

modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the guidelines effective? See Rule § 312.10(b)(3).⁴ If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) how the proposed guidelines could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

6. Please comment on the effectiveness of automation in the proposed guidelines and describe other means or mechanisms, if any, PrivacyBot.com should consider for its safe harbor program.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-777]

RIN 1218-AB36

Ergonomics Program

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; procedures for informal public hearing; rescheduling of informal public hearing; additional information and clarifications.

SUMMARY: OSHA is setting hearing and post-hearing procedures for its proposed Ergonomics Program standard published in the **Federal Register** on November 23, 1999. These procedures, which are provided as an alternative to the procedures the Agency usually uses, address: the hearing schedule, the nature of the hearing, availability of hearing testimony, the conduct of the rulemaking hearing, and post-hearing submissions. OSHA is issuing these procedures to ensure that the hearings proceed in a fair, orderly, and timely manner even though a very large number of parties have filed notices of

intent to appear at them. This document will enable the hearing participants to plan their activities in advance. This document also specifies the dates and locations of the hearings.

DATES: The hearing will begin on Monday, March 13, 2000, in Washington, D.C. The hearing in Washington will run for 4 weeks through April 7. The hearing will resume on April 11, in Chicago, Illinois, and will continue there until April 21. The hearing will then resume in Portland, Oregon on April 24 and run until May 3. The final week of the hearing will be May 8 through 12 at a location to be determined in Washington, D.C. The hearing will begin at 9:30 a.m. on March 13; on subsequent days, the starting time will be 8:30 a.m. The hearing will ordinarily conclude by 6:00 p.m. each day; however, in order to assure orderly development of the record on any particular day, the Administrative Law Judge may extend the hearing that day. All questioning of public participants will be completed on the day the participants testify.

ADDRESSES: The March 13 through April 7 hearing in Washington will be in the Frances Perkins Building Auditorium in the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The hearing in Chicago will be held at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 W. Randolph Street, in Chicago, Illinois. The hearing in Portland will be held at the Mark Hatfield Federal Court House, Courtroom #16, 1000 Southwest 3rd Avenue, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693-2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION: The procedures for the hearings on the Ergonomics Program Standard follow:

Hearing and Post-Hearing Procedures

I. General Information

1. *Authority.* The following procedures will be utilized in the public hearing on OSHA's proposed Ergonomics Program Standard (64 FR 65768; 65 FR 4795). OSHA rulemaking hearings are conducted in accord with Section 6(b)(3) of the OSH Act, 29 U.S.C. 655(b)(3), and the Secretary of Labor's procedural regulations in 29 CFR Part 1911. As noted in the Proposal, 64 FR 66065-66066, § 1911.4 allows the Assistant Secretary, upon reasonable notice, to specify additional or alternative procedures for good cause.

This document provides notice that the Assistant Secretary is exercising that

authority in this case. In light of the very large number of parties who have filed notices of intent to appear at the hearings, the Assistant Secretary finds that good cause exists to establish additional procedures in advance to assure that the hearing proceeds in a fair, orderly, and timely manner.

2. *Hearing Dates.* As stated in the **Federal Register** document of February 1, 2000 (65 FR 4795), the hearing will begin on Monday, March 13, 2000 in the Frances Perkins Building Auditorium in the U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC. The hearing in Washington will run for 4 weeks through April 7. The hearing will resume on April 11 at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 W. Randolph Street, in Chicago, Illinois, and will continue there until April 21. The hearing will then resume at the Mark Hatfield Federal Court House, Courtroom #16, 1000 Southwest 3rd Avenue, in Portland, Oregon on April 24 and run until May 3. The final week of the hearing will be May 8 through 12 at a location to be determined in Washington, DC. The hearing will begin at 9:30 a.m. on March 13; on subsequent days, the starting time will be 8:30 a.m. The hearing will ordinarily conclude by 6:00 p.m. each day; however, in order to assure orderly development of the record on any particular day, the Administrative Law Judge may extend the hearing that day. All questioning of public participants will be completed on the day the participants testify.

3. *Nature of Hearing.* This OSHA rulemaking hearing is a legislative-type hearing, not an adjudicative one. It is an informal administrative proceeding, intended for information gathering and clarification. This informal hearing is an adjunct to the written comment period, and is intended to provide interested persons with an additional opportunity to address the Agency and provide testimony and evidence for the rulemaking record. These procedural rules governing the hearing are intended to facilitate the development of a clear, accurate and complete record, while assuring fairness and due process. The rules of evidence and other procedural rules governing adjudications do not apply. Participants who have filed Notices of Intention to Appear may testify and question witnesses in accordance with these procedures (see Section II), but may not issue subpoenas or call to testify any person other than the persons who have agreed to testify for them. Motions to strike evidence will not be considered. The intent is to provide an opportunity for effective oral presentation by interested persons, and

⁴ *Id.*

to avoid procedures which might unduly impede or protract the rulemaking process. 29 CFR 1911.15(c)(3).

4. *Availability of Hearing Testimony.* The February 1, 2000, **Federal Register** document provided that participants submitting documentary evidence or requesting more than 10 minutes for their presentations must submit their evidence and the full text of their written testimony to the docket postmarked no later than March 2, 2000 (65 FR 4795). The materials submitted have been or will be entered into the rulemaking docket (S-777) in the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, where they are available for inspection and copying. This affords all participants an opportunity to review the evidence and to formulate in advance questions they may wish to ask at the hearing.

II. Conduct of the Rulemaking Hearing

1. *Schedule for Testimony.* The Assistant Secretary has established a schedule showing the location and date each participant will testify and be available for questions. A copy of the schedule has been provided to all participants who have filed a notice of intent to appear and is posted on OSHA's Web site (www.osha.gov). Each witness should plan to be present at the start of the day he or she is scheduled to testify. No individual witness will be allowed to present testimony in more than one location, although individuals appearing in a representative capacity may represent participants appearing at different locations. The schedule prescribes the amount of time for each participant to testify, and also allows time for other participants and OSHA representatives to question the witness. The Administrative Law Judge shall assure that the hearing proceeds in a fair and orderly manner so as to facilitate development of the record. Consistent adherence to the schedule will also allow advance planning by participants, many of whom are traveling from a considerable distance to testify.

2. *OSHA Witnesses.* The first witnesses at the Washington hearing on Monday March 13 will be a panel of OSHA representatives. Following the panel's presentation, participants who have filed notices of intent to appear and who wish to question the panel will be given the opportunity to do so. Initially each questioner will be given a 10 minute question period. The judge may adjust this, however, so long as the questioning is completed by March 14. The judge may allow participants

additional question periods if there is time remaining after all participants have had an initial opportunity to question the panel members. The OSHA panel will testify only in Washington, and will be available for questioning only on March 13 and 14.

OSHA's expert witnesses and a panel of witnesses from NIOSH will testify and be questioned March 15 through March 21. Following each panel, participants will be allowed a period of time, as noted in the schedule, to question panel members. The Administrative Law Judge may allow additional questioning so long as the testimony and questioning of each panel is completed on the day it is scheduled.

3. *Public Witnesses.* Participants who have filed timely notices of intention to appear in Washington, DC, are scheduled to make their presentations and be questioned beginning March 21.

4. *General.* Written hearing testimony that is submitted before the hearing is already part of the rulemaking record, and participants who have submitted written testimony in advance will not be permitted to read that testimony at the hearing. Instead, they should use their oral presentation to summarize and clarify their written submissions. Participants may provide additional copies of their testimony for the convenience of other hearing participants.

Participants who have filed Notices of Intention to Appear but have not substantially complied with the requirements for the submission of written testimony and documentary evidence will be allowed a maximum time of 10 minutes for their presentations at the hearing and will be expected to respond to questions following their presentations. If time permits, the Administrative Law Judge may allow persons who have not filed Notices of Intention to Appear an opportunity to testify at the close of the day.

5. *Questioning of Public Witnesses.* Participants who have filed Notices of Intention to Appear may ask questions on relevant issues following a presentation. Representatives of OSHA may also question witnesses. The Administrative Law Judge shall allocate the time allowed in the schedule among questioners. The judge may adjust this time so long as the testimony and questioning of all witnesses scheduled for each day is completed that day.

Questions must be as brief as possible and must be designed to clarify a presentation or elicit information that is within the competence or expertise of the witness. Participants may not ask questions that are outside the scope of

the matters addressed by this rulemaking.

The Administrative Law Judge shall not permit duplicative, argumentative, or irrelevant questions. Questioners will not be permitted to use the question periods to present their own testimony and views on issues.

Participants having similar interests are encouraged to designate one representative who can conduct the questioning on their behalf. When an organization is represented by more than one person, only one person from that organization may question each witness or panel.

After all questioners have had an opportunity to question a witness or panel, if a questioner still has important relevant questions that have not been asked, the questioner may request permission from the Administrative Law Judge to ask additional questions. Permission may be granted based on the time available and the witness schedule.

III. Post-Hearing Submissions

At the close of the hearing, those participants who have filed Notices of Intention to appear will have the opportunity to file additional evidence and data relevant to the proceeding, and to file final written briefs. Additional information and data relevant to the proceeding must be postmarked within 45 days of the close of the hearing; briefs must be postmarked 90 days after the close of the hearing. No reply briefs are to be filed.

At the close of the post-hearing comment period, the hearing record will be closed and certified by the Administrative Law Judge to the Assistant Secretary of Labor for Occupational Safety and Health.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6-96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 1st day of March, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

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