

§ 2200.33

29 CFR Ch. XX (7-1-06 Edition)

the cost of litigation. If a pleading, motion or other paper is signed in violation of this rule, such signing party or its representative shall be subject to the sanctions set forth in §2200.101 or §2200.104. A signature by a party representative constitutes a representation by him that he understands that the rules and orders of the Commission and its Judges apply equally to attorney and non-attorney representatives.

[70 FR 22788, May 3, 2005; 70 FR 25652, May 13, 2005]

§ 2200.33 Notices of contest.

Within 15 working days after receipt of—

(a) Notification that the employer intends to contest a citation or proposed penalty under section 10(a) of the Act, 29 U.S.C. 659(a); or

(b) Notification that the employer wishes to contest a notice of a failure to abate or a proposed penalty under section 10(b) of the Act, 29 U.S.C. 659(b); or

(c) A notice of contest filed by an employee or representative of employees under section 10(c) of the Act, 29 U.S.C. 659(c),

the Secretary shall notify the Commission of the receipt in writing and shall promptly furnish to the Executive Secretary of the Commission the original of any documents or records filed by the contesting party and copies of all other documents or records relevant to the contest.

[51 FR 32015, Sept. 8, 1986; 52 FR 13831, Apr. 27, 1987]

§ 2200.34 Employer contests.

(a) *Complaint.* (1) The Secretary shall file a complaint with the Commission no later than 20 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

(i) The basis for jurisdiction;

(ii) The time, location, place, and circumstances of each such alleged violation; and

(iii) The considerations upon which the period for abatement and the proposed penalty of each such alleged violation are based.

(3) Where the Secretary seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) *Answer.* (1) Within 20 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(3) The answer shall include all affirmative defenses being asserted. Such affirmative defenses include, but are not limited to, “infeasibility,” “unpreventable employee misconduct,” and “greater hazard.”

(4) The failure to raise an affirmative defense in the answer may result in the party being prohibited from raising the defense at a later stage in the proceeding, unless the Judge finds that the party has asserted the defense as soon as practicable.

[57 FR 41685, Sept. 11, 1992]

§ 2200.35 Disclosure of corporate parents, subsidiaries, and affiliates.

(a) *General.* All answers, petitions for modification of abatement period, or other initial pleadings filed under these rules by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable.

(b) *Failure to disclose.* The Commission or Judge in its discretion may refuse to accept for filing an answer or other initial pleading that lacks the disclosure declaration required by this paragraph. A party that fails to file an adequate declaration may be held in default after being given an opportunity to show cause why it should not be held in default.

(c) *Continuing duty to disclose.* A party subject to the disclosure requirement of this paragraph has a continuing duty to notify the Commission or the Judge of any change in the information on the disclosure declaration until the

Commission issues a final order disposing of the proceeding.

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (b) of this section shall be served upon the affected party by certified mail, return receipt requested.

[57 FR 41685, Sept. 11, 1992]

§ 2200.36 [Reserved]

§ 2200.37 Petitions for modification of the abatement period.

(a) *Grounds for modifying abatement date.* An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

(b) *Contents of petition.* A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) *When and where filed; Posting requirement; Responses to petition.* A petition for modification of abatement date shall be filed with the Area Director of the United States Department of Labor who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all

affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of 10 days.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Area Director. Failure to file such objection within 10 working days of the date of posting of such petition shall constitute a waiver of any further right to object to said petition.

(3) The Secretary or his duly authorized agent shall have the authority to approve any uncontested petition for modification of abatement date filed pursuant to paragraphs (b) and (c) of this section. Such uncontested petitions shall become final orders pursuant to sections 10 (a) and (c) of the Act.

(4) The Secretary or his authorized representative shall not exercise his approval power until the expiration of 15 working days from the date the petition was posted pursuant to paragraphs (c)(1) and (2) of this section by the employer.

(d) *Contested petitions.* Where any petition is objected to by the Secretary or affected employees, such petition shall be processed as follows:

(1) The Secretary shall forward the petition, citation and any objections to the Commission within 10 working days after the expiration of the 15 working day period set out in paragraph (c)(4) of this section.

(2) The Commission shall docket and process such petitions as expedited proceedings as provided for in §2200.103 of this part.

(3) An employer petitioning for a modification of the abatement period shall have the burden of proving in accordance with the requirements of section 10(c) of the Act, 29 U.S.C. 659(c), that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Where the petitioner is a corporation, it shall file a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable, within 10 working days