

Board regarding the subpoena or subpoena request.

(4) *Board action on subpoena requests and motions.* After issuing a subpoena or receiving a subpoena request, the Board must do the following:

(i) Give the party or nonparty subject to the subpoena or subpoena request a reasonable period of time for the submission of any responses, objections, or motions.

(ii) Consider the subpoena or subpoena request, and any responses, objections, or motions related thereto, under the criteria specified in paragraph (b) of this section.

(iii)(A) Issue in writing and send promptly to each party and any affected nonparty an order granting or denying any motion to quash or modify a subpoena, or granting or denying any subpoena request in whole or in part; and

(B) Issue, if applicable, an original or modified subpoena in accordance with paragraph (c)(2) of this section.

(d) *Reviewability*—(1) *General rules.* (i) If the Board issues, quashes, or modifies, or refuses to issue, quash, or modify, a subpoena under paragraphs (c)(2) or (c)(4) of this section, the Board's action is not subject to immediate review by the Administrator (as described in § 405.1875(a)(3) of this subpart).

(ii) Any Board action on a subpoena may be reviewed solely during the course of Administrator review of one of the Board decisions specified in § 405.1875(a)(2) of this subpart, or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3) of this subpart, as applicable.

(2) *Exception.* (i) To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the Board, the Administrator may review immediately that portion of the subpoena in accordance with § 405.1875(a)(3)(ii) of this subpart.

(ii) Upon notice to the Board that a party or nonparty, as applicable, intends to seek Administrator review of the subpoena, the Board must stay all proceedings affected by the subpoena.

(iii) The Board determines the length of the stay under the circumstances of

a given case, but in no event may the stay be less than 15 days after the day on which the Board received notice of the party or nonparty's intent to seek Administrator review.

(iv) If the Administrator grants a request for review, or takes own motion review, of the subpoena, the subpoena or portion of the subpoena, as applicable, is stayed until such time as the Administrator issues a written decision that affirms, reverses, modifies, or remands the Board's action on the subpoena.

(v) If the Administrator does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the Board's action is not immediately reviewable.

(e) *Enforcement.* (i) If the Board determines, whether on its own motion or at the request of a party, that a party or nonparty subject to a subpoena issued under this section has refused to comply with the subpoena, the Board may request the Administrator to seek enforcement of the subpoena in accordance with section 205(e) of the Act.

(ii) Any enforcement request by the Board must consist of a written notice to the Administrator describing in detail the Board's findings of noncompliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(iii) The Board must promptly mail a copy of the notice and related documents to the party or nonparty subject to the subpoena, and to any other party and affected nonparty to the appeal.

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§ 405.1859 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation, unless excused by the Board for cause. The Board may examine the witnesses and shall allow the parties or their representatives to do so. Parties to the proceeding may also cross-examine witnesses.