

## § 1921.16

the testimony taken at the hearing, together with the exhibits filed; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, and orders, and supporting reasons, as may have been filed in connection with the hearing; the hearing examiner's decision; and such exceptions, statements of objections, and briefs in support thereof, as may have been filed in the proceeding.

### § 1921.16 Decision and order of the Director.

(a) Upon the basis of and after due consideration of the whole record, the 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 grant-

## 29 CFR Ch. XVII (7-1-13 Edition)

ing 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.