

courts of the United States, and persons taking depositions shall be entitled to the same fees as are paid for like services in the courts of the United States, to be paid by the party at whose request the deposition is taken. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and claims therefor shall be presented to such party.

**§47.19 Post-hearing procedure before the examiner.**

(a) *Certification of transcript or recording.* As soon as practicable after receipt of the transcript or recording, the examiner shall prepare his or her certificate stating that, to the best of his or her knowledge and belief, the transcript or recording is a true, correct, and complete transcript or recording of the testimony given at the hearing, except in such particulars as the examiner shall specify, and that the exhibits transmitted are all the exhibits received in evidence at the hearing, with such exceptions as the examiner shall specify. The original of such certificate shall be attached to the original transcript or recording and a copy of such certificate shall be furnished to each of the parties and to the Hearing Clerk. The examiner shall correct the original copy of the transcript or recording by adding or crossing out (but without obscuring the text) at the appropriate places any words necessary to make the text conform to the correct meaning, as certified by the examiner.

(b) *Proposed findings of fact, conclusions, and order.* The examiner shall decide and shall announce at the hearing whether proposed findings of fact, conclusions, and order may be filed by the parties. If allowed by the examiner, he or she shall announce a definite calendar day as the time within which these documents may be filed. Such findings of fact, conclusions, and order shall be based solely upon the evidence of record. They may be accompanied by supporting briefs and by a statement of objections made to the rulings of the examiner at the hearing.

(c) *Briefs.* If the examiner does not allow proposed findings of fact, conclusions, and order to be filed, the parties shall be given until a definite calendar day to file briefs.

(d) *Claim for award of fees and expenses—(1) Filing.* Prior to the close of the hearing, or within 20 days thereafter, each party may file with the Hearing Clerk a claim for the award of the fees and expenses which he incurred in connection with the oral hearing. No award of fees and expenses to the prevailing party and against the losing party shall be made unless a claim therefor has been filed, and failure to file a claim within the time allowed shall constitute a waiver thereof.

(2) *Fees and expenses which may be awarded to prevailing party.* The term “fees and expenses,” as used in section 7(a) of the Act, includes:

(i) Reasonable fees of an attorney or authorized representative for appearance at the hearing and for the taking of depositions necessary for introduction at the hearing; (ii) fees and mileage for necessary witnesses at the rates provided for witnesses in the courts of the United States; (iii) fees for the notarizing of a deposition and its reduction to writing; (iv) fees for serving subpoenas; and (v) other fees and expenses necessarily incurred in connection with the oral hearing. Fees and expenses which are not considered to be reasonable or necessarily incurred in connection with the oral hearing will not be awarded.

(3) *Form of claim.* A claim for fees and expenses shall be in the form of a written itemized statement of the fees and expenses claimed, which shall include an explanation of how each item was computed, to which there shall be attached an affidavit, made by the party or the party’s authorized attorney or agent having knowledge of the facts, that each such item is correct and has been necessarily incurred in connection with the oral hearing in the proceeding and that the services for which fees are claimed were actually and necessarily performed.

(4) *Service of claim.* A copy of each such claim filed shall be served by the Hearing Clerk on the other party or parties to the proceeding.

(5) *Objections to claim.* Within 20 days after being served with a copy of a claim for fees and expenses, the party so served may file with the Hearing Clerk written objections to the allowance of any or all of the items claimed.

If evidence is offered in support of an objection, it must be in affidavit form. A copy of any such objections shall be served by the Hearing Clerk on the other party or parties.

(6) *Reply to objections to claim.* A claimant who is served with a copy of objections to his or her claim may, within 20 days after such service, file with the Hearing Clerk a reply to such objection. If evidence is offered in support of a reply, it must be in affidavit form. A copy of any such reply shall be served by the Hearing Clerk on the other party or parties.

(7) *Further inquiry by examiner.* Whenever it is deemed desirable or necessary for the proper disposition of a claim, the examiner may request statements as to specific matters from either or both parties. Any statements so furnished shall be served by the examiner on the other party.

(8) *Number of copies.* All documents or papers authorized by this paragraph to be filed with the examiner shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding an additional copy shall be filed for each additional party.

(e) *The examiner's report.* The examiner, with the assistance and collaboration of such employees of the Department as may be assigned for the purpose, and within a reasonable time after the termination of the periods allowed for the filing of the submissions of the parties filed pursuant to this section, shall prepare, upon the basis of the evidence received at the hearing and with due consideration of submissions of the parties filed pursuant to this section, his or her report. Such report shall be filed with the Hearing Clerk and shall be prepared in the form of a final order for the signature of the Secretary, but shall not be served upon the parties, unless and until it shall have been signed by the Secretary, as hereinafter provided.

[38 FR 30445, Nov. 5, 1973, as amended at 41 FR 50803, Nov. 18, 1976; 56 FR 175, Jan. 3, 1991; 60 FR 8462, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

#### § 47.20 Documentary procedure.

(a) *In general.* The documentary procedure described in this section shall, whenever it is applicable as provided in

paragraph (b) of this section, take the place and serve in lieu of the oral hearing procedure hereinbefore provided. Under the documentary procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the Hearing Clerk pursuant to § 47.7 will be considered as evidence in the proceeding. Under the shortened procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the Hearing Clerk pursuant to § 47.7, will be considered as evidence in the proceeding. In addition, the parties may submit written proof in support of the complaint, answer, or reply, as the case may be, in the form of verified statements or depositions. After the close of the evidence, the parties may file briefs.

(b) *When applicable—(1) Where damages claimed do not exceed \$30,000.* The documentary procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed \$30,000 (excluding interest).

(2) *Where damages claimed exceed \$30,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than \$30,000 (excluding interest), the examiner, whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion