

sought. Such agreement shall be embodied in a stipulation which becomes part of the record and may provide for the taking of depositions upon notice without leave of the presiding officer.

(d) *Procedure on deposition.* Depositions may be taken before any person having the power to administer oaths. Each witness whose testimony is taken by deposition shall be duly sworn before any question is propounded. Examination and cross-examination of deponents may proceed as permitted at the hearing. Objections to questions or documents shall be in short form, stating the grounds relief upon for the objection. Failure to object to questions or evidence is deemed a waiver if the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by or under the direction of the person before whom the deposition is taken. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is physically unable to sign, cannot be found, or refuses to sign. The deposition shall also be certified as a true and complete transcript by the person recording the testimony. If the deposition is not signed by the witness, the person recording the testimony shall state this fact and the reason therefor on the record. The person before whom the deposition is taken shall promptly file the transcript and all exhibits with the presiding officer. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits.

(e) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying at the hearing, the deposition or any part thereof may be received in evidence by the presiding officer in his or her discretion. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record upon which a decision may be based.

(f) *Payment of fees.* Deponents whose depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the district courts of the United States, which fees shall be paid by the party upon whose application the deposition is taken.

#### § 622.11 Motions.

(a) *How made.* An application or request for an order or ruling not otherwise specifically provided for in this subpart, unless made during a hearing, shall be made by written motion supported by a memorandum which concisely states the grounds therefor.

(b) *Opposition.* Within 10 days after service of any written motion, or within such other period of time as may be fixed by the presiding officer, any party may file a memorandum in opposition thereto. The moving party has no right to reply except as permitted by the presiding officer. The presiding officer has discretion to waive the requirements of this section as to motions for extension of time and may rule upon such motions *ex parte*.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board.

(d) *Rulings and orders.* Except as otherwise provided in this subpart, the presiding officer shall rule on all motions and may issue appropriate orders, except that motions may be referred to the Board if the presiding officer is unavailable or determines that such motion should be referred to the Board. Prior to the appointment of a presiding officer and after a recommended decision is filed pursuant to § 622.12, the Board shall rule on motions filed by the parties.

(e) *Appeal from rulings on motions.* All answers, motions, objections and rulings shall become part of the record. Rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, except by special permission of the Board. However, such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from a ruling of the presiding officer shall be

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filed in writing within 5 days of the ruling, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding who may then respond to such request within 5 days after service.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any request or motion by the Board.

### § 622.12 Proposed findings and conclusions; recommended decision.

(a) *Proposed findings and conclusions by parties.* Within 30 days after the hearing transcript has been filed, any party may file proposed findings of fact and conclusions of law. Such proposals shall be supported by citation of such statutes, decisions, and other authorities, and by specific page references to such portions of the record as may be relevant. All such proposals shall become a part of the record.

(b) *Recommended decision by presiding officer.* Within 30 days after the expiration of time allowed under paragraph (a) of this section, or within such further time as the Board for good cause allows, the presiding officer shall file the entire hearing record, including a recommended decision and findings and conclusions, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tender of proof), exceptions, rulings and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing, the presiding officer shall serve a copy of the recommended decision, findings and conclusions upon each party to the proceeding.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions, briefs, and other submissions permitted under paragraph (a) of this section shall be filed with the Board for consideration.

### § 622.13 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision of the presiding officer, any party may file exceptions thereto or to any portion thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the presiding officer.

(b) *Contents.* Each exception shall be supported by a concise argument and by citation of such statutes, decisions and other authorities, and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(c) *Waiver.* Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be a waiver of objection thereto.

### § 622.14 Briefs.

(a) *Contents.* Any brief filed in a proceeding shall be confined to the particular matters in issue, citing statutes, decisions, and other authorities, and page references to such portions of the record or the recommended decision of the presiding officer as may be relevant.

(b) *Reply briefs.* Reply briefs may be filed within 10 days after service of original briefs of opposing parties, and shall be confined to matters in such briefs. Further briefs may be filed only with permission of the presiding officer or the Board with respect to a matter before the Board.

(c) *Delayed filing.* Briefs not filed on or before the time fixed in this subpart or by the presiding officer will be received only upon special permission of the Board.

### § 622.15 Oral argument before the Board.

Upon its own initiative or upon written request by any party, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument