

**CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
TEL: (916) 274-5751
FAX: (916) 274-5785



TO: Stakeholders
FROM: California Occupational Safety and Health Appeals Board
RE: Stakeholder Meeting to be held on September 18, 2024
DATE: September 4, 2024

The Appeals Board will hold a stakeholder meeting to discuss proposed changes and updates to the Board's regulations. The proposed changes address, among other things, appeal initiation and hearing operations. Changes will provide clarity and update the language to better reflect existing practices.

The meeting will take place on September 18, 2024, at 9:30 a.m. The public can attend in person at two physical locations:

- (1) the Sacramento Office at 2520 Venture Oaks Drive, Suite 300, Sacramento, CA 95833
- (2) the West Covina Office at 100 North Barranca Street, Suite 410, West Covina, CA 91791

Access to the meeting will also be available via Zoom or telephonically. The Board will accept comment from the public via Zoom or telephonically. To join the Zoom meeting click on link below:

[Join the Zoom meeting](#)
Meeting ID: 824 0177 9497

Telephone in to the meeting:
+1 669 900 9128

If you wish to submit written comments, please send them to Khalbo@dir.ca.gov.

Attached is the text of the proposed regulatory changes which amends California Code of Regulations, title 8, sections 347, 348, 351, 355.1, 355.3, 355.4, 355.5, 356, 356.1,

359, 359.1, 364.2, 370, 371, 371.1, 373, 374, 374.2, 374.3, 376, 378, and 383, along with a summary chart. The proposed changes include:

1. Clarify the Board's preference for providing electronic copies in response to record requests, and set the amount to be charged for providing physical copies of records.
2. Require that parties provide a telephone number and the preferred method of service for the Official Address Record.
3. Make email service between the parties the default choice, from which a party can opt out by serving a notice of objection.
4. Clarify that an Administrative Law Judge (ALJ) can order an OASIS filing (as can the Board) and make exceptions to OASIS filing limitations for exhibits.
5. Clarify documents filed in OASIS should be served on the day they are filed on OASIS.
6. Allow un-represented parties to submit legible hand-written documents.
7. When a hearing is postponed to a new hearing date, require it be posted in the workplace and left up, and require an Employer to file a proof of posting with the Division within 2 working days of posting.
8. Require the Division, to provide, in addition to a copy of all appealed citations, the proof of service or proof of delivery for the originally issued citations.
9. Move the prehearing conference closer to the hearing for expedited cases, while maintaining the existing timeline from perfection of appeal to hearing.
10. Clarify regulatory authority for an ALJ to require status conference statements and a pre-hearing conference statements. In addition, if the ALJ finds the status conference statements to be complete, and determines a status conference is not necessary, provide the ALJ authority to remove the status conference from the calendar to streamline proceedings.
11. Clarify when the 3 year delay of hearing begins when there's a review of the case by the Bureau of Investigations or other prosecuting authority, allow the ALJ to hear motions or hold status conferences during that time.
12. Require a withdrawing representative to provide the Board with the most recent contact information for both the party and the replacement representative, if available.
13. Extend the deadline for requesting a reinstatement for good cause of a dismissed appeal or citation from 10 days to 15 days.

We look forward to hearing your comments and concerns regarding the proposed regulatory changes, and other matters addressed herein. If you have any questions about the proposed regulatory changes, please contact Staff Counsel Karen Halbo at 916-274-5756, or via email at KHalbo@dir.ca.gov.

<u>Regulation Section</u>	<u>Description of Change</u>
347 - Definitions	(f) detail required documents for a completed appeal, (g) add info from Gov Code 6806 for clarity, (k) update citation, (y) add "perfected," (ee) add "resolved," (gg) clarify "working days"
348 - Computation of Time	(c) revise to match existing practice for email and US mail in CA and outside CA
351 - Records of the Appeals Board	(a) revise to match actual hours, (b) clarify Bd preference for electronic copies (c) establish cost of physical copies (d) make consistent with pay first then get physical copies ISSUE: DIR charges \$0.19 cents a page, while Civil Code section 1798.33 limits agencies to charging \$0.10 cents a page.
355.1 - Official Address Record	Throughout add requirement of telephone number, add "or representative" (c) revise for clarity
355.3 - Service by Parties, Intervenors, Obligors, and Representatives	Change email service among the parties to be the default choice, unless a notice of objection is served.
355.4 - Filing Documents with the Appeals Board	(c) change "deemed filed" from date of receipt to date of postmark, (f) other OASIS filing can be ordered by ALJ or the Board, (f) edit list to reflect what can be filed on OASIS
355.5 - Form, Size Rqmts for Documents Filed	(a)(3) change docket to inspection, (b)(1) serve all day of filing on OASIS, (b)(2) ALJ can make exceptions for exhibits, (f) unrepresented may submit legible hand-written docs.
356 - Notice to Employees of Appeal Hearing	(a) reformat to list docs to be posted & where, (b) if continued, post new hearing date & leave up, (d) employer to file POS or posting w/Division w/in 2 working days
356.1 - Form of Participation Notice	(a) change "subject of hearings" to "resolved by proceedings" & add resolved before hearing, (c) remove "docketed Appeal and Participation Notice"
359 - Filing Intent To Appeal	(b) clarify how intent to appeal can be filed, (1) clarify notice of intent isn't enough, (2) clarify deadline and risk of dismissal of appeal, (d) timely determined by postmark, (e) POS & declaration req'd, declaration definition from 347 repeated, (f) grammatical edits
359.1 - Docketing & Perfecting an Appeal	(a)(1) can't require email, add telephone number & preferred method of service, (b) add OASIS filing initiation, and notice of incomplete appeal, (1) employer must provide docs and info or grounds for dismissal, (2) submitting intent to appeal alone without docs and info isn't enough, (e) changed docket number to investigation number, (f) & (f)(1) Division to provide POS of Citations, (g) Perfection notice will provide name of assigned ALJ

<u>Regulation Section</u>	<u>Description of Change</u>
364.2 - Settlement Order	Delete (a) & (b), (c) revise to reflect changes, (d) revise to reflect present practice, (f) revise to reflect present practice, delete NOTE
370 - Application of Article	Update citation to Health and Safety Code, Kerry's note left in to notify Board about DIR website issues.
371 - Prehearing Motions	(a) add citation to requirements reg section, (c)(3) move to reflect hearing dates being rescheduled, & clarify deadline.
371.1 - Motions Concerning Hearing Dates	Throughout, add in "Requests" to reflect Board's more informal processes, (g) change "formerly" to "previously" for clarity.
373 - Expedited Proceeding	(c) revise to reflect existing practice, both (1) & (2) add video option, (2) move prehearing conference away from status conference and closer to hearing, (3) change "be held" to "commence" for greater precision, add video, in person or combo as ALJ decides, and change to 150 days from perfection to keep total timeline the same in light of changes made in (2).
374 - Prehearing Conference	(a) add video option, (b) spell out acronym, add "conference" for clarity, add regulatory authority for ALJ to require pre-hearing conference statement
374.2 - Status Conference	(a) add video option, add regulatory authority for ALJ to require status conference statements. Allow that if ALJ finds status conference statements are complete and status conference isn't needed, provide regulatory authority to remove from calendar to streamline proceedings, benefit all parties.
374.3 - Settlement Conference	Add regulatory authority to hold settlement conferences by telephone, video, in person, or as ALJ directs.
376 - Time and Place of Hearing	(c) establish when 3 year delay of hearing begins where there's a BOI (or other) investigation, allow ALJ to hear motions or hold status conferences during the 3 year delay of hearing. Correct capitalization of Section throughout for consistency.
378 - Representation at Hearing	(a) move phrase regarding non-attorney representatives to end of paragraph, allow notice of representation to be filed at either office, (d) require withdrawing representative to provide Board with most recent contact info for party, and if available, contact info for replacement representative, add language for clarity.
383 - Failure to Appear	(b) change timeline to 15 days to request reinstatement of appeal, (d) add "or representative" to reflect existing practice.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 347 of Article 1 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 347. Definitions.

For the purpose of these rules:

- (a) “Administrative Law Judge” means any person appointed by the Appeals Board pursuant to Labor Code Sections 6605 and 6607 as a hearing officer to conduct hearings and to decide matters within the jurisdiction of the Appeals Board;
- (b) “Administrative Record” includes the following:
 - (1) Pleadings;
 - (2) All notices issued to parties;
 - (3) All orders issued;
 - (4) Any decision by an Administrative Law Judge;
 - (5) The final decision;
 - (6) Emails received from or sent to parties to the case;
 - (7) The hearing record as defined by subsection (s);
 - (8) Petition(s) for reconsideration and answers;
 - (9) Dispositions of petitions for reconsideration;
 - (10) Other documents entered into the record by the Appeals Board after a “Petition for Reconsideration” is received;
 - (11) Briefs;
 - (12) Motions;
 - (13) Stipulations;
 - (14) Party correspondence related to the proceeding;
 - (15) Other documents submitted by the parties related to the hearing; and
 - (16) Official Address Record;
- (c) “Affected Employee” means an employee of a cited employer who is exposed to the alleged hazard described in the citation as a result of assigned duties;
- (d) “Appeals Board” or “Board” means the Occupational Safety and Health Appeals Board, and includes the chairperson and members of the Appeals Board, administrative law judges, and staff of the Appeals Board;
- (e) “Authorized Employee Representative” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees or an employee organization which has been formally acknowledged by a public agency as an employee organization that represents affected employees of the public agency;
- (f) “Completed Appeal” means the appealing party has all required information submitted in writing to the Board the contact information required by Section 355.1, the inspection number listed on the citation, the identity of the citation(s) being appealed by citation number(s) and item number(s), the components of the citation(s) being challenged and any affirmative defense(s) through reference to both the citation number(s) and the item

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

~~number(s) being appealed, signed by employer or employer's representative, along with copies of the citation(s) that are the subject of the appeal, and notification of penalty;~~

(g) "Day", unless specifically stated otherwise means calendar day beginning at midnight and ending on the following midnight;

(h) "Decision by an Administrative Law Judge" means a decision signed and issued by the Administrative Law Judge and submitted by the Administrative Law Judge to the Appeals Board;

(i) "Declaration" means a certification in substantially the following form:

I, [identify declarant], declare that I have personal knowledge of the following facts:

- 1.....
- 2.....
- 3.....

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at (*city*) , California (or other state/country) on (*date*).

(*Signature*) _____

(j) "Division" means the Division of Occupational Safety and Health;

(k) "Division Action" means any citation, notice, special order, order to take special action, notification of penalty, notification of failure to abate alleged violation and of additional civil penalty, or notification of failure to return a signed statement of abatement issued by the Division pursuant to Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or Section ~~105200~~~~2950~~ of the Health and Safety Code, which by statute may be appealed to the Appeals Board;

(l) "Docketed" means the Appeals Board has acknowledged receipt of all information required under these rules to initiate an appeal as required by Sections 355.1, 355.3, 355.4, 359, 359.1, and 361.3;

(m) "Docket Number" means the number assigned to each docketed matter by the Appeals Board for identification purposes (for citations, the docket number will be the same as the inspection number listed on the citation);

(n) "Electronic Signature" means an electronic symbol (e.g., a graphic representation of a person's signature in JPEG file), or process (e.g., a procedure that conveys assent), attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record;

(o) "Employee" means every person who is required or directed by any employer, to engage in any employment, or to go to work or be at any time in any place of employment;

(p) "Employee Appeal" means any appeal filed by an employee from the period allowed by the Division to abate the alleged violation;

(q) "Employer" means the state and every state agency, each county, city, district, and all public and quasi-public corporations and public agencies therein, every person including any public service corporation, which has any natural person in service, and the legal representative of any deceased employer;

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

- (r) "Hearing" means any hearing before the Appeals Board or an Administrative Law Judge set for the purpose of receiving evidence;
- (s) "Hearing Record" means the official record of evidence taken during, and if allowed by order after, the hearing until the Appeals Board or Administrative Law Judge conducting the hearing orders the record closed to further evidence. The "Hearing Record" contains the hearing recording as described in Section 376.7, all documentary evidence and other evidence offered or admitted during the hearing or by affidavit (excluding withdrawn documents), such as admitted confidential evidence sealed from further disclosure by order of the Administrative Law Judge, admitted confidential evidence described in Section 376.6, and physical, mechanical or demonstrative exhibits returned to a party for storage pursuant to Section 376.4;
- (t) "Intervenor" means a person, group of persons, trade association, legal foundation, or public or private interest group who has been granted leave to intervene in any proceeding;
- (u) "Memorandum of Items of Costs" means an itemization of costs claimed pursuant to Section 149.5 of the Labor Code;
- (v) "Obligor" means a person other than an employer who is obligated to an employer to repair any machine, device, apparatus, or equipment and to pay any penalties assessed against an employer;
- (w) "Participation Notice" means a notice informing affected employees of their right to participate in certain proceedings;
- (x) "Party" means a person who has made an appearance before the Appeals Board and been granted party status;
- (y) "Perfected" means all the documents that constitute a completed appeal have been filed with the Board, and the appeal is determined to be timely;
- (~~zy~~) "Person" means an individual, firm, partnership, trust, estate, association, corporation, company, or other entity;
- (~~aaz~~) "Petition for Costs" means any claim for reasonable costs to be awarded by the Appeals Board pursuant to Section 149.5 of the Labor Code;
- (~~bbaa~~) "Pleading" means a citation, notification of penalty, paper or electronic appeal form, other document, or information submitted in place of an appeal form, and amendments thereto which contain the allegations of the parties of their respective charges and defenses;
- (~~cbb~~) "Proceeding" means any adjudicatory action begun by the filing of an appeal and includes a hearing, prehearing conference, petition for costs, reconsideration, or any other act that may result in an order or decision of the Appeals Board;
- (~~ddee~~) "Representative" means a person authorized by a party or intervenor to represent that party or intervenor in a proceeding;
- (~~eedd~~) "Resolved," as used in section 364.2 means the Appeals Board has issued a settlement order or other order that finally concludes the matter;
- (~~ffee~~) "Rule" means any section set forth in this chapter adopted by the Appeals Board;
- (~~ggff~~) "Working Day" means any day that is not a Saturday, Sunday or State-recognized holiday as provided in Government Code Sections 6700 and 6701. Notwithstanding

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Government Code sections 6700 and 6701, the dates excluded from being judicial holidays in Code of Civil Procedure section 135 are designated as working days, and they include the date corresponding with the second new moon following the winter solstice, or the third new moon following the winter solstice should an intercalary month intervene, known as “Lunar New Year,” April 24, known as “Genocide Remembrance Day,” September 9, known as “Admission Day,” and the second Monday in October, known as “Columbus Day.”

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Section 2015.5, Code of Civil Procedure; and Sections 148.7, 149.5, 6301, 6302, 6304, 6304.1, 6305(b) and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 348 of Article 1 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 348. Computation of Time.

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a working day, time shall be extended to the next working day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be:

(1) the postmark date appearing on the envelope if first-class postage was prepaid; or

(2) the date of delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(c) Where service of any document, letter, application, request, motion, pleading, brief, decision, petition, answer, memorandum, response, or other writing is by email or e by United States Postal Service mail to an address inside the State of California, and if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days, and if served by United States Postal Service mail to an and that the place of address is outside the State of California, the time within which such right may be exercised or act performed is extended 10 days if the place of address is outside the State of California but within the United States. Such extensions shall not apply to extend the time for filing an appeal.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Section 1013(a), Code of Civil Procedure; and Sections 148.7, 149.5 and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 351 of Article 1 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 351. Records of the Appeals Board.

(a) Except where public disclosure of information or exhibits is restricted by law, records of the Appeals Board are public records and are available at its ~~P~~principal ~~O~~office in Sacramento, California, for inspection and copying between 8:00 a.m. and ~~12:00 noon~~ and between 1:00 p.m. and 4:30 p.m. on any working day.

(b) Persons requesting copies of papers, records, or documents are encouraged to employ an independent copy service, or submit, via an email to oshappeals@dir.ca.gov, a statement that they agree to accept electronic copies of the papers, records, or documents requested.

(1) The Appeals Board does not charge for providing papers, records, or documents electronically via email.

(2) ~~However, t~~The Appeals Board will make physical copies of copy and forward papers, records, or documents as its working conditions permit and notify the requestor of the cost. The Appeals Board charges ten cents (\$0.10) per page for physical copies. Upon payment of the cost of making copies s, fees, and applicable sales tax, the Appeals Board will forward the papers, records, or documents to the requestor.

(c) No costs or fees will be charged for records furnished to California State Agencies.

(d) Payment of costs, fees, and sales tax must be made~~accompany the request~~ by check or money order made payable to the Department of Industrial Relations.

(e) Unless otherwise required, compliance by the Appeals Board with a subpoena duces tecum from a court of record, administrative board or commission, hearing officer or other body conducting a legal or administrative proceeding will be pursuant to Article 4 (commencing with Section 1560) of the Evidence Code.

NOTE: Authority cited: Sections 148.7 and 149.5, Labor Code. Reference: Sections 148.7, 149.5, 6314(a) and 6322, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 355.1 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 355.1. Official Address Record.

(a) The Appeals Board shall maintain in each proceeding an official address record, which shall contain the following information provided by each party, intervenor, and obligor:

(1) The name, postal address, ~~and email address, if any,~~ and telephone number, of each party, intervenor, or obligor;

(2) The name, postal address, ~~and email address, if any,~~ and telephone number, of each party, intervenor, or obligor's representative; and

(3) An election by each party, intervenor, ~~and obligor,~~ or representative of the method of service each party, intervenor, obligor, or representative shall receive from the Appeals Board pursuant to Section 355.2, subsection (a).

(b) Any change or substitution in the name, postal address, ~~or email address,~~ or telephone number, of any party, intervenor, obligor, or ~~their~~ its representative must be communicated to the Appeals Board in Sacramento in writing as soon as practicable after the change is known, but in no case more than 30 days after the change is known to the party, intervenor, obligor, or ~~their~~ its representative. The written communication must also be served on all other parties, intervenors, obligors, and their representatives.

(c) Failure to communicate changes or substitutions promptly in writing ~~by the employer~~ may result in dismissal of the appeal, ~~or loss of party or intervenor status,~~ if the Appeals Board is unable to ~~effectively~~ communicate with the participant(s) who fail to communicate such changes or substitutions. ~~employer, party, or intervenor.~~

Credits

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5 and 6610, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 355.3 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 355.3. Service by Parties, Intervenors, Obligors, and Representatives.

(a) When a party, intervenor, obligor, or representative serves a document on another party, intervenor, obligor, or representative, that service shall occur by first-class postal mail, ~~or email~~, unless a notice of objection is served pursuant to subsection (g), a carrier defined in subsection (b), or by personal service.

(b) A carrier will satisfy subsection (a) if it provides an alternative method that will effect service that is equivalent to or more expeditious than first-class mail. For purposes of this subsection, “an alternative method that will effect service that is equivalent to or more expeditious than first-class mail” shall be limited to either:

(1) Use of express (overnight) or priority mail; or

(2) Use of a bona fide commercial delivery service or attorney service promising delivery within two business days, as shown on the service's invoice or receipt.

(c) Service by postal mail is made by depositing the document in a post office, mailbox, or mail chute, or other like facility regularly maintained by the United States Postal Service, sealed, properly addressed, with first-class postage prepaid, or by deposit with a carrier as defined in subsection (b).

(d) Service is complete at the time of personal delivery, mailing, or emailing.

(e) Proof of service shall be filed with the document and may be made by any of the following means:

(1) Affidavit or declaration of service by personal delivery, mail, email, or overnight courier; or

(2) Letter of transmittal.

(f) If a party, intervenor, obligor, or their representative(s) responsible for serving the document(s) on another party, intervenor, obligor, or their representative, receives notification that the service to an intended recipient failed, the party responsible for sending the document(s) shall promptly re-serve the document on the intended recipient(s) using the method of service best calculated to result in valid service on the intended recipient(s).

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(1) The server need not re-serve the document on intended recipients for whom the server did not receive notification of failed service.

(2) On re-service, the server shall execute a new proof of service in accordance with subsection (e) showing re-service on the intended recipient(s).

(g) ~~By written stipulation of all parties, intervenors, and obligors,~~ If a party, intervenor, obligor, or their representative(s) has selected email service from the Board pursuant to section 355.2, service between the parties of all documents other than to the Board shall be by ~~email~~ electronic methods, unless a party, intervenor, obligor, or a representative serves a notice of objection to being served by email on all parties, intervenors, obligors, or their representative(s).

~~(4)~~ Unless otherwise stipulated, subsections (d) and (f) continue to apply to documents and things served between the parties.

Credits

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5, 6603 and 6610, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 355.4 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 355.4. Filing Documents With the Appeals Board.

(a) A party, intervenor, obligor, and their representatives shall file documents with the Appeals Board by one of the following methods:

(1) First-class mail;

(2) An alternative method of filing that is equivalent to or more expeditious than first-class mail as defined in Section 355.3;

(3) Personal service; or

(4) Electronic service pursuant to subsection (f).

(b) Any document filed with the Appeals Board must be served on the other parties, intervenors, obligors, and their representatives.

(c) Unless otherwise specified in another section, a document shall be deemed filed with the Appeals Board on the date a document is hand delivered, electronically filed, or the postmark on the envelope for a document sent by first-class mail ~~date the document is received by the Appeals Board~~.

(d) An electronically filed document shall be considered received by the Appeals Board the following working day if transmission begins later than 11:59 p.m. Pacific Time.

(e) Proof of service shall be filed with the document and may be made by any of the following means:

(1) Affidavit or declaration of service by personal delivery, mail, electronic service if stipulated to in accordance with Section 355.3, subsection (g), or courier; or

(2) Letter of transmittal.

(f) Only the following documents may be filed directly into OASIS via the Appeals Board's website, unless otherwise ordered by an Administrative Law Judge or the Board. Documents filed pursuant to this subsection shall comply with the requirements of Section 355.5. Documents not listed in this subsection shall be filed pursuant to subsections (a)(1), (2), or (3) of this section:

(1) Appeal information and citation and notification of penalty;

(2) Change to the Official Address Record including change of representative, change of address, or change of email address;

(3) Motion for Change of Venue;

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

- (4) Request/Motion for a Continuance;
- (5) Motion for a Discovery Order;
- (6) Request/Motion to Withdraw Appeal;
- (7) Motion to Withdraw Citation;
- (8) Request/Motion to File Late Appeal;
- (9) Employer's Proof of Posting~~Motion for Intervenor/Party status~~;
- (10) Petition for Reconsideration;
- (11) Request ~~for~~ Issuance of Subpoena;
- (12) Motion to Amend Appeal;
- (13) Motion to Amend Citation;
- (14) Response to Order Dismissing Failure to Appeal~~Request for conference with Appeals Board~~;
- (15) Request for Hearing Record;
- (16) Briefs;
- (17) Remittance for Cost of Discovery~~Proof of service by party on behalf of Appeals Board as allowed in Section 355.2, subsection (d)(4); and~~
- (18) Settlement terms~~Order and proof of service of Settlement Order.~~
- (19) Employer's Abatement Information; and
- (21) Employer's Petition for Cost Recovery pursuant to Section 397.

(g) When filing a document electronically as allowed by subsection (f), the following information shall be provided:

- (1) Document title;
- (2) Date of document being filed;
- (3) Inspection number, or docket number (if one exists);
- (4) Identification of party submitting the document; and
- (5) Identification of the party's representative who is filing the document, if any.

(h) Documents filed in violation of subsections (f) and (g) shall be rejected and shall not be filed in the Appeals Board electronic case file.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5, 6603 and 6610, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 355.5 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 355.5. Form and Size Requirements for Documents Filed with the Appeals Board.

(a) All documents filed with the Appeals Board, whether filed in paper or electronically, shall be filed in accordance with the following standards:

- (1) Only one side of each page shall be used;
- (2) All margins shall be at least one inch and shall be without typed or handwritten text in any margin;
- (3) The first page shall include a case caption that shall include the name and address of the employer, the assigned inspection~~docket~~-number, and the title of the document;
- (4) Documents shall be prepared in a font no less than 12 points in size;
- (5) No single document shall exceed 25 pages in length without the prior permission of the Appeals Board, a Presiding Administrative Law Judge, or an Administrative Law Judge who is assigned the case;
- (6) Documents shall be double-spaced or one-and-one-half-spaced; however, captions, headings, headers, footnotes, footers and block quotations may be single-spaced;
- (7) Paper documents shall be flat, without folds and without staples. Non-conforming submissions may be rejected and returned to the submitter; and
- (8) No documents shall contain bar codes, unless those bar codes are added after the document is filed as part of the scanning or document processing procedures initiated by the Appeals Board as a requirement of OASIS.

(b) Electronic document filing shall be in accordance with the following standards:

- (1) All documents must be served on all parties the same day as when~~All electronically filed documents shall be submitted in response to prompts and instructions on the Appeals Board's OASIS website;~~
- (2) Any document that may be filed in an electronic form shall be submitted in PDF/A (Portable Document Format), although exceptions will be made for hearing exhibits as determined by the assigned Administrative Law Judge;
- (3) With the exception of electronic forms and required attachments, no embedded data shall be allowed in electronically filed documents;
- (4) The filing party shall take all reasonable steps to ensure that the filing does not contain computer code, including viruses, that might be harmful to OASIS or to other users of OASIS. Any electronically submitted document that is determined to contain a virus or other potentially harmful computer code may not be processed and may be deleted; and
- (5) If it is necessary to submit an electronic document allowed by OASIS, the filing party shall verify the readability of the scanned document before submitting it to OASIS.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

- (c) Documents successfully filed through OASIS will receive a date- and time-stamped confirmation of successful transmission.
- (d) Oversized documents and photographs shall be filed only at the time of hearing.
- (e) Printed paper documents shall be printed with black ink on white paper that is 8 ½ x 11 inches and at least 20 pound weight.
- (f) Unrepresented Parties, intervenors, and obligors ~~who are not represented by legal counsel~~ may file legible hand-written documents; however, those documents must comply with subsections (a)(1), (2), (3), (5), (7), and (8).
- (g) The document form requirements in this section apply only to those documents prepared by a party, intervenor, obligor, or their representative, and do not apply to documents submitted as evidence at a hearing.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 356 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 356. Notice to Employees of Appeal and Hearing.

(a) The employer shall give notice of an appeal to its employees by posting at or near the site of the alleged violation:

(1) the notice of docketed Appeal,

(2) the notice of perfected appeal,

(3) ~~Participation Notice,~~ and

(4) ~~Notice of hearing, at or near the site of the alleged violation,~~

(b) The posted documents shall be positioned so as to be easily read by employees working in the area. If it is not practicable to post the document at or near the site of the alleged violation, the document may be posted in a conspicuous place where it will be readily observable by employees, or at a location to which employees report each day, or at a location from which employees operate to carry out their duties. The documents specified in subdivision (a) docketed Appeal, the Notice of Perfected Appeal, Participation Notice, and Notice of Hearing shall be posted immediately upon receipt from the Appeals Board and shall remain posted until the date of the hearing. If a continuance is issued and a new hearing date is assigned, the new notice of hearing shall replace the previous notice of hearing. These documents shall remain posted until receipt of an order disposing of the appeal.

(~~b~~c) In addition to posting, ~~as required in subsection (a),~~ service of the documents specified in subdivision (a) ~~docketed Appeal, Participation Notice, and Notice of Hearing~~ is required under the following circumstances:

(1) If affected employees are represented by an authorized employee representative, service in a manner prescribed in Section 355.3 shall be made upon the representative.

(2) If an employee sustained a serious injury or illness, or was killed, as a result of an alleged violation that is being appealed, service in the manner prescribed in Section 355.3 shall be made upon the employee or the representative of the deceased employee.

(d) An employer shall file with the issuing office of the Division, not later than the second working day following the service or posting, proof or certification of service of the items listed in subdivision (a).

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Section 6603(a), Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 356.1 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 356.1. Form of Participation Notice.

(a) The Participation Notice required by Section 356 shall be in the following form:

“Your employer, (name of employer), has been cited by the California Division of Occupational Safety and Health for violation of an Occupational Safety and Health standard. The citation and/or civil penalty has been contested and will be ~~the subject of a hearing~~resolved by proceedings conducted before the Occupational Safety and Health Appeals Board. Affected employees are entitled to participate in ~~any~~this hearing as parties under terms and conditions established by the Occupational Safety and Health Appeals Board in its rules of practice and procedure by filing a motion for party status. The motion for party status shall be filed with the Occupational Safety and Health Appeals Board in accordance with Section 355.4, and shall be accompanied by a proof of service and shall indicate that it was served on the Division and Employer and any other parties, as provided in Section 355.3.

“All papers filed relative to this matter may be inspected at: (A place reasonably convenient to employees, preferably at or near work place.)”

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

“The reasonableness of the period prescribed by the Division of Occupational Safety and Health for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Appeals Board, unless the matter is resolved before the hearing date.”

(b) For a special order or an order to take special action, the first two sentences of the above notice will be deleted and the following sentences will be substituted:

“Your employer, (name of employer), has been issued an order by the California Division of Occupational Safety and Health. The order has been contested and will be the subject of a hearing before the Occupational Safety and Health Appeals Board.”

(c) An employer shall file with the issuing office of the Division, not later than the second working day following the service or posting, proof or certification of service or posting of the items listed in section 356, subdivision (a) ~~docketed Appeal and Participation Notice.~~

(d) This section and Section 356 do not apply to appeals from citations issued pursuant to Section 2950 of the Health and Safety Code.

NOTE: Authority cited: Sections 148.7 and 6603(a), Labor Code. Reference: Sections 148.7, 6602 and 6603(a), Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 359 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 359. Filing an Intent to Appeal and Late Appeals.

(a) Except as provided in Section 361.1, subsection (b), an appeal shall be deemed filed on the date the Appeals Board is notified of an intent to file an appeal.

(b) An intent to file an appeal may be made by telephone, in writing, sent to the Appeals Board's main office either by mail or by in person delivery~~ed to the Appeals Board's main office~~, or online via the OASIS system. The Board shall also make available an optional paper appeal form, downloadable from its website, that may be used to demonstrate intent. The optional form may be mailed or delivered to the Appeals Board's main office in Sacramento.

(1) The receipt of an intent to appeal by telephone, in writing, or online without timely provision of the required documents is not sufficient to preserve an employer's right to an appeal.

(2) The information required in Section 359.1(a) must be provided to the Board within 20 days of written or electronic notification from the Board of the Board's receipt of an incomplete appeal. Failure to timely provide the information required in Section 359.1(a) to the Board constitutes grounds for dismissal.

(c) A communication to the Division of Occupational Safety & Health indicating an intent to appeal is not an intent to file an appeal.

(d) An appeal is timely if the intent to appeal is ~~mailed to or~~ received by the Appeals Board or received by the Appeals Board in an envelope sent by first-class mail that is postmarked within 15 working days of the date the citation is received by the cited employer. The time for filing any appeal may be extended or a late filing permitted upon a written showing of good cause that contains sufficient facts to show or establish a reasonable basis for the late filing.

(e) A request to file a late appeal shall be accompanied by a proof of service pursuant to Section 355.4(e) and a declaration pursuant to section 347(i) containing a statement that any facts therein are based upon the personal knowledge of the declarant. A declaration means a certification in substantially the following form:

I, [identify declarant], declare that I have personal knowledge of the following facts:

1.....

2.....

3.....

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at (city) , California (or other state/country) on (date).

(Signature)

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(f) The current address and phone number of the Appeals Board's main office shall be stated ~~in~~ the citation(s) package and posted on the Appeals Board's website.

(g) The Board may find good cause for a late appeal exists where:

(1) A settlement has been reached between the parties within 3 months of issuance of a citation; and

(2) The appellant is able to demonstrate that settlement was actively pursued by the parties during the period prior to filing of the late appeal.

(h) The parties may submit a stipulation to demonstrate that the requirements of subsections (g)(1) and (g)(2) have been met.

(i) Negotiations that do not result in an executed settlement agreement are not good cause for a late appeal under subsection (g). As stated in subsection (d), an employer must contact the Appeals Board within 15 working days of receipt of a citation to preserve its right of appeal.

(j) The Board may find good cause exists for a late appeal on the issue of abatement where:

(1) The employer submitted proof of abatement to the Division timely as required in the citation; and

(2) The Division does not accept the proof of abatement; or

(3) The Division fails to modify the penalty as required following submittal of proof of adequate abatement.

(k) Acceptance of a late appeal under subsection (j) does not appeal any other portion of the citation or notification of penalty.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 6601 and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 359.1 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 359.1. Docketing and Perfecting an Appeal.

(a) For an appeal to be docketed, the following information must be submitted to the Appeals Board by mail, hand delivery, or online via the OASIS system accessible through the Board's website:

(1) The contact information required by Section 355.1, including the name, postal address, ~~and email address, if any,~~ telephone number, and the preferred method of service, either by postal mail or email, of any party or obligor, and the name, postal address, ~~and email address, if any,~~ and telephone number and the preferred method of service, either by postal mail or email, of any party or obligor's representative; and

(2) The information required by Section 361.3, including:

(A) The inspection number listed on the citation;

(B) The identity of the citation(s) being appealed through reference to both citation number(s) and item number(s); and

(C) The components of the Division citation(s) being challenged as well as any affirmative defenses through reference to both citation number(s) and item number(s).

(i) The different components of the Division's citation that may be challenged are listed in Section 361.3, subsection (a), and also listed on the optional appeal forms supplied by the Board.

(b) If an appeal is initiated by telephone, in writing, or ~~by online form~~ via the OASIS system, but is incomplete, the Board shall serve a notice of incomplete appeal.

(1) An employer's failure to provide all requested documents and information within 20 days of service of the notice of incomplete appeal, shall constitute grounds for dismissal of the appeal. ~~the failure to provide the information listed in subsection (a) to the Appeals Board within 20 days of written or electronic acknowledgement by the Board of the receipt of an intent to appeal constitutes grounds for dismissal.~~

(42) The receipt of an intent to appeal by telephone, in writing, or online, without the timely provision of the documents required in subdivision (a) is will not be sufficient by itself to docket an to complete an employer's appeal.

(c) The Appeals Board shall furnish optional appeal forms upon request and shall provide them to the district offices of the Division.

(d) After the information required by subsection (a) is submitted either on paper or online via the OASIS system, and confirmed to be complete, the appeal will be docketed.

(e) Upon docketing of an appeal, the Appeals Board shall serve on each party a notice of docketed appeal advising that the matter is docketed and referencing the assigned investigation number ~~providing the docket number assigned to the appeal.~~

Accompanying the notice of docketed appeal, the Board will also serve on each party

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

the appeal information and copies of any documents submitted pursuant to subsection (a) required to perfect the appeal.

(f) The Division shall provide a copy of all appealed citations and the proof of service for the originally issued citations to the Appeals Board within 15 working days after service of the notice and appeal information described in subsection (e). This will not constitute an ex parte communication, notwithstanding Section 352, and service on other parties is not required. If the Division fails to provide a copy of all appealed citations and the proof of service for the originally issued citations within 15 working days, the Board will notify the Division of the deficiency and provide a reasonable opportunity for cure. The Division's failure to timely comply with this subsection shall not prejudice an employer's appeal.

(1) An employer may also voluntarily elect to provide a copy of all appealed citations to the Appeals Board. If an employer provides the Appeals Board copies of all appealed citations prior to receipt of the citations from the Division, the Appeals Board may proceed to the procedure set forth in subsection (g) without waiting for a copy of the appealed citations from the Division. An employer's act of providing the Board with a copy of the citations it has appealed does not relieve the Division from its duty to provide a copy of all the appealed citations and the proof of service for the originally issued citations.

(g) An appeal will be deemed perfected if the Appeals Board determines it is timely, as required by Section 359, and all required information and documents have been submitted to the Appeals Board in accordance with this section, including those documents set forth in subdivision (f). The Board shall serve on each party a notice advising when an appeal has been deemed perfected and provide the name of the administrative law judge assigned to the appeal.

(h) The Board shall also serve on the parties a notice of the right to discovery. The notice of the parties' right to discovery shall inform the parties of the discovery mechanisms available under its regulations, including those contained in Sections 372, 372.1, 372.2, and 372.3.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 6600, 6601 and 6603, Labor Code

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 364.2 of Article 1.5 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 364.2. Settlement Order.

~~(a) The Appeals Board may dispose of an appeal by issuing a Settlement Order, bearing the signature of the Division and the employer or obligor, at any time after the Appeals Board obtains jurisdiction of the appeal. The Division and employer, having agreed to resolution of the issues on appeal, shall submit the terms of the settlement agreement to the Appeals Board for approval with this section. Upon determination of compliance with this section, the Board shall issue a Notice of Acceptance of Settlement Order on all parties listed in the Official Address Record.~~

~~(b) A Settlement Order shall contain the following items in addition to the signature(s) of all parties:~~

~~(1) Employer name;~~

~~(2) Employer address;~~

~~(3) Docket number(s);~~

~~(4) Citation and item number(s) appealed;~~

~~(5) Final penalty amounts for each citation and item number on appeal;~~

~~(6) Payment due date(s); and~~

~~(7) The following paragraph: "This Settlement Order is a final Order of the Appeals Board and is effective 30 days from the date the Appeals Board issues a Notice of Acceptance of Settlement Order served on all parties, unless a petition for reconsideration is filed with the Appeals Board within those 30 days."~~

~~(a)~~ Full settlements of all appealed matters associated with a specific inspection number may be concluded and resolved by the parties by entering into a Settlement agreement ~~Order as described in subsection (a) or by~~ which will be memorialized as an Settlement Order issued by of the Appeals Board. Partial settlements may be entered into by stipulation of the parties and are effective when ~~approved~~ memorialized as a Partial Settlement Order by the assigned Administrative Law Judge.

~~(b)~~ The Appeals Board Division shall serve a copy of the Settlement Order on the parties once the Order is issued. ~~any authorized employee representative if known to the Division to represent affected employees. Service by the Board shall be in a manner as prescribed in Section 355.3 and proof of such service meeting the requirements of Section 355.3 shall be filed with the Appeals Board.~~

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

~~(ce)~~ The employer shall post for 30 working days a copy of the Settlement Order. Posting shall be in a manner as prescribed in Section 356, subsection (a).

~~(df)~~ Within 30 days of the date of the ~~Notice of Acceptance~~ of issuance of a Settlement Order or Partial Settlement Order, any party, intervenor, or obligor aggrieved may file a petition for reconsideration of the Partial Settlement Order or Settlement Order on the basis of fraud, misrepresentation, mutual mistake of fact, or undue influence in the formation of the Settlement Order, or the Board may order reconsideration on its own motion consistent with Section 390.2. If no petition for reconsideration is timely filed, the Partial Settlement Order or Settlement Order is a final order of the Appeals Board.

~~NOTE: The Appeals Board will make available an optional form for containing the items described in subsections (b)(1) through (b)(7).~~

NOTE: Authority cited: Sections 148.7 and 6603(a), Labor Code. Reference: Sections 148.7 and 6614, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 370 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 370. Application of Article.

This article applies to all proceedings before the Appeals Board brought pursuant to Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, Section 105200~~2950~~ of the Health and Safety Code and a petition for costs pursuant to Article 6 but not a proceeding under reconsideration pursuant to Article 5.

Note: Authority cited: Sections 148.7 and 149.5, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 371 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 371. Prehearing Motions.

(a) Any motion or request for action, any opposition thereto, and any reply relating to any proceeding shall be in writing, ~~be~~ directed to the Appeals Board, and comply with Section 355.4. The caption of each motion or request shall contain the title and docket or petition number of the proceeding and a clear and plain statement of the relief sought, together with the grounds therefor.

(b) Any motion or request, any opposition thereto, and any reply shall be signed by the party filing or by the party's representative, and a copy shall be served on all parties. Service shall be in a manner as prescribed in Section 355.3 and proof of such service meeting the requirements of Section 355.3 shall be filed with the Appeals Board.

(c) Unless otherwise ordered, the following dates shall apply to prehearing motions or requests:

(1) A motion or request shall be served and filed no later than 20 days before the hearing date.

(2) Any opposition to the motion shall be served and filed no later than 10 days from service of the motion or request.

(3) Any reply papers shall be served and filed no later than 5 days from service of the opposition to the motion or request ~~before the hearing date~~.

(d) A request to file a motion, opposition, or reply later than the times specified in (c) shall be granted if accompanied by a declaration showing good cause for the late filing.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5 and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 371.1 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 371.1. Requests or Motions Concerning Hearing Dates.

(a) Continuances are disfavored.

(b) A request or motion for a continuance shall be in writing and made promptly once the reason necessitating the continuance is ascertained. The request or motion shall be filed with the Appeals Board as required in Section 355.4. Service shall be in a manner as prescribed in Section 355.3 and proof of such service meeting the requirements of Section 355.3 shall be filed with the Appeals Board. In the case of an emergency where the time for the hearing does not permit service as set forth above, service may be made upon a party by fax, email, or personal service. Requests or Motions to the Appeals Board, however, may not be made by email. The request or motion shall contain:

(1) The date(s) presently assigned for hearing and the date(s) to which continuance is requested~~sought~~;

(2) A declaration signed under penalty of perjury containing facts in support of the request or motion; and

(3) An indication of whether the other parties to the appeal were contacted, and if so, their position on the request or motion. Absent exigent circumstances, the Appeals Board will not rule on the request or motion without notification of the other party's position or until the time to oppose the request or motion as provided in (c) has run, whichever comes first.

(c) Any opposition to a request or motion for continuance shall be filed with the Appeals Board immediately but no later than ten (10) days from service of the request or motion. Service shall be in a manner as prescribed in Section 355.3 and proof of such service meeting the requirements of Section 355.3 shall be filed with the Appeals Board.

(d) The request or motion shall be ruled on promptly and not delayed once the Appeals Board has received all information needed to rule on the request or motion.

(e) Each request or motion for a continuance shall be considered on its own merits. The request or motion shall be granted on an affirmative showing of good cause. The following circumstances shall be considered when determining whether good cause exists for the granting of the continuance:

(1) The unavailability of an essential witness, party, counsel or representative because an emergency arises, including, but not limited to, death or incapacitating illness.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

- (2) The addition of a new party who has not had notice of the hearing date and an adequate opportunity to prepare for the hearing.
 - (3) The age of the case and whether there were any previous continuances.
 - (4) The ability of the parties to agree on at least three (3) alternative hearing dates in the immediate future and the Appeals Board's ability to calendar the case on one of the dates.
 - (5) The prejudice that parties or witnesses will suffer as a result of the continuance being granted or denied.
 - (6) Whether the party's counsel is calendared in another hearing which conflicts with the Appeals Board's scheduled hearing, including administrative, civil or criminal matters, the specific attempts made by counsel to continue the other matter, and the results of such attempts.
 - (7) Whether an alternative short of continuing the entire hearing, such as leaving the record open to allow testimony of an unavailable witness or witnesses at a later time, would accommodate the needs of the moving party while allowing the matter to proceed in the meantime.
 - (8) Whether the employer has abated the alleged unsafe condition or conditions.
 - (9) The status of any related criminal investigations or proceedings.
 - (10) Whether the conflict necessitating the continuance was either foreseeable or created by the party(ies) or the party(ies) representative(s).
 - (11) Any other fact or circumstance relevant to the fair determination of the request or motion.
- (f) The following circumstances shall not constitute good cause:
- (1) Failure to obtain representation, unless a substitution is required through no fault of the party.
 - (2) Failure of another party to comply with a request for discovery, unless the Appeals Board orders a continuance of the hearing after a motion to compel discovery has been filed pursuant to Section 372.6. A continuance of the hearing may be ordered only if:
 - (A) a motion to compel discovery was filed at a time which would not have foreseeably delayed the hearing, or good cause for such later filing is shown, and
 - (B) the matters sought to be discovered are of sufficient importance to warrant a continuance of the hearing.

Note: At-hearing sanctions for discovery abuses are specified in Section 372.7 of these regulations.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(g) Once a request or motion for continuance has been ruled on by the Appeals Board, a request or motion for continuance based on the same grounds shall not be entertained at the hearing. If the request or motion was denied without prejudice a party may renew the request or motion and submit additional information supporting the request including, but not limited to, changed circumstances or new information not previously~~formerly~~ available.

Note: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5 and 6603, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 373 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 373. Expedited Proceeding.

(a) Upon motion of a party or upon its own motion, the Appeals Board may order an expedited proceeding. All parties shall be notified and shall be expected to do all things necessary to complete the proceeding in the minimum time consistent with fairness. Time limits for filing a motion to compel discovery, and for responsive filings under Section 372.6 may be shortened as necessary to accommodate the expedited date for disposition of the case.

(b) Where the Appeals Board is aware or is notified that an alleged violation appealed is classified by the Division of Occupational Safety & Health as a Serious, Repeat Serious, Willful Serious, Willful, Willful Repeat or Failure to Abate, and either abatement is on appeal, or abatement has not occurred, the Appeals Board shall expedite the proceeding.

(c) The Appeals Board shall serve parties a written explanation of the expedited process, ~~a notification of docketing, a copy of the docketed appeal forms and citations, a copy of the notice advising that the appeal has been perfected, a standing order compelling discovery, a stipulation form, and a status conference notice.~~

(1) A telephonic or video status conference shall be held within 30 days of the perfection of the appeal. At that time, the Administrative Law Judge ALJ will confirm that the expedited process is appropriate, review the requirements of the expedited process with the parties, review pending and impending discovery, and make such orders regarding any matter as needed to meet the timetable of this section,

(2) A telephonic or video prehearing conference shall be held within 60 days before the hearing ~~of the status conference~~. The prehearing conference will proceed under Section 374. The parties will be required to stipulate to undisputed facts, identify issues, and raise issues regarding the admissibility of evidence. The parties shall identify all witnesses and exhibits they intend to call or introduce at the hearing.

(3) A hearing shall commence ~~be held~~, either by telephone, ie video, in person, or a combination of the three as determined by the Administrative Law Judge, within 60 days ~~150 days from the perfection of the appeal of the prehearing conference and will be scheduled for one day and adjusted, if necessary.~~

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(4) The Appeals Board, on its own motion or pursuant to a motion of or a party, may ~~bring a motion to~~ shorten the timeframes set forth in subsections (c)(1)-(3) on a showing of good cause.

NOTE: Authority cited: Sections 148.7 and 149.5, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 374 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 374. Prehearing Conference.

(a) At any time before a hearing, upon motion of a party or upon its own motion, the Appeals Board may notice and order a prehearing conference for the purposes of simplifying the issues, expediting a hearing and affording parties an opportunity to participate in the disposition of the appeal. The prehearing conference may be conducted by means of a video or telephone conference call.

(b) Each party to a prehearing conference shall be prepared to discuss the issues, stipulate to any factual or legal issue about which there is no dispute, stipulate to the identification and admissibility of documentary evidence, comply with any request for discovery, report on discovery status where the Administrative Law Judge~~ALJ~~ has compelled discovery prior to the prehearing conference, and to do such other things as may aid in the disposition of the proceeding. The Administrative Law Judge may direct each party to provide a statement regarding the aforementioned topics prior to the prehearing conference.

(c) The failure of a party or its representative to prepare for and participate in the prehearing conference shall be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the Appeals Board may deem appropriate. These sanctions may include striking or excluding evidence offered by the non-complying party on that dispute, or precluding that party from contesting the position or information on that issue provided by the complying party.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 374.2 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 374.2. Status Conference.

(a) At any time before hearing, upon motion of a party or upon its own motion, the Appeals Board may notice and order a status conference to discuss the issues to be presented, the witnesses to be called, the status of discovery requests, pending and contemplated motions, and any other matters that may aid in expediting the hearing or otherwise disposing of the case. The status conference may be conducted by means of a ~~telephone~~video or teleconference call. The Administrative Law Judge may direct each party to provide a statement regarding the aforementioned topics prior to the status conference. In non-expedited proceedings, if the Administrative Law Judge determines the statements provide sufficient information establishing the status conference is unnecessary, they may take the status conference off calendar.

(b) The failure of a party or its representative to appear and participate in the status conference may be grounds for the imposition of such sanctions, inferences or other orders, then or during the hearing, as the Appeals Board may deem appropriate. These sanctions may include striking or excluding evidence offered by the non-complying party on that dispute, or precluding that party from contesting the position or information on that issue provided by the complying party.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 374.3 of Article 3 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 374.3. Settlement Conference.

The Appeals Board on its own motion, or upon written request of a party, may schedule a settlement conference to be held before an administrative law judge who shall not hear the appeal, unless otherwise stipulated by the parties. Each party shall attend or be represented by a person authorized to negotiate regarding settlement. The settlement conference ~~may~~shall be conducted telephonically, via video conference, by means of a telephone, in person, or as otherwise directed by the administrative law judge. ~~conference call.~~

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Section 148.7, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 376 of Article 4 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 376. Time and Place of Hearing.

(a) Appeals shall be heard promptly.

(b) Appeals relating to a special order, order to take special action, the reasonableness of the abatement period and an expedited proceeding shall be given priority over other proceedings.

(c) When the Appeals Board is notified that a case is being reviewed by the Bureau of Investigations or any prosecuting authority, the Appeals Board shall delay the hearing until notified that review is concluded or for a period not exceeding three (3) years, whichever occurs earlier. The three (3) year period begins when the Board receives notification of an investigation from the Bureau of Investigations or any prosecuting authority. If the Appeals Board is notified that criminal charges have been filed, the Appeals Board shall subsequently extend the delay until completion of the criminal case, which shall be deemed to occur on the date of a verdict of not guilty, a dismissal of the case by a court, or the date of sentencing after a verdict or plea of guilty or no contest. The Appeals Board may also delay the case beyond three (3) years from the date of the incident on the written request of a party or prosecuting authority if necessary to allow the Bureau of Investigations or any prosecuting authority to conclude its review or criminal prosecution of the case. The Board may, as determined necessary by the Administrative Law Judge assigned to the matter, hold status conferences or hear motions during the pendency of any such review, investigation, or prosecution.

(d) A hearing may be conducted by videoconference as provided in Government Code Section 11440.30 of the Administrative Procedure Act, if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place, to observe the exhibits, and to observe the hearing participants to the extent feasible.

(e) For each hearing, other than expedited proceedings set pursuant to ~~s~~Section 373, the Appeals Board shall determine, and include in any notice of hearing, the following information: the date(s), time(s), and length for the hearing; the format for conducting the hearing, whether in-person or by videoconference or a combination thereof; and the physical location of the hearing if the hearing includes an in-person format. If a videoconference hearing is selected, the notice of the hearing shall provide instruction on how to participate in the videoconference, identify the necessary technological equipment, and indicate what to do if technical problems arise.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(1) Factors and criteria relevant to these determinations, which may be addressed or discussed at prehearing or status conferences, include, but are not limited to, the following:

- (A) Evidentiary presentation and case management issues;
- (B) Whether multiple hearings can be set before an Administrative Law Judge on the same day without necessitating a continuance;
- (C) The parties' and Administrative Law Judge's projection of the length of time needed for the hearing;
- (D) The place of employment where the violation is alleged to have occurred;
- (E) The location and suitability of Appeals Board hearing venues;
- (F) The availability of Administrative Law Judges, witnesses, and parties;
- (G) The location of the parties and the witnesses;
- (H) Transportation barriers or travel distance required for attendance at a hearing, for any party or witness;
- (I) Hardship caused by time away from current employment or other responsibilities that would be required of a party or witness in order to attend a hearing;
- (J) Inability of a party or witness to secure care for children, other family members, or dependents that would unduly hinder travel to a hearing;
- (K) The health and safety of parties, witnesses, representatives, and Appeals Board staff;
- (L) Any factors requiring a more expeditious hearing date;
- (M) Stipulations of the parties;
- (N) Other hardships or impediments raised by a party or witness;
- (O) Any other fact deemed relevant by the Administrative Law Judge or Presiding Administrative Law Judge.

(2) For hearings set for the videoconference format under subdivision (e) or (g), in whole or in part, the Appeals Board may issue orders requiring prehearing lodging of proposed exhibits via OASIS. Prehearing lodging of exhibits shall not be required more than three working days prior to the hearing. The Appeals Board will not review or consider any lodged documents for substance until introduced by a party or representative at hearing.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

(A) Notwithstanding the existence of an order requiring prehearing lodging of exhibits, the Appeals Board may grant parties the opportunity to utilize additional exhibits during the hearing not previously lodged, upon a showing that good cause exists, that no prejudice would occur, or such other showing deemed sufficient by the Appeals Board in its discretion.

(3) If the Appeals Board orders that the hearing occur by videoconference under subdivision (e) or (g), in whole or in part, and a witness, subpoenaed person, party, or representative contends, in a reasonable amount of time prior to the hearing, that they do not have access to the technological equipment necessary to attend, comply, and/or conduct the hearing by videoconference, the Appeals Board will make facilities available where they can access necessary equipment. The Appeals Board may require evidence regarding such claims before making facilities available.

(f) During any prehearing or status conference, each party and party representative shall be prepared to discuss whether to set the matter for a hearing in person, by videoconference, or combination thereof, and be prepared to discuss any relevant criteria set forth in subdivision (e)(1). The Appeals Board may require evidence supporting the application of these criteria to the specific case.

(g) The Appeals Board shall set the date(s) for hearings for expedited matters pursuant to ~~s~~Section 373. An expedited hearing shall be set for the videoconference format. The Appeals Board may, in its discretion, modify the expedited hearing format after it is initially set. If a party believes that the videoconference format would be inappropriate for the expedited hearing, it may request, either at the status conference or pursuant to the procedures set forth in subdivision (h), that the Appeals Board modify the hearing format to an in-person hearing, with reference, without limitation, to the relevant criteria set forth in subdivision (e). The Appeals Board may require evidence supporting the application of these criteria to the specific case.

(h) Government Code section 11440.30, subdivision (b)(2), permits a party to object to the selection of the videoconference hearing format and requires the Appeals Board to consider the objection. Where a party objects to the Appeals Board's selection of the hearing format, except where otherwise directed by Administrative Law Judge, the objection shall be in the form of a written motion in compliance with ~~s~~Section 371, identifying the requested change in the hearing. If the facts supporting the objection first become known after the hearing commences, the objecting party shall file the motion as soon as the facts supporting the motion become known. Factors relevant to the Appeals Board's exercise of discretion on objections include, but are not limited to, whether the objecting party has demonstrated that it will be prejudiced or its due process rights will be compromised if it conducts the hearing in the selected format, with reference to the criteria set forth in subdivision (e), without limitation. The motion must be accompanied

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

by evidence in the form of either declarations (pursuant to sSection 347, subdivision (i)) or specific references to witness testimony and citation to the record. The Appeals Board may also reconsider the hearing format on its own motion at any time.

(i) For purposes of the Appeals Board's rules set forth in Chapter 3.3, when a hearing is ordered to occur by videoconference, the videoconference format of the hearing will constitute the place of hearing and hearing room. To the extent the rules set forth in Chapter 3.3 provide a right to appear in person or personally, that right is satisfied by the videoconference appearance. Further, subpoenas may be issued pursuant to sSection 372.2, either subdivision (a) or (c), requiring attendance of a person at the videoconference place of hearing, provided the subpoena includes sufficient instruction and information on how to participate in the videoconference, identifies the technological equipment necessary, and indicates what to do if technical problems arise. The Appeals Board shall furnish optional subpoena forms upon request for attorneys' use.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 11410.20, 11415.10, 11410.40 and 11440.30, Government Code; and Sections 148.7, 149.5 and 6308(c), Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 378 of Article 4 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 378. Representation at Hearing

(a) A party may appear in person or through a representative ~~who is not required to be an attorney at law~~. A representative shall file a written notice of representation with either the Sacramento or West Covina Office of the Appeals Board and serve a copy on all parties as required by Sections 355.3 and 355.4. A representative is not required to be an attorney at law.

(b) A representative of a party shall be deemed to control all matters respecting the interest of such party in the proceeding.

(c) An employee who is represented by an authorized employee representative may appear through such authorized employee representative.

(d) A representative may withdraw its representation of a party by filing a written notice of withdrawal with the Appeals Board, providing the Appeals Board with the most recent contact information the representative has for the party and the contact information for the replacement representative, if available, and by serving a copy of the written notice of withdrawal on all parties, intervenors, and obligors as required by Sections 355.3 and 355.4.

NOTE: Authority cited: Sections 148.7 and 149.5, Labor Code. Reference: Sections 148.7 and 149.5, Labor Code.

Occupational Safety and Health Appeals Board (OSHAB)

Public Access to Records

PROPOSED LANGUAGE

Added text is indicated with an underline. Deleted text is indicated by ~~strikeout~~.

Amend Section 383 of Article 4 of Chapter 3.3 of Division 1 of Title 8 of the California Code of Regulations to read as follows:

§ 383. Failure to Appear.

(a) If after service of a notice of hearing, prehearing conference, settlement conference, status conference, or another event scheduled and duly noticed by the Appeals Board, a party fails to appear at the noticed event, either personally or by representative, the Appeals Board may take the proceeding off calendar; may, after notice, dismiss the proceeding; or may receive evidence from any party that appears.

(b) Before dismissing the proceeding, the assigned Administrative Law Judge shall prepare and serve a notice of intent to dismiss the appeal or citation(s), or an order pursuant to Section 350.4, allowing the non-appearing party at least 15~~10~~ days to request reinstatement of the appeal. The request must show good cause for missing the noticed event.

(c) Good cause is defined as sufficient facts to establish a reasonable basis for the failure to appear. A request for reinstatement, and any opposition, shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant and declared under penalty of perjury.

(d) A party, intervenor, ~~or obligor~~, or their representative, opposing the reinstatement of any proceeding based on the non-appearing party's showing of good cause may file a response no later than 10 days from service of the reinstatement request.

(e) Service of the request for reinstatement and any response shall be accomplished as prescribed in Section 355.3 and proof of service meeting the requirements of Section 355.3, subsection (e) shall be filed with the Appeals Board as required in Section 355.4.

NOTE: Authority cited: Section 148.7, Labor Code. Reference: Sections 148.7, 149.5, 6603 and 6611, Labor Code.