

who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) *Duration of posting.* Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

[51 FR 32015, Sept. 8, 1986; 52 FR 13831, Apr. 27, 1987, as amended at 57 FR 41684, Sept. 11, 1992; 58 FR 26065, Apr. 30, 1993; 62 FR 35963, July 3, 1997]

§ 2200.8 Filing.

(a) *What to file.* All papers required to be served on a party or intervenor, except for those papers associated with part of a discovery request under Rules 52 through 56, shall be filed either before service or within a reasonable time thereafter.

(b) *Where to file.* Prior to assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at One Lafayette Centre, 1120-20th Street, NW., Suite 980, Washington, DC 20036-3419. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(c) *How to file.* Unless otherwise ordered, all filing may be accomplished by postage-prepaid first class mail or by personal delivery.

(d) *Number of copies.* Unless otherwise ordered or stated in this part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and eight copies of a document shall be filed.

(e) *Filing date.* Filing is effective upon mailing (if by mail) or upon receipt by the Commission (if filing is by personal delivery, overnight delivery service, or facsimile transmission), except that the filing of petitions for discretionary review is effective only upon receipt by the Commission. See § 2200.91.

(f) *Facsimile transmissions.* (1) Any document may be filed with the Commission or its Judges by facsimile transmission. Filing shall be deemed completed at the time that the facsimile transmission is received by the Commission or the Judge. The filed facsimile shall have the same force and effect as the original.

(2) All facsimile transmissions shall include a facsimile of the appropriate certificate of service.

(3) Within 3 days after the Commission or the Judge has received the facsimile, the party filing the document shall forward to the Commission or the Judge a signed, original document and, where appropriate, the proper number of multiple copies.

(4) It is the responsibility of parties desiring to file documents by the use of facsimile transmission equipment to utilize equipment that is compatible with facsimile transmission equipment operated by the Commission. Legibility of the transmitted documents is the responsibility of the serving party.

[57 FR 41684, Sept. 11, 1992, as amended at 58 FR 26065, Apr. 30, 1993; 62 FR 35963, July 3, 1997]

§ 2200.9 Consolidation.

Cases may be consolidated on the motion of any party, on the Judge's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact or in such other circumstances as justice or the administration of the Act require.

[51 FR 32015, Sept. 8, 1986; 52 FR 13831, Apr. 27, 1987; 52 FR 19631, May 26, 1987]

§ 2200.10 Severance.

Upon its own motion, or upon motion of any party or intervenor, where a showing of good cause has been made by the party or intervenor, the Commission or the Judge may order any proceeding severed with respect to some or all claims or parties.

[57 FR 41684, Sept. 11, 1992]

§ 2200.11 Protection of claims of privilege.

(a) *Scope.* This section applies to all claims of privilege, whenever asserted. It applies to privileged information,

such as trade secrets and other matter protected by 18 U.S.C. 1905, and other information the confidentiality of which is protected by law. As it is used in this section, “privileged information” encompasses such confidential information.

(b) *Assertion of a privilege.* A person claiming that information is privileged shall claim the privilege in writing or, if during a hearing, on the record. The claim shall (1) identify the information that would be disclosed and for which a privilege is claimed, and (2) allege with specificity the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order or by a motion that the allegedly privileged information be received and the claim be ruled upon *in camera*, that is, with the record and hearing room closed to the public, or *ex parte*, that is, without the participation of parties and their representatives.

(c) *Opposition to the claim.* A party wishing to make a response opposing a claim of privilege, or asserting a substantial need for disclosure in the event a qualified privilege exists, must do so within 15 days but, if the motion is made during a hearing, the Judge may prescribe a shorter time or require that the response be made during the hearing. A response contravening the facts stated by the claimant of the privilege shall be supported by affidavits, depositions, or testimony.

(d) *Examination of claim.* In examining a claim of privilege, the Judge may enter such orders and impose such terms and conditions on his examination as justice may require, including orders designed to assure that the alleged privileged information not be disclosed until after the examination is completed. The Judge may:

(1) Receive the allegedly privileged information *in camera*; he may temporarily seal the portions of the record containing the allegedly privileged information and may exclude the public from the hearing room.

(2) Receive the allegedly privileged information *ex parte*; he may order that the allegedly privileged information not be heard or served on all parties

and their representatives; he may hear or examine it without the presence of all parties and their representatives.

(3) Order the preparation of a summary of the allegedly privileged information; he may order that a copy of a document be prepared with the allegedly privileged information excised; he may order that such summaries or documents be served upon other parties or their representatives.

(4) Enter a protective order. See paragraphs (e) and (f) of this section.

(e) *Upholding of claim.* If a claim of privilege is upheld, the Judge may enter such orders and impose such terms and conditions as justice may require, including orders that the privileged information not be disclosed or be disclosed in a specified manner. The Judge may: exclude the privileged information from the record; enter orders under § 2200.52(d), including an order that discovery not be had; revoke or modify a subpoena; and permanently seal that portion of the record or other files of the Commission containing the privileged information, permitting access only to the Commission and any reviewing court. The Judge may also permit the information to be disclosed only to persons covered by protective orders under § 2200.52(d) and paragraph (f) of this section.

(f) *Protective orders.* To govern the examination of a claim of privilege or to govern the treatment of privileged information, the Judge may enter protective orders under § 2200.52(d). The Judge may decline to permit disclosure to persons against whom the Commission could not enforce the order. The order may require that—

(1) An attorney or other representative not disclose the allegedly privileged information to any person, including his client.

(2) Any person to whom the material will be disclosed sign a written confidentiality agreement that the material will not be disclosed except under stated terms and conditions and that stipulates a reasonable preestimate of likely damages.

(3) In the case of an entry upon land, the case be stayed to allow the party seeking entry an opportunity to seek an order of a court or search warrant with protective conditions.

(g) *Rejection of claim.* If the Judge overrules a claim of privilege, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

[51 FR 32015, Sept. 8, 1986; 52 FR 13831, Apr. 27, 1987, as amended at 62 FR 35963, July 3, 1997]

§ 2200.12 References to cases.

(a) *Citing decisions by Commission and Judges—*(1) *Generally.* Parties citing decisions by the Commission should include in the citation the name of the employer, a citation to either the Bureau of National Affairs' Occupational Safety and Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD"), the OSHRC docket number and the year of the decision. For example, *Clement Food Co.*, 11 BNA OSHC 2120 (No. 80-607, 1984).

(2) *Parenthetical statements.* When citing the decision of a Judge, the digest of an opinion, or the opinion of a single Commissioner, a parenthetical statement to that effect should be included. For example, *Rust Engineering Co.*, 1984 CCH OSHD ¶27,023 (No. 79-2090, 1984) (view of Chairman _____), *vacating direction for review of 1980 CCH OSHD ¶24,269 (1980) (ALJ) (digest).*

(3) *Additional reference to OSAHRC Reports optional.* A parallel reference to the Commission's official reporter, OSAHRC Reports, which prints the full text of all Commission and Judges' decisions in microfiche form, may also be included. For example, *Texaco, Inc.*, 80 OSAHRC 74/B1, 8 BNA OSHC 1758 (No. 77-3040, 1980). See generally 29 CFR 2201.4(c) (on OSAHRC Reports).

(b) *References to court decisions—*(1) *Parallel references to BNA and CCH reporters.* When citing a court decision, a parallel reference to either the Bureau of National Affairs' Occupational Safety and Health Cases ("BNA OSHC") or Commerce Clearing House's Occupational Safety and Health Decisions ("CCH OSHD") is desirable. For exam-

ple, *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 12 BNA OSHC 1401 (D.C. Cir. 1985); *Deering Milliken, Inc. v. OSHRC*, 630 F.2d 1094, 1980 CCH OSHD ¶24,991 (5th Cir. 1980).

(2) *Name of employer to be indicated.* When a court decision is cited in which the first-listed party on each side is either the Secretary of Labor (or the name of a particular Secretary of Labor), the Commission, or a labor union, the citation should include in parenthesis the name of the employer in the Commission proceeding. For example, *Donovan v. Allied Industrial Workers (Archer Daniels Midland Co.)*, 760 F.2d 783, 12 BNA OSHC 1310 (7th Cir. 1985); *Donovan v. OSHRC (Mobil Oil Corp.)*, 713 F.2d 918, 1983 CCH OSHD ¶26,627 (2d Cir. 1983).

[51 FR 32015, Sept. 8, 1986; 52 FR 13831, Apr. 27, 1987]

Subpart B—Parties and Representatives

§ 2200.20 Party status.

(a) *Affected employees.* Affected employees and authorized employee representatives may elect party status concerning any matter in which the Act confers a right to participate. The election shall be accomplished by filing a written notice of election at least 10 days before the hearing. A notice of election filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice. A notice of election shall be served on all other parties in accordance with §2200.7.

(b) *Employee contest.* Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status by a notice filed at least ten days before the hearing. A notice filed less than ten days prior to the hearing is ineffective unless good cause is shown for not timely filing the notice.

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