

§ 201.88

relevant, material, reliable, and probative evidence; exclude irrelevant, immaterial, unreliable, repetitious or cumulative evidence; exclude cross-examination which is primarily intended to elicit self-serving declarations in favor of the witness; and limit cross-examination of any questions of fact in issue; for a full and true disclosure of the facts in issue; act upon petitions to intervene; act upon submission of facts, or argument; initially consider offers of settlement or other proposals of adjustment upon which recommendations to the Administration may be made; hear oral argument at the close of testimony; fix the time for filing briefs, motions and other documents to be filed in connection with hearings and replies thereto; and issue the initial or recommended decisions and dispose of any other pertinent matter that normally and properly arises in the course of proceedings. When the presiding officer is unavailable for any reason, and the exercise of any of his powers and functions, as described herein, is due, timely, and necessary, the Chief Administrative Law Judge may exercise such powers and functions until the presiding officer becomes available or until his successor is designated.

[General Order 41, 3d Rev., 29 FR 14475, Oct. 22, 1964; 29 FR 15374, Nov. 17, 1964, as amended at 63 FR 9157, Feb. 24, 1998]

§ 201.88 Postponement or change of place by presiding officer.

If, in the judgment of the presiding officer, convenience or necessity so requires he may postpone the time or change the place of hearing.

§ 201.89 Disqualification of presiding officer.

Any presiding officer may at any time withdraw if he deems himself disqualified, in which case another presiding officer will be designated. If a party to a proceeding, or his representative, files in good faith a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the Administration will determine the matter as a part of the record and decision in the case.

46 CFR Ch. II (10-1-06 Edition)

Subpart I—Summary Disposition (Rule 9)

§ 201.91 Filing of motions, answers.

Any party or (if a petition to intervene shall have been filed but not have been acted upon) any prospective party may at or before the first prehearing conference in any proceeding, or at such later time as might be allowed by the presiding officer, move with supporting affidavits for a summary disposition in his favor of all or any part of the proceeding. Any adverse party may within 20 days serve opposing affidavits or may countermove for summary disposition. Oral argument thereon may be granted in the discretion of the presiding officer.

§ 201.92 Ruling on motion.

The presiding officer may grant such motion if the application, motion, or other pleadings, affidavits or depositions, if any, and matters of official notice show that there is no genuine issue as to any material facts, that there is no necessity that further facts be developed in the record, and that such party is entitled to a decision as a matter of law.

§ 201.93 Review of ruling, appeal.

The order of the presiding officer denying a motion for summary disposition shall be subject to interlocutory appeal under the provisions of § 201.123. An order granting a motion for summary disposition is automatically reviewable by the Administration in accordance with the provisions of § 201.133 and shall not be final until acted upon by the Administration.

Subpart J—Prehearing Conference; Settlements; Procedural Agreements (Rule 10)

§ 201.101 Prehearing conference.

Prior to any hearing a prehearing conference may be held before the presiding officer. Written notice of a prehearing conference shall be transmitted by the Secretary of the Administration or the Chief Hearing Examiner to all parties of record including persons whose petitions for leave to intervene in the proceeding have not

theretofore been granted, and where practicable, by general release to the public press.

(a) At the prehearing conference the following matters, among others, shall be considered: (1) Petitions for leave to intervene; (2) motions for consolidation or severance of dockets for joint or separate hearing to the extent that the Administration has not theretofore taken specific action; (3) simplification and delineation of the issues to be heard; (4) designation of matters in respect of which official notice may be taken; (5) requests for discovery and production of evidence considered to be generally relevant and material to the issues in the proceeding; (6) stipulations; (7) limitation of number of witnesses, particularly the avoidance of duplicate expert witnesses; (8) procedure applicable to the proceeding; (9) offers of settlement, as hereinafter to be more particularly discussed in § 201.103; and (10) scheduling of the dates for exchange of exhibits, written testimony both affirmative and rebuttal and establishing the date, time and place for hearing.

(b) If deemed necessary or appropriate, the presiding officer may also, on his own motion, or on motion of Public Counsel direct any party to a proceeding to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant and material to the issues in the proceeding to be sponsored by witnesses available for cross-examination thereon.

§ 201.102 Prehearing rulings.

The presiding officer will, where practicable, issue prehearing rulings, acting on petitions for leave to intervene, delineating the issues, summarizing the rulings made at the conference, specifying a schedule for the exchange of exhibits and written testimony, the date, time and place of hearing and specifying a time for the filing of exceptions to the rulings. The prehearing rulings shall be served upon all parties to the proceeding and any persons who participated in the conference. Exceptions to the prehearing rulings may be filed by any such party or person within the time specified therein. The presiding officer may

serve amended rulings in the light of the exceptions presented. Such rulings and amendments, if any, shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but they may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 201.103 Opportunity for agreement of parties and settlement of case.

Where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity for submission to and consideration by the presiding officer of offers of settlement, or proposals of adjustment together with facts and/or arguments relevant to such offers or proposals without prejudice to the rights of the parties. The presiding officer need not be present at any negotiations of such nature. The presiding officer shall issue an initial or recommended decision thereon recommending approval or disapproval of such offer of settlement or proposal of adjustment to the Administration for final action thereon. No agreement, offer, or proposal shall be admissible in evidence over the objection of any party in any hearing on the matter. When any settlement does not dispose of the whole proceeding, the remaining issues shall be determined in accordance with sections 7 and 8 of the Administrative Procedure Act.

Subpart K—Discovery and Depositions (Rule 11)

§ 201.109 Discovery and production of documents.

Upon request of any party showing good cause therefor, at the prehearing conference or otherwise upon notice to all other parties, the Administration or presiding officer may direct any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged which constitute or contain evidence relating to any matter, not privileged, which is relevant to the subject matter involved in the pending proceeding, and which