

Office of the Secretary, Interior

§4.1121

Board, any party filing a motion under this section shall—

- (1) Make the motion in writing;
- (2) Describe the exigent circumstances justifying advancement;
- (3) Describe the irreparable harm that would result if the motion is not granted; and

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.

(d) Unless otherwise directed by the administrative law judge or the Board, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the administrative law judge of statements in response to the motion, the administrative law judge may schedule a hearing regarding the motion. If the motion is granted, the administrative law judge may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate: *Provided*, A hearing on the merits shall not be scheduled with less than 5 working days notice to the parties, unless all parties consent to an earlier hearing.

(f) If the motion is granted, the Board may, if it deems such action to be appropriate, advance the appeal on its calendar and order such other advancement as may be appropriate, including an abbreviated schedule for briefing or oral argument.

§4.1115 Waiver of right to hearing.

Any person entitled to a hearing before an administrative law judge under the act may waive such right in writing. Where parties are directed by any rule in these regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are

deemed to have waived such right, a hearing will be held.

§4.1116 Status of notices of violation and orders of cessation pending review by the Office of Hearings and Appeals.

Except where temporary relief is granted pursuant to section 525(c) or section 526(c) of the act, notices of violation and orders of cessation issued under the act shall remain in effect during the pendency of review before an administrative law judge or the Board.

EVIDENTIARY HEARINGS

§4.1120 Presiding officers.

An administrative law judge in the Office of Hearings and Appeals shall preside over any hearing required by the act to be conducted pursuant to 5 U.S.C. 554 (1970).

§4.1121 Powers of administrative law judges.

(a) Under the regulations of this part, an administrative law judge may—

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas;
- (3) Issue appropriate orders relating to discovery;
- (4) Rule on procedural requests or similar matters;
- (5) Hold conferences for settlement or simplification of the issues;
- (6) Regulate the course of the hearing;
- (7) Rule on offers of proof and receive relevant evidence;
- (8) Take other actions authorized by this part, by 5 U.S.C. 556 (1970), or by the act; and
- (9) Make or recommend decisions in accordance with 5 U.S.C. 557 (1970).

(b) An administrative law judge may order a prehearing conference—

- (1) To simplify and clarify issues;
- (2) To receive stipulations and admissions;
- (3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and
- (4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in these regulations, the jurisdiction of