

**North Carolina Department of Labor
Division of Occupational Safety and Health**

Administrative Information System

Administrative Procedure Notice 16

March 15, 2006

Subject: Citation Review

- A. Purpose.** This Administrative Procedure Notice describes the citation review process at the Director's Office level of review. The purpose of citation review by the Citation Review Committee is to assure that the state has a properly documented case file that will be legally defensible in the event that notice of contest is received, and that the file is complete in support of an informal conference with an employer. The citation review process also serves as a factual update and briefing for management, the Communications Division, and other interested parties. Often specific questions are received from the media, and the public relating to high profile cases.
- B. Background.** The need for a management citation review process was typified by a division inspection that resulted in no citations being issued in a case in which an employee was killed. Initially the wrong employer was cited, and the citations for the cited employer were not sustainable. The situation was brought to the attention of the Commissioner of Labor by the next of kin who was understandably not satisfied with the investigation results. In response to this situation and to prevent similar cases in the future, the Commissioner of Labor created the Citation Review committee.
- C. Cases Requiring Citation Review.** Types of cases that could result in review by the Citation Review Committee are listed on the Citation or Settlement Authorization Form (attachment). Because of determinations originating from the Citation Review Committee, a closing conference should not be scheduled for these cases until the citation review process has been completed.
- D. Actions Required Prior to Committee Meeting.**
 - 1. The field level case file review process should be completed prior to submitting the file for review by the Citation Review Committee. This should include the CSHO and supervisor review process. The complete case file material submitted to the Citation Review Committee should be accurate, correct and consistent with instructions documented in the Technical Writing Course. The role of the committee is not to correct structural deficiencies in case file documents such as grammatical or spelling errors. If it is apparent that a case file is not in final draft form, it will be returned to the CSHO, for correction and resubmittal.
 - 2. Contact should be made by the CSHO with an attorney in the AG's Office prior to citation review to begin the process of developing an effective investigation strategy including proper documentation. Participation by this attorney in the citation review process should stream line the review process.

3. Certain settlement agreements may not require review by the committee based on the discretion of the Assistant Director. These would include those settlements with only penalty adjustments.

E. Preparing the Case File for Citation Review.

1. When cases have been submitted for review, the Citation Review Committee meets twice per week on Wednesday and Friday. Scheduling conflicts of committee members might result in meeting cancellations.
2. To schedule a case file for review on Wednesday, a complete case file must be received in the Assistant Director's Office by 12pm on Monday.
3. To schedule a case file for review on Friday, a complete case file must be received in the Assistant Director's Office by 12pm on Wednesday.
4. The case file package can be sent interoffice, hand delivered, faxed, or e-mailed. However, the submittal deadlines must be met to meet the Wednesday or Friday review days.
5. The six month statute of limitations is not a legitimate excuse for lack of adherence to procedures for scheduling a case file for review by the Citation Review Committee.
6. A complete package including the following materials must be submitted to permit scheduling for case file review.
 - a. Citation or Settlement Authorization form with all items completed including required approval signatures.
 - b. Completed 1b forms. (For settlement authorization 1bs are not required, only Authorization form, Citations, and Settlement.)
 - c. OSHA 1
 - d. Inspection narrative
 - e. Any items referenced in the narrative including relevant photos (if needed for clarification).
 - f. Copies of the citation(s), except for settlement agreement, are optional as long as 1bs are provided.
 - g. OSHA 36 and 170 if accident or fatality report
 - h. A written justification or explanation must accompany a proposed settlement agreement along with all citations.
 - i. Any other items that the CSHO will reference during the Citation review.
7. Once the complete citation or settlement agreement package is received in the Assistant Director's Office, copies are made for the committee participants. For this reason, materials submitted should be suitable for copying.
8. Faxed photos do not copy well. Photos can be e-mailed to the Assistant Director's Administrative Assistant. Only photos relevant to the citation review should be submitted.
9. The Assistant Director will send the schedule of cases to be considered to committee participants.

F. Citation Review Process.

1. The Citation Review Committee includes participation by the Attorney General's Office, Legal Affairs Division, Director, Assistant Director, Bureau Chiefs, District Supervisors, Communications Division and the CSHO.
2. It is the responsibility of each participant in the citation review process to review the assigned case files prior to the meeting.

3. The Director, Assistant Director, or their designee will direct the review of case file scheduled for consideration. As necessary, the oldest cases on the committee schedule will be reviewed first.
4. Participation is intended by the affected Bureau Chief, District Supervisor, and CSHO. Participation by the Bureau Chief and District Supervisor is particularly important if changes had been made to the case file after completion by the CSHO.
5. The CSHO, Supervisor, and/or Bureau Chief who have knowledge of the investigation will provide an overview of the case under review and should be prepared to respond to any questions from the committee participants. Particular attention should be given to any type of special situations or unique elements of the investigation that could be a point of contention at the appeals stage.
6. Most questions originating from the participating attorneys will relate to questions of law such as employer knowledge, employer/employee and contractor/subcontractor relationships, and/or applicability of a particular standard. Consideration of these type of issues prior to citation review will expedite the process. The OSHNC Legal Training Manual and the FOM are helpful reference sources.
7. Any constructive criticism a case file receives by the Citation Review Committee is designed to minimize this level of scrutiny at the appeal level. All parties involved are expected to be cordial, cooperative, and respectful toward one another.
8. Required changes, as a result of the citation review process, to any case file documents will only be communicated to the CSHO during the citation review process.
9. In the interest of time, committee participants should stick to the point. Discussion during the citation review process should be limited to cases that are scheduled for that day's review.
10. Information requested during the citation review may require additional contact with the affected employer.

G. Post Citation Review Activity.

1. A Citation or Settlement Authorization Form signed by the Director/Assistant Director, documents the authorization for citations or a settlement agreement to be issued.
2. If a case file must be resubmitted as a result of the case file review process, a complete package must be prepared and resubmitted as described at E. 6.
3. The complete package must be resubmitted to the Assistant Director as soon as possible in the interest of keeping citation lapse time to a minimum.
4. The goal of the Division is to complete a fatality investigation within 90 calendar days of the inspection open date. Fatality citation lapse time is tracked on a special report maintained in the Assistant Director's office.

H. Expiration. This APN will remain in effect until cancelled by the Director.

Allen M. Nichols
Director

3/16/06
Date

Ken D. Beiguel
Assistant Director

3/16/06
Date

CITATION OR SETTLEMENT AUTHORIZATION

Employer's Name: _____

Inspection #: _____

Supervisor's Name: _____

CSHO's Name: _____

Inspection Type: Accident Referral General Industry
 Complaint Follow-up

Check Applicable Item(s):

Private Sector Penalties > \$50,000 Amount: _____
 Public Sector Penalties > \$10,000 Amount: _____
 Multi-Employer - Single Incident, total Penalties > \$50,000
 Fatality/Accident Inspection with no Violations
 Fatality/Accident with Violations
 Willful Violation(s)
 Media Involvement
 Notice of Failure to Abate
 Failure to Abate Penalty Exception
 Director "Need to Know"
 Corporate - Wide/State - Wide Settlements (OPN 98)
 1910 Standard Cited in Construction and not previously identified as applicable
 Other: (Specified) _____

Citation Authorization Settlement Authorization Must Issue Date: _____

Name of Assigned NCDOJ Attorney : _____ Date of Initial CSHO Contact: _____

(With Assigned NCDOJ Attorney)

Additional NCDOJ Attorney Contact Dates: _____

Supervisor Comments: NO Issues Issues (Specified) _____

Supervisor Approval: _____ Date: _____

Bureau Chief Comments: _____

Bureau Approval: _____ Date: _____

Director's Review:

Approved for Issue _____ Date: _____
 Returned _____ Date: _____
 Returned 2nd Review: _____ Date: _____
 Returned 3rd Review: _____ Date: _____
 Settlement Approval: _____ Date: _____