

§ 201.20

(2) State his qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training that qualifies him as an expert;

(3) Identify the direct testimony previously submitted in accordance with these regulations; and

(4) Submit to appropriate direct and cross examination. Cross-examination shall be by a party whose interests are adverse to those of the witness on the issue presented if the witness is a party, or adverse to the interests of the party who presented the witness if the witness is not a party.

(c) A party shall be deemed to have waived the right to introduce direct testimony if such party fails to present a witness to introduce the direct testimony.

(d) Official notice may be taken of such matters as are judicially noticed by the courts of the United States, *provided*, that parties shall be given adequate notice by the presiding officer at the hearing of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

§ 201.20 Cross-examination.

(a) The presiding officer may:

(1) Require the cross-examiner to outline the intended scope of the cross-examination;

(2) Prohibit parties from cross-examining witnesses unless the presiding officer has determined that the cross-examiner has an adverse interest on the facts at issue to the party-witness. For the purposes of this subsection, the Administrator's or his representative's interest shall be considered adverse to all parties;

(3) Limit the number of times any party or parties having a common interest may cross-examine an "adverse" witness on the same matter; and

(4) Exclude cross-examination questions that are immaterial, irrelevant, or unduly repetitious.

(b) Any party shall be given an opportunity to appear, either in person or through an authorized counsel or representative, to cross-examine witnesses. Before cross-examining a witness, the party or counsel shall state his name, address, and occupation. If

49 CFR Ch. II (10-1-06 Edition)

counsel cross-examines the witness, counsel shall state for the record the authority to act as counsel. Cross-examiners shall be assumed to be familiar with the direct testimony.

(c) Any party or party's counsel who fails to appear at the hearing to cross-examine an "adverse" witness shall be deemed to have waived the right to cross-examine that witness.

(d) Scientific, technical, or commercial publications may be used only for the limited purpose of impeaching witnesses under cross-examination unless previously submitted and introduced in accordance with these regulations.

§ 201.21 Oral and written arguments.

(a) The presiding officer may, in his discretion, provide for oral argument at the end of the hearing. Such argument, when permitted, may be limited by the presiding officer to the extent necessary for the expeditious disposition of the proceeding.

(b) The presiding officer shall announce at the hearing a reasonable period of time within which any interested person may file with the presiding officer any written comments on the application, including proposed findings and conclusions or written arguments or brief based upon the record, citing where practicable the relevant page or pages of the transcript. If a party filing a brief desires the presiding officer to reconsider any objection made by such party to a ruling of the presiding officer, he shall specifically identify such rulings by reference to the pertinent pages of the transcript and shall state his arguments thereon as a part of the brief.

(c) Oral or written arguments shall be limited to issues arising from direct testimony on the record.

§ 201.22 Recommended decision, certification of the transcript, and submission of comments on the recommended decision.

(a) Promptly after expiration of the period for receiving written briefs, the presiding officer shall make a recommended decision based on the record and transmit the decision to the Administrator. The recommended decision shall include:

(1) A statement containing a description of the history of the proceedings;

(2) Findings on issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(b) The presiding officer shall also transmit to the Administrator the transcript of the hearing, the original and all copies of the direct testimony, and written comments. The presiding officer shall attach to the original transcript of the hearing a certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as are specified.

(c) Immediately after receipt of the recommended decision, the Administrator shall give notice thereof in the FEDERAL REGISTER, send copies of the recommended decision to all parties, and provide opportunity for the submission of comments. The recommended decision may be reviewed and/or copied in the Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590.

(d) Within twenty days after the notice of receipt of the recommended decision has been published in the FEDERAL REGISTER, any interested person may file with the Administrator any written comments on the recommended decision. All comments shall be submitted during the twenty-day period to the Administrator at the above address.

§ 201.23 Administrator's decision.

(a) Upon receipt of the recommended decision and transcript and after the twenty-day period for receiving written comments on the recommended decision has passed, the Administrator's decision may affirm, modify, or set aside, in whole or in part, the recommended findings, conclusions, and decision of the presiding officer. The Administrator may also remand the hearing record to the presiding officer for a fuller development of the record.

(b) The Administrator's decision shall include:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

(c) The Administrator's decision shall be published in the FEDERAL REGISTER. If the Amtrak application is approved in whole or in part, the final order shall be promulgated with the decision.

PART 207—RAILROAD POLICE OFFICERS

Sec.

207.1 Application.

207.2 Definitions.

207.3 Designation and commissioning.

207.4 Notice to State officials.

207.5 Authority in States where officer not commissioned.

AUTHORITY: 45 U.S.C. 446; 49 CFR 1.49(ff).

SOURCE: 59 FR 6587, Feb. 11, 1994, unless otherwise noted.

§ 207.1 Application.

This part applies to all railroads, as such term is defined in section 202(e) of the Federal Railroad Safety Act of 1970, as amended, Public Law 91-458 (45 U.S.C. 431(e)).

§ 207.2 Definitions.

As used in this part:

(a) *Railroad police officer* means a peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(b) *Commissioned* means that a state official has certified or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(c) *Property* means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

§ 207.3 Designation and commissioning.

(a) A railroad may designate employees to be commissioned by a state authority as railroad police officers to serve in the states in which the railroad owns property.