

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

BUREAU OF SAFETY AND REGULATION

OCCUPATIONAL SAFETY AND HEALTH

(By authority conferred on the departments of labor and public health by section 69 of Act No. 154 of the Public Acts of 1974, being S408.1069 of the Michigan Compiled Laws)

PART 13. INSPECTIONS AND INVESTIGATIONS, CITATIONS, AND PROPOSED PENALTIES

R 408.22301 Purpose.

Rule 1301. The purpose of this part is to prescribe rules and set forth general policies for enforcement of the inspection and investigation, citation, and proposed penalty provisions of the act. In situations where this part sets forth general enforcement policies, rather than substantive or procedural rules, such policies may be modified in specific circumstances where the department director or his designee determines that an alternative course of action would better serve the objectives of the act.

History: 1979 AC.

R 408.22303 Scope.

Rule 1303. (1) The act requires that every employer covered under the act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to his employees. The act also requires that employers comply with occupational safety and health standards promulgated under the act, and that employees comply with standards, rules, regulations, and orders issued under the act which are applicable to their own actions and conduct.

(2) The act authorizes the departments of consumer and industry services and public health to conduct inspections and investigations and to conduct tests and gather samples of materials and substances as are necessary to aid in the evaluation of the place of employment, and to issue citations and proposed penalties for alleged violations, and to question employers and employees in connection with research and other related activities.

(3) The act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties if appealed by an employer or by an employee or authorized representative of employees.

History: 1979 AC.

R 408.22305 Definitions; A to C.

Rule 1305. (1) "Act" means the Michigan occupational safety and health act, Act No. 154 of the Public Acts of 1974, as amended, being S408.1001 et seq. of the Michigan Compiled Laws.

(2) "Authorized employee representative" or "representative of employee" means a person designated by a labor organization certified by the national labor relations board or employment relations commission as defined in section 2(c) of Act No. 176 of the Public Acts of 1938, being S423.2 of the Michigan Compiled Laws, as the bargaining representative for the affected employees. In the absence of certification, it shall be a person designated by the organization having a collective bargaining relationship with the employer and designated as having a collective bargaining relationship with the employer by the affected employees. If a labor organization is not certified or if no organization has a collective bargaining relationship with the employer, "authorized employee representative" or "representative of employee" means a person designated by the affected employees to represent them for the purpose of proceedings under this act.

(3) "Board" means the board of health and safety compliance and appeals created in section 46 of the act.

(4) "Citation" means a written communication issued by the department to an employer pursuant to section 33 of the act.

History: 1979 AC.

R 408.22307 Definitions; D,E.

Rule 1307. (1) "Department" means the Michigan department of consumer and industry services or the Michigan department of public health.

(2) "Director" means the director of the Michigan department of consumer and industry services or the director of the Michigan department of public health.

(3) "Employee" means a person permitted to work by an employer.

(4) "Employer" means an individual or organization, including the state or a political subdivision, which employs 1 or more persons.

(5) "Establishment" means a single physical location where business is conducted or where services or operations are performed; for example, a factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, central administrative office, a single school within a school district, a city garage within the department of public works, a branch office of the department of state, or a police station within the police department of a city. Where distinctly separate activities are performed at a single physical location, such as contract construction activities operated from the same physical location as a lumberyard, each activity shall be treated as a separate establishment.

History: 1979 AC.

R 408.22309 Definitions; I to W.

Rule 1309. (1) "Imminent danger" means a condition or practice in a place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm, either immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided.

(2) "Inspection" means the examination or survey of a place of employment to detect the presence of an existing or potential occupational safety or health hazard or to determine compliance with the act, rules, or standards promulgated, or orders issued, pursuant to the act.

(3) "Investigation" means the detailed evaluation or study of working conditions, including equipment, processes, substances, air contaminants, or physical agents, with respect to the actual or potential occurrence of occupational accidents, illnesses, or diseases.

(4) "Trade secret" means a confidential process, formula, pattern, device, or compilation of information which is used in the employer's business and which gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(5) "Working day" means any day other than a Saturday, Sunday, or state legal holiday. (In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.)

History: 1979 AC.

R 408.22311 Posting of notice; availability of the act, rules, and applicable standards.

Rule 1311. (1) Each employer shall post a notice to be furnished by the department, informing employees of the protections and obligations provided for in the act, and informing them that, for assistance and information, including copies of the act and of specific safety and health standards, employees may contact the department. The notice shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that the notice is readable and is not altered or defaced.

(2) A separate notice shall be posted in each establishment. Where employers are engaged in activities which are physically dispersed (such as agriculture, construction, transportation, communications, and electric, gas, and sanitary services) the notice required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment (such as traveling salesmen, technicians, engineers, etc.), such notice shall be posted at the location from which the employees operate to carry out their activities. In all cases, the notice shall be posted pursuant to subrule (1) of this rule.

(3) Copies of the act, all procedural rules promulgated pursuant to the act, and all applicable standards shall be available from the department.

If an employer has obtained copies of these materials, he shall make them available upon request to an employee or his authorized representative for review in the establishment where the employee is employed at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(4) An employer failing to comply with the provisions of this rule shall be subject to citation and penalty pursuant to section 35 of the act.

(5) Reproductions or facsimiles of the state poster shall constitute compliance with the posting requirements of this rule where the reproductions or facsimiles are at least 8-1/2 inches by 14 inches and the printing size is at least 10 point. The caption or heading on the poster shall be in large type, not less than 36 point.

History: 1979 AC.

R 408.22321 Authority for inspection or investigation.

Rule 1321. (1) The department representatives, upon presenting appropriate credentials, may enter, without delay and at reasonable times, any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer to inspect and investigate, during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein; to question privately any employer, owner, operator, agent, or employee; and to review records required by the act and rules promulgated pursuant to the act, and other records which are directly related to the purpose of the inspection or investigation.

(2) Prior to inspecting areas containing information which is classified by an agency of the federal government in the interest of national security, departmental representatives shall obtain the appropriate security clearance.

History: 1979 AC.

R 408.22322 Objection to inspection or investigation.

Rule 1322. (1) Upon a refusal to permit a department representative, in the exercise of his official duties, to enter, without delay and at reasonable times, any place of employment or any place therein to inspect, to investigate, to review records, or to question any employer, owner, operator, agent, or employee pursuant to R 408.22321, or to permit a representative of employees to accompany the department representative during the physical inspection or investigation of any workplace pursuant to R 408.22326, the department representative shall terminate the inspection or investigation or confine the inspection or investigation to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised.

(2) The department representative shall endeavor to ascertain the reason for such refusal, and he shall immediately report the refusal, and the reason therefor, to the department director or authorized representative.

The department director or authorized representative shall take appropriate action and, if necessary, apply to the proper judicial officer for a warrant commanding the sheriff or a peace officer to aid the department in the conduct of an inspection or investigation as provided in section 29 of the act.

History: 1979 AC.

R 408.22323 Entry not a waiver.

Rule 1323. Permission to enter, inspect, investigate, review records, or question a person shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the act. Department representatives are not authorized to grant any such waiver.

History: 1979 AC.

R 408.22324 Advance notice of inspection or investigation.

Rule 1324. (1) Advance notice of inspections or investigations shall not be given except in the following situations.

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

(b) In circumstances where the inspection or investigation can most effectively be conducted after regular business hours, or where special preparations are necessary for an inspection or investigation.

(c) Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection or investigation.

(d) In other circumstances where the department director or his designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection or investigation.

(2) In the situations described in subrule (1) of this rule, advance notice of inspections or investigations may be given only if authorized by the department director or his designee.

(3) When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection or investigation, if the identity of such representative is known to the employer. Upon the request of the employer, the department representative shall inform the authorized representative of employees of the inspection or investigation, provided that the employer furnishes the department representative with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection or investigation. An employer who fails to comply with his obligation under this rule promptly to inform the authorized representative of employees of the inspection or investigation, or to furnish such information as is necessary to enable the department representative promptly to inform such representative of the inspection or investigation, is subject to citation and penalty under section 35(3) of the act.

(4) Advance notice in any of the situations described in subrule (1) of this rule shall not be given more than 24 hours before the inspection or investigation is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(5) A person who gives advance notice of an inspection or investigation to be conducted under the act, without authority from the department director or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000.00 or by imprisonment for not more than 6 months, or by both, as provided in section 35(8) of the act.

History: 1979 AC.

R 408.22325 Conduct of inspections or investigations.

Rule 1325. (1) Subject to the provisions of R 408.22321, inspections and investigations shall take place at such times and in such places of employment as the department director or his designee may direct. At the beginning of an inspection or investigation, the department representatives shall present their credentials to the owner, operator, or an agent in charge at the establishment; explain the nature and purpose of the inspection or investigation; and indicate generally the scope of the inspection or investigation and the records specified in R 408.22321 which they wish to review. However, such designation of records shall not preclude access to additional records specified in R 408.22321.

(2) Department representatives may take air, environmental, and material samples; take or obtain photographs related to the purpose of the inspection or investigation; employ other reasonable

investigative techniques; and question privately any employer, owner, operator, agent, or employee of an establishment (See R 408.22331 on trade secrets).

(3) In taking photographs and samples, the department representatives shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment are not hazardous. Department representatives shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

(4) The conduct of inspections or investigations shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

(5) Following the completion of an inspection or investigation by the department representative, an opportunity for a conference shall be afforded the employer or his representative and the employee or employee representative to informally advise them of any apparent safety or health violations disclosed by the inspection or investigation. During such conference, the employer or employee shall be afforded an opportunity to bring to the attention of the department representative any information regarding conditions in the workplace pertinent to the apparent safety or health violations.

(6) Inspections or investigations shall be conducted pursuant to the requirements of this part.

History: 1979 AC.

R 408.22326 Representatives of employers and employees.

Rule 1326. (1) Department representatives shall be in charge of conducting inspections or investigations, and may question persons affected by the inspection or investigation. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the department representative during the physical inspection or investigation of a workplace for the purpose of aiding the inspection or investigation. A department representative may permit additional employer representatives and additional representatives authorized by employees to accompany him when it is determined that the additional representatives may further aid the inspection or investigation. A different employer and employee representative may accompany the department representative during each different phase of an inspection or investigation if this does not interfere with the conduct of the inspection or investigation.

(2) Department representatives may resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the department representative is unable to determine with reasonable certainty who is such representative, the department representative shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(3) If, in the judgment of the department representative, good cause is shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection or investigation of the workplace, the third party may accompany the department representative during the inspection or investigation.

(4) Department representatives may deny the right of accompaniment under this rule to a person whose conduct interferes with a fair and orderly inspection or investigation. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R 408.22331(4). With regard to information classified by an agency of the federal government in the interest of national security, only persons authorized to have access to the information may accompany a department representative in areas containing such information.

History: 1979 AC.

R 408.22331 Trade secrets.

Rule 1331. (1) Information reported to, or otherwise obtained by, a department representative in connection with an inspection, investigation, or proceeding under the act, which contains or which might reveal a trade secret, shall be considered confidential. Such information may be disclosed only to other department representatives concerned with carrying out the act or when relevant in any proceeding

under the act. In any such proceeding, the department shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(2) Information which contains, or which might reveal, a trade secret is not subject to public inspection and copying.

(3) At the commencement of an inspection or investigation, the employer may identify areas in the establishment which contain, or which might reveal, a trade secret. If the department representative has no clear reason to question the identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential--trade secret" and shall not be disclosed except in accordance with the provisions of section 63 of the act.

(4) Upon the request of an employer, any authorized representative of employees accompanying the department representative in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative, the department representative shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

History: 1979 AC.

R 408.22333 Consultation with employees.

Rule 1333. Department representatives may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection or investigation. During the course of an inspection or investigation, an employee shall be afforded an opportunity to bring any violation of the act which he has reason to believe exists in the workplace to the attention of the department representative.

History: 1979 AC.

R 408.22338 Complaints by employees.

Rule 1338. (1) Any employee or representative of employees, who believes that a violation of the act which threatens physical harm exists in a workplace where the employee is employed, may request an inspection or investigation of the workplace by giving notice of the alleged violation to the department. The notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the department or department representative no later than at the time of inspection or investigation, except that, upon the request of the person giving the notice, his name and the names of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the department.

(2) If, upon receipt of such notice, the department determines that the complaint meets the requirements set forth in subrule (1) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, the department shall cause an inspection or investigation to be made as soon as practicable to determine if the alleged violation exists. Inspections or investigations under this rule need not be limited to matters referred to in the complaint.

(3) If the department determines that an inspection or investigation is not warranted because the written complaint does not meet the provisions of subrule (1) of this rule, the department shall notify the complaining party, in writing, of such determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of subrule (1) of this rule.

(4) Prior to or during an inspection or investigation of a workplace, an employee or representative of employees employed in the workplace may notify the department representative, in writing, of any violation of the act, or of any rule promulgated under the act, which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subrule (1) of this rule.

(5) When an employee or a representative of employees believes that a condition exists which may present an imminent danger to an employee, he may notify either department in the most expedient manner without regard to a written notice. Upon notification of an alleged imminent danger, the department shall cause an immediate inspection to be made or take other action that it finds necessary to abate the danger as provided by R 408.22342 of this part.

(6) If a citation is issued for a violation alleged in a request for inspection under subrule (1) of this rule or a notification of violation under subrule (4) of this rule, a copy of the citation issued shall be sent to the employee or representative of employees who made such request or notification.

(7) A person shall not discharge, or in any manner discriminate against, an employee because the employee filed a complaint or instituted, or caused to be instituted, a proceeding under, or regulated by, the act; or because the employee testified, or is about to testify, in any such proceeding; or because of the exercise by such employee, on behalf of himself or others, of any right afforded by the act.

History: 1979 AC.

R 408.22339 Informal review of complaints by employees.

Rule 1339. (1) The department shall notify a complaining party, in writing, when any of the following determinations are made regarding a complaint under R 408.22338.

(a) There are no reasonable grounds to believe that an inspection or investigation should be conducted.
(b) Based on an inspection or investigation conducted pursuant to the complaint there are no reasonable grounds to believe that the alleged violation exists.

(2) The department shall notify the employer, in writing, of any determination made pursuant to subrule (1)(b) of this rule.

(3) The complaining party may obtain informal review of a determination made pursuant to subrule (1) by submitting a written statement of position to the department. The department may hold an informal conference in which the complaining party may orally present his views. The employer may attend the informal conference at the discretion of the department.

(4) After considering all written and oral views presented, the department shall do either of the following.

(a) Affirm, modify, or reverse the determination made in subrule (1)(a) of this rule.
(b) Order a reinspection or reinvestigation, issue a citation if it is believed that the inspection or investigation disclosed a violation, or affirm the determination made in subrule (1)(b) of this rule.

(5) The department shall furnish the complaining party with a written notification of the final disposition of the complaint and the reasons therefor. The final disposition of the complaint by the department shall not be subject to further departmental review.

History: 1979 AC.

R 408.22342 Imminent danger; cease operation order.

Rule 1342. (1) When a department representative concludes, on the basis of an inspection or investigation, that conditions or practices exist in a place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the act, the department representative shall inform the employer and affected employee of the danger and afford the employer the opportunity to voluntarily eliminate the danger.

(2) If the employer does not immediately take steps to eliminate the imminent danger, the department representative shall recommend to the department director that a cease operation order be issued pursuant to section 31(1) of the act to require that steps be taken as may be necessary to avoid, correct, or remove the imminent danger. Appropriate citations and notices of proposed penalties may be issued with respect to violations associated with an imminent danger, even though, after being informed of such danger by the department representative, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

(3) Upon the failure of the employer to promptly comply with a cease operation order issued pursuant to subrule (2) of this rule, the department shall petition the circuit court having jurisdiction to restrain any condition or practice in a place of employment which the department determines causes the imminent danger to exist.

History: 1979 AC.

R 408.22344 Citations.

Rule 1344. (1) The inspection or investigation report of the department representative shall be reviewed by a department designee. If, on the basis of the report, the department designee believes that the employer violated a requirement of section 11 of the act, a requirement of any standard or rule promulgated pursuant to the act, or a requirement of any order issued pursuant to the act, he shall issue to the employer a citation by registered mail. An appropriate citation shall be issued even though, after being informed of an alleged violation by the department representative, the employer immediately abates, or initiates steps to abate, the alleged violation. A citation shall be issued with reasonable promptness after termination of the inspection or investigation. A citation shall not be issued under this rule after the expiration of 90 days from the completion of the physical inspection or investigation of the establishment.

(2) A citation shall be in writing and describe with particularity the nature of the alleged violation, including a reference to the provision of the act, standards, rule, regulation, or order alleged to have been violated. A citation shall also fix a reasonable time for the abatement of the alleged violation.

(3) A citation shall contain, on its face, a statement that it is an allegation of a violation. The issuance of a citation does not constitute a finding that a violation of the act has occurred unless there is a failure to appeal, either initially to the department or subsequently to the board as provided in R 408.22351 and R 408.22354 of this part, or, if appealed to the board, unless the citation is affirmed by the board.

History: 1979 AC.

R 408.22346 Proposed penalties.

Rule 1346. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time after the termination of the inspection or investigation, the department shall notify the employer by registered mail of the proposed penalty as provided by section 35 of the act, or that no penalty is being proposed. The notice of the proposed penalty shall include statements informing the employer that the proposed penalty shall become a final order of the board and not subject to review by any court or agency unless, within 15 working days from the date of receipt of such notice, the employer notifies the department in writing that he intends to appeal the citation or the notification of proposed penalty (see R 408.22351). Payment of the penalty shall be made to the department, payable to the "State of Michigan," within 5 working days of the date the penalty became a final order of the board.

(2) The department shall determine the amount of a proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, the seriousness of the violation, and the history of previous citations, pursuant to section 36 of the act.

(3) Appropriate penalties may be proposed with respect to an alleged violation, even though, after being informed of the alleged violation by the department representative, the employer immediately abates, or initiates steps to abate, the alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

History: 1979 AC.

R 408.22348 Posting of citations.

Rule 1348. (1) Upon receipt of a citation issued under the act, the employer shall immediately post the citation, or a copy thereof, unedited, at or near the place of each alleged violation referred to in the citation, with the following exceptions.

(a) Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near the place of alleged violation, the citation shall be posted, unedited, in a prominent place where it is readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day.

(b) Where employees do not primarily work at, or report to, a single location, the citation may be posted at the location from which the employees operate to carry out their activities.

(2) The employer shall take steps to ensure that the citation is readable and not altered or defaced. The citation may be reproduced for posting purposes if more than 1 location is cited on a single citation.

(3) A citation, or a copy thereof, shall remain posted until the violation is abated, or for 3 working days, whichever is later. The filing by the employer of an appeal, either initially with the department or subsequently with the board as provided in R 408.22351 and R 408.22354 of this part, shall not affect the employer's posting responsibility under this rule, unless the citation is vacated.

(4) An employer failing to comply with subrules (1) and (2) of this rule shall be subject to citation and penalty pursuant to sections 33 and 35 of the act.

History: 1979 AC.

R 408.22349 Notification of compliance with citations.

Rule 1349. (1) An employer to whom a citation is issued shall notify the department, in writing, immediately upon compliance with each item of the citation. Upon compliance with an item of the citation, notification to the department shall not exceed 3 working days from the final abatement date on the citation of such item.

(2) Notification, as required in subrule (1) of this rule, may be accomplished by either of the following.

(a) Submitting to the department, signed and dated, the "notification of abatement" copy of the citation, or a copy thereof.

(b) Submitting a document, in writing, to the department certifying compliance.

History: 1979 AC.

R 408.22351 Employer appeal petitions of citations.

Rule 1351. (1) An employer to whom a citation or notice of proposed penalty is issued may, under section 41 of the act, petition the department in writing for a modification or dismissal of the citation and any proposed penalty, or for a grant of additional time for compliance.

The petition shall be postmarked within 15 working days of the receipt by the employer of a citation or proposed penalty. The petition shall specify which item on the citation is being petitioned, and whether it is directed to the violation, proposed penalty, or abatement date.

(2) An employer shall post a copy of the petition near the location of the violation where the subject citation is posted, or give a copy of the petition to the affected employees or their employee representative.

(3) An employer shall include in the petition to the department a certification that a copy of the petition was posted or given to the affected employees or their employee representative pursuant to subrule (2) of this rule. The certification shall include the date and method of transmittal of the petition.

History: 1979 AC.

R 408.22352 Employee appeal petitions of citations.

Rule 1352. Within 15 working days after the employer receives a citation, an employee or employee representative may petition the department, in writing, alleging that the period of time fixed in an item of the citation for abatement of such item is unreasonable. The petition shall specify which item on the citation is being petitioned. The department, upon receipt of the petition, shall promptly submit a copy of the petition to the employer, deleting the name of the employee or employee representative if so requested.

History: 1979 AC.

R 408.22353 Department decision on an appeal petition.

Rule 1353. (1) Upon receipt of a petition, the department may.

- (a) Modify or dismiss the citation or proposed penalty.
- (b) Modify the time period fixed for compliance.
- (c) Affirm the citation, including the abatement date and proposed penalty.

(2) The department shall notify the employer by registered mail of the decision regarding a petition within 15 working days of receipt of the petition by the department. The employer shall promptly post the department's decision, together with the appropriate citation, at the location of the posting of the subject citation. The decision shall remain posted until the violation is abated or for 3 working days, whichever is later.

History: 1979 AC.

R 408.22354 Employer and employee notices of appeal to the board.

Rule 1354. (1) Within 15 working days after receipt by the employer of the department's decision regarding an appeal petition of a citation.

- (a) The employer may appeal the decision to the board.
- (b) The employee or employee representative may appeal the decision, with respect to the date fixed for abatement, to the board.

(2) The notice of appeal of the department's decision shall be submitted to the department. The department shall immediately transmit the notice of appeal to the board in accordance with the procedure prescribed by the board.

History: 1979 AC.

R 408.22355 Petition for modification of abatement period.

Rule 1355. (1) An employer may file a petition for modification of an abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation which has become a final order of the board, but the abatement has not been completed because of factors beyond the employer's reasonable control.

(2) A petition for modification of an abatement date shall be in writing and shall include the following information.

- (a) Steps taken by the employer, and the dates of those steps, in an effort to achieve compliance during the prescribed abatement period.
- (b) The specific additional abatement time needed in order to achieve compliance.
- (c) The reasons the 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.
- (d) Available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (e) A certification that the petition for modification of an abatement date has been filed and posted in accordance with subrule (4).

(3) A petition for modification of an abatement date shall be filed with the board no later than the close of the next working day following the date on which abatement was originally required. A petition filed later shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(4) On the same day that the petition is filed with the board, a copy of the petition shall be filed with the department that issued the citation and a copy shall be posted by the employer in a conspicuous place at or near the place where the citation was required to be posted and remain so posted for a period of 10 working days.

(5) The department, affected employees, or their representatives may file written objection to the petition with the board setting forth the reasons for opposing the petition. An objecting party shall also file a copy of the written objection with the other parties. Failure to file an objection within 10 working days of the date of filing the petition shall constitute a waiver of any further right to object to the petition.

(6) The board may approve without a hearing a petition for modification of an abatement date to which an objection has not been filed.

(7) Where a petition is objected to by the department or affected employees, the petition shall be processed as follows.

(a) The board shall process the petition in the same manner as any other contested case, except that a hearing on the petition shall be handled in an expeditious fashion.

(b) An employer petitioning for a modification of an abatement date shall have the burden of proving by a preponderance of the evidence that he 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 his control.

History: 1979 AC.

R 408.22356 Citation for failure to correct a previously cited violation.

Rule 1356. (1) If an inspection or investigation discloses that an employer failed to correct an alleged violation, for which a citation was issued, within the period permitted for its correction, the department may notify the employer, by registered mail, of the failure and of any additional penalty proposed under section 35(2) of the act by reason of such failure.

(2) The period for the correction of a violation for which a citation was issued shall not begin to run until the date of the final order of the board if a review proceeding before the board is initiated by the employer in good faith and not solely for delay or avoidance of penalties. The period of correction shall not be delayed by a review proceeding initiated by the employer only with respect to the proposed penalty.

(3) An employer receiving a citation for failure to correct a violation and a proposed additional penalty may notify the department, in writing, that he intends to petition for a dismissal of the citation or the proposed additional penalty, or both, pursuant to R 408.22351 of these rules. An appeal petition regarding a citation for failure to correct a violation shall be limited to the subject matter of the failure to correct citation.

(4) Within 15 working days after receipt of the department decision relative to an appeal petition of a citation for failure to correct a violation or a proposed additional penalty, or both, an employer may appeal the decision to the board pursuant to R 408.22354.

History: 1979 AC.

R 408.22358 Cease operation order for failure to correct a previously cited violation.

Rule 1358. (1) If an inspection or investigation discloses that an employer failed to correct a violation within the period permitted for its correction by a citation which became a final order of the board, the department may issue a cease operation order directing the employer to cease operating or render inoperable, pursuant to such order, as much of the operation as is necessary to eliminate the hazard which is the subject of the cease operation order.

(2) If an employer fails to obey a cease operation order issued pursuant to subrule (1) of this rule, the department shall refer the matter to the prosecuting attorney of the county in which the violation exists, who shall promptly institute proceedings in the circuit court to enforce the department's order.

History: 1979 AC.

R 408.22361 Informal conference.

Rule 1361. At the request of an affected employer, employee, or employee representative, the department may hold an informal conference for the purpose of discussing any issues raised by an inspection or investigation, citation, notice of proposed penalty, or appeal petition. If the conference is requested by the employer, an affected employee or employee representative shall be afforded an opportunity to participate, at the discretion of the department. If the conference is requested by an employee or employee representative, the employer shall be afforded an opportunity to participate, at the discretion

of the department. A party may be represented by counsel at the conference. No conference or request for conference shall operate as a stay of the 15 working day period for filing an appeal petition to the department or notice of appeal to the board as prescribed in R 408.22351, R 408.22352, and R 408.22354.

History: 1979 AC.