

CHAPTER 127

South Carolina Occupational Health and Safety Review Board

(Statutory Authority; 1976 Code § 41-15-610(a))

RULES OF PROCEDURE FOR PROTESTING CITATIONS, PENALTIES AND PERIODS OF ABATEMENT

127-1.1. Notice of Protest.

A Notice of Protest must be in writing and signed by the protesting party, counsel for the protesting party, or any authorized representative. The notice does not have to be a formal petition but may be a memorandum, letter, or other writing which states the protest of the party. The notice must be mailed or delivered to the Director of OSH/Compliance, South Carolina Department of Labor, 3600 Forest Drive, Post Office Box 11329, Columbia, South Carolina 29211.

A. The Notice of Protest should include:

1. The name and address of protesting party.
2. The address of the worksite for which the citation was issued, the penalty proposed or period of abatement set.
3. The date and number of the citation, proposed penalty or period of abatement.
4. A brief statement of facts regarding the protest of the citation, abatement dates, or proposed penalties.
5. A request, either expressed or implied, for a hearing regarding the citation, abatement date, penalty, or any combination thereof.

B. In cases involving a protest by an employer, the employer shall on the day the Notice of Protest is mailed or delivered as required herein, post a copy of the Notice of Protest adjacent to the citation being protested. In all other cases, a copy of the Notice of Protest shall be mailed or delivered to the affected employer on the day the same is mailed or delivered as required herein.

C. Within three (3) days of the receipt of the Notice of Protest, the same shall be filed by the Director of OSH/Compliance, South Carolina Department of Labor, with the Administrative Law Clerk of the Occupational Health and Safety Review Board.

D. Signature of Record on a Notice of Protest does not constitute compliance with Section 127-1.5. A separate written notice must be given in order to serve as a representative of a party or as an intervenor.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

127-1.2. Protection of Trade Secrets and Other Confidential Information.

Upon application by any person, whether a party or not, in a proceeding where trade secrets or other confidential matters may be divulged, the Board member to whom the protest is assigned shall issue such orders as may be appropriate to protect such trade secrets or other confidential information.

127-1.3. Party Status.

Affected employees or authorized employee representatives may elect to participate as parties at any time prior to the hearing on the merits of the protest by making a written request to the assigned Board member. Where a Notice of Protest is filed by an employee or by an authorized employee representative with respect to a citation, proposed penalty, or the period for abatement of a violation,

the employer charged with the responsibility of abating the alleged violation may elect party status at any time before the commencement of the hearing on the merits of the protest by making a written request to the assigned Board member.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

127-1.4. Intervention; Appearance by Non-parties.

A written petition for leave to intervene may be filed with the Administrative Law Clerk of the Occupational Health and Safety Review Board not later than five (5) days in advance of the commencement of the hearing on the merits of the matter for which intervention is sought. The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding. The Board or the Board member to whom the matter has been assigned may grant a petition for intervention to such an extent and upon such terms as the Board or Board member shall determine that the interest of the petitioner may warrant.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

127-1.5. Representative of Parties and Intervenors.

Any protesting party or intervenor may appear in person or through a representative. Parties may choose an officer or a full time employee as a representative. If a party chooses an attorney as a representative, the attorney must comply with all requirements of the South Carolina Supreme Court, including provisions for appearance pro hac vice. The representative of a party of intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding. It shall be the duty of the party or intervenor to notify, in writing, the Administrative Law Clerk of the Occupational Health and Safety Review Board and the Board member to whom the matter is assigned of the address of record of the party or intervenor or of the representative appearing for the party or intervenor.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 30, Issue No. 5, eff May 26, 2006.

127-1.6. Failure to Appear.

The failure of a protesting party to appear at a hearing shall be deemed a withdrawal of the Notice of Protest and a waiver of all rights except the right to be served with a copy of the order of the Board or of the Board member to whom the matter has been assigned. If a party requesting a change in abatement dates fails to appear, such failure shall be an abandonment of the request. Upon a showing of good cause, the Board or Board member to whom the matter has been assigned may grant requests for reinstatement filed within ten (10) days after the scheduled hearing. In such cases, the hearing may be rescheduled. If the matter is not reinstated, the protesting party in default may be taxed with the costs of the hearing in the amount of Three Hundred Fifty (\$350) dollars.

HISTORY: Amended by State Register Volume 18, Issue No. 6, eff June 24, 1994; State Register Volume 28, Issue No. 5, eff May 28, 2004.

127-1.7. Duty and Authority of Board Member.

It shall be the duty of the Board member conducting a hearing to conduct a fair and impartial hearing, to assure that the facts are fully disclosed, to adjudicate all issues and to avoid any unnecessary delay. At any time in the disposition of a protested case, the Review Board by majority vote may request the Administrative Law Clerk to reassign the case to another board member. The Board member shall have authority with respect to hearings assigned to the member to issue any orders or rules or take such other action as is necessary and prudent to carry out the purpose of a fair and impartial hearing.

HISTORY: Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

127-1.8. Filing of Briefs and Oral Arguments.

Any party or intervenor shall be entitled, upon request, to a reasonable period of time at the close of the hearing to present oral argument, which argument shall be included in the stenographic report of the hearing. Any party or intervenor shall be entitled, upon request made before the close of the

hearing, to file a brief, proposed findings of fact, conclusions of law, or both, with the Board member. The Board member shall fix a reasonable period of time for such filing.

127-1.9. Hearings on Petitions for Modification of Abatement Dates.

Upon receipt of a Petition for modification of an abatement date accompanied by an objection in writing by affected employees, an authorized employee representative, or the Assistant Director for OSH/Compliance, the Board shall immediately set the matter for hearing at the earliest convenience of the member to whom the matter is assigned, but not more than sixty (60) days following the filing of the Petition.

127-1.10. Service and Notice.

A. Notice of Protest

1. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of protest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of protest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times.

2. The authorized employee representative, if any, must be served with a copy of the notice of protest.

3. Where a notice of protest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall serve a copy of his notice on the authorized employee representative and shall file proof of such service.

4. Where a notice of protest is filed by an affected employee or an authorized employee representative, a copy of the notice of protest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph A.1. of this rule.

5. An authorized employee representative who files a notice of protest shall be responsible for serving any other authorized employee representative whose members are affected employees.

B. Notice of Hearing

1. A copy of the notice of the hearing to be held before the Board Member shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

2. A copy of the notice of the hearing to be held before the Board Member shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph E.1 of this rule, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

C. Notice of Proposed Settlement Agreement

1. A copy of the proposed settlement being submitted to the Board Member for approval shall be served by the employer on affected employees who are not represented by an authorized agent by posting a copy of such proposed settlement agreement at or near the place where the citation is required to be posted.

2. A copy of the proposed settlement agreement being submitted to the Board Member shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph E.1 of this rule, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date the proposed settlement agreement is signed by the employer.

3. A proposed settlement agreement shall not be approved by the Board Member until at least fifteen (15) days following service of the proposed settlement agreement on affected employees.

D. Other Documents

1. At the time of filing pleadings or other documents, a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

2. Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

E. Proof of Service

1. Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effective at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

2. Proof of service shall be accomplished by a written statement which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

3. Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

4. Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

127-1.11. Conflict of Interest.

In the event that a Board member has a personal conflict of interest, the Board member shall request the Administrative Law Clerk to reassign the case to another Board member.

In the event any party is aware of a conflict of interest regarding the assigned Board member, a written statement describing the nature of the conflict and requesting reassignment of the case should be submitted to the Board member and filed with the Administrative Law Clerk.

HISTORY: Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

RULES OF PROCEDURE FOR THE PREPARATION AND PRESERVATION OF A RECORD OF HEARINGS AND OTHER PROCEEDINGS

127-2.1. Record.

All hearings and other proceedings shall be of record with the testimony and argument recorded by a qualified court reporter.

127-2.2. Transcripts, Exhibits.

The court reporter shall take possession of all exhibits, retain them until transmitting them to the Board member to whom the matter was assigned together with the original transcript of the proceeding.

127-2.3. Filing of Transcript and Exhibits.

Upon rendering a decision, findings or order, the Board member shall transmit the transcript and exhibits to the Administrative Law Clerk together with the decision, findings or order.

127-2.4. Preservation of Record.

The Administrative Law Clerk shall retain possession of and preserve the orders of the Board member, the transcript and exhibits until the period allowing appeals to the Review Board or the Circuit Courts shall have run.

RULES OF PROCEDURE FOR APPEALS TO THE REVIEW BOARD

127-3.1. Petition for Review.

Any party seeking review of any decision, order, or findings of any member of the Board may petition the Review Board for review within thirty (30) days of the service of the decision, order or findings. The Petition must state the grounds upon which the Board member's decision, order or findings are to be reversed or modified.

127-3.2. Request for Response.

In the event the Review Board grants the petition for review, the Review Board may request affected parties to respond to the grounds urged in the petition for review as the basis for reversal or modification of the Board member's decision, order or findings.

127-3.3. Oral Argument.

The Review Board may, in the exercise of its discretion, request oral argument by the parties. If argument is requested, the parties shall be notified of the date, time and place.

127-3.4. Record for Appeal.

If the Review Board grants a petition for review, the Administrative Law Clerk shall copy and distribute to each member, except that member from whose decision, order or findings the appeal is taken, a copy of the orders of the Board member, the transcript and exhibits in the matter.