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(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by §105.45;

(3) Adopt procedures for the submission of motions, evidence, and other documents pertinent to the proceeding;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(9) Take any other action authorized by, or consistent with, the provisions of this subpart and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The official who issued the notice of probable violation, or his representative, has the burden of proving the facts alleged therein.

(d) The respondent may appear and be heard on his own behalf or through counsel of his choice. The respondent or his counsel may offer relevant information including testimony which he believes should be considered in opposition to the allegations or which may bear on the sanction being sought and conduct such cross-examination as may be required for a full disclosure of the facts.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 67 FR 61011, Sept. 27, 2002]

§107.323 ALJ's decision.

(a) After consideration of all matters of record in the proceeding, the ALJ shall issue an order dismissing the notice of probable violation in whole or in part or granting the sanction sought by the Office of Chief Counsel in the notice. If the ALJ does not dismiss the notice of probable violation in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both. The order includes a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion.

(b) If, within 20 days of receipt of an order issued under paragraph (a) of this section, the respondent does not submit in writing his acceptance of the terms of an order directing compliance, or, where appropriate, pay a civil penalty, or file an appeal under §107.325, the case may be referred to the Attorney General with a request that an action be brought in the appropriate United States District Court to enforce the terms of a compliance order or collect the civil penalty.

§107.325 Appeals.

(a) *Hearing proceedings.* A party aggrieved by an ALJ's decision and order issued under §107.323, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(b) *Non-Hearing proceedings.* A respondent aggrieved by an order issued under §107.317, may file a written appeal in accordance with paragraph (c) of this section with the Administrator, Office of the Administrator, Pipeline and Hazardous Materials Safety Administration, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(c) An appeal of an order issued under this subpart must:

(1) Be filed within 20 days of receipt of the order by the appealing party; and

(2) State with particularity the findings in the order that the appealing party challenges, and include all information and arguments pertinent thereto.

(d) If the Administrator, PHMSA, affirms the order in whole or in part, the respondent must comply with the terms of the decision within 20 days of the respondent's receipt thereof, or within the time prescribed in the order. If the respondent does not comply with the terms of the decision within 20 days of receipt, or within the time prescribed in the order, the case may be referred to the Attorney General for action to enforce the terms of the decision.