

prior to the beginning of a hearing and shall serve a copy on each party. The amicus curiae may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

### Subpart C—Hearing Procedures

#### § 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

- (1) Change the date, time, and place of the hearing, upon due notice to the parties. This authority includes the power to continue the hearing in whole or in part;
- (2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (3) Regulate participation of parties and *amici curiae* and require parties and *amici curiae* to state their position with respect to the various issues in the proceeding;
- (4) Administer oaths and affirmations;
- (5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;
- (6) Regulate the course of the hearing and conduct of counsel therein;
- (7) Examine witnesses;
- (8) Receive, rule on, exclude or limit evidence or discovery;
- (9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;
- (10) If the presiding officer is the Assistant Secretary, make a final decision;
- (11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and
- (12) Take any action authorized by the rules in this part or in conformance

with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

#### § 99.22 Rights of parties.

All parties may:

- (a) Appear by counsel or other authorized representative, in all hearing proceedings;
- (b) Participate in any prehearing conference held by the presiding officer;
- (c) Agree to stipulations as to facts which will be made a part of the record;
- (d) Make opening statements at the hearing;
- (e) Present relevant evidence on the issues at the hearing;
- (f) Present witnesses who then must be available for cross-examination by all other parties;
- (g) Present oral arguments at the hearing; and
- (h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

#### § 99.23 Discovery.

The Department, the Lead Agency, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.