Labor in contested cases, under the supervision of the Office of the Solicitor, that do not involve accidents, fatalities, or complex legal issues. Some CLR's are authorized to represent MSHA in administrative hearing before an administrative law judge. Mine operators may also seek an informal health and safety conference at the district level following the issuance of a citation or order, and prior to assessment of a civil penalty.

If I already contested a citation or order, do I still need to contest the proposed penalty assessment for the citation?

Yes. If you do not contest a proposed penalty assessment, the penalty will become final, even if you previously filed a “notice of contest” and/or are negotiating with MSHA over the violation.

If I am in conference with MSHA about any citations or orders included in the proposed penalty assessment, must I still contest the proposed assessment within 30 days?

Yes. If you do not contest a proposed penalty assessment, the penalty will become final, even if you previously filed a “notice of contest” and/or are negotiating with MSHA over the violation.

How much time do I have to appeal an administrative law judge’s decision?

A mine operator, contractor, agent, or miner (Entity) has 30 days from the date of issuance or a judge’s decision to file a petition for discretionary review with the Federal Mine Safety and Health Review Commission. The petition must be filed upon one or more of the following grounds:

1. A finding or conclusion of material fact is not supported by substantial evidence.
2. A necessary legal conclusion is erroneous.
3. The decision is contrary to law or the duly promulgated rules or decisions of the Commission; or
4. A prejudicial error of procedure was committed.

If a judge’s decision is not appealed to the Commission within 30 days after it is issued, or the Commission does not order an appeal of its own violation, the judge’s decision will become a final order not reviewable by any court or agency, A petition for discretionary review that is not granted within 40 days after issuance of the judge’s decision is deemed denied.

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