

TITLE 615 BOARD OF SAFETY REVIEW

ARTICLE 1. OCCUPATIONAL HEALTH AND SAFETY: PROCEEDINGS BEFORE THE BOARD OF SAFETY REVIEW

Rule 1. Jurisdiction; Filing; Parties; Pleadings; Conduct of Hearings; Settlement (Repealed)

(Repealed by Board of Safety Review; filed Nov 12, 1987, 9:30 am: 11 IR 1274)

Rule 2. Procedures Governing Adjudicative Proceedings Before the Board of Safety Review

615 IAC 1-2-1 Definitions

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5; IC 22-8-1.1-1

Sec. 1. (a) The definitions contained in IC 4-21.5-1 are applicable to this rule (615 IAC 1-2) unless the context clearly requires otherwise.

(b) The definitions contained in IC 22-8-1.1-1 are applicable to this rule (615 IAC 1-2).

(c) The definitions contained in 610 IAC 4-3-21 are applicable to this rule (615 IAC 1-2).

(d) Except to the extent that the term in a particular context would refer to the Commissioner, the term “agency” as used in IC 4-21.5 means the Board for proceedings before the Board.

(e) The term “ultimate authority” as used in IC 4-21.5 means the Board for proceedings before the board. *(Board of Safety Review; 615 IAC 1-2-1; filed Nov 12, 1987, 9:30 am: 11 IR 1268; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305)*

615 IAC 1-2-2 Procedural matters; applicable statutes and rules

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5; IC 5-14-1.5; IC 22-8-1.1

Sec. 2. (a) All proceedings before the Board of Safety Review shall be governed by IC 4-21.5 which concerns administrative orders and procedures, the Indiana Occupational Safety and Health Act (IC 22-8-1.1), the Indiana Open Door law (IC 5-14-1.5), this rule (615 IAC 1-2) and any applicable rule adopted by the Commissioner specifically including 610 IAC 4-3. On any procedural matter not dealt with by these statutes and rules, the Board shall be guided to the extent practicable by the Indiana Rules of Trial Procedure.

(b) The basic purpose of this rule (615 IAC 1-2) is to supplement the statutes and other rules stated in subsection (a). For a complete understanding of provisions applicable to proceedings before the Board it is especially important to consider the detailed provisions found in IC 4-21.5-3. *(Board of Safety Review; 615 IAC 1-2-2; filed Nov 12, 1987, 9:30 am: 11 IR 1269; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305)*

615 IAC 1-2-3 Function of the board

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 3. The Board is authorized to hear and decide disputes which may arise between the Commissioner and employers who are aggrieved by a Safety Order, assessment of penalty or notice of failure to correct violation, issued by the Commissioner, or with employees or representatives of employees who are aggrieved by an abatement period issued by the Commissioner. The board is also authorized to hear and decide disputes between an employer who has filed a Petition for Modification of Abatement and the Commissioner or affected employees or their representatives. *(Board of Safety Review; 615 IAC 1-2-3; filed Nov 12, 1987, 9:30 am: 11 IR 1269; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305)*

615 IAC 1-2-4 Jurisdiction of the board

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 4. The Board obtains jurisdiction of a dispute when the Commissioner certifies to the Board that a dispute exists between him and an employer or employee in respect to a Safety Order, assessment of penalty, notice of failure to correct violation, or a Petition for Modification of Abatement. The Commissioner shall certify a case to the Board in conjunction with granting of a petition for review under the applicable provisions of 610 IAC 4-3-15, 610 IAC 4-3-18, 610 IAC 4-3-19, 610 IAC 4-3-19.5 or 610 IAC 4-3-20. (*Board of Safety Review; 615 IAC 1-2-4; filed Nov 12, 1987, 9:30 am: 11 IR 1269; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-5 Form of pleadings

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 5. (a) There are no specific requirements of form for any pleading or other paper except as provided for by this section. (b) Cases, except those initiated by a Petition for Modification of Abatement, shall be titled:

Commissioner of Labor,

Complainant,

v.

(Name of party who petitioned for review)

Respondent.

(c) Cases initiated by a Petition for Modification of Abatement shall be titled:

(Name of Employer),

Petitioner,

v.

Commissioner of Labor,

Respondent.

(d) The titles provided for in subsections (b) and (c) shall appear at the upper left portion of the initial page of any pleading or paper (other than exhibits) filed.

(e) The initial page of any pleading or paper (other than exhibits) shall show opposite the title, the docket number, if known, assigned by the Board. (*Board of Safety Review; 615 IAC 1-2-5; filed Nov 12, 1987, 9:30 am: 11 IR 1269; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-6 Parties to proceedings

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-21; IC 22-8-1.1

Sec. 6. (a) In all cases, except those initiated by a Petition for Modification of Abatement, the Commissioner and the person who filed the petition for review shall be deemed parties to the proceeding. When the petition for review was filed by the employer, employees of the employer, or their authorized representatives, may intervene (elect to participate as a party) pursuant to subsection (c). When the petition *[sic]* for review was filed by an employee of the employer or an authorized employee representative, the employer may intervene (elect to participate as a party) pursuant to subsection (c).

(b) In cases initiated by a Petition for Modification of Abatement, the parties shall be the petitioning employer, the Commissioner, and any affected employees or their representatives who have filed a petition for review pursuant to 610 IAC 4-3-15. However, any employee of the employer or authorized employee representative, even though he did not previously file a petition for review, may intervene (elect to participate as a party) pursuant to subsection (c).

(c) Petitions for intervention shall comply with IC 4-21.5-3-21. (*Board of Safety Review; 615 IAC 1-2-6; filed Nov 12, 1987, 9:30 am: 11 IR 1269; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-7 Notification to employees and employee representatives of board proceedings

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-21; IC 22-8-1.1

Sec. 7. (a) Within seven days of notice that the Commissioner has granted a petition for review filed by an employer, the

employer shall post, where the Safety Order is required to be posted, a copy of said petition for review and a notice informing affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:

Name of Employer:

Your employer has been cited by the Commissioner of Labor for violation of the Indiana Occupational Safety and Health Act. A petition for review has been filed and it will be the subject of a proceeding before the Board of Safety Review. Affected employees are entitled to participate in this proceeding as parties under terms and conditions established by the Board of Safety Review in its Rules of Procedure. Notice of intent to participate shall be by a petition for intervention which must meet the requirements of IC 4-21.5-3-21 and be sent to:

Board of Safety Review
Indiana Government Center-South
402 West Washington Street, Room W195
Indianapolis, Indiana 46204

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace)

(b) Within seven days of notice that the commissioner has granted a petition for review filed by an employee or employee representative, the employee or employee representative shall serve such petition for review on the employer who shall immediately post it. Said employee or employee representative shall also serve any other employee representative with said petition and a notice such as that required by subsection (a). A copy of this notice shall also be given to the employer to be posted.

(c) Where employees are represented by an authorized employee representative then the notices required by this section to be posted shall also be served on said employee representative either by personal service or by United States mail postage prepaid.

(d) This section does not apply to cases initiated by a Petition for Modification of Abatement date. (*Board of Safety Review; 615 IAC 1-2-7; filed Nov 12, 1987, 9:30 am: 11 IR 1270; errata filed Sep 7, 2001, 10:20 a.m.: 25 IR 106; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-8 Service and filing of pleadings and other papers

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-1; IC 22-8-1.1

Sec. 8. (a) This section supplements the requirements contained in IC 4-21.5-3-1.

(b) Service when required. Unless otherwise provided by this rule (615 IAC 1-2) or an order of the Board, each party shall be served with:

- (1) every order required by its terms to be served;
- (2) every pleading filed subsequent to the papers delivered to the Board at the time the case is certified to it;
- (3) every written motion;
- (4) every brief submitted to the Board;
- (5) every paper relating to discovery required to be served upon a party; and
- (6) every written notice, appearance, or similar paper.

(c) Service: How made

(1) Whenever a party is represented by an attorney of record, service shall be made upon such attorney unless service upon the party himself is ordered by the Board.

(2) Delivery. Delivery of a copy within this rule (615 IAC 1-2) means

(A) handing it to the attorney or party;

(B) leaving it at his office with a clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein; or

(C) if the office is closed, by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(3) Service by mail. If service is made by mail, the papers shall be deposited in the United States mail addressed to the person on whom they are being served, with postage prepaid. Service shall be deemed complete upon mailing. Proof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney. It shall be the duty of attorneys when entering their appearance in a proceeding

or when filing pleadings or papers therein, to have noted on said pleadings or papers so filed the address and telephone number of their office. Service by delivery or by mail at such address shall be deemed sufficient and complete.

(d) Filing. Subsequent to the papers delivered to the Board at the time the case is certified to it, all pleadings and papers required to be served upon a party shall be filed with the Board either before service or within a reasonable time thereafter, except to the extent that 615 IAC 1-2-13(c) provides otherwise.

(e) Filing with the Board Defined. The filing of pleadings and papers with the Board as required by this rule (615 IAC 1-2) shall be made by one of the following methods:

(1) Delivering the pleadings or papers to the Secretary of the Board at Indiana Government Center-South, 402 West Washington Street, Room W195, Indianapolis, Indiana 46204.

(2) Mailing the papers to said Secretary by registered or certified mail, return receipt requested.

Filing by registered or certified mail shall be complete upon mailing.

(f) Pleadings and other papers shall be signed by the party, or his attorney. Such signing constitutes a representation by the signer that he has read the document and that, to the best of his knowledge, information, and belief the statements made therein are true and the document is not interposed for delay. (*Board of Safety Review; 615 IAC 1-2-8; filed Nov 12, 1987, 9:30 am: 11 IR 1270; errata filed Sep 7, 2001, 10:20 a.m.: 25 IR 106; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-9 Time computation; extension

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-2; IC 22-8-1.1

Sec. 9. (a) The computation of any period of time in a proceeding before the Board shall be done pursuant to IC 4-21.5-3-2.

(b) Notwithstanding subsection (a), a period of time measured by working days shall be measured pursuant to the definition of "working days" found in 610 IAC 4-3-21.

(c) Subsection (d) applies as follows:

(1) to any act required or allowed to be done within a specified time by this rule (615 IAC 1-2); and

(2) to the extent they specifically permit an enlargement of time for the particular act involved, to any act required or allowed to be done within a specified time by IC 4-21.5 and Rules 26 through 37 of the Indiana Rules of Procedure.

(d) The board may at any time for cause shown:

(1) order the period enlarged, with or without motion or notice, if request therefor is made before the expiration of the period originally prescribed or extended by a previous order; or

(2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

(*Board of Safety Review; 615 IAC 1-2-9; filed Nov 12, 1987, 9:30 am: 11 IR 1271; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-10 Pleadings

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 10. (a) The Commissioner shall within five working days of the granting of a petition for review transmit all relevant documents to the Board.

(b) Unless the Commissioner files a complaint under subsection (c), in all proceedings [*sic.*], except those initiated by a Petition for Modification of Abatement Date, the Safety Order, penalty assessment or notice of failure to correct violation shall stand as the complaint and the petition for review shall stand as the answer.

(c) Except in cases initiated by a Petition for Modification of Abatement Date, the Commissioner may within twenty days of certification to the Board file a written complaint to set forth with more particularity the elements of the case which may include considerations upon which the abatement period or the proposed penalty is based.

(d) If the Commissioner files a complaint under subsection (c), the person complained of shall file within twenty days an answer denying those allegations which the person intends to contest. Any allegation not denied shall be deemed admitted. Any affirmative defenses must be raised in said answer. Default judgments may be granted upon motion where a person has not answered in the prescribed period.

(e) In cases initiated by a petition for modification of abatement date, the pleadings shall consist of the petition for modification of abatement date, the commissioner's order granting or denying such and any petition for review. (*Board of Safety Review; 615 IAC 1-2-10; filed Nov 12, 1987, 9:30 am: 11 IR 1271; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-11 Petitions for modification of abatement date

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-21; IC 22-8-1.1

Sec. 11. (a) This section applies to petitions for modification of abatement date provided for by 610 IAC 4-3-15.

(b)(1) Within seven days of notice that the Commissioner has granted a petition for review, the employer shall post in a conspicuous place, and serve any authorized employee representative, the following notice (or a substantial equivalent):

Name of Employer:

Your employer has filed a Petition for Modification of Abatement Date which was (granted/denied) by the Commissioner of Labor and which is now the subject of a proceeding before the Board of Safety Review based on a petition for review filed by (your employer/other petitioning person). Affected employees are entitled to participate in the proceeding as parties under terms and conditions established by the Board of Safety Review in its Rules of Procedure. Notice of intent to participate shall be by a petition for intervention which must meet the requirements of IC 4-21.5-3-21 and be sent to:

Board of Safety Review

Indiana Government Center-South

402 West Washington Street, Room W195

Indianapolis, Indiana 46204

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace)

(2) The notice required by subsection (b)(1) need not be served upon an employee representative who filed a petition for review and need not be posted if all affected employees are represented by the employee representative who filed the petition for review.

(c) If the commissioner denied the petition for modification of abatement date, he shall within fifteen days of granting the petition for review file a response setting forth the reasons for such denial.

(d) If an employee or employee representative petitions for review of the Commissioner's action granting or denying a petition for modification of abatement date, he shall within fifteen days of the Commissioner's granting the petition for review file a response setting forth the reasons for his opposition to the Commissioner's action.

(e) The Board shall schedule hearings on petitions for modification of abatement date in an expedited manner.

(f) An employer petitioning for a modification of abatement period shall have the burden of proving that such employer has made a good faith effort to comply with the abatement requirements of the safety order and that abatement has not been completed because of factors beyond the employer's control. (*Board of Safety Review; 615 IAC 1-2-11; filed Nov 12, 1987, 9:30 am: 11 IR 1272; errata filed Sep 7, 2001, 10:20 a.m.: 25 IR 106; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-12 Consolidation of cases

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 12. Cases may be consolidated on the motion of any party or on the Board's own motion where there exists common parties, common questions of law or fact, or both. (*Board of Safety Review; 615 IAC 1-2-12; filed Nov 12, 1987, 9:30 am: 11 IR 1272; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-13 Discovery

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 13. (a) Pursuant to Trial Rule 28(F) of the Indiana Rules of Trial Procedure any party to a hearing before the Board of Safety Review shall be entitled to use the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure.

Protective and other orders shall be obtained first from the Board, and if enforcement of such orders or right of discovery is necessary, it may be obtained in a court of general jurisdiction in the county where discovery is being made or sought, or where the hearing is being held.

(b) For the purposes of this section, unless the context requires otherwise, references in Trial Rules 26 through 37 to “the court” shall be deemed references to the Board.

(c) No deposition or request for discovery or response thereto under Trial Rules 27, 30, 31, 33, 34 or 36 shall be filed with the Board unless:

(1) a motion is filed pursuant to T.R. 26(C) or T.R. 37 and the original deposition or request for discovery or response thereto is necessary to enable the Board to rule; or

(2) a party desires to use the deposition or request for discovery or response thereto for evidentiary purposes at trial or in connection with a motion, and the Board, either upon its own motion or that of any party, or as a part of any prehearing order, orders the filing of the original.

(d) Custody of Original and Period of Retention:

(1) The original of a deposition shall, subject to the provisions of Trial Rule 30(E), be delivered by the reporter to the party taking it and shall be maintained by that party until filed with the Board pursuant to subsection (c) or until the later of the Board's final order, agreed settlement of the proceeding or all appellate rights have been exhausted.

(2) The original or any request for discovery or response thereto under Trial Rules 27, 30, 31, 33, 34 and 36 shall be maintained by the party originating the request or response until filed with the Board pursuant to subsection (c) or until the later of the Board's final order, agreed settlement or all appellate rights have been exhausted.

(e) In the event it is made to appear to the satisfaction of the Board that the original of a deposition or request for discovery or response thereto cannot be filed with the Board when required, the Board may allow use of a copy instead of the original. (*Board of Safety Review; 615 IAC 1-2-13; filed Nov 12, 1987, 9:30 am: 11 IR 1272; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-14 Notices of hearing; posting and service on employee representatives

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 14. Upon receipt of a Notice of Hearing the employer shall:

(1) serve it on any employee representative; and

(2) post it, in a place where affected employees will have an opportunity to review it, and maintain posting until commencement of the hearing or earlier disposition.

(*Board of Safety Review; 615 IAC 1-2-14; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-15 Statement of position

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 15. At any time prior to the commencement of the hearing, any party may file a Statement of Position with respect to any or all of the issues to be heard. (*Board of Safety Review; 615 IAC 1-2-15; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-16 Briefs and proposed findings

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-29; IC 22-8-1.1

Sec. 16. (a) Prior to the close of hearing, the administrative law judge may, and upon the request of a party shall, allow the parties to file proposed findings, a brief, or both within a designated amount of time.

(b) Prior to the close of oral argument held pursuant to IC 4-21.5-3-29(d) or (e), the Board may, and upon the request of a party shall, allow the parties to file proposed findings, a brief, or both within a designated amount of time. (*Board of Safety Review; 615 IAC 1-2-16; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-17 Withdrawal of petitions for review

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 17. (a) Any party may withdraw its petition for review in writing at any stage of a proceeding.

(b) Upon receipt of such a withdrawal, the Board shall issue an appropriate order which unless justice clearly requires otherwise shall affirm the action of the Commissioner to which the petition for review had objected. (*Board of Safety Review; 615 IAC 1-2-17; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-18 Settlement agreements

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1

Sec. 18. (a) Settlement at any stage of the proceeding is encouraged where the proposed settlement is consistent with the provisions and objectives of the law.

(b) Settlement agreements shall:

(1) be in writing;

(2) be accompanied by a proposed order;

(3) prior to being filed with the Board:

(A) be served on any other parties to the proceedings;

(B) be served on any employee representative by the employer if the employee representative is not required to be served under subsection (b)(3)(A); and

(C) be posted by the employer, in a place where affected employees will have an opportunity to review it, for a period of three working days or until abatement is completed, whichever period is longer.

(*Board of Safety Review; 615 IAC 1-2-18; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-19 Employees and employee representatives of final orders; notification

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3-27; IC 4-21.5-3; IC 22-8-1.1

Sec. 19. Upon receipt of a final order issued by the board under IC 4-21.5-3-27 or IC 4-21.5-3-29 or a modified order under IC 4-21.5-3-31, the employer shall;

(1) serve it on any employee representatives which are not parties to the proceeding; and

(2) post it, in a place where affected employees will have an opportunity to review it, for a period of three working days or until abatement is completed, whichever period is longer.

(*Board of Safety Review; 615 IAC 1-2-19; filed Nov 12, 1987, 9:30 am: 11 IR 1273; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

615 IAC 1-2-20 Protection of trade secrets

Authority: IC 4-21.5-3-35; IC 22-8-1.1-48.1

Affected: IC 4-21.5-3; IC 22-8-1.1-48.4

Sec. 20. (a) Any information reported to or otherwise obtained by the Board that contains or might reveal a trade secret shall be considered confidential and pursuant to IC 22-8-1.1-48.4 disclosed only to the extent necessary for the Board to carry out its functions.

(b) The Board shall issue such orders as may be appropriate, including the impoundment of files, or portions of files, to protect the confidentiality of trade secrets. (*Board of Safety Review; 615 IAC 1-2-20; filed Nov 12, 1987, 9:30 am: 11 IR 1274; readopted filed Nov 13, 2001, 9:55 a.m.: 25 IR 1305*)

BOARD OF SAFETY REVIEW

*