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§ 502.224 Separation of functions.

The separation of functions as required by 5 U.S.C. 554(d) shall be observed in proceedings under subparts A to Q inclusive, of this part. [Rule 224.]

§ 502.225 Decisions—Commission.

All final decisions will include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues presented on the record, and the appropriate rule, order, sanction, relief, or denial thereof. A copy of each decision when issued shall be served on the parties to the proceeding. This provision shall also apply to decisions issued pursuant to subpart T of this part. [Rule 225.]

[64 FR 7810, Feb. 17, 1999]

§ 502.226 Decision based on official notice; public documents.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts, or of technical or scientific facts within the general knowledge of the Commission as an expert body, provided, that where a decision or part thereof rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice shall be so stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

(b) Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a state or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or relevant part thereof. [Rule 226.]

46 CFR Ch. IV (10–1–14 Edition)

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judge; replies thereto; review of decisions or orders of dismissal by Commission; and judicial review.

(a)(1) Within twenty-two (22) days after date of service of the initial decision, unless a shorter period is fixed under §502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate transcript page and exhibit number when referring to the record, and shall be served on all parties pursuant to subpart H of this part.

(2) Any adverse party may file and serve a reply to such exceptions within twenty-two (22) days after the date of service thereof, which shall contain appropriate transcript and exhibit references.

(3) Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission thirty (30) days after date of service thereof (and the Secretary shall so notify the parties), unless within such 30-day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed or a determination to review is made by the Commission on its own initiative.

(4) A decision or order of dismissal by an administrative law judge shall only be considered final for purposes of judicial review if the party has first sought review by the Commission pursuant to this section.

(5) Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter.

(6) Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision

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on its own initiative, notice of such intention shall be served upon the parties.

(7) The time periods for filing exceptions and replies to exceptions, prescribed by this section, shall not apply to proceedings conducted under § 502.75.

(b)(1) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than twenty-two (22) days after service of the ruling on the motion in question.

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within twenty-two (22) days after the appeal is served.

(3) The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission thirty (30) days after date of service of such order (and the Secretary shall so notify the parties), unless within such 30-day period the Commission decides to review such order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within thirty (30) days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

(e) All briefs and replies filed pursuant to this section shall ordinarily be limited to fifty (50) pages in length, exclusive of pages containing the table of contents, table of authorities, and certificate of service, unless the Commission allows the parties to exceed this limit for good cause shown and upon application filed not later than five (5) days before the time fixed for filing of such a brief or reply. [Rule 227.]

[49 FR 44369, Nov. 6, 1984, as amended at 58 FR 27211, May 7, 1993; 61 FR 66617, Dec. 18, 1996; 64 FR 7810, Feb. 17, 1999]

§ 502.228 Request for enlargement of time for filing exceptions and replies thereto.

Requests for enlargement of time within which to file exceptions, and briefs in support thereof, or replies to exceptions shall conform to the applicable provisions of § 502.102. Requests for extensions of these periods will be granted only under exceptional circumstances duly demonstrated in the request. Except for good cause shown, such requests shall be filed and served not later than five (5) days before the expiration of the time fixed for the filing of such documents. Any enlargement of time granted will automatically extend by the same period the date for the filing of notice or review by the Commission. [Rule 228.]

§ 502.229 Certification of record by presiding or other officer.

The presiding or other officer shall certify and transmit the entire record to the Commission when (a) exceptions are filed or the time therefor has expired, (b) notice is given by the Commission that the initial decision will be reviewed on its own initiative, or (c) the Commission requires the case to be certified to it for initial decision. [Rule 229.]

§ 502.230 Reopening by presiding officer or Commission.

(a) *Motion to reopen.* At any time after the conclusion of a hearing in a proceeding, but before issuance by the presiding officer of a recommended or initial decision, any party to the proceeding may file with the presiding officer a motion to reopen the proceeding for the purpose of receiving additional evidence. A motion to reopen shall be served in conformity with the requirements of subpart H and shall set forth the grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(b) *Reply.* Within ten (10) days following service of a motion to reopen, any party may reply to such motion.

(c) *Reopening by presiding officer.* At any time prior to filing his or her decision, the presiding officer upon his or