
§ 1920.1 Purpose.

This part governs the procedure for the granting of variations from the safety and health regulations established pursuant to section 41 of the Longshoremen’s and Harbor Workers’ Compensation Act. The part provides the same procedures under this Act as are available for considering variances under the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

[37 FR 10800, May 31, 1972]

§ 1920.2 Variances.

(a) Variances from standards in parts 1915 through 1918 of this chapter may be granted in the same circumstances in which variances may be granted under sections 6(b) (6)(A) or 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The procedures for the granting of variances from Parts 1915-1918 of this chapter are those published in Part 1905 of this chapter.

(b) Any requests for variances shall also be considered requests for variances under the Williams-Steiger Occupational Safety and Health Act of 1970, and any variance from §§1910.13 through 1910.16 of this chapter which adopt parts 1915-1918 of this chapter shall be deemed a variance from the standard under both the Longshoremen’s and Harbor Workers’ Compensation Act and the Williams-Steiger Occupational Safety and Health Act of 1970.

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Authority: Sec. 41, Longshoremen’s and Harbor Workers’ Compensation Act (33 U.S.C. 941); 5 U.S.C. 301.


Subpart A—Applicability of Rules; Definitions

§ 1921.1 Applicability of rules.
This part provides rules of practice for administrative hearings relating to the enforcement of section 41 of the Longshoremen’s and Harbor Workers’ Compensation Act and the safety regulations promulgated thereunder which are published in parts 1915 and 1918 of this subtitle. This part applies only to proceedings held under section 41(b)(5) of the Act. It does not apply to any other administrative proceedings held under section 41 of the Act.

§ 1921.2 Definitions.
(a) Act means the Longshoremen’s and Harbor Workers’ Compensation Act.

(b) Chief Hearing Examiner means the Chief Hearing Examiner, United States Department of Labor, Washington DC 20210.

(c) Respondent means the person or organization proceeded against.

(d) Assistant Secretary means the Assistant Secretary for Occupational Safety and Health.
complaint shall constitute an admission of such allegation.

(c) Procedure upon admission of facts. The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of facts, the hearing examiner without further hearing shall prepare his decision in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to his decision, and to file briefs in support of the exceptions.

§ 1921.5 Motions and requests.

Motions or requests shall be filed with the Chief Hearing Examiner, except that those made during the course of the hearing shall be filed with the hearing examiner or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The hearing examiner is authorized to rule upon all motions or requests filed or made prior to the filing of his report.

§ 1921.6 Intervention.

At any time after the institution of proceedings and before the hearing examiner makes his decision, the hearing examiner may, upon petition in writing and for good cause shown, permit any interested person, including an employer, employee, labor or trade organization, or Federal or State agency, to intervene therein. The petition shall state with precision and particularity:

(a) The petitioner's relationship to the matters involved in the proceedings;

(b) The nature of any material he intends to present in evidence;

(c) The nature of any argument he intends to make, and

(d) Any other reason that he should be allowed to intervene.

§ 1921.7 Stipulations of compliance.

At any time prior to the issuance of a complaint in the proceeding, the Assistant Solicitor in charge of trial litigation may in his discretion, enter into stipulations with the prospective respondent, whereby the latter admits the material facts and agrees to discontinue the acts or practices which are intended to be set up as violative of the Act or parts 1915 and 1918 of this subtitle. Such stipulations shall be admissible as evidence of such acts and practices in any subsequent proceeding in law or equity or under these regulations against such person.

§ 1921.8 Consent findings and order.

(a) General. At any time after the issuance of a complaint and prior to the reception of evidence in any proceeding, the respondent may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) Content. Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner or the Director; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the hearing examiner for his consideration; or

(2) Inform the hearing examiner that agreement cannot be reached.

(d) Disposition. In the event an agreement containing consent findings and an order is submitted within the time

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allowed therefor, the hearing examiner within 30 days thereafter shall accept such agreement by issuing his decision based upon the agreed findings.

§ 1921.9 Prehearing conferences.
(a) Upon his own motion or the motion of the parties, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:
1. Simplification of the issues;
2. Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;
3. Stipulations, admissions of fact and of contents and authenticity of documents;
4. Limitation of the number of expert witnesses; and
5. Such other matters as may tend to expedite the disposition of the proceeding.
(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

Subpart C—Hearing and Related Matters
§ 1921.10 Appearances.
(a) Representation. The parties may appear in person or by counsel. The term “counsel” means a member in good standing of the bar of a Federal Court or of the highest court of any State or Territory of the United States.
(b) Failure to appear. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner’s decision and to file exceptions thereto.

§ 1921.11 Postponement or change of place of hearing.
If in the judgment of the hearing examiner convenience or necessity so requires, he may postpone the time or change the place of the hearing.

§ 1921.12 Hearing.
(a) Order of proceeding; burden of proof. Except as may be determined otherwise by the hearing examiner, counsel supporting the complaint shall proceed first at the hearing. The Assistant Solicitor of Labor in charge of trial litigation, supporting the complaint, shall have the burden of proof. The burden of proof shall be satisfied by a preponderance of the evidence.
(b) Evidence—(1) In general. The testimony of witnesses shall be upon oath or affirmation administered by the hearing examiner and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The hearing examiner shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.
(2) Objections. If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceeding.
(c) Exceptions. Formal exception to an adverse ruling is not required.
(d) Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department by reason of its functions is presumed to be expert; Provided, That the parties shall be given adequate notice, at the hearing or by reference in the hearing examiner’s decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.
(e) Oral argument before the hearing examiner. Oral argument before the hearing examiner may be allowed. However, such argument may be limited by the hearing examiner to any extent that he finds necessary for the expeditious disposition of the proceeding.
the transcript may be obtained by the parties upon written application filed with the reporter, and upon the payment of fees at the rate provided in the agreement between the Assistant Secretary and the reporter.

Subpart D—Decision and Order

§ 1921.13 Decision of the hearing examiner.

(a) Filing of transcript of evidence. As soon as practicable after the close of the hearing, the reporter shall transmit to the Chief Hearing Examiner the copies of the transcript of the testimony and the exhibits introduced in evidence at the hearing except such copies of the transcript and exhibits as are forwarded to the hearing examiner.

(b) Proposed findings of fact, conclusions, and orders. Within 10 days after receipt of notice that the transcript of the testimony has been filed or such additional time as the hearing examiner may allow, each party may file with the hearing examiner proposed findings of fact, conclusions of law, and order, together with a supporting brief including the reasons for any proposals. Such proposals shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

(c) Decision of the hearing examiner. Within a reasonable time after the termination of the time allowed for the filing of proposed findings of fact, conclusions of law, and orders, or after the date of submission of an agreement containing consent findings and order, the hearing examiner shall prepare his decision, which shall become the decision of the Assistant Secretary 20 days after service thereof unless exceptions are filed thereto, as provided in §1921.14 except in cases dealt with in §1921.8(b).

(b) When a final order of the Assistant Secretary issued pursuant to...
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§ 1921.13(c) or paragraph (a) of this section has been in force for 2 years or more, a party may file with the Assistant Secretary a petition for modification or vacation of the order. Such petition must be in writing, and must be based upon satisfactory compliance with the order during the 24 months immediately preceding the filing thereof and upon such changes in conditions and circumstances as to demonstrate, if established, that a continuation of the order in full force and effect is no longer required to assure satisfactory compliance with the regulations under the order. Such changes in conditions and circumstances as are relied upon must be expressly set forth together with the reasons why petitioner believes relief is justified and the precise nature of the relief sought. The petition may be supported by affidavits as to matters of fact.

(c) If, after such investigation as the Assistant Secretary deems appropriate, in his judgment sufficient cause has been shown to justify the relief requested, he will enter an order granting relief. If in his judgment, sufficient cause has not been shown he shall so notify petitioner, who may then in writing request a hearing. Upon receipt of such request the Assistant Secretary will refer the petition with its supporting documents and the request to the Chief Hearing Examiner who will assign the matter for a hearing to be held on not less than 10 days notice at a time and place to be set by the hearing examiner. The Deputy Solicitor of Labor may file a pleading and otherwise appear in opposition to the petition. The hearing will be subject to all of the provisions of §§ 1921.9 through 1921.22.

[31 FR 11144, Aug. 23, 1966]

Subpart E—Miscellaneous

§ 1921.18  Witnesses and fees.
Witneses subpoenaed by any party shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 1921.19  Depositions.
(a) When, how, and by whom taken. For good cause shown, the testimony of any witness may be taken by deposition in any proceeding, when a complaint has been filed, whether at issue or not. Depositions may be taken orally or upon written interrogatories before any person designated by the hearing examiner and having power to administer oaths.

(b) Application. Any party desiring to take the deposition of a witness shall make application in writing to the hearing examiner, setting forth the reasons why such deposition should be taken; the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each witness is expected to testify.

(c) Notice. Such notice as the hearing examiner shall order shall be given for the taking of a deposition, but this shall not be less than 5 days' written notice when the deposition is to be taken within the United States and not less than 15 days' written notice when the deposition is to be taken elsewhere.
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(d) Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

§ 1921.20 Subpoenas.

All applications for subpoenas ad testificandum and subpoenas duces tecum shall be made in writing to the hearing examiner. Application for subpoenas duces tecum shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 1921.21 Hearing examiners.

(a) Who presides. All hearings shall be presided over by a hearing examiner appointed under section 11 of the Administrative Procedure Act.

(b) How assigned. The presiding hearing examiner shall be designated by the Secretary or the Chief Hearing Examiner.

(c) Powers. Hearing examiners shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

1. To administer oaths and affirmations;

2. To issue subpoenas upon proper application as provided in §1921.20;

3. To rule upon offers of proof and receive relevant evidence;

4. To take or cause to be taken depositions and to determine their scope;

5. To regulate the course of the hearing and the conduct of the parties and their counsel therein;

6. To hold conferences for the settlement or simplification of the issues by consent of the parties;

7. To consider and rule upon procedural requests;

8. To make and file decisions in conformity with this part;

9. To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act.

(d) Consultation. The hearing examiner shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(e) Disqualification of hearing examiners. (1) When a hearing examiner deems himself disqualified to preside in a particular proceeding, he shall withdraw therefore from the record directed to the Chief Hearing Examiner.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Hearing Examiner a motion to disqualify and remove such hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(f) Contemptuous conduct; failure or refusal of a witness to appear or answer. In the event of contemptuous conduct, including the failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper, the hearing examiner may take any action reasonable under 41 CFR 50–203.8(l), promulgated under section 5 of the Act of June 30, 1936 (41 U.S.C. 39).

§ 1921.22 Computation of time.

Sundays and holidays shall be included in computing the time allowed for filing any document or paper under this part. When such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.