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(5) The extent to which one movant's participation may reasonably be expected to delay the proceedings.

(c) A motion to intervene should be filed before the first prehearing conference, the initiation of correspondence under § 209.20, or the setting of the time and place for the hearing, whichever occurs earliest. Motions shall be served on all parties. Any opposition to such motion must be filed within 10 days of service.

(d) All motions to be made an intervener shall be reviewed by the administrative law judge using the criteria set forth in paragraph (b) of this section and considering any opposition to such motion. The administrative law judge may, in granting such motion, limit a movant's participation to certain issues only.

(e) If the administrative law judge grants the motion with respect to any or all issues, he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties. If the administrative law judge denies the motion he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties and shall briefly state the reasons why the motion was denied.

(f) All motions to be made an intervener shall include the movant's agreement that the movant and any person he or she represents will be subject to examination and cross-examination, and will also include an agreement to make any supporting and relevant records available at the movant's own expense upon the request of the administrative law judge, on his or her own motion or the motion of any party or other intervener. If the intervener fails to comply with any of these requests, the administrative law judge may, in his or her discretion, terminate his or her status as an intervener.

§ 209.16 Late intervention.

Following the expiration of the time prescribed in § 209.15 for the submission of motions to intervene in a hearing, any person may file a motion with the administrative law judge to intervene in a hearing. Such a motion must contain the information and commitments required by paragraph (b) and (f) of § 209.15, and, in addition, must show that there is good cause for granting the motion and must contain a statement that the movant shall be bound by agreements, arrangements, and other determinations which may have been made in the proceeding.

§ 209.17 Amicus curiae.

Persons not parties to the proceedings who wish to file briefs may do so by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, granted on motion. This motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. An amicus curiae shall be eligible to participate in any briefing following the granting of his or her motion, and shall be served with all briefs, reply briefs, motions and orders relating to issues to be briefed.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

§ 209.18 Administrative law judge.

(a) *General.* The administrative law judge shall conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, and shall take all necessary action to avoid delay and maintain order. He or she shall have all power consistent with Agency rule and with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all appropriate procedural and other motions, and to issue all necessary orders;

(6) To require the submission of testimony in written form whenever in the opinion of the administrative law judge oral testimony is not necessary for full and true disclosure of the facts.

(7) To require the filing of briefs on any matter on which he or she is required to rule;

(8) To require any party or any witness, during the course of the hearing,