Agency Name: Department of Labor, Licensing and Regulation - Office of Occupational Safety and Health

Statutory Authority: 41-3-40 and 41-15-210

Document Number: 4446

Proposed in State Register Volume and Issue: 37/12

House Committee: Labor, Commerce and Industry Committee

Senate Committee: Labor, Commerce and Industry Committee

120 Day Review Expiration Date for Automatic Approval 06/04/2014

Final in State Register Volume and Issue: 38/6

Status: Final

Subject: Enforcement of Violations

History: 4446

By Date Action Description Jt. Res. No. Expiration Date

- 12/27/2013 Proposed Reg Published in SR

- 02/04/2014 Received by Lt. Gov & Speaker 06/04/2014

H 02/04/2014 Referred to Committee

S 02/04/2014 Referred to Committee

S 04/02/2014 Resolution Introduced to Approve 1186

H 04/03/2014 Committee Requested Withdrawal

120 Day Period Tolled

- 04/03/2014 Withdrawn and Resubmitted 06/04/2014

S 04/15/2014 Resolution Introduced to Approve 1227

- 06/04/2014 Approved by: Expiration Date

- 06/27/2014 Effective Date unless otherwise

provided for in the Regulation

Resubmitted: April 4, 2014

Document No. 4446

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**

**OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

CHAPTER 71

Statutory Authority: 1976 Code Sections 41-3-40 and 41-15-210

71-400. Definitions.

71-401. Citations; Notice of De Minimis Violation.

71-402. Proposed Penalty.

71-403. Posting of Citation.

71-404. Failure to Correct Violation for Which Citation Has Been Issued.

71-405. Petition for Modification of Abatement.

71-406. Informal Conference.

71-407. Employer or Employee Contest.

71-408. Failure to Contest.

71-409. Withdrawal, Modification or Amendment to Citation and Proposed Penalty.

71-410. Abatement Verification.

**Synopsis**:

The South Carolina Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health proposes to amend Regulations 71-400 through 71-407, add Regulation 71-408, and amend Regulations 71-409 through 71-411 to reflect recent amendments made to the South Carolina Occupational Safety and Health Act.

A Notice of Drafting was published in the *State Register* on February 22, 2013.

**Instructions:**

The following sections of Chapter 71 are modified as provided below. All other sections remain unchanged.

**Text:**

SUBARTICLE 4

ENFORCEMENT OF VIOLATIONS

71‑400. Definitions.

As used in this Subarticle, unless the context clearly requires otherwise

A. “Abatement” means corrections of violations issued in citation package.

B. "Act" means Act 379, South Carolina Acts and Joint Resolutions, 1971, as amended, and State Laws enacted by the South Carolina General Assembly.

C. "Administrator" means that person in the South Carolina Department of Labor, Licensing and Regulation, who is designated by the Director as responsible for the supervision of the activities of the Occupational Safety and Health Division.

D. "Affected Employee" shall mean an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his employment.

E. "Agency" means the South Carolina Department of Labor, Licensing and Regulation.

F. "Authorized Employee Representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

G. "Citation" means a written agency determination issued by the Director or his designated representative pursuant to Section 41‑15‑280, Code of Laws, State of South Carolina, 1976, as amended. For the purpose of this section, the word "citation" includes "amended citation".

H. "Compliance Manager" means that person in the Department of Labor, Licensing and Regulation, State of South Carolina, who is designated by the Administrator as responsible for inspections made pursuant to the State's Occupational Safety and Health Laws including, but not limited to, the issuance of citations and assessment of penalties.

I. “Contest Period” means the thirty day period that begins once the citation is received by the employer.

J. “Designee” means the person or persons acting on behalf of one or more of the following: Director, Administrator, Compliance Officer, or Informal Conference Hearing Officer, having the same authority and responsibility as the one for whom he is acting.

K. "Day" means calendar day.

L. "Director" means the Director of the South Carolina Department of Labor, Licensing and Regulation.

M. "Employee" means any person employed by an individual, partnership, joint venture, cooperative association or corporation doing business in the State, or by the State of South Carolina or any political subdivision thereof.

N. "Employer" means any individual, partnership, joint venture, cooperative association or corporation doing business in the State and the State of South Carolina and any political subdivision thereof which employs one (1) or more persons to perform work within the State of South Carolina.

O. “Informal Conference” means a conference held to discuss any issues raised by an inspection, citation, notice of penalty, and notification of failure to correct violation. No informal conference or request for an informal conference shall operate as a stay of the thirty (30) day period for filing a request for a contested case hearing to the ALC.

P. “Informal Conference Hearing Officer” means the designee of the Administrator given authority to hold informal conferences.

Q. “Informal Settlement Agreement” means the product of an agreement between both parties, which includes the parameters of such settlement and signatures of both parties. This agreement serves as a final order in lieu of contest, which the employer waives by entry into this agreement.

R. "Notification of Penalty" means a written agency determination issued by the Director or his designee to an employer to notify the employer of penalties assessed under Section 41‑15‑320, Code of Laws, State of South Carolina, 1976, as amended.

S. "OSH Compliance Officer" means any individual commissioned by the Director to enforce safety and health statutes, rules and regulations.

T. "Party" means any individual, partnership, joint venture, cooperative association, corporation, State of South Carolina or any political subdivision thereof who shall have a vested interest to participate in a hearing conducted in accordance with this subarticle.

U. "Person" means any individual, partnership, joint venture, cooperative association, corporation, organization of employees, or the State of South Carolina or any political subdivision thereof.

V. "Representative" means any person, including an authorized employee representative, authorized by a party, survivor, or intervener to represent him in a proceeding.

W. "Rules and Regulations" means any rules and regulations promulgated and adopted by the Department.

X. "State" means the State of South Carolina.

71‑401. Citation; Notice of De Minimis Violation.

A. The Compliance Manager or his designee shall review the report of inspection of each OSH Compliance Officer. If the report indicates a violation of the state statutes or rules and regulations, there shall be issued to each employer, by certified mail or by personal service, a citation(s). Any citation shall be issued with reasonable promptness after the termination of the inspection. No citation shall be issued after the expiration of six (6) months following the occurrence of any violation. Citations shall detail the conditions and circumstances of the violation, and refer to applicable statutes, rules and regulations or order alleged to have been violated. The citation shall also fix a reasonable time for abatement of the violation(s). Where a citation is issued as a result of a request for inspection under Subarticle 5, R. 71‑508, copies of the citation shall also be provided to the employee or employee representative who made such request. If appropriate, a citation will be issued to an employer even where the employer abates immediately.

B. Notice of De Minimis Violation. The Compliance Manager or his designee shall review the report of inspection of each OSH Compliance Officer. If the report indicates a violation of the state statutes or rules and regulations which have no direct or immediate relationship to safety or health, the Compliance Manager may issue a notice of de minimis violation if he shall determine that such notice shall be beneficial to the health and safety of employees. Such notice of de minimis violation shall be in the form of a recommendation only and may not be contested.

C. While the issuance of a citation is the agency’s determination, it does not constitute a determination that a violation of state statutes or rules and regulations has occurred, but it is an allegation that such may have occurred, unless there is a failure to contest as provided for in accordance with Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court, or, if contested, unless the violation is determined to have existed by a final order of the Administrative Law Court or by a final adjudication in the courts of this State.

D. No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

(1)(a) such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations; and

(b) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(2)(a) such employee is directed by the employer to perform rescue activities in the course of carrying out the employee’s job duties; and

(b) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(3)(a) such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such a workplace operation where employees are located in confined spaces or trenches; handle hazardous waste, respond to emergency situations, perform evacuations, or perform construction over water; and

(b) such an employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and

(c) the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

71‑402. Penalty.

A. After, or concurrent with, the issuance of a citation, and within a reasonable time of the inspection, the Compliance Manager, or his designee, shall notify the employer by certified mail or by personal service of the penalty under Section 41‑15‑300, Code of Laws of South Carolina, 1976, as amended, or that no penalties are assessed.

B. The Compliance Manager or his designee shall determine the amount of any 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 Section 41‑15‑320, Code of Laws of South Carolina, 1976, as amended.

C. Appropriate penalties may be assessed with respect to alleged violations even though after being informed of such an alleged violation by the OSH Compliance Officer, the employer immediately abates or initiates steps to abate such violation. A penalty shall not be assessed for de minimis violations.

D. While the issuance of an assessed penalty is the agency’s determination, it does not constitute an obligation unless there is a failure to contest the assessed penalty as provided in accordance with Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court, or, if contested, unless the assessed penalty is determined to be an obligation under Section 41‑15‑320, Code of Laws of South Carolina, 1976, as amended, by an Order of the Administrative Law Court or upon final adjudication in the courts of this State.

71‑403. Posting of Citation.

A. Upon receipt of a 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 practical 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. 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 three working days, whichever is later. The filing by the employer of a request for a contested case hearing under R. 71‑407 and R.71-408 shall not affect his posting responsibility under these sections.

C. Any employer failing to comply with the provisions of paragraphs A and B of this regulation shall be subject to citation and penalty in accordance with the provisions of Section 41‑15‑320, Code of Laws of South Carolina, 1976, as amended.

71‑404. Failure to Correct Violation for Which Citation Has Been Issued.

A. If any subsequent inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Compliance Manager or his designee shall notify the employer by certified mail or by personal service of such failure and of the penalty assessed under Section 41‑15‑320, South Carolina Code of Laws, 1976, as amended, by reason of such failure, and of a later date after which an additional penalty may be assessed for continued failure to correct the violation.

B. Any employer receiving a notification of penalties for failure to abate violations and notification of penalty may notify the Administrator, in writing, that he intends to contest such citation or notification of penalty. Such right to contest notification of failure to correct a violation or assessed penalty may be made by the employer, by notifying the Administrator, in writing. Such request for a contested case hearing shall comply with Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court.

71‑405. Petition for Modification of Abatement.

A. Filing. If the employer has made a good faith effort to comply with the abatement period, but has not been able to do so by the prescribed date because of factors beyond his control, he may file a petition for modification of abatement. The petition must be filed with the Compliance Manager or his designee no later than the end of the next working day following the date on which abatement was to have been completed. The petition shall state why the abatement cannot be completed within the prescribed time, the steps taken to achieve compliance, and what interim steps are being taken to protect the employees from the cited hazard. Affected employees and their authorized representative (if any) must be also notified in writing of the petition by posting of the petition at the same location the citation is posted, and the petition shall remain posted for a period of ten (10) days.

B. Incomplete Petition for Modification of Abatement. Should a petition for modification of abatement be submitted to the Compliance Manager, or his designee, which does not meet the requirements of this regulation, the Compliance Manager, or his designee, shall immediately notify the employer of the deficiency and may allow up to an additional five (5) days to meet the requirements.

C. Objections to Petition for Modification of Abatement. Affected employees or their authorized representative may file an objection in writing to a petition for modification of abatement with the Compliance Manager. Failure to file such objection within ten (10) 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 the petition unless good cause is shown for such failure.

D. Decision. The Compliance Manager or his designee may issue a decision, served by certified mail, after ten (10) days. The decision of the Compliance Manager or his designee to accept or deny the petition for modification of abatement may be contested by the employer or affected employee; or within thirty (30) days from receipt of the decision, it may be contested to the Administrative Law Court.

E. Service. Unless otherwise ordered, service to the Department may be accomplished by postage prepaid 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). Service and notice to employees represented by an authorized employee representative shall be deemed accomplished in the manner prescribed in paragraph B of this regulation

F. Failure to File Timely. Where the employer fails to file with the Compliance Manager or his designee, a petition for modification of abatement within the time prescribed in paragraph A of this regulation, the abatement period shall be deemed a final order of the Compliance Manager or his designee unless good cause is shown for such failure. Where any filing required by this regulation is made later than the period specified herein, the Compliance Manager or his designee may consider the merits of the objection or petition if he finds that there was a good cause for such delay and that such delay was not excessive. If the Compliance Manager or his designee shall determine that there was not good cause or that the delay was excessive, he shall recommend the denial of and thereby object to the petition for modification of abatement in accordance with paragraph D of this regulation.

71‑406. Informal Conference.

A. Authority. At the request of either the employer, an affected employee, or representative of employees, the Informal Conference Hearing Officer or his designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of penalty, or notification of failure to abate violation. The settlement of any issue at such conference shall be subject to these rules and regulations of procedure. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator or his designee. Any party may be represented by legal counsel. No such conference or request for conference shall operate as a stay of the thirty (30) day period for filing a request for a contested case hearing, and no such conference or request for conference will be held or accepted subsequent to receipt of a request for a contested case hearing as defined in Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court.

B. Informal Conference Procedures—If the request for a contested case hearing is not filed pursuant to subsection A., the Informal Conference procedure is as follows:

1. Requesting Informal Conference. Request for an informal conference may be made orally or in writing to the Informal Conference Hearing Officer.

2. Location. Informal conferences shall be conducted by the Informal Conference Hearing Officer and held at the South Carolina Department of Labor, Licensing, and Regulation. At the request of an employer, an alternate site may be designated upon approval by the Administrator.

3. Time. Informal conferences will be scheduled upon request. All conferences will be held and decisions rendered within the thirty (30) day contest period.

4. Decision. A decision of the Informal Conference Hearing Officer or his designee will be made at the close of the informal conference and communicated promptly to the parties as close to the informal conference as possible and within the thirty (30) day contest period.

C. Informal Settlement Agreement. Informal Settlement Agreement is the product of an agreement between both parties, which include the parameters of such settlement and signatures of both parties. This agreement serves as a final order in lieu of contest, which the employer waives by entry into this agreement.

D. The Informal Conference Hearing Officer. The Informal Conference Hearing Officer may enter into a settlement agreement which amends any previous citations, penalties, and abatement dates. Such settlement agreements will be in writing, signed by both parties, and within the thirty (30) day contest period.

71‑407. Employer or Employee Contest.

A. Any employer to whom a citation or notice of penalty has been issued may request a contested case hearing in which it does contest such citation, proposed penalty, abatement date, or any combination thereof in accordance with the rules of procedure of Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court. The request for a contested case hearing shall be filed within thirty (30) days after the receipt of the citation issued by the Compliance Manager. The employer shall provide a copy of the filed request for a contested case hearing to the Compliance Manager.

B. Any employee or any employee representative of an employer to whom a citation or notice of penalty has been issued, may request for a contested case hearing in which it does contest such abatement date in accordance with the rules of procedure of Articles 3 and 5 of Chapter 23, Title 1 and the rules of the Administrative Law Court. The employee or any employee representative of an employer shall provide a copy of the filed request for a contested hearing to the Administrator.

C. Where the employer, employee or employee representative fails to file a request for a contested case hearing pursuant to the rules of procedure of the Administrative Law Court, the citation and penalty shall be deemed a final order not subject to administrative review.

71-408. Request for a Contested Case Hearing; Posting.

A. Request for a contested case hearing; posting.

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 request for a contested case hearing, post where the citation is required to be posted, a copy of the request for a contested case hearing 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, shall be served with a copy of the request for a request for a contested case hearing.

3. Where a request for a contested case hearing 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 in a manner prescribed in subsection D.1. of this section.

4. Where a request for a contested case hearing is filed by an affected employee or an authorized employee representative, a copy of the request for a contested case hearing 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 request for a contested case hearing shall be responsible for serving any other authorized employee representative whose members are affected employees in a manner prescribed in subsection D.1. of this section.

B. Notice of Hearing.

1. A copy of the notice of the hearing to be held before the Administrative Law Court 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 Administrative Law Court shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph D.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. 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.

D. 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, unless otherwise specified, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

71‑409. Failure to Contest.

Where the employer, employee or employee representative fails to file a request for a contested case hearing pursuant to the rules of procedure of the Administrative Law Court, the citation and penalty shall be deemed a final order of the Director not subject to administrative review unless good cause is shown for such failure. Where the filing of request for a contested case hearing is made later than the period specified, the Director may nevertheless waive his objection to the late contest, if he finds that there was good cause for such delay and that the delay was not excessive.

71‑410. Withdrawal, Modification or Amendment to Citation and Penalty.

A. The Occupational Safety and Health Division of the South Carolina Department of Labor, Licensing and Regulation may withdraw, modify or amend a citation and/or penalty during the thirty (30) day contest period.

B. After the expiration of the thirty (30) day period or after a request for a contested case hearing has been filed and provided to the Administrator or his designee, the Administrator may on his own motion withdraw, modify or amend a citation and/or penalty, provided the same does not unduly prejudice the position of any party.

C. After the request for contested case hearing is filed and received by the Administrative Law Court, any action to withdraw, modify, or amend a citation or penalty shall be according to the rules of the Administrative Law Court.

71‑411. Abatement Verification.

PURPOSE: OSHA's inspections are intended to result in the abatement of violations of the South Carolina Occupational Safety and Health Act. This section sets forth the procedures OSHA will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

A. Scope and application. This section applies to employers who receive a citation for a violation of the Occupational Safety and Health Act.

B. Abatement certification.

(1) Within 10 calendar days after the abatement date, the employer must certify to OSHA (The Agency) that each cited violation has been abated, except as provided in paragraph (B)(2) of this section.

(2) The employer is not required to certify abatement if the OSHA Compliance Officer, during the on‑site portion of the inspection:

(a) Observes, within 24 hours after a violation is identified, that abatement has occurred; and

(b) Notes in the citation that abatement has occurred.

(3) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by paragraph (G) of this section that affected employees and their representatives have been informed of the abatement.

Note to paragraph (B): Appendix A contains a sample abatement certification letter.

C. Abatement documentation.

(1) The employer must submit to the Agency, along with the information on abatement certification required by paragraph (B)(3) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the Agency indicates in the citation that such abatement documentation is required.

(2) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

D. Abatement plans.

(1) The Agency may require an employer to submit an abatement plan for each cited violation (except an other‑than‑serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citations must so indicate.

(2) The employer must submit an abatement plan for each cited violation within twenty five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

Note to paragraph (D): Appendix B contains a sample abatement plan form.

E. Progress reports.

(1) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. 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 thirty (30) calendar days after submission of an abatement plan;

(c) Whether additional progress reports are required;

(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.

Note to paragraph (E): Appendix B contains a sample progress report form.

F. Employee notification.

(1) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the Agency or a summary of the document near the place where the violation occurred.

(2) Where such posting does not effectively inform employees and their representative(s) about abatement activities (for example, for employers who have mobile work operations), the employer must:

(a) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

(b) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the Agency.

(a) An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

(b) The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(4) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the Agency and that abatement documents are:

(a) Not altered, defaced, or covered by other material; and

(b) Remain posted for three (3) working days after submission to the Agency.

G. Transmitting abatement documents.

(1) The employer must include, in each submission required by this section, the following information:

(a) The employer's name and address;

(b) The optional report number to which the submission relates;

(c) The citation and item numbers to which the submission relates;

(d) A statement that the information submitted is accurate; and

(e) The signature of the employer or the employer's authorized representative.

(2) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Agency receives the document is the date of submission.

H. Movable equipment.

(1) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites.

Note to paragraph (H)(1): Attaching a copy of the citation to the equipment is deemed by OSHA to meet the tagging requirement of paragraph (H)(1) of this section as well as the posting requirement of 71‑403 in this subarticle.

(2) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

Note to paragraph (H)(2): Non‑Mandatory Appendix C contains a sample tag that employers may use to meet this requirement.

(3) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment.

(a) For hand‑held equipment, immediately after the employer receives the citation; or

(b) For non‑hand‑held equipment, prior to moving the equipment within or between work sites.

(4) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this section when the information required by paragraph (H)(2) is included on the tag.

(5) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(6) The employer must assure that the tag or copy of the citation attached to movable equipment remains until:

(a) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the Agency;

(b) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(c) The Court issues a final order vacating the citation.

Appendices Abatement Verification

Note: Appendices A through C provide information and non-mandatory guidelines to assist employers and employees in complying with the appropriate requirements of this section.

Appendix A: Sample Abatement Certification Letter (Non-mandatory)

(Name), Administrator

S.C. Department of Labor, Licensing & Regulation OSHA

Address of the Area Office (on the citation)

[Company’s Name]

[Company’s Address]

The hazard referenced in Optional Report No. (insert 6-digit #) for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citation [insert #] and item [insert #] was corrected on [insert date] by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I attest that the information contained in this document is accurate.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Typed or Printed Name

Appendix B – Sample Abatement Plan or Progress Report (Non-mandatory)

(Name), Administrator

S.C. Department of Labor, Licensing & Regulation – OSHA

Address of Area Office (on the citation)

[Company’s Name]

[Company’s Address]

Check one:

Abatement Plan [ ]

Progress Report [ ]

Optional Report Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Page \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Citation Number(s)\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Item Number(s)\*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Action Proposed Completion Completion Date (for

Date (for Abatement Progress reports only)

Plans only)

1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date required for final abatement:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I attest that the information contained in this document is accurate.

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone Number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

APPENDIX C:

Sample Warning Tag (Nonmandatory)

**WARNING:**

EQUIPMENT HAZARD CITED BY OSHA

EQUIPMENT CITED:

\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_

HAZARD CITED

\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_

FOR DETAILED INFORMATION SEE OSHA CITATION POSTED AT:

\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_

**BACKGROUND COLOR-----ORANGE**

**MESSAGE COLOR------BLACK**



**Fiscal Impact Statement:**

There will be no cost incurred by the State or any of its political subdivisions in complying with these proposed regulations.

**Statement of Rationale:**

The updated regulations will reflect recent amendments made to the Occupational Safety and Health Act.