

§ 1316.53

production of documents and materials to the extent necessary to conduct administrative hearings pending before him.

(e) Examine witnesses and direct witnesses to testify.

(f) Receive, rule on, exclude, or limit evidence.

(g) Rule on procedural items pending before him.

(h) Take any action permitted to the presiding officer as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 42 FR 57457, Nov. 3, 1977; 62 FR 13970, Mar. 24, 1997]

§ 1316.53 Time and place of hearing.

The hearing will commence at the place and time designated in the notice of hearing published in the FEDERAL REGISTER but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 1316.54 Prehearing conference.

The presiding officer on his own motion, or on the motion of any party for good cause shown, may direct all parties to appear at a specified time and place for a conference for:

(a) The simplification of the issues.

(b) The possibility of obtaining stipulations, admission of facts, and documents.

(c) The possibility of limiting the number of expert witnesses.

(d) The identification and, if practicable, the scheduling of all witnesses to be called.

(e) The advance submission at the prehearing conference of all documentary evidence and affidavits to be marked for identification.

(f) Such other matters as may aid in the expeditious disposition of the hearing.

§ 1316.55 Prehearing ruling.

The presiding officer may have the prehearing conference reported verbatim and shall make a ruling reciting the action taken at the conference, the

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agreements made by the parties, the schedule of witnesses, and a statement of the issues for hearing. Such ruling shall control the subsequent course of the hearing unless modified by a subsequent ruling.

§ 1316.56 Burden of proof.

At any hearing, the proponent for the issuance, amendment, or repeal of any rule shall have the burden of proof.

§ 1316.57 Submission of documentary evidence and affidavits and identification of witnesses subsequent to prehearing conference.

All documentary evidence and affidavits not submitted and all witnesses not identified at the prehearing conference shall be submitted or identified to the presiding officer as soon as possible, with a showing that the offering party had good cause for failing to so submit or identify at the prehearing conference. If the presiding officer determines that good cause does exist, the documents or affidavits shall be submitted or witnesses identified to all parties sufficiently in advance of the offer of such documents or affidavits or witnesses at the hearing to avoid prejudice or surprise to the other parties. If the presiding officer determines that good cause does not exist, he may refuse to admit as evidence such documents or affidavits or the testimony of such witnesses.

§ 1316.58 Summary of testimony; affidavits.

(a) The presiding officer may direct that summaries of the direct testimony of witnesses be prepared in writing and served on all parties in advance of the hearing. Witnesses will not be permitted to read summaries of their testimony into the record and all witnesses shall be available for cross-examination. Each witness shall, before proceeding to testify, be sworn or make affirmation.

(b) Affidavits submitted at the prehearing conference or pursuant to § 1316.57 with good cause may be examined by all parties and opposing affidavits may be submitted to the presiding officer within a period of time fixed by him. Affidavits admitted into evidence shall be considered in light of the lack

of opportunity for cross-examination in determining the weight to be attached to statements made therein.

[36 FR 7820, Apr. 24, 1971, as amended at 36 FR 13387, July 21, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973]

§ 1316.59 Submission and receipt of evidence.

(a) The presiding officer shall admit only evidence that is competent, relevant, material and not unduly repetitious.

(b) Opinion testimony shall be admitted when the presiding officer is satisfied that the witness is properly qualified.

(c) The authenticity of all documents submitted in advance shall be deemed admitted unless written objection thereto is filed with the presiding officer, except that a party will be permitted to challenge such authenticity at a later time upon a showing of good cause for failure to have filed such written objection.

(d) Samples, if otherwise admissible into evidence, may be displayed at the hearing and may be described for purposes of the record, or may be admitted in evidence as exhibits.

(e) Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded opportunity to controvert such fact.

(f) The presiding officer shall file as exhibits copies of the following documents:

(1) The order to show cause or notice of hearing;

(2) Any notice of waiver or modification of rules made pursuant to § 1316.44 or otherwise;

(3) Any waiver of hearing (together with any statement filed therewith) filed pursuant to § 1316.49 or otherwise;

(4) The prehearing ruling, if any, made pursuant to § 1316.55;

(5) Any other document necessary to show the basis for the hearing.

§ 1316.60 Objections; offer of proof.

If any party in the hearing objects to the admission or rejection of any evidence or to other limitation of the scope of any examination or cross-examination, he shall state briefly the

grounds for such objection without extended argument or debate thereon except as permitted by the presiding officer. A ruling of the presiding officer on any such objection shall be a part of the transcript together with such offer of proof as has been made if a proper foundation has been laid for its admission. An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form a copy of such evidence shall be marked for identification and shall accompany the records as the offer of proof.

§ 1316.61 Exceptions to rulings.

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action that he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

§ 1316.62 Appeal from ruling of presiding officer.

Rulings of the presiding officer may not be appealed to the Administrator prior to his consideration of the entire hearing, except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party or substantial detriment to the public interest. If an appeal is allowed, any party in the hearing may file a brief in quintuplicate with the Administrator within such period that the presiding officer directs. No oral argument will be heard unless the Administrator directs otherwise.

§ 1316.63 Official transcript; index; corrections.

(a) Testimony given at a hearing shall be reported verbatim. The Administration will make provision for a stenographic record of the testimony and for such copies of the transcript