

## Maritime Administration, DOT

necessary to protect substantial interests of the petitioner and where intervention will not materially broaden the issues. A person granted permission to intervene becomes a party to the proceeding.

### § 201.79 Motions.

All motions and requests for rulings shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, such motions shall be in writing. If made at the hearing, they may be stated orally: *Provided, however,* That the presiding officer may require that such motion be reduced to writing and filed and served in the same manner as a formal motion. Answers to formal motions shall comply with the requirements of § 201.80. Motions and answers thereto shall be addressed to the presiding officer if the case is pending before such officer. Oral argument upon a written motion in which an answer has been filed may be granted within the discretion of the Administration or the presiding officer, as the case may be. A repetitious motion will not be entertained.

### § 201.80 Answers to applications, petitions, or motions.

A pleading filed in response to an application, petition, or motion is called an answer. An answer may be filed to any application, petition, motion or pleading which is required to be served on the answering party or noticed in the FEDERAL REGISTER. An answer to a written application, petition, or motion shall be in writing and shall be filed within ten days after service of the pleading which it answers. Any new matter raised in an answer shall be deemed to be controverted. A response to an answer is called a reply. A short reply restricted to such new matters may be filed within five days of service of the answer.

## Subpart H—Responsibilities and Duties of Presiding Officer (Rule 8)

### § 201.85 Commencement of functions of Department of Transportation Office of Hearings.

In proceedings handled by the Department of Transportation Office of

## § 201.87

Hearings, its functions shall attach upon notice of the institution of a formal proceeding involving a prehearing conference and/or a hearing by the Administration.

[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]

### § 201.86 Presiding officer.

An Administrative Law Judge in the Department of Transportation Office of Hearings will be designated by the Department's Chief Administrative Law Judge to preside at hearings required by statute, or directed to be held under the Administration's discretionary authority in hearings not required by statute, in rotation so far as practicable, unless the Administration shall designate one or more of its officials to serve as presiding officer(s) in hearings required by statute, or member(s) of the staff in proceedings not required by statute.

[63 FR 9157, Feb. 24, 1998]

### § 201.87 Authority of presiding officer.

The officer designated to hear a case shall have authority to arrange and issue notice of the date, time and place of hearings; under appropriate circumstances consolidate dockets for joint hearing; sign and issue subpoenas authorized by law; take or cause depositions to be taken; rule upon proposed amendments or supplements to pleadings; hold conferences for the settlement or simplification of matters embraced in the proceedings; regulate the course of the hearing; prescribe the order in which evidence shall be presented; dispose of procedural requests or similar matters; hear and initially rule upon all motions and petitions before him; administer oaths and affirmations; examine witnesses, direct witnesses to testify or produce available evidence and to submit reports, studies and analyses of data available to them which may be generally relevant and material to the determination of any questions of fact in issue; rule upon offers of proof and receive competent,

**§ 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