

§ 1102.26

delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b) *Methods; non-appearing party.* If a party has not appeared in the proceeding in accordance with §1102.22 of this subpart, the ASC or any other party shall make service by any of the following methods:

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c) *By the Subcommittee.* All papers required to be served by the ASC shall be served by the Secretary unless some other person shall be designated for such purpose by the ASC.

(d) *By the respondent.* All papers filed in a proceeding under this subpart shall be served by a respondent on the Secretary and each party's attorney, or, if any party is not so represented, then upon such party. Such service may be made by any of the appropriate methods specified in paragraphs (a) and (b) of this section.

§ 1102.26 When papers are deemed filed or served.

(a) *Effectiveness.* Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) *Modification.* The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

§ 1102.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not in-

12 CFR Ch. XI (1-1-06 Edition)

cluded. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *For service and filing responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28 Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in §1102.24 of this subpart.

§ 1102.29 Conduct of proceedings.

(a) *In general.* Unless otherwise provided in the notice of proceedings, all proceedings under this subpart shall be conducted as hereinafter provided.

(b) *Written submissions.* All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under §1102.36 of this subpart.

(c) *Disqualification.* A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) *User of ASC staff.* Appropriate members of the ASC's staff who are not engaged in the performance of investigative or prosecuting functions in the

proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) *Authority of Subcommittee Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) *Conferences.* (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) *Changes or extensions of time and changes of place of proceeding.* The ASC, in connection with initiating a specific proceedings under §1102.32 of this subpart, may instruct the Secretary to

publish in the FEDERAL REGISTER time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending any time limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) *Call for further briefs, memoranda, statements; reopening of matters.* The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.30 Rules of evidence.

(a) *In general.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Stipulations.* Any party may stipulate in writing as to any relevant matters of fact, law, or the authenticity of any relevant documents. The Secretary shall place such stipulations in the public file, and they shall be binding on the parties.

(c) *Official notice.* Every matter officially noticed by the ASC shall appear in the public file, unless the ASC determines that the matter must be withheld from public disclosure under applicable Federal law.

§ 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going