

§ 202.114

9 CFR Ch. II (1–1–10 Edition)

§ 202.114 Rule 14: Post-hearing procedure.

(a) *Oral hearing.* Any party present or represented at an oral hearing, desiring to file any written argument or brief, proposed findings of fact, conclusions, and order, or statement of objections to rulings made by the presiding officer, must so inform the presiding officer at the oral hearing; upon being so informed, the presiding officer shall set a reasonable time for the filing of such documents, and state it on the record at the oral hearing.

(b) *Written hearing.* After filing of the last evidence in a written hearing, notice shall be served on each party that such party may file, within 20 days after such service on such party, written argument of brief, proposed findings or fact, conclusions, and order.

(c) *Service; delay in preparation of report.* If any such document is filed by any party, it shall be served on all other parties. The report shall not be prepared before expiration of such time for filing.

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

§ 202.115 Rule 15: Submission for final consideration.

(a) *Report.* The presiding officer, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, shall prepare a report. The report shall be prepared on the basis of the evidence in the record, including the investigation report if one is prepared by the agency head and served on the parties, and any allegations admitted or deemed to be admitted, and any stipulations. The report shall be prepared in the form of a final order for signature by the judicial officer, and shall be filed with the hearing clerk. The report shall not be served on the parties unless and until it is signed by the judicial officer.

(b) *Record.* At the same time as the report is filed with the hearing clerk, the record shall also be filed with the hearing clerk. The record shall include: Pleadings; motions and requests filed and rulings thereon; the investigation report if one is prepared by the agency head and served on the parties; the transcript or recording of an oral hearing, and exhibits received, if an oral

hearing was held; evidence filed by the parties if a written hearing was held; documents filed in connection with pre-hearing conferences; any proposed findings of fact, conclusions and orders, statements of objections, and briefs; any stipulations; and proof of service.

(c) *Submission to judicial officer.* Unless the hearing clerk reasonably believes that the record is not complete and in proper order, the record and the report shall be submitted to the judicial officer for decision.

(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

[43 FR 30510, July 14, 1978, as amended at 60 FR 8467, Feb. 14, 1995]

§ 202.116 Rule 16: Issuance of order.

(a) As soon as practicable after the receipt of the record and report from the hearing clerk, the judicial officer, on the basis of and after due consideration of the record, shall issue an order in the proceeding, which shall be served on the parties.

(b) If the judicial officer deems it advisable to do so, the order may be made a tentative order. In such event, a presiding officer shall be assigned and the tentative order shall be served on each party, and each party shall have 20 days in which to file written exceptions to it, and arguments or briefs in support of such exceptions. If no party timely files exceptions, the tentative order shall automatically become the final order in the proceeding, and notice of such fact shall be served on the parties. If any party timely files such exceptions, they shall be handled in the same manner as a petition filed under rule 17, § 202.117.

§ 202.117 Rule 17: Petition to reopen a hearing; to rehear or reargue a proceeding; to reconsider an order; or to set aside a default order.

(a) *Filing of petition—(1) To reopen a hearing.* Any party may file a petition to reopen a hearing to take further evidence, at any time prior to the issuance of the final order, or prior to a tentative order becoming final. Such a petition must state the nature and purpose of the evidence to be offered, show that it is not merely cumulative, and state a good reason why it was not