

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]

EFFECTIVE DATE NOTE: At 70 FR 22788, May 3, 2005, § 2200.11 was removed and reserved, effective Aug. 1, 2005.

#### § 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 example, *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,

## § 2200.21

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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### § 2200.21 Intervention; appearance by non-parties.

(a) *When allowed.* A petition for leave to intervene may be filed at any time prior to ten days before commencement of the hearing. A petition filed less than ten days prior to the commencement of the hearing will be denied unless good cause is shown for not timely filing the petition. A petition shall be served on all parties in accordance with § 2200.7.

(b) *Requirements of petition.* The petition shall set forth the interest of the petitioner in the proceeding and show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unduly delay the proceeding.

(c) *Granting of petition.* The Commission or Judge may grant a petition for intervention to such an extent and upon such terms as the Commission or the Judge shall determine.

### § 2200.22 Representation of parties and intervenors.

(a) *Representation.* Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney. A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(b) *Affected employees in collective bargaining unit.* Where an authorized employee representative (see § 2200.1(g)) elects to participate as a party, affected employees who are members of the collective bargaining unit may not separately elect party status. If the authorized employee representative does

## 29 CFR Ch. XX (7-1-05 Edition)

not elect party status, affected employees who are members of the collective bargaining unit may elect party status in the same manner as affected employees who are not members of the collective bargaining unit. See paragraph (c) of this section.

(c) *Affected employees not in collective bargaining unit.* Affected employees who are not members of a collective bargaining unit may elect party status under § 2200.20(a). If more than one employee so elects, the Judge shall provide for them to be treated as one party.

(d) *Control of proceeding.* A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

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

### § 2200.23 Appearances and withdrawals.

(a) *Entry of appearance—(1) General.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor in accordance with paragraph (a)(2) of this section, or thereafter by filing an entry of appearance in accordance with paragraph (a)(3) of this section.

(2) *Appearance in first document or pleading.* If the first document filed on behalf of a party or intervenor is signed by a representative, he shall be recognized as representing that party. No separate entry of appearance by him is necessary, provided the document contains the information required by § 2200.6.

(3) *Subsequent appearance.* Where a representative has not previously appeared on behalf of a party or intervenor, he shall file an entry of appearance with the Executive Secretary, or Judge if the case has been assigned. The entry of appearance shall be signed by the representative and contain the information required by § 2200.6.

(b) *Withdrawal of counsel.* Any counsel or representative of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel or representative of record for him, must file a motion with the Commission or Judge requesting