

Assistant Secretary shall render his decision, which shall adopt, modify, or set aside the findings, conclusions, and order contained in the decision of the hearing examiner, and shall include a statement of the reasons or bases for the action taken. With respect to the findings of fact, the Assistant Secretary shall upset only those findings that are clearly erroneous. Copies of the decision and order shall be served upon the parties.

(b) When a final order of the Assistant Secretary issued pursuant to § 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

#### § 1921.17 Service; copies of documents and pleadings.

(a) *Manner of service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy or mailing a copy to the last known address. If the person upon whom service is made by mail resides 500 miles or more from the party effecting service, such mailing must be by airmail. When a party is represented by an attorney the service may be upon the attorney.

(b) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be proof of the service of the pleading or other document.

(c) *Service upon Department, number of copies of pleading or other documents.* An original and three copies of all pleadings and other documents shall be filed with the Department of Labor, whether to the Assistant Solicitor in charge of trial litigation, the hearing examiner, or the Assistant Secretary, as the case may be.

#### § 1921.18 Witnesses and fees.

Witnesses 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

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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.

(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 by the party taking it 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

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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 applications 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 therefrom by notice on 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(1), 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.

**PART 1922—INVESTIGATIONAL HEARINGS UNDER SECTION 41 OF THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT**

Sec.

- 1922.1 Definitions.
- 1922.2 Purpose and scope.
- 1922.3 Composition of the Board.
- 1922.4 Responsibilities of the Board; voting.
- 1922.5 Notice of investigational hearings.
- 1922.6 Investigational hearings.

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

**SOURCE:** 27 FR 4168, May 2, 1962, unless otherwise noted. Redesignated at 28 FR 7909, Aug. 2, 1963, and further redesignated at 36 FR 25232, Dec. 30, 1971.

**§ 1922.1 Definitions.**

- (a) *Act* means the Longshoremen's and Harbor Workers' Compensation Act.
- (b) *Board* means the Board of Investigation.
- (c) *Administration* means the Occupational Safety and Health Administration.
- (d) *Assistant Secretary* means the Assistant Secretary for Occupational Safety and Health.
- (e) *Injury* means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury.

**§ 1922.2 Purpose and scope.**

Whenever any serious injury results from the employments covered by the Act or whenever it is otherwise appropriate, the Assistant Secretary may appoint a Board of Investigation to hold an investigational hearing during the course of any investigation made under section 41 of the Act. This part prescribes the manner in which any investigational hearings shall be conducted. This part does not apply to any adjudicative proceedings held under section 41(b)(5) of the Act.

**§ 1922.3 Composition of the Board.**

The Board shall be composed of three members appointed by the Assistant Secretary, one of whom shall be designated as Chairman. All members shall be employees of the United States Department of Labor, and shall have experience in the field of maritime safety.

**§ 1922.4 Responsibilities of the Board; voting.**

(a) *Determinations and recommendations.* To the extent possible, the Board shall determine the facts, conditions, and circumstances relating to any injury or condition which is the subject of investigation, the probable cause thereof, and shall recommend measures which will provide the best means of preventing future injuries or conditions of similar character. The determinations and recommendations shall be made after hearing such witnesses and receiving such documents and other data relating to the subject or subjects of investigation as may be found available as a result of preliminary investigation.

(b) *Report.* Upon completion of the investigational hearing, the Board shall file a report of its investigation with the Assistant Secretary. The report shall contain the determinations and recommendations required under paragraph (a) of this section. Any member may file a separate report in order to express determinations, recommendations, or reasons for determinations or recommendations which differ from those of a majority of the Board.