Rules of Practice Applicable to Appeals of Reconsidered Determinations Issued by the Executive Vice President, Commodity Credit Corporation, Under 7 U.S.C. ' ' 1359dd and 1359ff

Rule 1 Applicability and bases of the rules of practice; nature of proceeding.

(a) *Applicability.* These Rules of Practice govern:

(1) Appeals of reconsidered determinations by the executive vice president establishing allocations of marketing allotments under section 359d of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. ' 1359dd); and

(2) Appeals of reconsidered determinations by the executive vice president arbitrating disputes between processors and producers or groups of producers under section 359f of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. ' 1359ff).

(b) *Bases of rules and nature of proceeding.* These Rules of Practice are issued pursuant to section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. ' 1359ii), and 7 C.F.R. ' 1435.319(b). Section 359i(b)(2) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. ' 1359ii(b)(2)), requires that the Secretary of Agriculture provide an adversely affected person that appeals the executive vice president=s reconsidered determination an opportunity for a hearing before an administrative law judge in accordance with 5 U.S.C. ' ' 554 and 556. Pursuant to 7 C.F.R. ' 1435.319(b) any person adversely affected by the executive vice president=s reconsidered determination under section 359d or 359f of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. ' ' 1359dd, 1359ff), may appeal the reconsidered determination in accordance with Rules of Practice issued by the judicial officer.

Rule 2 Definitions.

For the purposes of these Rules of Practice, unless the context otherwise requires, the following terms shall have the meanings assigned to them in Rule 2. The singular form shall also signify the plural. Words that are not defined in Rule 2 shall have the meanings attributed to them in general usage as reflected by definitions in a standard dictionary.

(a) *Administrative law judge* means an administrative law judge appointed pursuant to 5 U.S.C. ' 3105 and either employed by the United States Department of Agriculture or detailed to the United States Department of Agriculture pursuant to 5 U.S.C. ' 3344.

(b) *Administrative law judge=s decision* means a decision issued by an administrative law judge in accordance with 5 U.S.C. ' ' 556 and 557 and includes the administrative law judge=s: (1) findings of fact, conclusions of law, and reasons and bases for findings of fact and conclusions of law on all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

(c) *Affected person* means a sugar beet processor, a sugarcane processor, a sugar beet producer, a sugarcane producer, a group of sugar beet producers, or a group of sugarcane producers, other than the petitioner, affected by the executive vice president=s reconsidered determination and identified by the executive vice president as an affected person.

(d) *Executive vice president* means the executive vice president of the Commodity Credit Corporation or any person to whom the executive vice president delegates authority to act for the executive vice president.

(e) *Hearing* means that part of the proceeding conducted under these Rules of Practice which involves the submission of evidence before an administrative law judge for the record in the proceeding.

(f) *Hearing clerk* means the hearing clerk, Office of Administrative Law Judges, United States Department of Agriculture, Washington, DC 20250.

(g) *Intervenor* means an affected person who elects to intervene in a proceeding conducted in accordance with these Rules of Practice.

(h) *Judicial officer* means an officer of the United States Department of Agriculture delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1970 (7 U.S.C. ' ' 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953 (5 U.S.C. app. ' 4(a)); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. ' 6912(a)(1)) to perform the function involved, or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary of Agriculture.

(i) *Judicial officer=s decision* means the decision and order by the judicial officer upon appeal of the administrative law judge=s decision.

(j) *Legal public holiday* means the days listed in 5 U.S.C. ' 6103(a) and any other day declared to be a holiday in Washington, DC, by Federal statute or by Executive Order.

(k) *Party* means the petitioner and the executive vice president.

(l) *Petitioner* means a person who is adversely affected by a reconsidered determination and who files a petition for review of that reconsidered determination.

(m) *Reconsidered determination* means a determination issued by the executive vice president in response to receipt of a written request by a person adversely affected by a previous determination issued by the executive vice president.

(n) *Representative* means a person: (1) who is authorized by a party or intervenor to represent that party or intervenor in a proceeding conducted under these Rules of Practice; and (2) who has filed an appearance.

Rule 3 Institution of the proceeding; petition for review.

(a) *Institution of the proceeding.* A petitioner may institute a proceeding under these Rules of Practice by filing with the hearing clerk a petition for review within 20 days after the date the executive vice president=s reconsidered determination is effective. Unless a later date is specified by the executive vice president in the executive vice president=s reconsidered decision, the reconsidered decision, which is the subject of the petition for review, shall be considered effective on the date on which announcement of the reconsidered decision is made.

(b) *Petition for review.* (1) The petition for review shall be in writing and signed by the petitioner or by the petitioner=s representative.

(2) The petition for review shall include a statement of the factual and legal matters that the petitioner believes warrant reversal of the reconsidered determination.

(3) The petition for review shall be accompanied by a copy of the reconsidered determination to be reviewed.

Rule 4 Docket number; service of petition for review.

(a) *Docket number.* Immediately following the institution of a proceeding under these Rules of Practice, the hearing clerk shall assign the proceeding a docket number. After the hearing clerk assigns the proceeding a docket number, the proceeding shall be referred to by that docket number and all papers filed with the hearing clerk in the proceeding shall display the docket number.

(b) *Service of the petition for review*. The hearing clerk shall serve the executive vice president with the petition for review.

Rule 5 Answer.

(a) *Filing.* Within 20 days after the hearing clerk serves the executive vice president with the petition for review, the executive vice president shall file with the hearing clerk an answer signed by the executive vice president or the executive vice president=s representative. The answer shall be accompanied by a certified copy of the record upon which the executive vice president based the reconsidered determination which is the subject of the petition for review and the record upon which the executive vice president based the reconsidered

determination shall become part of the record in the proceeding under these Rules of Practice. The answer shall also be accompanied by the names and addresses of each affected person and the date the reconsidered determination was announced.

(b) *Contents.* (1) The answer shall admit, deny, or explain each of the allegations of the petition for review and set forth any defense asserted by the executive vice president; or

(2) The answer shall state that the executive vice president admits all the facts alleged in the petition for review; or

(3) The answer shall state that the executive vice president admits the jurisdictional allegations of the petition for review and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the petition for review and failure to deny or otherwise respond to an allegation of the petition for review shall be deemed, for purposes of the proceeding, an admission of the allegation.

(d) *Service.* The hearing clerk shall serve the petitioner with any answer filed by the executive vice president. The hearing clerk shall serve each affected person with the petition for review, any answer filed by the executive vice president, and a notice advising the affected person of the affected person=s right to intervene in the proceeding.

Rule 6 Procedure for an affected person to intervene in the proceeding.

(a) *Notice and answer.* An affected person may intervene in a proceeding under these Rules of Practice by filing a notice with the hearing clerk within 20 days after service of the notice of the right to intervene in the proceeding, stating that the affected person elects to intervene in the proceeding. Failure to file a timely notice with the hearing clerk shall constitute a waiver of the right to intervene in the proceeding.

(b) *Service.* The hearing clerk shall serve the parties and each of the other intervenors with the notice filed by any affected person.

Rule 7 Procedure upon failure to file an answer.

The failure by the executive vice president to file an answer shall constitute a waiver of hearing. After the executive vice president=s failure to file an answer, the petitioner shall file with the hearing clerk a proposed decision, along with a motion for adoption of the proposed decision. The hearing clerk shall serve the executive vice president and the intervenors with the petitioner=s proposed

decision and the petitioner=s motion for adoption of the proposed decision. Within 20 days after service of the proposed decision and motion for adoption of the proposed decision, the executive vice president and the intervenors may file objections to the proposed decision and the motion for a proposed decision. If the administrative law judge finds that the executive vice president or any intervenor has filed meritorious objections, the petitioner=s motion shall be denied with supporting reasons. If the administrative law judge finds that neither the executive vice president nor any intervenor has filed meritorious objections, the administrative law judge shall issue a decision without further procedures or hearing. The hearing clerk shall serve the administrative law judge=s decision or denial of petitioner=s motion on the parties and the intervenors. If the administrative law judge adopts the proposed decision as the administrative law judge=s decision, the administrative law judge=s decision shall become final 25 days after the hearing clerk serves the decision on the executive vice president, unless a party or an intervenor appeals to the judicial officer in accordance with Rule 11: *Provided, however*, That no decision shall be final for purposes of judicial review, except a final decision of the judicial officer after appeal in accordance with Rule 11.

Rule 8 Conferences.

(a) *Motion for and notice of conference.* Upon the motion of any party or any intervenor, or upon the administrative law judge=s own motion, the administrative law judge may direct the parties and the intervenors or their representatives to participate in a conference at any reasonable time prior to the hearing or during the course of the hearing. The administrative law judge shall give the parties and the intervenors or their representatives reasonable notice of the time and place of the conference.

(b) *Scope of the conference.* (1) The administrative law judge may order each party and each intervenor to provide at the conference or subsequent to the conference, the following:

(i) An outline of the case or defense;

(ii) The legal theories upon which the party or the intervenor will rely;

(iii) Copies of or a list of documents that the party or the intervenor anticipates relying upon at the hearing; and

(iv) A list of witnesses who the party or the intervenor anticipates will testify on the party=s or the intervenor=s behalf. With permission of the administrative law judge, the names of the witnesses need not be provided if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence the witnesses will offer.

(2) The administrative law judge shall not order a party or an intervenor to disclose the items in Rule 8(b)(1) if the party or the intervenor can show disclosure is inappropriate or unwarranted under the circumstances of the proceeding.

(3) At the conference, the following matters shall be considered:

(i) The simplification of issues;

(ii) The necessity of the amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitation of the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties and the intervenors for the completion of the actions decided at the conference; and

(ix) Any other matter that may expedite and aid in the disposition of the proceeding.

(c) *Reporting the conference.* The conference will not be transcribed unless so directed by the administrative law judge. Any party or intervenor may petition the administrative law judge to allow for a stenographic transcript of a conference. The person requesting the transcript shall bear the cost of producing the transcript and the duplication cost for one transcript provided to the administrative law judge and each party and intervenor.

(d) *Manner of conference.* In the event the administrative law judge concludes that personal attendance by the administrative law judge and the parties and the intervenors or their representatives at a conference is unwarranted or impractical, but decides that a conference would expedite the proceeding or aid in the disposition of the proceeding, the administrative law judge may conduct the conference by telephone, audio-visual communication, or correspondence.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the administrative law judge concludes that a stenographic report shall suffice or the administrative law judge elects to make a statement on the record at the hearing summarizing the actions taken.

Rule 9 Procedure for hearing.

(a) *Request for hearing.* (1) The petitioner may request a hearing by including the request for hearing in the petition for review or in a separate request filed with the hearing clerk within the time that an answer may be filed. The

executive vice president may request a hearing by including the request in the answer or in a separate request filed with the hearing clerk within the time that an answer may be filed. An affected person may request a hearing by including the request in the notice filed with the hearing clerk that the affected person elects to intervene in the proceeding. Failure to file a timely request for a hearing shall constitute a waiver of the right to a hearing. Waiver of hearing shall not be deemed to be a waiver of the right to request oral argument before the judicial officer upon appeal of the administrative law judge=s decision.

(2) If any material fact is joined by the pleadings, the administrative law judge, upon motion of a party or an intervenor or upon the administrative law judge=s own motion, shall set a time and place for the hearing with due regard for the convenience of the parties, the intervenors, and their representatives. The administrative law judge shall file with the hearing clerk a notice stating the time and place of the hearing. The hearing clerk shall serve the administrative law judge=s notice on the parties and the intervenors.

(b) *Appearance at hearing.* Any party or any intervenor may appear in person or by a representative. Any person who appears as a representative must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Debarment of representative.* (1) Whenever an administrative law judge finds that a representative is guilty of unethical or contumacious conduct in connection with a proceeding conducted under these Rules of Practice, the administrative law judge may order that such person be precluded from further acting as a representative. Review by the judicial officer may be taken on any such order, but no proceeding shall be delayed or suspended pending disposition of the debarment review by the judicial officer: *Provided*, That the administrative law judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party or the intervenor to obtain another representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person, who is acting or who has acted as a representative for another person in any proceeding before the United States Department of Agriculture, is unfit to act as a representative because of unethical or contumacious conduct, such person will be precluded from acting as a representative in any or all proceedings before the United States Department of Agriculture as found to be appropriate.

(d) *Failure to appear.* (1) If a party or an intervenor, after being duly notified, fails to appear at the hearing without cause, that party or intervenor shall be deemed to have waived the opportunity for an oral hearing.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with the administrative law judge=s decision or to seek review by the judicial officer in accordance with Rule 11.

(e) *Order of proceeding.* Except as may otherwise be determined by the administrative law judge, the petitioner shall proceed first at the hearing.

(f) *Evidence.* (1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(ii) Upon a finding of good cause, the administrative law judge may order that any witness be examined separately and apart from all other witnesses except those witnesses who are parties.

(iii) After a witness called by the executive vice president has testified on direct examination, the petitioner or any intervenor may request and obtain the production of any statement, or any part of any statement, of the witness, in the possession of the executive vice president, which relates to the subject matter about which the witness has testified. The production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. ' 3500).

(iv) Evidence that is immaterial, irrelevant, unduly repetitious, or that is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* (i) If a party or an intervenor objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to the ruling of the administrative law judge, the party or the intervenor raising the objection shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the administrative law judge.

(ii) Only objections made before the administrative law judge may subsequently be relied upon in the proceeding.

(3) *Exhibits.* Unless the administrative law judge finds that providing copies of exhibits is impracticable, four copies of each exhibit shall be filed with the administrative law judge: *Provided,* That, where there is an intervenor or where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party and each intervenor. A true copy of the exhibit may be substituted for the original.

(4) *Official records or documents.* An official government record or document or entry in the record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated. The record or document shall be evidenced by an official publication or by a copy certified by the person having the legal authority to make the certification.

(5) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the Untied States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That the parties and the intervenors shall be given adequate notice of the matter so

noticed and shall be given adequate opportunity to show that such facts are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded by the administrative law judge, the party or the intervenor offering the evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, the oral statement shall be included in the transcript in its entirety. If the evidence consists of an exhibit, it shall be marked for identification and inserted into the hearing record. In either event, the evidence shall be considered a part of the transcript and hearing record if the judicial officer, upon appeal, decides the administrative law judge=s ruling excluding evidence was erroneous and prejudicial. If the judicial officer decides the administrative law judge=s ruling was erroneous and prejudicial, and that it would be inappropriate to have such evidence part of the hearing record, the judicial officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(g) *Transcript.* Hearings shall be transcribed verbatim. At the time a hearing is scheduled, the hearing clerk shall make arrangements for the transcription of the hearing. Transcripts of hearings shall be made available to any party and to any intervenor at actual cost of duplication.

Rule 10 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Any party or any intervenor may file a motion proposing correction to the transcript within 20 days after receipt of the transcript.

(2) Unless a party or an intervenor files a timely motion proposing correction to the transcript, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record and shall be deemed to be certified without further action by the administrative law judge.

(3) At any time prior to the filing of the administrative law judge=s decision and after consideration of any objections filed as to the transcript, the administrative law judge may issue an order making any corrections in the transcript that the administrative law judge finds are warranted. Such corrections shall be entered into the original transcript by the hearing clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Prior to the administrative law judge=s decision, each party and each intervenor shall be afforded a reasonable opportunity to file proposed findings of facts, conclusions,

orders, and briefs with the hearing clerk. The hearing clerk shall serve upon each of the other parties and each of the other intervenors each such document filed by a party or an intervenor.

(c) *Administrative law judge=s decision.* (1) The administrative law judge within a reasonable time shall prepare, upon the basis of the record and officially noticed matters, and shall file with the hearing clerk, the administrative law judge=s decision. The hearing clerk shall serve the administrative law judge=s decision upon each of the parties and each of the intervenors.

(2) The administrative law judge=s decision shall become final 25 days after the hearing clerk serves the decision on the executive vice president, unless a party or an intervenor files an appeal petition pursuant to Rule 11.

(3) No decision shall be final for purposes of judicial review except a final decision of the judicial officer upon appeal as prescribed in Rule 11.

Rule 11 Appeal to the judicial officer.

(a) *Appeal petition*. (1) Within 20 days after service of the administrative law judge=s decision, any party or intervenor who disagrees with the administrative law judge=s decision, any part of the decision, or any ruling by the administrative law judge may appeal the decision to the judicial officer by filing an appeal petition with the hearing clerk.

(2) Each issue set forth in the appeal petition, and the arguments on each issue, shall be plainly and concisely stated and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of the arguments. A brief in support may be filed simultaneously with the appeal petition.

(b) *Response to appeal petition*. Within 20 days after service of the appeal petition and any brief in support of the appeal petition, any other party or any other intervenor may file a response in support of or in opposition to the appeal petition and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of the record*. Whenever an appeal petition is filed and a response to the appeal petition has been filed or time for filing a response has expired, the hearing clerk shall transmit the record to the judicial officer.

(d) *Oral argument*. A party or an intervenor filing an appeal petition may request, within the prescribed time for filing the appeal petition, an opportunity for oral argument before the judicial officer. Within the time allowed for filing a response to an appeal petition, any responding party or responding intervenor may file a request for oral argument. Failure to file a timely request to appear before the judicial officer shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the judicial officer. The

judicial officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the judicial officer for cause shown upon request of a party or an intervenor or upon the judicial officer=s own motion.

(e) *Scope of argument*. Argument to be heard by the judicial officer on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal petition or in the response to the appeal petition. Evidence will be limited to the record; no new evidence may be presented.

(f) *Notice of oral argument.* The hearing clerk shall advise all parties and intervenors of the time and place at which oral argument will be heard.

(g) *Submission on briefs*. By agreement of the parties and intervenors, a brief may be submitted for decision, but the judicial officer may direct that the appeal be argued orally.

(h) *Decision of the judicial officer on appeal*. (1) As soon as practicable, after the receipt of the record from the hearing clerk, or, in case oral argument was had, as soon as practicable after oral argument, the judicial officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the appeal.

(2) The judicial officer may adopt, reduce, reverse, compromise, remand, or approve settlement of any claim decided by the administrative law judge.

(3) The hearing clerk shall serve each party and each intervenor to the appeal with a copy of the judicial officer=s decision.

(4) The judicial officer=s decision shall be considered the final determination for purposes of judicial review.

Rule 12 Form; filing; computation of time; extensions of time; service.

(a) *Form.* (1) The original and three copies of each paper in a proceeding conducted under these Rules of Practice shall be filed with the hearing clerk: *Provided,* That, where there is an intervenor in the proceeding or where there are more than two parties in the proceeding, an additional copy shall be filed for each intervenor and each additional party.

(2) Each paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the hearing clerk, and a descriptive title.

(3) Each paper shall be signed by and contain the address and telephone number of the party or the intervenor or the representative for the party or intervenor on whose behalf the paper was filed.

(b) *Effective date of filing.* Any paper required or authorized under these rules of practice to be filed shall be deemed to be filed at the time the hearing clerk receives the paper.

(c) *Computation of time.* Saturdays, Sundays, and legal public holidays shall be included in computing the time allowed for filing of any paper. In computing any period of time under these rules of practice or in an order issued under these Rules of Practice, the time begins with the day following the act, event, or default, and includes the last day of the period, unless the last day of the period is a Saturday, Sunday, or legal public holiday, in which event the last day of the period includes the next workday.

(d) *Extensions of time.* The time for filing any paper required or authorized under these Rules of Practice to be filed may be extended by the administrative law judge or the judicial officer as provided in Rule 13, if, in the judgment of the administrative law judge or the judicial officer, there is good cause for the extension. A request for an extension of time shall be submitted to the administrative law judge or the judicial officer prior to the expiration of the original due date. In instances in which time permits, notice of the request for extension of time shall be given to the other parties and the other intervenors with the opportunity to submit views concerning the request.

(e) *Service.* (1) Any paper shall be deemed to be received by a party or an intervenor on the date of delivery by certified or registered mail to the last known principal place of business of the party or the intervenor, the last known principal place of business of the representative of the party or the intervenor, or the last known residence of the party or the intervenor if the party or intervenor is an individual.

(2) Any paper served other than by mail on a party, an intervenor, or a representative shall be deemed to be received by the party or the intervenor on the date of:

(i) Delivery to any responsible individual at or leaving in a conspicuous place at the last known principal place of business of the party or the intervenor, the last known principal place of business of the representative of the party or the intervenor, or the last known residence of the party or the intervenor if the party or intervenor is an individual; or

(ii) Delivery at any location to the party or the intervenor if the party or the intervenor is an individual, delivery at any location to an officer or director of the party or the intervenor if the party or the intervenor is a corporation, delivery at any location to a member of the party or a member of the intervenor if the party or the intervenor is a partnership, or delivery at any location to the representative of a party or an intervenor.

(f) *Proof of service.* Any of the following in the possession of the United States Department of Agriculture showing service shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the United States Postal Service with signature;

(2) An official record of the United States Postal Service;

(3) An entry on the docket record or a copy placed in the docket file by the hearing clerk or by an employee of the hearing clerk in the ordinary course of business; and

(4) A certificate of service showing the method, place, and date of service in writing signed by an individual with personal knowledge of the service: *Provided*, That the certificate of service must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party or an intervenor, a representative of a party or an intervenor, an employee of the United States, or an employee of a state or a political subdivision of a state.

Rule 13 Motions.

(a) *General.* All motions shall be filed with the hearing clerk and the hearing clerk shall serve the motions on the other parties and the other intervenors, except motions for extensions of time pursuant to Rule 12(d), motions made on the record during oral hearing, and motions made during oral argument before the judicial officer. The administrative law judge shall rule on all motions filed or made prior to the filing of an appeal petition pursuant to Rule 11, except motions directly relating to the appeal. The judicial officer shall rule on all motions filed simultaneously with or after the filing of an appeal petition and all motions directly relating to the appeal.

(b) *Motions entertained.* Any motion will be entertained.

(c) *Contents.* All motions shall state the particular order, ruling, or action desired and the grounds for the request for the order, ruling, or action.

(d) *Response to motions.* Within 20 days after service of any written motion, or within a shorter or longer period fixed by the administrative law judge or the judicial officer, any party or intervenor may file a response to the motion.

Rule 14 Administrative law judges.

(a) *Assignment.* No administrative law judge shall be assigned to serve in a proceeding under these Rules of Practice who:

(1) Has any pecuniary interest in any matter or business involved in the proceeding;

(2) Is related by blood or marriage to any party or intervenor in the proceeding; or

(3) Has any conflict of interest that might impair the administrative law judge=s objectivity in the proceeding.

(b) *Disqualification of an administrative law judge*. (1) Any party or intervenor to the proceeding may, by motion, request that the administrative law

judge withdraw from the proceeding on one or more of the grounds in Rule 14(a). The motion shall set forth with particularity the alleged grounds for disqualification. The administrative law judge may then either rule upon or certify the motion to the judicial officer, but not both.

(2) The administrative law judge may withdraw from any appeal for any reason deemed by the administrative law judge to be disqualifying.

(c) *Powers*. Subject to review as provided elsewhere in these Rules of Practice, the administrative law judge, in any assigned proceeding, shall have the power to:

(1) Set the time and place of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(2) Administer oaths and affirmations;

(3) Examine witnesses and receive evidence at the hearing;

(4) Admit or exclude evidence;

(5) Hear oral argument on facts or law;

(6) Perform all acts and take all measures necessary for the maintenance of order,
including the exclusion of contumacious representatives or other persons; and

(7) Take all other actions authorized under these Rules of Practice.

(d) *Who may act in the absence of the administrative law judge*. In case of the absence of the administrative law judge or the administrative law judge=s inability to act, the powers and duties to be performed by the administrative law judge under these Rules of Practice in connection with any assigned proceeding may, without abatement of the proceeding, unless otherwise directed by the chief administrative law judge, be assigned to any other administrative law judge.

Rule 15 Representation; appearances.

(a) *Representation.* Any party or intervenor may be represented by representatives.

(b) *Appearances.* A representative appearing on behalf of a party or an intervenor shall file a notice of appearance with the hearing clerk before or simultaneous with the first pleading or paper filed by the representative on behalf of a party or an intervenor. A representative may withdraw an appearance by filing a notice of withdrawal with the hearing clerk.

Rule 16 Ex parte communications.

(a) *Administrative law judge; judicial officer.* At no time prior to the issuance of the final decision shall the administrative law judge or judicial officer discuss ex parte the merits of the proceeding with any person who is connected

with the proceeding in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the administrative law judge or judicial officer may discuss the merits of the case with such a person if all parties and intervenors to the proceeding, or their representatives, have been given notice and an opportunity to participate in the discussion. A memorandum of such discussion shall be included in the record.

(b) *Parties; intervenors; interested persons.* No party, intervenor, or other interested person shall make or knowingly cause to be made to the administrative law judge or judicial officer an ex parte communication relevant to the merits of the proceeding.

(c) *Procedure.* (1) If the administrative law judge or judicial officer receives an ex parte communication in violation of Rule 16(b), the person who receives the communication shall place in the record:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) Copies of all written responses, and memoranda stating the substance of all oral responses to the ex parte communication.

(2) Upon receipt of a communication knowingly made or knowingly caused to be made by a party or an intervenor in violation of Rule 16(b), the administrative law judge or judicial officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party or the intervenor to show cause why the party=s or intervenor=s claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of Rule 16(b) shall be sufficient grounds for a decision adverse to the party or intervenor who knowingly commits a violation of Rule 16(b) or who knowingly causes the violation to occur.