

parties with appropriate space for signature by the Judge. The consent recommendation shall contain an admission of the jurisdictional facts, the factual and legal basis for the recommended sourcing area, the consent to the issuance of the recommended decision as the final decision of the agency without further procedure and such other admissions or statements as may be recommended by the parties. The Judge shall review the recommendation to determine whether such recommendation conforms with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), 36 CFR 223.190, 36 CFR 223.191(e) and these procedures. If the recommendation conforms to the aforementioned Act, regulations, and procedures, the Judge may enter such decision without further procedure, unless an error is apparent on the face of the document. If the Judge enters the decision, such decision shall have the same force and effect as a decision issued after full hearing and shall become final upon issuance to become effective in accordance with the terms of the decision.

§ 1.421 Prehearing conferences and procedures.

(a) *Purpose and scope.* (1) Upon motion of a party of record or upon the Judge's own motion, the Judge may direct the parties or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Judge finds that the proceeding would be expedited by a prehearing conference. Reasonable notice of the time and place of the conference shall be given. The Judge may order each of the parties to furnish at or subsequent to the conference any or all of the following:

- (i) An outline of a party's position;
- (ii) The facts upon which the party will rely;
- (iii) The legal theories upon which the party will rely;
- (iv) Copies of or a list of documents which the party anticipates introducing at the hearing; and
- (v) A list of anticipated witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the

names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(2) The Judge shall not order any of the foregoing procedures that a party can show is inappropriate or unwarranted under the circumstances of the particular determination.

(3) At the conference, the following matters shall be considered:

- (i) The simplification of issues;
- (ii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (iii) The limitation of the number of expert or other witnesses;
- (iv) Negotiation, compromise, or settlement of issues;
- (v) The exchange of copies of proposed exhibits;
- (vi) The identification of documents or matters of which official notice may be requested;
- (vii) A schedule to be followed by the parties for completion of the actions decided at the conference; and
- (viii) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A prehearing conference will not be stenographically reported unless so directed by the Judge.

(c) *Action in lieu of personal attendance at a conference.* In the event the Judge concludes that personal attendance by the Judge and the parties or counsel at a prehearing conference is unwarranted or impracticable, but determines that a conference would expedite the proceeding, the Judge may conduct such conference by telephone or correspondence.

(d) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the Judge concludes that a stenographic report shall suffice, or if the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 1.422 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing. If any change in

the time or place of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral script, or actual notice is given to the parties.

(b) *Appearances.* The parties may appear in person or by attorney of record in the proceeding. Any party who desires to be heard in person shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through counsel, such person or such counsel shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel. Any such person or such counsel shall give such other information respecting his appearance as the Judge may request. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Failure to appear.* A party of record who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision.

(d) *Order of proceeding.* The Judge shall determine the order in which the parties shall proceed.

(e) *Evidence—(1) In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation and shall be subject to cross-examination. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts. The Judge may require that testimony on one issue raised by numerous parties be heard at one time.

(ii) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) After a witness has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of

such witness in the possession of the party who called the witness, which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(iv) Evidence which is immaterial, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the Judge, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Judge.

(ii) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of §1.228 of these procedures.

(4) *Exhibits.* Unless the Judge finds that the furnishing of copies is impracticable, two copies of each exhibit shall be filed with the Judge. The party submitting the exhibit shall serve on every other party of record a copy of the exhibit, pursuant to §1.427(c) of these procedures. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice shall be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That the parties shall be given adequate notice of matters so noticed, and shall be

given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the hearing record.

(f) *Transcript.* Hearings shall be recorded and transcribed verbatim. Transcripts thereof shall be made available to any person, at actual cost of duplication (5 U.S.C. App. 2, section 11).

§ 1.423 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be complete.

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript, the Judge shall issue an order making any corrections to the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, order, and brief.* Prior to the close of the hearing, each party may submit for consideration proposed findings of fact, conclusions, order, and brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within 10 calendar days after the close of the hearing, or within 10 calendar days after submission of the record, if no hearing is requested.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.427.

(4) The Judge's decision shall become effective without further proceedings 21 calendar days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 21 calendar days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.426; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

(5) The Judicial Officer shall issue a decision within 10 calendar days of the receipt of the response to the appeal.

§ 1.424 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties except motions and requests made on the record during the oral hearing.

(b) *Motions entertained.* No dispositive motions, including motions to dismiss on the pleadings and motions for summary judgment, shall be entertained unless specifically mentioned herein or allowed in the discretion of the Judge.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefore.

(d) *Response to motions and requests.* Within 5 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response.

§ 1.425 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who: