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U.S. Department of Labor

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**OSHA
DOCKET OFFICER**

DATE JUL 17 2008

TIME _____

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Issue Date: 15 July 2008

Case No.: 2008-OSH-00002

PRE-HEARING GUIDELINES

TO: Participants in the Informal Public Hearings on the Proposed Rule to Revise OSHA's Standards on General Working Conditions in Shipyard Employment

Your participation in the informal public hearings on the Proposed Rule to Revise OSHA's Standards on General Working Conditions in Shipyard Employment (29 CFR Part 1915, Subpart F) (72 FR 72452 (12/20/2007); Docket No. OSHA-S049-2006-0675) is both welcome and appreciated. These guidelines describe the procedures that participants are to follow during the hearing and provide other relevant information on this rulemaking.

As stated in the Federal Register hearing notice (73 FR 36823 (6/30/2008)), the hearings will be held will begin at 9:30 a.m., Tuesday, September 9, 2008, in the auditorium of the Department of Labor, 200 Constitution Avenue, N.W., Washington, DC; and at 9:30 a.m., Tuesday, October 21, in Seattle, WA. OSHA will announce the address of the Seattle, WA, hearing later in the Federal Register. On subsequent days, if any, the hearing also will begin at 9:30 a.m., at each location. Each hearing day will end when the participants scheduled for that day complete their testimony and questions. OSHA will provide participants with a schedule of the hearing and will announce any changes to the schedule during the course of the hearing.

It is important that participants understand the purpose of and the procedures for this hearing. OSHA is convening the hearing in accordance with Section 6(b)(3) of the Occupational Safety and Health Act of 1970 (OSH Act)(29 U.S.C. 651 *et seq.*) and the Agency's procedural regulations in 29 CFR Part 1911. Since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. Therefore, the technical rules of evidence do not apply.

These guidelines and procedural rules that govern the hearing will assure fairness and due process and will facilitate the development of a clear, accurate and complete record. Consistent with this purpose, these guidelines and procedural rules will be interpreted to encourage development of the record, and decisions regarding questions of relevance, procedure and participation generally will be resolved in favor of development of the record.

In the interest of due process and fairness, the hearing notice specified that participants who request more than 10 minutes for their presentations, or who will provide documentary evidence at the hearing, must submit a Notice of Intention to Appear (NOITA) by July 18, 2008. They

also must submit the full text of their written testimony and any documentary evidence by August 8, 2008. NOITAs, written hearing testimony and documentary evidence are placed into the docket for this rulemaking (OSHA Docket No. OSHA-S049-2006-0675). These submissions as well as comments submitted in response to the proposed rule are available to read or download at <http://www.regulations.gov> or at the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. This affords participants a full opportunity to review the evidence and to formulate in advance any questions they may wish to ask at the hearing.

Absent special circumstances, participants who file a NOITA, but do not comply substantially with the requirement to submit written testimony and documentary evidence, will have a maximum of 10 minutes for their hearing presentations. Scheduling time to respond to questions regarding these presentations is at the discretion of the Administrative Law Judge (ALJ) presiding at the hearing. The ALJ also has discretion to allow individuals who did not file NOITAs to present brief oral statements not exceeding 10 minutes at the end of the scheduled presentations; however, they are not entitled to question witnesses.

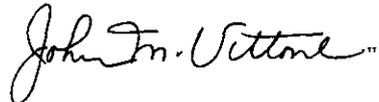
Since written testimony and documentary evidence submitted before the hearing are part of the record, oral testimony at the hearing should summarize and clarify the written submissions. Following oral testimony, participants who filed a NOITA may ask the witness questions on relevant issues. OSHA recommends that participants ask their most important questions first and ask questions that:

- Are as brief as possible;
- Clarify a presentation;
- Are within the competence or expertise of the witness to answer;
- Do not repeat questions that a witness has answered already; and
- Are not argumentative.

Participants who have similar interests should designate one representative to conduct the questioning on their behalf (e.g., when an organization has more than one participant at the hearing, only one of them should question a witness on an issue). Note that the ALJ will not permit participants to use the question period to present their own testimony and views on issues.

To afford participants adequate opportunity for questioning, each participant must limit questioning to a maximum 15 minutes per witness. However, a participant may request permission from the ALJ for additional time to ask important and relevant questions. The ALJ may allow a participant additional time for questioning as is necessary and the ALJ may allocate such questioning to the end of the testimony scheduled for that hearing day. Permission to extend the questioning period will depend in part on the witness schedule and the time available. Additional time is unlikely to be granted if the hearing falls significantly behind schedule. If this occurs, the ALJ may place additional limits on questioning or require that participants consolidate their questions. The ALJ shall also allow reasonable time for OSHA to ask questions to develop a clear, accurate, and complete record.

At the close of the hearing, the ALJ will establish a post-hearing comment period for participants who filed a NOITA. This period will have two parts. The first part will provide an opportunity for participants to submit additional information and data relevant to the rulemaking. The second part will allow participants to submit final written comments, summations and briefs. (Participants do not file reply briefs.) At the conclusion of the post-hearing comment period, the ALJ will close and certify the hearing record to the Assistant Secretary of Labor for Occupational Safety and Health.



JOHN M. VITTONI
Chief Administrative Law Judge