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§1112.11 Authority of officers.

Except to the extent that they apply only to the conduct of a public hearing, the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in §1113.3(a) and (b).

PART 1113—ORAL HEARING

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AUTHORITY: 5 U.S.C. 559; 49 U.S.C. 721.

SOURCE: 47 FR 49559, Nov. 1, 1982, unless otherwise noted.

§1113.1 Scheduling hearings; continued hearings.

(a) *Assignment; service and posting of notice.* In those proceedings in which an oral hearing is to be held, the Board will assign a time and place for hearing. Notice of hearings will be posted in the Office of the Secretary of the Board and will be served upon the parties and such other persons as may be entitled to receive notice under the Act.

(b) *Requests for changes in assignment.* Requests for postponements of date of hearing will be granted only in exceptional circumstances.

(c) *Continuances.* (1) A continuance may be granted at the discretion of the presiding officer.

(2) If the presiding officer announces the time and place of a continued hear-

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ing on the record, no further notice need be given.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§1113.2 Subpoenas.

(a) *Issuance.* A subpoena may be issued upon the direction of the Board on its own motion or upon request. A subpoena may be issued by the Board or by the officer presiding at a hearing and must be signed by the Secretary or a member of the Board.

(b) *Requests.* (1) A request for a subpoena to compel the appearance of a person at a hearing to give oral testimony, but not to produce documents, may be made either by letter (only the original need be filed with the Board) or orally upon the record at the hearing. A showing of general relevance and reasonable scope of the evidence sought to be introduced through the subpoenaed person may be required.

(2) A request for a subpoena to compel a witness to produce documentary evidence should be made in writing by petition. The petition should specify with particularity the books, papers, or documents desired and facts expected to be proved, and should show the general relevance and reasonable scope of the evidence sought. The officer presiding at a hearing may grant a request for such a subpoena made orally upon the record.

(c) *Service.* The original subpoena should be exhibited to the person served, should be read to him if he is unable to read, and a copy should be delivered to him by the officer or person making service.

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, service should be evidenced by his return on the subpoena. If made by any other person, such person shall make an affidavit stating the date, time and manner of service; and return such affidavit on, or with, the original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure should be stated on the original subpoena. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the

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required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Secretary of the Board, unless otherwise directed.

(e) *Witness fees.* A witness who is summoned and responds to the summons is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§1113.3 Authority of officers.

(a) *General.* (1) The presiding officer has the authority to regulate the procedure in the hearing before him, and has authority to take all measures necessary or proper for the efficient performance of the duties assigned him. These include authority: (i) To hold hearings; (ii) to administer oaths and affirmations; (iii) to grant intervention; (iv) to accept any pleading; (v) to establish special rules of procedure appropriate to the effective handling of the particular proceeding; (vi) to examine witnesses; (vii) to issue subpoenas at the hearing; (viii) to dispose of requests for discovery; (ix) to hold conferences for the settlement and simplification of issues; (x) to rule on motions and dispose of procedural requests; (xi) to make initial decisions; (xii) to exclude any person from the hearing for contemptuous conduct; and (xiii) to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts.

(2) The presiding officer has the authority: (i) To terminate examination or cross-examination of repetitious or cumulative nature; (ii) to limit direct examination to material matters; (iii) to limit cross-examination to disputed material facts; (iv) to require that principal examination or cross-examination be conducted by one or more counsel representing similar interests in proceedings where several parties are involved; (v) to set reasonable schedules for the presentation of wit-

nesses; (vi) and to set reasonable time limits for the examination or cross-examination of witnesses. In order to enforce this paragraph, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness.

(b) *Motions to dismiss; amendments.* (1) The presiding officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding.

(2) The presiding officer may grant leave to amend any application or complaint.

(c) *Preparation of the decision by the prevailing party.* Any proceeding in which an oral hearing is held and in which the officer is able to announce his decision either:

(1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or

(2) By appropriate notification to the parties after the close of hearing, may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(d) *Recording; media coverage.* The presiding officer shall have authority to permit or to refuse to permit the recording of the hearing by means of live or delayed television or radio broadcast, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§1113.4 Prehearing conferences.

(a) *Purposes.* Upon written notice by the Board in any proceeding, or upon written or oral instruction of an officer, parties or their representatives may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

(1) The simplification of issues;