

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

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an administrative law judge shall terminate upon—

- (1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;
- (2) The issuance of an order of the Board granting a petition for review; or
- (3) The expiration of the time period within which a petition for review or an appeal to the Board may be filed.

§4.1122 Conduct of administrative law judges.

Administrative law judges shall adhere to the “Code of Judicial Conduct.”

§4.1123 Notice of hearing.

- (a) An administrative law judge shall give notice to the parties of the time, place and nature of any hearing.
- (b) Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this section shall be in writing.
- (c) In an expedited proceeding when there is only opportunity to give oral notice, the administrative law judge shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

§4.1124 Certification of interlocutory ruling.

Upon motion or upon the initiative of an administrative law judge, the judge may certify to the Board a ruling which does not finally dispose of the case if the ruling presents a controlling question of law and an immediate appeal would materially advance ultimate disposition by the judge.

§4.1125 Summary decision.

- (a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case.
- (b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.
- (c) An administrative law judge may grant a motion under this section if the record, including the pleadings,

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depositions, answers to interrogatories, admissions, and affidavits, shows that—

- (1) There is no disputed issue as to any material fact; and
 - (2) The moving party is entitled to summary decision as a matter of law.
- (d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the administrative law judge shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

§4.1126 Proposed findings of fact and conclusions of law.

The administrative law judge shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the administrative law judge.

§4.1127 Initial orders and decisions.

An initial order or decision disposing of a case shall incorporate—

- (a) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and
- (b) An order granting or denying relief.

§4.1128 Effect of initial order or decision.

An initial order or decision shall become final if that order or decision is not timely appealed to the Board under §4.1270 or §4.1271.

§4.1129 Certification of record.

Except in expedited review proceedings under §4.1180, within 5 days after an initial decision has been rendered, the administrative law judge shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in