

§ 164.60

circumstances warranting the taking of the discovery, (ii) the nature of the information expected to be discovered and (iii) the proposed time and place where it will be taken.

(2) If the Administrative Law Judge determines the motion should be granted, he shall issue an order and appropriate subpoenas, if necessary, for the taking of such discovery together with the conditions and terms thereof.

MOTIONS

§ 164.60 Motions.

(a) *General.* All motions, except those made orally during the course of a public hearing or as otherwise provided by this part, shall be in writing and shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be filed with the hearing clerk and served on all parties.

(b) *Response to motions.* Within 10 days after service of any motion filed pursuant to this part, or within such other time as may be fixed by the Administrator, his designee, or the Administrative Law Judge, any party may serve and file an answer to the motion. The movant shall, if requested by the Administrator, his designee, or the Administrative Law Judge, serve and file reply papers within the time set by the request.

(c) *Decision.* The Administrative Law Judge shall rule upon all motions filed or made prior to the filing of his initial or accelerated decision at the time of filing on ex parte motions or where the movant has stated that no party objects to the granting of such motion. Otherwise, such decision shall await the answering papers and reply papers if permitted. The Environmental Appeals Board shall rule upon all motions filed after the filing of the initial or accelerated decision. Oral argument of motions will be permitted only if the Administrative Law Judge or the Environmental Appeals Board deems it necessary.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5343, Feb. 13, 1992]

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SUBPOENAS AND WITNESS FEES

§ 164.70 Subpoenas.

(a) The attendance of witnesses or the production of documentary evidence may, by subpoena, be required at any designated place of hearing or place of discovery. Subpoenas may be issued by the Administrative Law Judge sua sponte or upon a showing by an applicant that evidence sought for hearing is relevant and material to the issues involved in the hearing or that the sought discovery pursuant to § 164.51 meets the standards set forth therein. The Administrative Law Judge shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of a witness or the content of the documents produced.

(b) *Motion for subpoena duces tecum.* Subpoenas for the production of documentary evidence, unless issued by the Administrative Law Judge sua sponte, shall be issued only upon a written motion. Such motion shall specify, as exactly as possible, the documents desired.

(c) *Service of subpoenas.* Subpoenas shall be served as provided by the Federal Rules of Civil Procedure.

§ 164.71 Fees of witnesses.

Witnesses summoned before the Administrative Law Judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and persons whose depositions are taken, and the persons taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

THE HEARINGS

§ 164.80 Order of proceeding and burden of proof.

(a) At the hearing, the proponent of cancellation or change in classification has the burden of going forward to present an affirmative case for the cancellation or change in classification of the registration. In the case of the denial of an application for registration, the applicant shall have the burden of