

Chapter 7

POST-CITATION PROCEDURES AND ABATEMENT VERIFICATION

I. Contesting Citations, Notifications of Penalty or Abatement Dates.

CSHOs shall advise the employer that the citation, the penalty and/or the abatement date may be contested in cases where the employer does not agree to the citation, penalty or abatement date or any combination of these.

A. Notice of Contest.

CSHOs shall inform employers that if they intend to contest, the Commissioner must be notified in writing and such notification must be postmarked no later than the 15th working day after receipt of the citation and notification of penalty (working days are Monday through Friday, excluding State and Federal holidays), otherwise the citation becomes a final order of the Appeal Board. See [Iowa Code 88.8](#). The agency has no authority to modify the contest period. The notice of contest may be provided to the Labor Commissioner at the Division of Labor Services by mail, personal delivery, facsimile or email transmission. It shall be emphasized that oral notices of contest do not satisfy the requirement to give written notification.

1. An employer's Notice of Contest must clearly state what is specifically being contested. It must identify which item(s) of the citation, penalty, the abatement date, or any combination of these is being objected to. CSHOs shall ask the employer to read the OSHA pamphlet accompanying the citation for additional details.
 - a. If the employer only requests a later abatement date and there are valid grounds to consider the request, the Administrator should be contacted. The Administrator may issue an amended citation changing an abatement date prior to the expiration of the 15 working day period.
 - b. If the employer contests only the penalty or some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.

2. CSHOs shall inform the employer that the Act provides that employees or their authorized representative(s) have the right to contest in writing any or all of the abatement dates set for a violation if they believe the date(s) to be unreasonable.

B. Contest Process.

The CSHO shall explain that when a Notice of Contest is properly filed, the Administrator is required to forward the case to an independent adjudicatory agency, (Employment Appeal Board) at which time the case is considered to be in litigation.

1. OSHA will normally cease all investigatory activities once an employer has filed a notice of contest. Any action relating to a contested case must first have the concurrence of the legal staff.
2. Upon receipt of the Notice of Contest, the Appeal Board assigns the case to an administrative law judge, who will schedule a hearing.

II. Informal Conferences.

A. General.

1. Pursuant to [IAC 875-3.12](#), the employer, any affected employee, or the employee representative may request an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.
2. The informal conference will be conducted within the 15 working day contest period. The conference or any request for such a conference shall not operate as a stay of the 15 working day contest period.
3. If the employer's intent to contest is not clear, the Administrator or designated representative will make an effort to contact the employer for clarification.
4. Informal conferences may be held by any means practical.

B. Assistance of Counsel.

In the event that an employer is bringing its attorney to an informal conference, the Administrator or his or her designee may contact the legal staff and ask for the assistance of counsel.

C. Opportunity to Participate.

1. If an informal conference is requested by the employer, an affected employee or his representative shall be afforded the opportunity to participate. The employer must post the Notice of Informal Conference in the area where the employer normally places other notifications to employees. If the conference is requested by an employee or an employee representative, the employer shall be afforded an opportunity to participate by IOSHA.
2. If the affected employee or employee representative chooses not to participate in the informal conference, an attempt will be made by IOSHA to contact that party and to solicit their input. Attempts to contact the party should be noted in the case file.

NOTE: In the event of a settlement, it is not necessary to have the employee representative sign the informal settlement agreement.

3. If any party objects to the attendance of another party or the Administrator believes that a joint informal conference would not be productive, separate informal conferences may be held.
4. During the conduct of a joint informal conference, separate or private discussions will be permitted if either party so requests.

D. Notice of Informal Conferences.

The Administrator or designee shall document in the case file notification to the parties of the date, time and location of the informal conference.

E. Posting Requirement.

1. The Administrator or designee will ask the employer at the beginning of the informal conference whether the form in the citation package indicating the date, time, and location of the conference has been posted as required.
2. If the employer has not posted the form, the Administrator or designee may postpone the informal conference until such action is taken.

F. Conduct of the Informal Conference.

The informal conference will be conducted in accordance with the following guidelines:

1. **Conference Subjects.**
 - a. Purpose of the informal conference;
 - b. Rights of participants;
 - c. Contest rights and time constraints;
 - d. Limitations, if any;
 - e. Potential for settlements of citations; and
 - f. Other relevant information (e.g., if no employee or employee representative has responded, whether the employer has posted the notification form regarding the informal conference, etc.).
2. **Subjects Not to be Addressed.**
 - a. No opinions regarding the legal merits of an employer's case shall be expressed during the informal conference by the CSHO.
 - b. There should be no discussion with employers or employee representatives concerning the potential for referral of fatality inspections to the County Attorney for criminal prosecution under the Act.
3. **Closing Remarks.**
 - a. At the conclusion of the conference, all main issues and potential courses of action will be summarized and documented.
 - b. A copy of the summary, together with any other relevant notes of the discussion made by the Administrator or designee, will be placed in the case file.

III. Petition for Modification of Abatement Date (PMA).

An employer may file a petition for modification of abatement date when it has made a good faith effort to comply with abatement requirements, but such abatement has not been completed due to circumstances beyond its control. See [IAC 875-3.13](#). If the employer requests additional abatement time after the 15 working day contest period has passed, the following procedures for PMAs are to be observed:

A. Filing.

A PMA must be filed in writing with the Administrator no later than the close of the next working day following the date on which abatement was originally required.

1. If a PMA is submitted orally, the employer shall be informed that OSHA cannot accept an oral PMA and that a written petition must be mailed by the end of the next working day after the abatement date. If there is not sufficient time to file a written petition, the employer shall be informed of the requirements below for late filing of the petition.
2. A late petition may be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay.

B. Where Filing Requirements Are Not Met.

If the employer's written PMA does not meet all the requirements of [IAC 875-3.13\(2\)](#), the employer shall be contacted within 10 working days and notified of the missing elements. A reasonable amount of time for the employer to respond shall be specified during this contact.

1. If no response is received or if the information returned is still insufficient, a second attempt (by telephone or in writing) shall be made. The employer shall be informed that if it fails to respond in a timely or adequate manner, the PMA will not be granted and the employer may be found to not have abated the violations.
2. If the employer responds satisfactorily by telephone and the Administrator determines that the requirements for a PMA have been met, that finding shall be documented in the case file.
3. Although IOSHA policy is to handle PMAs as expeditiously as possible, there may be cases where the Administrator's decision may be delayed because of deficiencies in the PMA, the need to conduct a monitoring inspection and/or the need for other involvement. Requests for additional time (e.g., 45 days) for the Administrator to reach a decision shall be sent to the Appeal Board through the legal staff. A letter conveying this request shall be simultaneously sent to the employer and the employee representatives.

C. Approval of PMA.

After the expiration of 15 working days following the posting of a PMA, the Administrator shall agree with or object to the request within 10 working days, if additional time has not been requested from the Appeal Board. In the absence of a timely objection, the PMA shall be deemed granted even if not explicitly approved. The following action shall be taken:

1. If the PMA requests an abatement date that is two years or less from the issuance date of the citation, the Administrator has the authority to approve or object to the petition.
2. Reserved
3. If the PMA is approved, the Administrator shall notify the employer and the employee representatives by letter.
4. The Administrator or Labor Commissioner (as appropriate) after consultation with the legal section, shall object to a PMA where the evidence supports non-approval (e.g., employer has taken no meaningful abatement action at all or has otherwise exhibited bad faith). In such cases, all relevant documentation shall be sent to the Appeal Board in accordance with [IAC 875-3.13\(4\)](#). Both the employer and the employee representatives shall be notified of this action by letter, with return receipt requested.
 - a. Letters notifying the employer or employee representative of the objection shall be mailed on the same date that the agency objection to the PMA is sent to the Employment Appeal Board.
 - b. When appropriate, after consultation with the legal section, a failure to abate notification may be issued in conjunction with the objection to the PMA.

D. Objection to PMA.

Affected employees or their representatives may file a written objection to an employer's PMA with the Administrator within 10 working days of the date of posting of the PMA by the employer or its service upon an authorized employee representative.

1. Failure to file such a written objection with the 10 working day period constitutes a waiver of any further right to object to the PMA.

2. If an employee or an employee representative objects to the extension of the abatement date, all relevant documentation shall be sent to the Employment Appeal Board through the legal staff.
 - a. Confirmation of this action shall be mailed (return receipt requested) to the objecting party as soon as it is accomplished.
 - b. Notification of the employee objection shall be mailed (return receipt requested) to the employer on the same day that the case file is forwarded to the Employment Appeal Board.

IV. OSHA's Abatement Verification Regulation, IAC 875-3.19.

A. Important Terms and Concepts.

1. Abatement.

- a. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.
- b. For each inspection, except follow-up inspections, OSHA shall open an employer-specific case file. The case file remains open throughout the inspection process and is not closed until the Agency is satisfied that abatement has occurred. If abatement was not completed, annotate the circumstances or reasons in the case file and enter the proper code in the OIS.
- c. Employers are required to verify in writing that they have abated cited conditions, in accordance with [IAC 875-3.19](#).

2. Abatement Verification.

Abatement verification includes abatement certification, documents, plans, and progress reports.

3. Abatement Certification.

Employers must certify that abatement is complete for each cited violation. The written certification must include: the employer's name and address; the inspection number; the citation and item numbers; a statement that the information submitted is accurate; signature of the employer or employer's authorized representative; the date and method of abatement for each cited violation; and a statement that affected employees and their representatives have been informed of the abatement.

4. **Abatement Documents.**

Documentation submitted must establish that abatement has been completed, and include evidence such as the purchase or repair of equipment, photographic or video evidence of abatement or other written records verifying correction of the violative condition.

5. **Affected Employee.**

Affected employee means an employee who is exposed to the hazards(s) identified as violations(s) in a citation.

6. **Final Order Dates.**

a. **Uncontested Citation Item.**

For an uncontested citation item, the final order date is the day following the fifteenth working day after the employer's receipt of the citation.

b. **Contested Citation Item.**

For a contested citation item, the final order date is as follows:

- The sixtieth day after the date on which a final order was entered by the Employment Appeal Board and no petition for judicial review has been filed; or
- Reserved
- If a petition for judicial review is filed, the final order date is the first day when all opportunities for appeal have passed.

c. **Informal Settlement Dates.**

The final order date is when, within the 15 working days to contest a citation, the ISA is signed by **both** parties. See also [Chapter 15, Section XIII](#), *Citation Final Order Dates*.

7. **Abatement Dates.**

a. **Uncontested Citations.**

For uncontested citations, the abatement date is the later of the following dates:

- The abatement date identified in the citation;
- The extended date established as a result of an employer's filing for a Petition for Modification of Abatement (PMA);
- The abatement date has been extended due to an amended citation; or
- The date established by an informal settlement agreement.

b. Contested Citations.

For contested citations for which the Employment Appeal Board has issued a final order, the abatement date is the later of the following dates:

- The date identified in the final order for abatement;
- Where there has been a contest of a violation or abatement date (not penalty), the date computed by adding the period allowed in the citation for abatement to the final order date; or
- The date established by a formal settlement agreement.

c. Contested Penalty Only.

Where an employer has contested only the proposed penalty, the abatement period continues to run unaffected by the contest. The abatement period is subject to the time periods set forth above.

8. Movable Equipment.

- a. Movable equipment means a hand-held or non-hand-held machine or device, powered or non-powered, that is used to do work and is moved within or between worksites.
- b. Hand-held equipment is equipment that is hand-held when operated and can generally be picked up and operated with one or two hands, such as a hand grinder, skill saw, portable electric drill, nail gun, etc.

9. Worksite.

- a. For the purpose of enforcing the Abatement Verification regulation, the worksite is the physical location specified within the “Alleged Violation Description” of the citation.
- b. If no location is specified, the worksite shall be the inspection site where the cited violation occurred.

B. Written Certification.

The Abatement Verification Regulation, [IAC 875-3.19](#), requires those employers who have received a citation(s) for violation(s) of the Act to certify in writing that they have abated the hazardous condition for which they were cited and to inform affected employees of their abatement actions.

C. Verification Procedures.

The verification procedures to be followed by an employer depend on the nature of the violation(s) identified and the employer's abatement actions. The abatement verification regulation establishes requirements for the following:

1. Abatement Certification
2. Abatement Documentation
3. Abatement Plans
4. Progress Reports
5. Tagging for Movable Equipment

D. Supplemental Procedures.

Where necessary, OSHA supplements these procedures with follow-up inspections and onsite monitoring inspections. For additional information see [Section XII](#) of this chapter, *OnSite Visits: Procedures for Abatement Verification and Monitoring*.

E. Requirements.

Except for the application of warning tags or citations on movable equipment ([IAC 875-3.19\(9\)](#)), the abatement verification regulation does not impose any requirements on the employer until a citation item has become a final order of the Employment Appeal Board. For moveable hand-held equipment, the warning tag or citation must be attached

immediately after the employer receives the citation. For other moveable equipment, the warning tag or citation must be attached prior to moving the equipment within or between worksites.

V. Abatement Certification.

A. Minimum Level.

Abatement certification is the minimum level of abatement verification and is required for all violations once they become Employment Appeal Board final orders. An exception exists where the CSHO observed abatement during the onsite portion of the inspection and the violation is listed on the citation as “Corrected During Inspection (CDI)” or “Quick Fix”. See [Paragraph VI.D.](#) of this chapter, *CSHO Observed Abatement*.

B. Certification Requirements.

The employer's written certification that abatement is complete must include the following information for each cited violation:

1. The date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement;
2. The employer's name and address;
3. The inspection number to which the submission relates;
4. The citation and item numbers to which the submission relates;
5. A statement that the information submitted is accurate; and
6. The signature of the employer or the employer's authorized representative.

C. Certification Timeframe.

1. All citation items which have become final orders, regardless of their characterizations, require written abatement certification within 10 calendar days of the abatement date.
2. A PMA received and processed in accordance with the guidance of the FOM will suspend the 10-day time period for receipt of the abatement certification for the item for which the PMA is requested.

- a. Thus, no citation will be issued for failure to submit the certification within 10 days of the abatement date.
- b. If the PMA is denied, the 10-day time period for submission to OSHA begins on the day the employer receives notice of the denial.

VI. Abatement Documentation.

More extensive documentation of abatement is required for the most serious violations. When a violation requires abatement documentation, in addition to certifying abatement, the employer must submit documents demonstrating that abatement is complete.

A. Required Abatement Documentation.

Pursuant to IAC 875- 3.19, documentation of abatement is required for the following:

1. Willful violations;
2. Repeat violations; and
3. Serious violations where OSHA determines that such documentation is necessary. For further information see [Paragraph VI.C.](#) of this chapter, *Abatement Documentation for Serious Violations*.

B. Adequacy of Abatement Documentation.

1. Abatement documentation must be accurate and describe or portray the abated condition adequately. It may be submitted in electronic form, if approved by the Administrator.
2. The abatement regulation does not mandate a particular type of documentary evidence for any specific cited conditions.
3. The adequacy of the abatement documentation submitted by the employer will be assessed by OSHA using the information available in the citation and the Agency's knowledge of the employer's workplace and history.
4. Examples of documents that demonstrate that abatement is complete include, but are not limited to:
 - a. Photographic or video evidence of abatement;

- b. Evidence of the purchase or repair of equipment;
 - c. Evidence of actions taken to abate;
 - d. Bills from repair services;
 - e. Reports or evaluations by safety and health professionals describing the abatement of the hazard or a report of analytical testing;
 - f. Documentation from the manufacturer that the article repaired is within the manufacturer's specifications;
 - g. Records of training completed by employees if the citation is related to inadequate employee training; and
 - h. A copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer's respirator or hazard communication program.
5. Abatement documentation (photos, employer programs, etc.) shall be retained in accordance with the Iowa Records Retention Schedule.

C. Abatement Documentation for Serious Violations.

1. **High Gravity Serious Violations.**
- a. OSHA policy is generally that all high gravity serious violations will require abatement documentation.
 - b. Where, in the opinion of the Administrator, abatement documentation is not required for a high gravity serious violation, the reasons for this must be set forth in the case file.

2. **Moderate or Low Gravity Serious Violations.**

Moderate or low gravity serious violations should not normally require abatement documentation, except that the Administrator will require evidence of abatement for moderate and low gravity serious violations under the following circumstances:

- a. If the establishment has been issued a citation for a willful violation or a failure-to-abate notice for any standard which has become final order in the previous three years; or

- b. If the employer has any history of a violation that resulted in a fatality or an OSHA-300 log entry indicating serious physical harm to an employee in the past three years. The standard being cited must be similar to the standard cited in connection with the fatality or serious injury or illness.

D. CSHO Observed Abatement.

1. Employers are not required to certify abatement for violations if they abated during the onsite portion of the inspection and abatement was observed by the CSHO.
 - a. The Administrator may use his/her discretion in extending the “24 hour” time limit to document abated conditions during the inspection.
 - b. Observed abatement will be documented on the IOSHA violation worksheet for each violation and must include the date and method of abatement.
2. If the observed abatement is for a violation that would normally require abatement documentation by the employer, the documentation in the case file must also indicate that abatement is complete. Where suitable, the CSHO may use photographs or video evidence. For additional information regarding adequacy of abatement documentation, see [Paragraph VI.B.](#) of this chapter, *Adequacy of Abatement Documentation*.
3. When the abatement has been witnessed and documented by the CSHO, a notation reading “Corrected During Inspection” shall be made on the citation. Immediate abatement of some violations may qualify for penalty reductions under IOSHA’s “Quick-Fix” incentive program. See Chapter 6, section IV.A., Quick-Fix Penalty Adjustment.
4. Notations stating “Corrected during inspection” or “Employer has abated all hazards” shall not be made on the citation in cases where there is evidence of a continuing violative practice by an employer that may be subject to a summary enforcement order under [Iowa Code 88.9\(2\)](#) (i.e., failure to provide fall protection is a recurring condition based on citation history or other indications suggesting widespread violations of the same or similar standards at other establishments or construction worksites).

VII. Monitoring Information for Abatement Periods Greater than 90 Days.

A. Abatement Periods Greater than 90 Days.

For abatement periods greater than 90 calendar days, the IAC allows the Administrator flexibility in either requiring or not requiring monitoring information.

1. The requirement for abatement plans and progress reports must be specifically associated to the citation item to which they relate.
2. Progress reports may not be required unless abatement plans are specifically required.
3. Note that Paragraph (a) of [IAC 875-3.19\(5\)](#) has limits: the Administrator is not allowed to require an abatement plan for abatement periods less than 91 days or for citations characterized as other-than-serious.
4. The regulation places an obligation on employers, where necessary, to identify how employees are to be protected from exposure to the violative condition during the abatement period. One way of ensuring that interim protection is included in the abatement plan is to note this requirement on the citation. See [IAC 875-3](#), for a sample of an Abatement Plan and Progress Report.

B. Abatement Plans.

1. The Administrator may require an employer to submit an abatement plan for each qualifying cited violation.
 - a. The requirement for an abatement plan must be indicated in the citation.
 - b. The citation may also call for the abatement plan to include interim measures.
2. Within 25 calendar days from the final order date, the employer must submit an abatement plan for each violation that identifies the violation and the steps to be taken to achieve abatement. The abatement plan must include a schedule for completing the abatement and, where necessary, the methods for protecting employees from exposure to the hazardous conditions in the interim until the abatement is complete ([IAC 875- 3.19\(5\)\(b\)](#)).
3. In cases where the employer cannot prepare an abatement plan within the allotted time, a PMA must be submitted by the employer to amend the abatement date.

C. Progress Reports.

1. An employer that is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. In such cases, the citation must indicate:
 - a. That periodic progress reports are required and the citation items for which they are required;
 - b. The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after the due date of an abatement plan;
 - c. Whether additional progress reports are required; and
 - d. The date(s) on which additional progress reports must be submitted.
2. For each violation, the progress report must identify in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. There is nothing in this policy or the regulation prohibiting progress reports as a result of settlement agreements.

D. Special Requirements for Long-Term Abatement.

1. Long-term abatement is abatement which will be completed more than one year from the citation issuance date.
2. The Administrator must require the employer to submit an abatement plan for every violation with an abatement date in excess of one year.
3. Progress reports are mandatory and must be required at a minimum every six months. More frequent reporting may be required at the discretion of the Administrator.

VIII. Employer Failure to Submit Required Abatement Certification.

A. Actions Preceding Citation for Failure to Certify Abatement.

1. If abatement certification, or any required documentation, is not received within 13 calendar days after the abatement date (the regulation requires filing within 10 calendar days after the

abatement date; and another 3 calendar days is added for mailing), the following procedures should be followed:

- a. Remind the employer by telephone of the requirement to submit the material and tell the employer that a citation will be issued if the required documents are not received within 7 calendar days after the telephone call.
 - b. During the conversation with the employer, determine why it has not complied and document all communication efforts in the case file. Discuss OSHA's PMA policy and explain that a late petition to modify the abatement date can be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay.
 - c. Issue a follow-up letter to the employer the same day as the telephone call.
 - d. The employer may be allowed to respond via fax or email where appropriate.
2. If the certification and/or documentation is not received within the next 7 calendar days, a single other-than-serious citation will be issued.
 3. Normally citations for failure to submit abatement certification for violations of [IAC 875-3.19\(3\)\(a\)](#) shall not be issued until the above procedures have been followed and the employer has been provided additional opportunity to comply. These pre-citation procedures also apply when abatement plans or progress reports are not received within 13 days of the due date.

B. Citation for Failure to Certify.

1. Citations for failure to submit abatement verification (certification, documentation, abatement plans or progress reports) can be issued without formal follow-up activities by following the procedures identified below.
2. A single other-than-serious citation will be issued combining all the individual instances where the employer has not submitted abatement certification and/or abatement documentation.
 - a. This "other" citation will be issued under the same inspection number which contained the original violations cited.

- b. The abatement date for this citation shall be set 30 days from the date of issuance.

NOTE: Each violation of IAC 875-3.19 (3), (5), or (6) with respect to each original citation item is a separate item.

3. For those situations where the abatement date falls within the 15 day informal conference time period, and an informal conference request is likely, enforcement activities should be delayed for these citations until it is known if the citation's characterization or abatement period is to be modified.
4. For those rare instances where the reminder letter is returned by the Post Office as undeliverable and telephone contact efforts fail, the Administrator has the discretion to stop further efforts to locate the employer and document in the case file the reason for no abatement certification.

C. Certification Omissions.

1. An initial minor or non-substantive omission in an abatement certification (e.g., lack of a definitive statement stating that the information being submitted is accurate) should be considered a de minimis condition of the regulation.
2. If there are minor deficiencies, such as omitting the inspection number, signature or date, the employer should be contacted by telephone to verify that the documents received were the ones they intended to submit. If so, the date stamp of the Office can serve as the date on the document.
3. A certification with an omitted signature should be returned to the employer to be signed.

D. Penalty Assessment for Failure to Certify.

The penalty provisions of [Iowa Code 88.14](#) apply to all citations issued under this regulation. See [Chapter 6, Penalties and Debt Collection](#), for additional information.

IX. Tagging for Movable Equipment.

A. Tag-Related Citations.

Tag-related citations must be observed by CSHOs prior to the issuance of a citation for failure to initially tag cited movable equipment.

1. OSHA must be able to prove the employer's initial failure to act (tag the movable equipment upon receipt of the citation).
2. Where there is insufficient evidence to support a violation of the employer's initial failure to tag or post the citation on the cited movable equipment, a citation may be issued for failure to maintain the tag or copy of the citation using [IAC 875-3.19\(9\)\(f\)](#).

B. Equipment Which is Moved.

Tags are intended to provide an interim form of protection to employees through notification for those who may not know of the citation or the hazardous condition.

1. For non hand-held equipment, CSHOs should make every effort to be as detailed as possible when documenting the initial location where the violation occurred. This documentation is critical to the enforcement of the tagging requirement ([IAC 875-3.19\(9\)\(c\)\(2\)](#)) because the tagging provision is triggered upon *movement* of the equipment.
2. For hand-held equipment, employers must attach a warning tag or copy of the citation *immediately* after the employer's receipt of the citation. The attachment of the tag is not dependent on any *subsequent* movement of the equipment.

X. Failure to Notify Employees by Posting.

A. Evidence.

Like tag-related citations, CSHOs shall investigate an employer's failure to notify employees by posting.

B. Location of Posting.

Where an employer claims that posting at the location where the violation occurred would ineffectively inform employees ([IAC 875-3.19\(7\)\(b\)](#)) the employer may post the document or a summary of the document in a location where it will be readily observable by affected employees and their representatives. Employers may also communicate by other means with affected employees and their representatives regarding abatement activities. The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

C. Other Communication.

The CSHO must determine not only whether the documents or summaries were appropriately posted, but also whether, as an alternative, other communication methods, such as meetings or employee publications, were used.

XI. Abatement Verification for Special Enforcement Situations.

A. Construction Activity Considerations.

1. Construction activities pose situations requiring special consideration.
 - a. Construction site closure or hazard removal due to completing of the structure or project will only be accepted as abatement without certification where the office verifies the site closure/completion and where closure/completion effectively abates the condition cited.
 - b. In all other circumstances, the employer must certify to OSHA that the hazards have been abated by the submission of an abatement certification. In rare cases the verification may have to cease and the abatement action closed through cessation of work or verification with the general contractor of the site to verify abatement.
2. Equipment-related and all program-related (e.g., crane inspection, hazard communication, respirator, training, competent person, qualified persons, etc.) violations *will always* require employer certification of abatement regardless of construction site closure.
3. Where the violation specified in a citation is the employer's general practice of failing to comply with a requirement (e.g., the employer routinely fails to provide fall protection at its worksites), closure/completion of the individual worksite will not be accepted as abatement.
4. For situations where the main office of the employer being cited is physically located in another jurisdiction, the Administrator will notify the Des Moines Area Office of the communication with the employer.
5. Where a follow-up inspection to verify abatement is deemed necessary, the Administrator or designee will determine the most efficient and mutually beneficial approach to conducting the inspection.

B. **Reserved.**

C. **Follow-Up Policy for Employer Failure to Verify Abatement under IAC 875-3.19.**

Follow-up or monitoring inspections would not normally be conducted when evidence of abatement is provided by the employer or employee representatives. For further information on exceptions for Severe Violator Enforcement Program (SVEP) cases, see [CPL 02-00-149](#), *Severe Violator Enforcement Program (SVEP) Directive*, dated June 18, 2010.

NOTE: For further information on extended abatement periods, see [Section VII](#), *Monitoring Information for Abatement Periods Greater than 90 Days*, and [Section XIII](#), *Monitoring Inspections*, both of this chapter.

1. Where the employer has not submitted the required abatement certification or documentation within the time permitted by the regulation, the Administrator has discretion to conduct a follow-up inspection.
2. Submission of inadequate documents may also be the basis for a follow-up inspection.
3. This inspection should not generally occur before the end of the original 15 day contest period except in unusual circumstances.

XII. Onsite Visits: Procedures for Abatement Verification and Monitoring.

A. **Follow-Up Inspections.**

The primary purpose of a follow-up inspection is to determine if the previously cited violations have been corrected.

B. **Severe Violator Enforcement Program (SVEP) Follow-Up.**

1. For any inspection which results in a SVEP case, an enhanced follow-up inspection will normally be conducted even if abatement of the cited violations has been verified. The primary purpose of follow-up inspections is to assess both whether the cited violation(s) were abated and whether the employer is committing similar violations.
2. If there is compelling reason not to conduct a follow-up inspection, the reason must be documented in the file.

3. Grouped and combined violations from the original inspection will be counted as one violation for SVEP purposes.
4. For further information on the Severe Violator Enforcement Program (SVEP), see [CPL 02-00-149](#), *Severe Violator Enforcement Program Directive*, dated June 18, 2010.

C. Initial Follow-Up.

1. The initial follow-up is the first follow-up inspection after issuance of the citation.
2. If a violation is found not to have been abated, the CSHO shall inform the employer that the employer is subject to a Notification of Failure to Abate Alleged Violation and proposed additional daily penalties while such failure or violation continues.
3. Failure to comply with enforceable interim abatement dates involving multi-step abatement shall be subject to a Notification of Failure to Abate Alleged Violation.
4. Where the employer has implemented some controls, but the control measures were inadequate during follow-up monitoring, and other technology was available which would have brought the process into compliance, a Notification of Failure to Abate Alleged Violation normally shall be issued. If the employer has exhibited good faith, a late PMA for extenuating circumstances may be considered.
5. Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a Notification of Failure to Abate Alleged Violation shall be issued.

D. Second Follow-Up.

1. Any subsequent follow-up after the initial follow-up inspection dealing with the same violations is considered a second follow-up.
 - a. After the Notification of Failure to Abate Alleged Violation has been issued, the Administrator shall allow a reasonable time for abatement of the violation before conducting a second follow-up. The employer must ensure that employees are

adequately protected by other means until the violations are corrected.

- b. If the employer contests the proposed additional daily penalties, a follow-up inspection shall still be scheduled to ensure correction of the original violation.
2. If a second follow-up inspection reveals the employer still has not corrected the original violations, a second Notification of Failure to Abate Alleged Violation with additional daily penalties shall be issued if the Administrator, after consultation with the Labor Commissioner and Legal Section, believes it to be appropriate.
3. If a Notification of Failure to Abate Alleged Violation and additional daily penalties are not to be proposed because of an employer's flagrant disregard of a citation or an item on a citation, the Administrator shall immediately contact the Legal Staff, detailing the circumstances for appropriate action.

E. **Reserved.**

F. **Follow-Up Inspection Reports.**

1. Follow-up inspection reports shall be included with the original initial inspection case file. The applicable identification and description sections of the IOSHA violation worksheet shall be used for documenting correction of willful, repeated, and serious violations and failure to correct items during follow-up inspections.
2. If serious, willful, or repeat violation items were appropriately grouped in the IOSHA violation worksheet in the original case file, they may be grouped on the follow-up IOSHA violation worksheet; otherwise, individual IOSHA violation worksheets shall be used for each item. The correction of other-than-serious violations may be documented in the narrative portion of the case file.
3. **Documentation of Hazard Abatement by Employer.**
 - a. The hazard abatement observed by the CSHO shall be specifically described in the IOSHA violation worksheet, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements or readings, or other conditions.

- b. Brief terms such as “corrected” or “in compliance” will not be accepted as proper documentation for violations having been corrected.
- c. When appropriate, this written description shall be supplemented by a photograph and/or a videotape to illustrate correction circumstances.
- d. Only the item description and identification blocks need be completed on the follow-up IOSHA violation worksheet with an occasional inclusion of an applicable employer statement concerning correction under the employer knowledge section, if appropriate.

4. **Sampling.**

- a. CSHOs conducting a follow-up inspection to determine abatement of violations of air contaminant or noise standards, shall decide whether sampling is necessary and if so, what kind (i.e., spot sampling, short-term sampling, or full-shift sampling).
- b. If there is reasonable probability that a Notification of Failure to Abate Alleged Violation will be issued, full-shift sampling is required to verify exposure limits based on an 8-hour time-weighted average.

5. **Narrative.**

The CSHO must include in the narrative the findings pursuant to the inspection, along with recommendations for action. In order to make a valid recommendation, it is important to have all the pertinent factors available in an organized manner.

6. **Failure to Abate.**

In the event that any item has not been abated, complete documentation shall be included on an IOSHA violation worksheet.

XIII. Monitoring Inspections.

A. **General.**

Monitoring inspections are conducted to ensure that hazards are being corrected and employees are being protected, whenever a long period of

time is needed for an establishment to come into compliance. Such inspections may be scheduled, among other reasons, as a result of:

1. Abatement dates in excess of one year.
2. A petition for modification of abatement date (PMA).
3. A Corporate Wide Settlement Agreement. See [CPL 02-00-152](#), *Guidelines for Administration of Corporate-Wide Settlement Agreements*, dated June 22, 2011.
4. To ensure that terms of a permanent variance are being carried out.
5. At the request of an employer requesting technical assistance granted by the Administrator.

B. Conduct of Monitoring Inspection (PMAs and Long-Term Abatement).

Monitoring inspections shall be conducted in the same manner as follow-up inspections. An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:

1. Determine the progress an employer is making toward final correction.
2. Ensure that the target dates of a multi-step abatement plan are being met.
3. Ensure that an employer's petition for the modification of abatement dates is made in good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.
4. Ensure that the employees are being properly protected until final controls are implemented.
5. Ensure that the terms of a permanent variance are being carried out.
6. Provide abatement assistance for items under citation.

C. Abatement Dates in Excess of One Year.

1. Monitoring visits shall be scheduled to check on progress made whenever abatement dates extend beyond one year from the issuance date of the citation.

2. These inspections shall be conducted approximately every six months, counted from the citation date, until final abatement has been achieved for all cited violations.
 - a. If the case has been contested, the final order date shall be used as a starting point, instead of the citation date.
 - b. A settlement agreement may specify an alternative monitoring schedule.
3. If the employer is submitting satisfactory quarterly progress reports and the Administrator agrees after careful review that these reports reflect adequate progress on implementation of control measures and adequate interim protection for employees, a monitoring inspection may be conducted every twelve months.
4. Such inspections shall have priority equal to that of serious formal complaints. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.

D. Monitoring Abatement Efforts.

1. The Administrator shall take the steps necessary to ensure that the employer is making a good faith attempt to bring about abatement as expeditiously as possible.
2. Where engineering controls have been cited or required for abatement, a monitoring inspection shall be scheduled to evaluate the employer's abatement efforts. Failure to conduct a monitoring inspection shall be fully explained in the case file.
3. Where no engineering controls have been cited but more time is needed for other reasons not requiring assistance from OSHA, such as delays in receiving equipment, a monitoring visit need not normally be scheduled.
4. Monitoring inspections shall be scheduled as soon as possible after the initial contact with the employer and shall not be delayed until actual receipt of the PMA.
5. CSHOs shall decide during the monitoring inspection whether sampling is necessary and, if so, to what extent; i.e., spot sampling, short-term sampling, or full-shift sampling.

6. CSHOs shall include pertinent findings in the narrative along with recommendations for action. To reach a valid conclusion when recommending action, it is important to have all the relevant factors available in an organized manner. The factors to be considered may include, but are not limited to the following:
 - a. Progress reports or other indications of the employer's good faith, demonstrating effective use of technical expertise and/or management skills, accuracy of information reported by the employer, and timeliness of progress reports.
 - b. The employer's assessment of the hazards by means of surveys performed by in-house personnel, consultants, and/or the employer's insurance agency.
 - c. Other documentation collected by office personnel including verification of progress reports, success and/or failure of abatement efforts, and assessment of current exposure levels of employees.
 - d. Employer and employee interviews.
 - e. Specific reasons for requesting additional time including specific plans for controlling exposure and specific calendar dates.
 - f. Personal protective equipment.
 - g. Medical programs.
 - h. Emergency action plans.

E. Monitoring Corporate-Wide Settlement Agreements.

Corporate-wide Settlement Agreements (CSA) extend abatement requirements to all covered locations of the company. These agreements may require baseline, periodic and follow-up monitoring. Additional information regarding abatement related to CSA may be found in [CPL 02-00-152](#), *Guidelines for Administration of Corporate-Wide Settlement Agreements*, dated June 22, 2011.

XIV. Notification of Failure to Abate.

A. Violation.

A Notification of Failure to Abate an Alleged Violation (OSHA-2B) shall be issued in cases where violations have not been corrected as required, as verified by an onsite inspection or follow-up inspection.

B. Penalties.

Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which had become a final order of the Employment Appeal Board.

C. Calculation of Additional Penalties.

1. A Gravity Based Penalty (GBP) for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation on the basis of the facts noted upon re-inspection.
2. Detailed information on calculating failure to abate (FTA) penalties is included in [Chapter 6, Penalties and Debt Collection](#).

XV. Case File Management.

A. Closing of Case File Without Abatement Certification.

The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the Administrator or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation.

B. Review of Employer-Submitted Abatement.

CSHOs will review employer-submitted abatement verification materials as soon as possible but no later than 30 days after receipt. If the review will be delayed, notify the employer that the material will be reviewed by a certain date, and that the case will be closed if appropriate, after that time.

C. Whether to Keep Abatement Documentation.

Abatement documentation (photos, employer programs, etc.) shall be maintained with the case file and retained in accordance with the Iowa Records Retention Schedule.

XVI. Abatement Services Available to Employers.

Employers requesting abatement assistance shall be informed that IOSHA is willing to work with them even after citations have been issued.