

(b) Unless the administrative law judge or the Board orders otherwise, any party to a proceeding in which a motion is filed under paragraph (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) An administrative law judge or the Board shall rule on all motions as expeditiously as possible.

§ 4.1113 Consolidation of proceedings.

When proceedings involving a common question of law or fact are pending before an administrative law judge or the Board, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of an administrative law judge or the Board.

§ 4.1114 Advancement of proceedings.

(a) Except in expedited review proceedings under § 4.1180, or in temporary relief proceedings under § 4.1266, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.

(b) Except as otherwise directed by the administrative law judge or the Board, any party filing a motion under this section shall—

- (1) Make the motion in writing;
- (2) Describe the exigent circumstances justifying advancement;
- (3) Describe the irreparable harm that would result if the motion is not granted; and
- (4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.

(d) Unless otherwise directed by the administrative law judge or the Board, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the administrative law judge of statements in response to the motion, the

administrative law judge may schedule a hearing regarding the motion. If the motion is granted, the administrative law judge may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate: *Provided*, A hearing on the merits shall not be scheduled with less than 5 working days notice to the parties, unless all parties consent to an earlier hearing.

(f) If the motion is granted, the Board may, if it deems such action to be appropriate, advance the appeal on its calendar and order such other advancement as may be appropriate, including an abbreviated schedule for briefing or oral argument.

§ 4.1115 Waiver of right to hearing.

Any person entitled to a hearing before an administrative law judge under the act may waive such right in writing. Where parties are directed by any rule in these regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

§ 4.1116 Status of notices of violation and orders of cessation pending review by the Office of Hearings and Appeals.

Except where temporary relief is granted pursuant to section 525(c) or section 526(c) of the act, notices of violation and orders of cessation issued under the act shall remain in effect during the pendency of review before an administrative law judge or the Board.

§ 4.1117 Reconsideration.

A party may file a motion for reconsideration of any decision of the Board under this subpart within 60 days after the date of the decision. The provisions of § 4.403 apply to a motion filed under this paragraph.

[75 FR 64669, Oct. 20, 2010]