

**24 NCAC 03 .0305 PETITION FOR MODIFICATION OF ABATEMENT PERIOD**

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

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

- (1) All steps taken by the employer and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
- (2) The specific additional abatement time necessary in order to achieve compliance.
- (3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
- (4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (5) A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with Subparagraph (c)(1) of this Rule and a certification of the date upon which such posting and service was made.
- (6) A separate declaration listing all parents, subsidiaries, and affiliates, or stating that none exist, if the petitioner is a corporation.

(c) A petition for modification of abatement date shall be filed with the Director of the Office of Occupational Safety and Health no later than the close of the working day on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

- (1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted in accordance with Rule .0107(j) of this Chapter. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.
- (2) Affected employees or their representative may file an objection in writing to such petition with the Director. Failure to file such objection within 15 working days of the date of posting of such petition and of service upon an authorized representative, where required, shall constitute a waiver of any further right to object to said petition.
- (3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to Paragraph (b) and (c) of this Rule. Such uncontested petitions shall become final orders pursuant to N.C.G.S. Section 95-137(b)(1) and (4).
- (4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of 15 working days from the date the petition was posted or served pursuant to Subparagraphs (c)(1) and (2) of this Rule by the employer.

(d) Where any petition is objected to by the Commissioner or affected employees, the petition, citation, and any objections shall be forwarded to the Review Board within seven working days after the expiration of the 15 working-day period set out in Subparagraph (c)(4) of this Rule.

- (1) The Review Board shall docket and process such objections as expedited proceedings as provided for in Rule .0702 of this Chapter.
- (2) An employer petitioning for modification of abatement period shall have the burden of proving in accordance with the requirements of N.C.G.S. Section 95-137(b)(4) that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's reasonable control.
- (3) Within 10 working days after receipt of notice of docketing by the Review Board of any objection to the Petition for Modification of Abatement Date, each objecting party shall file a response setting forth the reasons for opposing the granting or not granting of a modification date different from that requested in the petition.

*History Note: Authority G.S. 95-135;  
Temporary Rule Eff. October 2, 1991 For a Period of 180 Days to Expire on March 30, 1992;  
Eff. February 3, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*