

The proposal revises this section to specify that a party must file a motion for a private hearing with the agency head and not the ALJ, since the agency has sole discretion to rule on a motion for a private hearing. The proposal also clarifies that a party must serve the ALJ with a copy of a motion for a private hearing.

Section _____.34 Hearing subpoenas.

The proposal revises the treatment of hearing subpoenas to: (1) Ensure that each party receives a copy of each subpoena issued and each motion to quash a subpoena; and (2) give each party the ability to move to quash any hearing subpoena.

The current Uniform Rules do not specifically require that a party inform all other parties when a subpoena to a non-party is issued. The proposal requires that, after a hearing subpoena is issued by the ALJ, the party that applied for the subpoena must serve a copy of it on each party. Any party may move to quash any hearing subpoena and must serve the motion on each other party. The changes to this section are intended to keep all parties informed of the issuance of a hearing subpoena and to permit any party to move to quash any hearing subpoena once it has been issued.

Section _____.35 Conduct of hearings.

The proposal limits the number of counsel permitted to examine a witness, clarifies that hearing transcripts may be obtained only from the court reporter, and clarifies that the same method of service must be used to notify each party that a transcript has been filed. The current Uniform Rules are silent on these issues.

The agencies have found that witnesses are sometimes subject to cross-examination by multiple counsel representing a single party. When more than one attorney conducts a cross-examination, the cross-examination often becomes repetitive and unreasonably stressful and intimidating for the witness.

The proposal conforms with the local rules of many courts by permitting only one counsel for each party to examine a witness, except in the case of extensive direct examination. In the case of extensive direct examination, the ALJ may permit more than one counsel for the party presenting the witness to conduct the examination. In addition, a party may have a different counsel conduct the direct and re-direct examination of a witness or the cross and re-cross examination of a witness.

The proposal also clarifies that parties may obtain copies of a hearing

transcript only from the reporter. This change ensures that each party bears the cost of its own copy of the transcript.

Finally, as discussed below, the proposal removes certain requirements in § _____.35(b) and inserts them at proposed § _____.37(a).

Section _____.37 Post hearing filings.

The proposal changes the title of this section from "Proposed findings and conclusions" to "Post hearing filings" in order to describe more accurately the content of the section.

Under the current Uniform Rules, § _____.35(b) requires the ALJ to serve each party with notice that the certified transcript of the hearing, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. The proposal moves this provision to proposed § _____.37(a). The agencies believe that the provision more directly relates to § _____.37(a) because § _____.37 uses the ALJ's notice as the start date for a time limit. Under § _____.37, the party is permitted 30 days, after the party is served with the ALJ's notice, to file proposed findings of fact, proposed conclusions of law, and a proposed order.

In addition, under the current Uniform Rules, there is no express requirement that notice of the ALJ's filing of the certified transcript be served on each party by the same method. The proposal requires that the same method of service be used for each party to serve notice that a transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. This change eliminates the inequities that can arise when different methods of service are used.

The current Uniform Rules suggest, but do not explicitly state, that the ALJ may order a longer period of time for parties to file proposed findings of fact and conclusions of law. It provides that parties must file within 30 days "unless otherwise ordered by the administrative law judge."

The proposal clearly states that the ALJ may, when appropriate, permit parties more than the allotted 30 days to file proposed findings of fact, proposed conclusions of law, and a proposed order.

Section _____.38 Recommended decision and filing of record.

Under the current Uniform Rules, when the ALJ files the record with the agency head, an index of the record is not always provided to the agency head. As a result, if a document is missing from the record, the agency head has no

means of knowing that the document exists. The proposal requires that an index be filed with the record. The proposal also reorganizes this section to improve its clarity.

E. Section-by-Section Summary and Discussion of Proposed Amendments to the Local Rules of Each Agency

1. Proposed Amendments to the OCC Local Rules

Section 19.100 Filing Documents.

The proposal changes the heading of this section from "Scope" to "Filing documents", which more accurately describes the content of the section.

The proposal clarifies that ALJs will file the administrative record of a removal or prohibition case with the Board of Governors. The current OCC Local Rules state that all materials should be filed with the Hearing Clerk of the OCC and provide for no exception for removal and prohibition cases. Unlike all other OCC administrative actions, which are decided by the Comptroller, removal and prohibition cases are decided by the Board of Governors. ALJs, therefore, file hearing records with the Board of Governors in removal and prohibition cases.

Section 19.112 Informal Hearing.

The proposal changes § 19.112(b) to conform the informal hearing initiation provisions so that the same OCC official who sets the date, time, and place for an informal hearing also appoints the presiding officer. Under the current OCC Local Rules, the appropriate District Administrator or the Deputy Comptroller for Multinational Banking fixes the date, time, and place for a hearing, but the Comptroller appoints the presiding officer.

The OCC believes that it is more efficient for the same OCC official who sets the date, time, and place for a hearing to appoint the presiding officer. Under the proposal, the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational, or the Deputy Comptroller or Director for Special Supervision, whoever is appropriate, fixes the date, time, and place for the hearing and chooses the presiding officer.

Proposed paragraph (c) makes clear that, if a petitioner waives the opportunity to present an oral argument at a hearing, the OCC may file written response submissions with the presiding officer no later than the date on which the hearing was to be held. The proposal also requires a petitioner who chooses to waive the opportunity to present oral argument to submit that waiver at the same time the petitioner