

§ 201.326 Evidence: Presentation, rebuttal and cross-examination.

In any proceeding in which a hearing is required to be conducted on the record after opportunity for hearing in accord with 5 U.S.C. 556(a), a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Commission or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, in any other proceeding shall be determined by the Commission or the hearing officer in each proceeding.

§ 201.340 Proposed findings, conclusions and supporting briefs.

(a) *Opportunity to file.* Before an initial decision is issued, each party shall have an opportunity, reasonable in light of all the circumstances, to file in writing proposed findings and conclusions together with, or as a part of, its brief.

(b) *Procedure.* Proposed findings of fact must be supported by citations to specific portions of the record. If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs, and any counter statement of proposed findings and conclusions must, in addition to any other matter, indicate those paragraphs of the proposals already filed as to which there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

(c) *Time for filing.* In any proceeding in which an initial decision is to be issued:

(1) At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed. The party or parties directed to file first shall make its

or their initial filing within 30 days of the end of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary.

(2) The total period within which all such proposed findings and conclusions and supporting briefs and any counter statements of proposed findings and conclusions and reply briefs are to be filed shall be no longer than 90 days after the close of the hearing unless the hearing officer, for good cause shown, permits a different period and sets forth in an order the reasons why the different period is necessary.

§ 201.350 Record in proceedings before hearing officer; retention of documents; copies.

(a) *Contents of the record.* The record shall consist of:

(1) The order instituting proceedings, each notice of hearing and any amendments;

(2) Each application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Each stipulation, transcript of testimony and document or other item admitted into evidence;

(4) Each written communication accepted by the hearing officer pursuant to § 201.210;

(5) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under § 201.112, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(6) All motions, briefs and other papers filed on interlocutory appeal;

(7) All proposed findings and conclusions;

(8) Each written order issued by the hearing officer or Commission; and

(9) Any other document or item accepted into the record by the hearing officer.

(b) *Retention of documents not admitted.* Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any such documents until the later of the date upon which

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a Commission order ending the proceeding becomes final, or the conclusion of any judicial review of the Commission's order.

(c) *Substitution of copies.* A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this section.

§ 201.351 Transmittal of documents to Secretary; record index; certification.

(a) *Transmittal from hearing officer to Secretary of partial record index.* The hearing officer may, at any time, transmit to the Secretary motions, exhibits or any other original documents filed with or accepted into evidence by the hearing officer, together with an index of such documents. The hearing officer, may, by order, require the interested division or other persons to assist in promptly transporting such documents from the hearing location to the Office of the Secretary.

(b) *Preparation, certification of record index.* Promptly after the close of the hearing, the hearing officer shall transmit to the Secretary an index of the originals of any motions, exhibits or any other documents filed with or accepted into evidence by the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, or if no initial decision is to be prepared, within 30 days of the close of the hearing, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any person may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. If an initial decision is to be issued, the initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(c) *Final transmittal of record items to the Secretary.* After the close of the

hearing, the hearing officer shall transmit to the Secretary originals of any motions, exhibits or any other documents filed with, or accepted into evidence by, the hearing officer, or any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, or if no initial decision is to be issued, within 60 days of the close of the hearing, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

§ 201.360 Initial decision of hearing officer.

(a) *When required.* Unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to § 201.202.

(b) *Content.* An initial decision shall include: Findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this section:

(1) The initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) If a party timely files a petition for review or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.

(c) *Filing, service and publication.* The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial