

the Department, a copy of the transcript or recording shall be kept at the area office of the Agency most convenient to the respondent; however, if there are two or more respondents and they are located in different regions, such copy of the transcript or recording shall be kept at the area office of the Agency nearest to the place where the hearing was held. In addition, a copy of the transcript or recording shall be kept at the area office of the Agency most convenient to the complainant. Any such copy shall be available for examination during official hours of business at the area office, but shall remain the property of the Department and shall not be removed from such office.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990; 60 FR 8466, Feb. 14, 1995]

§ 202.113 Rule 13: Written hearing.

(a) *Evidence.* As used in this section, the term "evidence" shall mean depositions, affidavits, or statements under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550, of persons having knowledge of the facts, or documents properly identified by such deposition, affidavit, or statement, or otherwise authenticated in such a manner that they would be admissible in evidence at an oral hearing, except as provided hereinafter. Testimony on deposition, to the extent credible, shall be given greater weight as evidence, than such affidavits or statements. In a case in which a party, entitled to oral hearing as provided in rule 11, §202.111, withdraws such party's request for oral hearing on condition that only depositions be used if a written hearing is held, only depositions, and documents properly identified therein, shall be made a part of the record as evidence by the parties if a written hearing is held.

(b) *Verification.* Any facts must be verified, by oath or affirmation before a person legally authorized to administer oaths or before a person designated by the Secretary for the purpose (except in the case of a statement under penalty of perjury as provided in 28 U.S.C. 1746, Pub. L. 94-550), by a person who states, in the deposition, affidavit, or statement, that such person

has actual knowledge of the facts. Except under unusual circumstances, which shall be set forth in the deposition, affidavit, or statement, any such person shall be one who would appear as a witness if an oral hearing were held.

(c) *Complainant's evidence.* The complainant shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the complainant may file evidence. What the complainant files in response to that notice shall be served promptly on the respondent.

(d) *Respondent's evidence.* After expiration of the time for the filing of complainant's evidence, the respondent shall be served with notice of an opportunity to file evidence. Within 20 days after such service, the respondent may file evidence. What the respondent files in response to that notice shall be served promptly on the complainant.

(e) *Complainant's rebuttal.* If the respondent files anything pursuant to paragraph (d) of this section, the complainant shall be served with notice of an opportunity to file evidence in rebuttal of what the respondent has filed. Within 20 days after such service, the complainant may file such evidence, which shall be confined strictly to rebuttal of what the respondent has filed. What the complainant files in response to that notice shall be served promptly on the respondent.

(f) *Failure to file.* Failure to file any evidence authorized under this section, within the time prescribed, shall constitute a waiver of the right to file such evidence.

(g) *Extension of time for depositions.* If any party timely files an application for an order for the taking of testimony by deposition pursuant to rule 9, §202.109, time for the filing of such party's evidence shall be extended as reasonable, to permit consideration of the application, and taking of depositions if ordered.

(h) *Investigation report.* No provision of this rule 13 shall change the status of an investigation report served on the parties and made a part of the record pursuant to rule 4, §202.104.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990]