

Guide to Simplified Proceedings

Occupational Safety and Health Review Commission

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Section 1 – Introduction to Simplified Proceedings

The Review Commission

The Occupational Safety and Health Review Commission (“Commission”) is an independent agency of the U.S. Government. The Commission’s **only function is to resolve disputes that** result from inspections carried out under the Occupational Safety and Health Act of 1970, which we will refer to simply as the Act. The Commission is completely independent of the Department of Labor and the Department’s Occupational Safety and Health Administration (“OSHA”). It has three Commission members who are appointed by the President of the United States for six-year terms, and it employs Administrative Law Judges to hear and decide cases, which may include settlement proceedings.

What are Simplified Proceedings?

Simplified Proceedings are a method for resolving less complex cases assigned to Commission judges. They are quicker, less costly and involve fewer legal formalities than the conventional method of hearing cases. Even though the legal process is streamlined, **the proceedings still involve a hearing** before an Administrative Law Judge with sworn testimony and witness cross-examination.

Purpose of this Guide

This guide is an explanation of how Simplified Proceedings are conducted before Commission judges. It is intended to assist you in following the Commission’s Simplified Proceedings Rules. **The guide is not, however, a substitute for these Rules.** In the event of a perceived inconsistency, the Commission’s Rules of Procedure will govern. References to the “Rules” in this guide simply state “See Rule,” followed by the rule number.

Using This Guide

This guide describes the process and related documents the Commission has developed to simplify legal proceedings before its judges. It includes a table summarizing the major steps for using Simplified Proceedings in Section 3 of this Guide. Important terms and requirements are shown in **bold** the first time they appear and are included in a Glossary for easy reference. This Guide does not address the Commission’s more complex conventional proceedings, except where such information is needed to understand Simplified Proceedings. Conventional proceedings are the standard way cases are handled in which all legal formalities are observed. They can be costly and time-consuming, but often necessary for more complex cases.

Rules of Procedure

The Commission’s Rules of Procedure are published in part 2200 of Title 29, Code of Federal Regulations (“C.F.R.”); Subpart M (Rules 2200.200-2200.211) covers Simplified Proceedings. These rules, along with the Act, are posted on the Commission website, located at www.oshrc.gov, or may be obtained by writing or calling:

Executive Secretary
U.S. Occupational Safety and Health
Review Commission
1120 20th Street, N.W., 9th Floor
Washington, D.C. 20036-3457
(202) 606-5400

Time is of the Essence

Many of the documents that parties are required to **file**, such as those needed to challenge an OSHA citation or proposed penalty, must be filed within a specific time period. To “file” a document means to submit it to the Commission through the Commission’s E-File System or to send it to the Commission’s Executive Secretary or to the judge assigned to your case. To “serve” a document means to provide a copy of the document to the other parties in the case. Failure to file documents as required could result in a **citation** issued to you by OSHA becoming a final order without an opportunity to have your case heard by a Commission judge. Therefore, you must respond promptly and within the time limits ordered to communications you receive from the judge, the Commission, or any of the parties to the dispute.

Electronic Filing

All parties and intervenors must file documents electronically in the Commission’s E-File System by following the instructions on the Commission’s website (www.oshrc.gov). If you are represented by an attorney or a non-attorney representative, that representative is responsible for making electronic filings on your behalf. If you are self-represented, you are responsible for electronically filing your own documents. If for some reason you are unable to file documents electronically or filing documents electronically would place a heavy burden on you, you may submit a written statement to the judge requesting an exemption from this mandatory requirement on the grounds that it would place an undue burden on you to comply. If the judge grants you an exemption, you must send your documents to the Commission’s Executive Secretary or the judge assigned to your case via U.S. Mail, a commercial delivery service, personal delivery, or fax.

Sample Legal Documents

The Appendixes contain forms and sample correspondence that may be used or referred to in preparing a case. These sample documents are mentioned throughout this Guide. The sample form and correspondence are also available on the Commission website, www.oshrc.gov.

Employer’s Notice of Contest

Most cases begin with the filing of a **notice of contest** by an employer disagreeing with some part or all of the OSHA citation. The employer must notify OSHA in **writing of that disagreement within 15 working days (Mondays through Fridays, excluding Federal holidays) of receiving the citation**. This written notification is called a notice of contest. If the notice of contest is filed after the deadline, the employer is not usually entitled to have the dispute resolved by the Commission.

The notice of contest is a statement that an employer intends to contest (1) the alleged violations, (2) the specific abatement periods, and/or (3) the penalties proposed by OSHA. The notice should state those matters being contested. (See Appendixes 1A, 1B.)

The notice of contest must be **in writing and delivered to the Area Director of the OSHA office that mailed the citation within the 15 working day contest period**. But if the notice of contest is sent by U.S. Mail, the notice of contest will be timely if the mailing is postmarked within the 15 working day contest period.. The Area Director’s name and address will be listed on the citation. **A notice of contest must not be sent to the Commission or filed using the Commission’s E-File System.**

Notice of Docketing

Once OSHA notifies the Commission of the case, our Executive Secretary issues a **notice of docketing**, which confirms that we have received the case. The Executive Secretary also assigns a **Docket Number** that must be included on every document subsequently filed in the case.

Questions About Commission Procedure

If you have questions on proper procedure, contact the Legal Assistants in the Office of the Chief Administrative Law Judge at 202-606-5405. They cannot give legal advice or discuss the merits of a case, but they may be able to explain some Commission procedures.

Section 2 – Simplified Proceedings—An Overview for Employers and Employees

What are Simplified Proceedings?

Simplified Proceedings are designed to resolve small and relatively simple cases in a less formal, less costly, and less time-consuming manner. **The Commission’s Chief Administrative Law Judge (“Chief Judge”) or the judge assigned to your case notifies you that your case will be heard under Simplified Proceedings.** Even though the legal process is streamlined, **these proceedings still involve a hearing** before a Commission Judge with sworn testimony and witness cross-examination.

Major Features of Simplified Proceedings

Under Simplified Proceedings:

1. Early discussions among the parties and the judge are required to narrow and define the disputes between the parties.
2. Limited, if any, motion practice is contemplated.
3. The Secretary of Labor is required to provide the employer with inspection details early in the process. In some cases, the employer may also be required to provide certain documents necessary to establish an affirmative defense, such as evidence of the employer’s safety program, to the Secretary.
4. Discovery, which is the written exchange of information, documents and questionnaires between the parties before a hearing, is discouraged and permitted only when ordered by the judge.
5. Appeals of actions taken by the judge before the hearing and decision, such as asking the Commission to rule on the judge’s refusal to allow the introduction of a piece of evidence, called interlocutory appeals, are not permitted.
6. Hearings are less formal. The Federal Rules of Evidence, which govern other trials, do not apply unless the parties agree in writing that the Federal Rules of Evidence will apply in whole or in part. Each party may present oral argument at the close of the hearing. The judge may allow or require post-hearing briefs (written arguments explaining your position in the case) or statements of position upon request of either party or on the judge’s own motion. (See Rule 209(e).) In some instances, the judge may render a decision “from the bench,” which means the judge will state at the end of the hearing whether the evidence proved the alleged violations and will state the amount of the penalty the employer must pay, if a violation is found.

Cases Eligible for Simplified Proceedings

It is possible that not every relatively small case eligible for Simplified Proceedings will be selected. (See Rules 202 and 203(a).) **The Chief Judge will assign cases for Simplified Proceedings or, if your case is not selected, you may request that it be assigned.** Cases appropriate for Simplified Proceedings are those with one or more of the following characteristics:

- relatively simple issues of law or fact with relatively few citation items,
- total proposed penalty of not more than \$30,000,
- a hearing that is expected to take less than two days, or
- a small employer whether appearing with or without an attorney.

Cases with willful or repeated violations or that involve a fatality are not deemed appropriate for Simplified Proceedings.

Employees May Contest Abatement Period

Even if the employer does not contest the citation, unions or **affected employees** can challenge the reasonableness of the period of time for abating (correcting) an alleged violation. **This must be done within 15 working days of the employer's receipt of the citation.** The written notice of contest should state that the signer is an affected employee or a union that represents affected employees and that the signer wishes to contest the reasonableness of the abatement period.

The employee or the union **must deliver the written notice of contest to the Area Director of the OSHA office that mailed the citation, not the Commission.** But if the notice of contest is sent by U.S. Mail, the notice of contest will be timely if the mailing is postmarked within the fifteen-working-day contest period. (See Section 10 of the Act and Rules 20, 22, and 33.)

Simplified Proceedings may be ordered in contests that are initiated by affected employees or their union challenging the reasonableness of the abatement period.

When affected employees or their unions have contested the time allowed for abatement, and the employer has not contested the citation, the employer may still elect party status in the proceeding. Also, other employees or unions may likewise elect party status in the proceeding in which an affected employee or other union has challenged the reasonableness of the abatement period.

Requesting Simplified Proceedings

If the total proposed penalties in a contested citation are between \$20,000 and \$30,000, the Chief Judge may designate your case for Simplified Proceedings. If the penalties are \$20,000 or less and your case has not already been designated for Simplified Proceedings, you may file a request for Simplified Proceedings if there is no allegation of willfulness or a repeat violation, and the case does not involve a fatality.

You must file your request within 21 days of the docketing of your case by the Executive Secretary's Office. The request must be in writing. You need not give any reasons for requesting Simplified Proceedings. A letter saying simply "I request Simplified Proceedings," and indicating the Docket Number assigned to your case, is sufficient. (See Appendix 2.) If the employer is represented, the letter must be filed electronically in the Commission's E-File System. If the employer is self-represented and has not elected to use the E-File System, it must be sent to:

Executive Secretary
U.S. Occupational Safety and Health
Review Commission

1120 20th Street, N.W., 9th Floor
Washington, D.C. 20036-3457

Even though your case may be appropriate for Simplified Proceedings but that does not necessarily mean that your particular interests will be best served by requesting Simplified Proceedings. In addition to considering time and expense, you should base your decision on the facts of your case, the nature of your objections to the citation, what you will try to show the judge at the hearing, the amount of paperwork involved if your case proceeds under conventional proceedings as compared to Simplified Proceedings, and whether you have legal representation.

Either way, Simplified Proceedings or conventional, the proceedings are legal in nature and the Secretary of Labor will be represented by an attorney. You have the right to represent yourself or to be represented by an attorney or by anyone of your choosing.

Complaint and Answer

Once your case is selected for Simplified Proceedings, the complaint and answer are not required. However, until a case has been designated for Simplified Proceedings, conventional procedures will apply, so if a complaint has been served an answer must be timely filed. (See Rule 205(a).)

Notifying Other Parties

A copy of your request for Simplified Proceedings must be sent to the Regional Solicitor of the Department of Labor office for your region. The address is on your notice of docketing. All employee representatives, including an employee union, that have elected party status must also be sent a copy of your request for Simplified Proceedings. **A brief statement indicating to whom, when, and how your request was served on the parties in the case must be received with the request for Simplified Proceedings.** An example of such a "Certificate of Service" follows (see Rule 203(b)):

Example: I certify that on June 1, 2019, a copy of my request for Simplified Proceedings was sent by first class mail to Jane Doe, Office of the Solicitor, U.S. Department of Labor, 123 Street, City, State Zip Code and to John Doe, President, Local 111, GHI International Union, 456 Street, City, State Zip Code. (See Appendix 6.)

Objections to and Discontinuing Simplified Proceedings

If you decide to object to another party's request for Simplified Proceedings, you have 14 days to file a brief written statement with the judge assigned to your case or, if the case has not been assigned to a judge, with the Chief Judge, explaining why your case is not appropriate for Simplified Proceedings. (See Rule 204(b).)

At any time during the proceedings, any party who believes the case is not appropriate for Simplified Proceedings may file a brief written statement with the judge assigned to the case or, if the case has not been assigned to a judge, with the Chief Judge, explaining why the case is not appropriate for Simplified Proceedings and requesting that the case continue under conventional proceedings.

If you agree with another party's request to discontinue Simplified Proceedings, you should submit a letter saying so. When all parties agree that a case is not appropriate for Simplified Proceedings, the judge is required to grant the request unless the request is filed less than 30 days before a scheduled hearing date. If the judge orders that a case be taken out of Simplified Proceedings, the case will proceed under the Commission's conventional procedures.

If it becomes apparent at any time that a case is not appropriate for Simplified Proceedings, the judge assigned to the case may, at the judge's discretion and after consulting with the Chief Judge, discontinue the use of Simplified Proceedings and order the case to continue under conventional proceedings.

Limitations on Obtaining Information and Flexibility Regarding Evidence

Discovery (the process by which one party obtains information from another party before a hearing) is limited under Simplified Proceedings. Unlike conventional procedures, discovery is discouraged and will occur only when ordered by the judge. Rules governing the admissibility of evidence are also modified in Simplified Proceedings. The judge is not bound by the technical requirements of the Federal Rules of Evidence unless the parties agree in writing that the Federal Rules of Evidence will apply in whole or in part. This means that the judge may be more flexible in determining what evidence is submitted and how those submissions can be made. (See Rules 208 and 209.)

Required Information Disclosures

In cases designated for Simplified Proceedings, the Secretary of Labor must give the employer, free of charge, a copy of documents generally called the OSHA investigatory report (OSHA forms 1-A and 1-B, the narrative and worksheet) within 21 days after a case has been designated for Simplified Proceedings, and, within 30 days, copies of photographs and videotapes. The Secretary of Labor must also give the employer any **exculpatory evidence** in the Secretary's possession, which is information that may clear you of a charge or of fault or of guilt.

When an employer admits that the violation occurred, but offers an excuse for the violation, known as an "affirmative defense," the judge will order the employer to disclose to the Secretary of Labor documents relevant to the defense. (See Rules 206(a) and (b).)

Pre-hearing Conference

The judge may hold a pre-hearing conference to address possible settlement of the case and also to find out which factual and legal issues the parties agree on. This discussion may be conducted in person but is usually conducted by a telephone conference call. The judge may direct the parties to speak with one another to determine what facts and issues they agree on. The discussion may include the following topics (see Rule 207):

1. **Narrowing of Issues.** The parties should be prepared to discuss all areas in dispute and to resolve as many as possible by agreement. Where matters remain unresolved, the judge may issue an order that specifies the issues to be resolved at the hearing.
2. **A Statement of Facts.** The parties are expected to agree on as many of the facts as possible. Examples of facts about which the parties may agree include: the size and nature of the business, its safety history, details of the inspection, and the physical nature of the worksite.
3. **A Statement of Defenses.** An employer will be required to identify any specific defenses the employer may have to the citation. The burden is on the Secretary of Labor to establish that each violation occurred. However, an employer should be prepared to tell the judge all reasons why the employer believes that the citation is wrong.

An employer may also have "**affirmative defenses.**" An affirmative defense is a recognized set of circumstances in which an employer will be found not in violation even though the employer did not comply with the cited OSHA standard. For example, an employer may believe that the alleged violation was the result of an employee acting contrary to a work rule that has been effectively communicated and enforced. Or, an employer may think that compliance with the standard was impossible or infeasible, or would have resulted in a danger to employees that was greater than the danger that the standard was designed to prevent.

You should be aware that **the burden of proving an affirmative defense is on the employer.** Therefore, if an employer argues that a violation was the result of employee misconduct, at the hearing the employer will have to prove to the judge that it had an effectively communicated and

enforced work rule. If an employer raises an affirmative defense, the judge may require it to provide the Secretary of Labor with certain documents before the hearing regarding the defense. For example, if an employer claims that an employee violated a written work rule, the employer will probably be required to provide the Secretary with a copy of its safety rules.

It is critical that an employer set forth any defenses at the pre-hearing conference. An employer may be prohibited from later asserting any defenses not raised at the pre-hearing conference.

4. **Witnesses and Exhibits.** The parties are expected to identify the witnesses they intend to call at a hearing, and to identify and provide to the other parties copies of documentary exhibits (e.g. correspondence, photographs, safety policies) they intend to introduce to support their positions.

Motions

A motion is an oral or written request asking that the judge direct some act to be done in favor of the party making the motion. Limited, if any, motion practice is contemplated in Simplified Proceedings. (See Rule 205(b).)

Hearings

The judge will hold a hearing as soon as possible after the pre-hearing conference on the issues the parties have not resolved. A court reporter will be present and will prepare a transcript of the hearing. At the beginning of the hearing, the judge will officially enter into the record any agreements reached by the parties as well as all defenses raised at the pre-hearing conference. The record includes all documents filed in the case, all judges' rulings, transcripts and exhibits presented at the hearing. The judge will determine whether other agreements can be reached and if so, enter these into the record. The judge will then conduct a hearing on any remaining areas of dispute. Although the Federal Rules of Evidence will not apply unless the parties agree in writing that the Federal Rules of Evidence will apply in whole or in part, each party will have the right to question all witnesses and to introduce relevant evidence. **All testimony will be under oath or affirmation.** (See Rule 209.)

Copies of the transcript may be purchased at your own expense. At the close of the hearing, you may make an oral summary of your case to explain your position on the record.

The judge may allow or require briefs (written arguments explaining your position in the case) or statements of position after the hearing upon the request of a party or on the judge's own motion. If you intend to file a brief, you should request permission to do so from the judge during the hearing. The judge will then set a due date for your brief if permission to file is granted or if the judge chooses to require briefs.

If a brief is allowed or required, it should contain a summary of the facts as established at the hearing, the parts of the Act or the OSHA regulations or standards that are involved, and an explanation, or argument, of how the law or past Commission decisions support your position.

In some instances, the judge may issue a decision at the hearing immediately after the oral arguments of the parties. This is called ruling "from the bench." In such a situation, the judge, within 45 days after the hearing ends, will place a written version of the oral decision in the record. When the judge finds it necessary to deliberate further and does not rule "from the bench," the judge will write a decision that generally will be sent to you within 60 days after the close of the hearing record (see Appendix 3).

Review of the Judge's Decision

Any party adversely affected or aggrieved by the judge's decision may petition the Commission for review of that decision.

No particular form is required for the petition (see Appendix 4). However, it should clearly explain why you believe that the judge's decision is in error on either the facts or the law or both. **Review of a judge's decision is at the discretion of the Commission. It is not a right.** (See Rules 91 and 210.)

Your petition should be filed no later than 20 days after the judge's written decision is docketed. Under the Act, the Commission cannot grant any petition for review more than 30 days after the judge's decision is docketed. Therefore, **your petition should be filed as soon as possible to obtain maximum consideration.**

The Commission will notify you whether your petition has been granted (see Appendix 5). If it is granted, your case will then proceed under the Commission's conventional rules.

Section 3 – Simplified Proceedings Step By Step

Remember: failure to meet deadlines may have serious consequences.

- The employer files notice of contest with the OSHA office that mailed citation within 15 working days of receiving the citation.
- The employer receives notification (notice of docketing) from Commission of case, docket number, and forms to notify employees.
- The employer posts notification to employees of case in progress.
- The union and/or affected employees may contest reasonableness of abatement period; notice of contest is sent to citing OSHA office within 15 working days of the employer's receipt of citation.
- The union and/or affected employees may also participate by electing party status after the employer files a notice of contest, but they must do so at least 14 days before the hearing.

If case designated for Simplified Proceedings:

- The employer receives the OSHA investigatory documents from the Secretary of Labor within 21 days after the case is designated for Simplified Proceedings.
- The employer receives photographs, videotapes and any evidence from the Secretary of Labor within 30 days after the case is designated for Simplified Proceedings.
- The parties may participate in a pre-hearing conference with the judge to narrow disputed issues, agree upon facts and list employer defenses.
- The employer sends the Secretary of Labor documents relating to affirmative defenses.

If all disputed issues are not resolved at the prehearing conference, then parties:

- List witnesses and exhibits.
- Prepare for and participate in a hearing.
- Present oral arguments at the close of the hearing.
- May purchase a copy of the hearing transcript.

- Decide whether to request permission to file a brief.

Judge then issues decision either from the bench or in writing within 60 days.

- If adversely affected or aggrieved by the decision, any party may ask for **Commission review** of the decision.

Section 4 – Other Important Things to Know

Appearances in Commission Proceedings

Any employer, employee, or union which initially files a notice of contest is automatically a party to the proceedings. Affected employees or their union may also choose to participate as a party where the employer has filed a notice of contest. Any party may be self-represented in a Commission proceeding (e.g., for an organization, through an employee of the organization). Alternatively, any party may appear through an attorney, or through a non-attorney representative. (See Rule 22.) However, any individual that represents a party in a particular case before the Commission must either enter an **appearance** by signing the first document filed on behalf of the party or intervenor, or thereafter by filing an entry of appearance. (See Rule 23.)

Every party to the case must **serve** every other party or its representative with copies of every document it files with the Commission or judge. Service is made by email, personal delivery, first-class mail or facsimile transmission. Documents that are electronically filed must be simultaneously emailed to the other parties and intervenors to ensure that service of the document is accomplished on the same date that the document is e-filed with the Commission. (See Rules 7(c)(1), 8(c)(9).)

All notices the Commission sends to the parties will list the name, address, and email address of any self-represented party or a represented party's attorney or non-attorney representative. (See Rule 22.) Parties must do the same.

Penalties

OSHA only proposes amounts which it believes are appropriate as penalties. These proposals automatically become penalties assessed against the cited employer when the enforcement action (the citation and proposed penalty) is not contested. **Once a citation or proposed penalty is contested, the amount of the penalty for that citation, if any, will be decided by the Commission or a judge.**

When a case goes to hearing before a Commission judge, the employer's evidence and argument on what penalty, if any, should be assessed, receives the same consideration as the evidence and argument of the Secretary of Labor.

The four factors that the Act requires the Commission to consider in determining the appropriateness of civil penalties are:

- The size of the business of the employer being charged,
- The gravity of the violation,
- The good faith of the employer, and
- The employer's history of previous violations.

The maximum amounts that may be assessed as civil penalties by the Commission under Section 17 of the Act are set by law and increase periodically as inflation increases.

Private (Ex Parte) Discussions

Parties to cases before the Commission may not communicate **ex parte** (without the knowledge or consent of the other parties) with respect to the merits of a case with the judge, a Commissioner, or any employee of the Commission. In other words, no participant, directly or indirectly, may discuss the case or make any argument about a matter in a case to any Commission personnel unless done in the presence of the other case participants who are then given an equal opportunity to present their side, or unless it is done in writing and copies are sent to all other parties. Violation of this rule may result in the offending party losing their case before the Commission. This prohibition does not, however, preclude asking questions about the scheduling of a hearing or other matters that deal only with Commission procedures. (See Rule 105.)

Expedited Proceedings

In certain situations, time periods allowed for certain procedures are shortened. The Commission's Rules of Procedure provide that an **Expedited Proceeding** may be ordered by the Commission. If an order is made to speed up proceedings, all parties in the case will be specifically notified. All **Petitions for Modification of Abatement** and all employee contests are automatically expedited. Expedited proceedings are different from Simplified Proceedings. (See Rule 103.)

Maintaining Copies of Pleadings

In order that affected employees may have the opportunity to be kept informed of the status of the case, the employer must keep available at some convenient place copies of all pleadings filed in the case so they can be inspected and copied at reasonable times by affected employees. (See Rule 7(g).)

Seeking Review of the Judge's Decision

A party that is adversely affected or aggrieved by the judge's decision can object to it by asking the Commission members to review it by filing a **Petition for Discretionary Review** (see Appendix 4 for an example). **Instructions for submitting such a petition will be stated in the judge's letter transmitting the decision. Cases on review are heard using the Commission's conventional proceedings.** A party may petition the Commission to review the judge's decision if the party believes that the judge (1) made findings of material facts which are not supported by the evidence; (2) that the judge's decision is contrary to law; (3) that a substantial question of law, policy, or abuse of discretion is involved; or (4) that a prejudicial error was committed. These petitions may be filed electronically through the Commission's E-File System or be sent to:

Executive Secretary
U.S. Occupational Safety and Health
Review Commission
1120 20th Street N.W., 9th Floor
Washington, D.C. 20036-3457

Each issue in a petition should be separately numbered and stated simply. The issue should also refer to specific pages of the transcript of the hearing, to the evidence, or to other legal authorities that the party thinks support its position. A petitioning party should file only the original petition for discretionary review and no copies. These steps permit a prompt and fair review of each petition. If a party fails to request review on an aspect or issue in the judge's decision, the Commission may assume thereafter that the party approves of the judge's decision in that aspect and probably will not direct review on that issue.

Glossary

Abatement Period – Period of time specified in citation for correcting alleged workplace safety or health violation.

Affected Employee – An employee of a cited employer who has been exposed to or could be exposed to any hazard arising from the cited violations—that is the circumstances, conditions, practices, or operations creating the hazard.

Answer – Written document filed in response to a complaint, consisting of short plain statements responding to each of the allegations in the complaint.

Certificate of Service – Written document stating the date and manner in which the parties were served (given) a document. See Appendix 2B for sample certificate. (Also see definition of “service.”)

Citation – Written notification from OSHA of alleged workplace violation(s), proposed penalty(ies), and abatement period.

Complaint – Written document filed by the Secretary of Labor detailing the alleged violations contained in a citation.

Discovery – The process by which one party obtains information from another party prior to a hearing.

Exculpatory Evidence – Information that may clear one of a charge or of fault or of guilt; in the context of OSHRC cases, information that might help the employer’s case.

File – To submit documents to the Commission electronically through the Commission’s E-File System or to send documents by some other means to the Commission’s Executive Secretary or to the judge assigned to a case. (See “Service” below regarding providing a filed document to the other parties.)

Interlocutory Appeal – An appeal of a judge’s ruling on a preliminary issue in a case that is made before the judge issues a final decision on the full case. These types of appeals are infrequently made and are infrequently allowed. One example of an issue often raised in an interlocutory appeal is whether certain material that a party wants kept confidential, such as an employer’s trade secrets or employee medical records, should become part of the public record in a case.

Motion – Oral or written request asking that the judge direct some act to be done in favor of the party making the request or motion.

Notice of Contest – Written document disagreeing with any part of an OSHA citation.

Notice of Docketing – Written document from the Review Commission’s Executive Secretary telling an employer, the Secretary of Labor, and any other parties in a case that the case has been received by the Commission and given an OSHRC docket number.

Party – The Secretary of Labor, anyone who files a notice of contest, or a union or affected employee(s) with party status.

Petition for Discretionary Review – Written request from a party in a case asking the Commission to review the judge’s decision. The grounds on which a party may request discretionary review are: (1) it believes the judge made findings of material facts which are not supported by the evidence; (2) it believes that the judge’s decision is contrary to law; (3) it believes that a substantial question of law, policy, or abuse of discretion is involved; or (4) it believes that a prejudicial error was committed.

Service – Sending by email, first class mail, personal delivery, or facsimile transmission a copy of documents filed in a case to all parties in the case. See Definitions of “Certificate of Service” and “File.” (See Rule 7.)

Settlement – An agreement reached by the parties resolving the disputed issues in a case.

Appendixes/Sample Legal Documents

This section is not intended to be a manual of forms, and the sample legal documents here are limited in number. The sample legal documents are intended for illustration to familiarize the reader with the general nature of some of the documents received and issued. Many of the documents received by the Commission, such as those in Appendixes 1 and 4 (Notice of Contest and Petition for Discretionary Review), vary significantly from case to case. These and other sample legal documents are also available on the Commission's website, www.oshrc.gov.

Appendix 1 - Notices of Contest

Appendix 1A. Notice of Contest to Citation and Proposed Penalties

XYZ Corp.
123 Street
City, State Zip Code

February 26, 2019

Jane Doe, Area Director
Occupational Safety and Health Administration
U.S. Department of Labor, Federal Building
456 Road
City, State Zip Code

Dear Ms. Doe:

This is to notify you that XYZ Corp. intends to contest all of the items and penalties alleged in the Citation and Proposed Penalty, received February 20, 2019, and dated February 19, 2019 (a copy is attached).

Very truly yours,

[Company official's name]

Appendix 1B. Notice of Contest to Proposed Penalties Only

XYZ Corp.
123 Street
City, State Zip Code

March 14, 2019

Jane Doe, Area Director
Occupational Safety and Health Administration
U.S. Department of Labor, Federal Building
456 Road
City, State Zip Code

Dear Ms. Doe:

I wish to contest the amount of the Proposed Penalties of \$1,200 issued March 8, 2019, based on the violations cited by you during your recent inspection.

Sincerely,

[Company official's name]

Appendix 1C. Notice of Contest by Authorized Employee Representative

GHI International Union
123 Street
City, State Zip Code

June 7, 2019

Jane Doe, Area Director
Occupational Safety and Health Administration
U.S. Department of Labor, Federal Building
456 Road
City, State Zip Code

Dear Ms. Doe:

We have been authorized by the employee representative, GHI International Union, to file this notice of contest to the OSHA citations issued on June 3, 2019, against the employer, XYZ Co. The abatement dates of June 27, 2019, for Items No. 1 and No. 3 of the non-serious citation, and January 6, 2019, for Item No. 1 of the serious citation, are unreasonable and will continue to expose workers to safety hazards.

Sincerely,

Director
Safety Department
GHI International Union

Appendix 2 – Request for Simplified Proceedings

XYZ Corp.
123 Street
City, State Zip Code

March 26, 2019

Executive Secretary
U.S. Occupational Safety and Health
Review Commission
1120 20th Street, N.W., 9th Floor
Washington, D.C. 20036-3457

Dear Executive Secretary;

I request Simplified Proceedings. The Review Commission Docket Number assigned to my case is 99-9999.

Very truly yours,

[Company official's name]

Appendix 3 - Notice of Decision

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

Phone: (202) 606-5405

Fax: (202) 606-5409

Notice of Decision

In Reference To:

Secretary of Labor v.

OSHRC Docket No.

1. Enclosed is a copy of my decision. The entire record, including this decision, shall constitute the report of this Administrative Law Judge pursuant to section 12(j) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. § 661(j). The Judge's report, which includes this decision, will be filed with the Commission's Executive Secretary on **[date]**. See Commission Rule 90(b), 29 C.F.R. § 2200.90(b).¹ The Executive Secretary will then issue a "Notice of Docketing of Administrative Law Judge's Decision" that notifies all parties of the date that the Executive Secretary docketed the Judge's report, and that will state the date by which a party must file a petition for discretionary review.
2. *Commission final order.* The decision shall become a final order of the Commission thirty (30) days from the date the Executive Secretary docketed the decision, unless a Commission member directs review of the Decision within that time. See Section 12(j) of the Act; Commission Rule 90(f), 29 C.F.R. § 2200.90(f).
3. *Party adversely affected or aggrieved by the decision.* A party adversely affected or aggrieved by the decision of the Judge may seek review by the Commission by filing a petition for discretionary review with the Executive Secretary at any time following the service of the Judge's decision on the parties but no later than 20 days after the date of docketing of the Judge's report. See Commission Rule 91(b), 29 C.F.R. § 2200.91(b). The Executive Secretary's address is as follows:

**Executive Secretary
Occupational Safety and Health Review Commission
One Lafayette Centre
1120 20th Street NW, Suite 980
Washington, D.C. 20036-3457**

The full text of the rule governing the filing of a petition for discretionary review is Commission Rule 91, 29 C.F.R. § 2200.91.

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

4. *Correction of errors in the Judge's report.* Up to the time that either the Commission directs review of the decision or the decision becomes a final order of the Commission, a request to correct clerical errors arising through oversight or inadvertence in the decision or in other parts of the Judge's report shall be filed with the undersigned Judge, by motion, pursuant to Commission Rule 90(b)(4)(i), 29 C.F.R. § 2200.90(b)(4)(i). Motions shall conform to Commission Rule 40, 29 C.F.R. § 2200.40.
5. *Relief from default.* Requests for relief from default or for reinstatement of the proceeding may be filed with the undersigned Judge, by motion, until the date the Executive Secretary docketed the Judge's report. See Commission Rule 90(c), 29 C.F.R. § 2200.90(c). Motions shall conform to Commission Rule 40, 29 C.F.R. § 2200.40.
6. *Filing with Executive Secretary.* Except for motions filed to correct errors in the Judge's report discussed in paragraph 4 above, on or after the date the Executive Secretary docketed the Judge's report, all documents shall be filed with the Executive Secretary. See Commission Rule 90(d), 29 C.F.R. § 2200.90(d).

Administrative Law Judge

Dated:

Appendix 4 - Petition for Discretionary Review

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. XYZ CORP., Respondent.	OSHRC DOCKET NO.
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PETITION FOR DISCRETIONARY REVIEW

Pursuant to Commission Rule 91, 29 C.F.R. 2200.91, Respondent, XYZ Corp. petitions the Occupational Safety and Health Review Commission for review of the Administrative Law Judge's decision in this case.

Statement Of Portions Of The Decision And Order To Which Exception Is Taken

1. XYZ Corp. takes exception to that portion of the Decision and Order wherein the Administrative Law Judge held XYZ Corp. in serious violation of the standard published at 29 CFR 1926.28(a) as alleged in Serious Citation 1, Item 1, in finding that XYZ's employee John Jones was exposed to the alleged violation. (Judge's Decision at pp. 8 - 12.)
2. XYZ Corp. takes exception to that portion of the Decision and Order pertaining to Serious Citation 1, Item 1, wherein the Administrative Law Judge held that action of employee John Jones was not unpreventable employee misconduct. (Judge's Decision at pp. 13 - 17.)

Statement Of Reasons For Which Exceptions Are Taken

1. In the Decision, the Administrative Law Judge failed to follow the test set forth for the Fifth Circuit's Decision in Secretary of Labor v. RPQ Corp. for determining the existence of employee exposure. The testimony at transcript pages 25-45 clearly shows that John Jones was not in the zone of danger because he was on a work break and outside of the definition of the zone.
2. The evidence of record supports XYZ's position that the actions taken by employee John Jones were unpreventable. The Commission has set forth the test for determining unpreventable employee misconduct at Secretary of Labor v. ROM Corp. The testimony of XYZ's employees at transcript pp. 46-59 met all of the requirements of ROM Corp. to prove John Jones's actions were unpreventable.

For the reasons stated herein, XYZ Corp. submits that the Occupational Safety and Health Review Commission should direct review of the Decision and Order of the Administrative Law Judge.

Respectfully submitted,

By _____
Attorney for
XYZ Corp.
123 Street
City, State Zip Code
Tel. No. (999) 999-9999

Appendix 5 - Direction for Review

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR, Complainant, v. XYZ CORP., Respondent.	OSHRC DOCKET NO.
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DIRECTION FOR REVIEW

Pursuant to 29 U.S.C. § 66(j) and 29 C.F.R. § 2200.92(a), the report of the Administration Law Judge is directed for review. A briefing order will follow.

COMMISSIONER

Dated:

Appendix 6 – Certificates of Service*

CERTIFICATE OF SERVICE

[Electronic filing].

This is to certify that service of the Joint Notification of Settlement filed in the Commission's E-File System was also simultaneous served by email attachment to the parties listed below on

_____.

[Self-Represented party exempted from electronic filing].

This is to certify that a copy of the Joint Notification of Settlement was served by first class, postage prepaid, U.S. Mail to the parties listed below on _____.

/s/

Name Title
Company / Firm Name / Office of the Solicitor
Street Address
City, State, Zip Code
Email Address

* A similar document must accompany all other documents requiring a certificate of service.