whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the motion to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, the Secretary may apply to the appropriate district court of the United States to seek enforcement of the subpoena in accordance with 49 U.S.C. 70115(c). A party may request the Secretary to seek such enforcement.

§ 406.161   Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 406.163   Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing; all exhibits received into evidence; the complaint, answer, and amendments thereto; all motions, applications, and requests, and responses thereto; and all rulings constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) A person may keep the original document, data, or other evidence, with the consent of the administrative law judge, by substituting a legible copy for the record.

§ 406.165   Argument before the administrative law judge.

(a) *Argument during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision if the administrative law judge finds that submission of written briefs would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 406.167   Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the