

## **§ 209.12**

to be introduced into evidence or papers filed in connection with any appeal, it shall serve copies upon all other parties. A certificate of service shall be provided on or accompany each document or paper filed with the hearing clerk. Documents to be served upon the Director of the Noise Enforcement Division shall be mailed to: Director, Noise Enforcement Division, U.S. Environmental Protection Agency (EN-387), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(c) Service by mail is complete upon mailing. Filing is completed when the document reaches the hearing clerk. It shall be timely if mailed within the time allowed for filing as determined by the postmark.

## **§ 209.12 Time.**

(a) In computing any period of time prescribed or allowed by these rules of practice, the day of the act or event from which the designated period of time begins to run shall not be included, except as otherwise provided. Saturdays, Sundays, and Federal legal holidays shall be included in computing any period allowed for the filing of any document or paper, except that when a period expires on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to include the next following business day.

(b) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, 3 days shall be added.

## **§ 209.13 Consolidation.**

The Administrator or the administrative law judge may consolidate two or more proceedings to be held under this section for resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise any issues that could otherwise have been raised.

## **§ 209.14 Motions.**

(a) All motions, except those made orally during the course of the hearing, shall be in writing, shall state the

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grounds with particularity, and shall set forth the relief or order sought.

(b) Within 10 days after service of any motion filed under this section or within such other time as may be fixed by the Environmental Appeals Board or the administrative law judge, as appropriate, any party may serve and file an answer to the motion. The movant shall, by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, serve and file reply papers within the time set by the request.

(c) The administrative law judge shall rule upon all motions filed or made subsequent to his or her appointment and prior to the filing of his or her decision or accelerated decision, as appropriate. The Environmental Appeals Board shall rule upon all motions filed before the appointment of the administrative law judge and all motions filed after the filing of the decision of the administrative law judge or accelerated decision. Oral argument of motions will be permitted only if the administrative law judge or the Environmental Appeals Board, as appropriate, deems it necessary.

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

## **§ 209.15 Intervention.**

(a) Persons desiring to intervene in a hearing to be held under section 11(d) of the act shall file a motion setting forth the facts and reasons why they should be permitted to intervene.

(b) In passing on a motion to intervene, the following factors, among other things, shall be considered by the administrative law judge:

(1) The nature of the movant's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the movant;

(2) The effect the order which may be entered in the proceeding may have on the movant's interest;

(3) The extent to which the movant's interest will be represented by existing parties or may be protected by other means;

(4) The extent to which the movant's participation may reasonably be expected to assist materially in the development of a complete record;

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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 intervenor 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 intervenor 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 intervenor. If the intervenor 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 intervenor.

### § 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,