

PART 1921—RULES OF PRACTICE IN ENFORCEMENT PROCEEDINGS UNDER SECTION 41 OF THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

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

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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.

Subpart B—Prehearing Procedures

§ 1921.3 Complaints.

(a) *Issuance.* The Deputy Solicitor of Labor shall institute enforcement proceedings by issuing a complaint and causing the complaint to be served upon the respondent.

(b) *Contents.* The complaint shall contain a clear and concise factual statement sufficient to inform the respondent with reasonable definiteness of the types of acts or practices alleged to have occurred and to violate section 41 of the Act or the provisions of parts 1915 and 1918 of this subtitle.

(c) *Amendments.* At any time prior to the close of the hearing, the complaint may be amended in the discretion of the hearing examiner and on such terms as he may approve.

(d) *Notice of hearing.* The hearing examiner shall notify the parties of the time and place for a hearing within 10 days after the service of the complaint.

§ 1921.4 Answer.

(a) *Filing and service.* Within 14 days after the service of the complaint, the respondent shall file an answer with the Chief Hearing Examiner. The answer shall be signed by the respondent or his attorney.

(b) *Contents; failure to file.* The answer shall:

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(1) Contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or

(2) State that the respondent admits all of the allegations of the complaint. The answer may contain a waiver of hearing.

Failure to file an answer to or plead specifically to any allegation of the 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,

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(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