

§ 45.25

(e) *Notice in lieu of answer.* If the bureau elects not to file an answer to a hearing request:

(1) The bureau is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The bureau may file a list of witnesses and exhibits with respect to the request only as provided in § 45.42(b); and

(3) The bureau must file a notice containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 45.23.

§ 45.25 What will DOI do with any hearing requests?

(a) *Case referral.* Within 5 days after receipt of the bureau's answer, OEPC will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by DOI, OEPC will refer the case to the Hearings Division.

(2) If the hearing is to be conducted by another Department, OEPC will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) A copy of any preliminary condition or prescription under § 45.20;

(2) The original of any hearing request under § 45.21;

(3) The original of any notice of intervention and response under § 45.22;

(4) The original of any answer under § 45.24; and

(5) An original referral notice under paragraph (c) of this section.

(c) *Notice.* At the time OEPC refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The date on which OEPC is referring the case for docketing.

43 CFR Subtitle A (10–1–06 Edition)

(d) *Delivery and service.* (1) OEPC must refer the case to the appropriate Department hearings component by one of the methods identified in § 45.12(b)(1)(i) and (b)(1)(ii).

(2) OEPC must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 45.13(c)(1) and (c)(2).

§ 45.26 What regulations apply to a case referred for a hearing?

(a) If OEPC refers the case to the Hearings Division, the regulations in this subpart will continue to apply to the hearing process.

(b) If OEPC refers the case to the United States Department of Agriculture's Office of Administrative Law Judges, the regulations at 7 CFR 1.601 *et seq.* will apply from that point on.

(c) If OEPC refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

GENERAL PROVISIONS RELATED TO HEARINGS

§ 45.30 What will the Hearings Division do with a case referral?

Within 5 days after issuance of the referral notice under § 45.25(c), 7 CFR 1.625(c), or 50 CFR 221.25(c):

(a) The Hearings Division must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 45.40. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 45.31 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, consistent with the requirements of § 45.60(a), including the powers to:

(a) Administer oaths and affirmations;

- (b) Issue subpoenas to the extent authorized by law;
- (c) Rule on motions;
- (d) Authorize discovery as provided for in this subpart;
- (e) Hold hearings and conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Exclude any person from a hearing or conference for misconduct or other good cause;
- (i) Issue a decision consistent with § 45.60(b) regarding any disputed issues of material fact relating to any bureau's or other Department's condition or prescription that has been referred to the ALJ for hearing; and
- (j) Take any other action authorized by law.

§ 45.32 What happens if the ALJ becomes unavailable?

- (a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 45.31, the Hearings Division shall designate a successor.
- (b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 45.33 Under what circumstances may the ALJ be disqualified?

- (a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.
- (b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.
 - (1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.
 - (2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.
 - (c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 45.34 What is the law governing ex parte communications?

- (a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).
- (b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 45.35 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearings Division issues a docketing notice under § 45.30.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

- (i) Be in writing;
 - (ii) Comply with the requirements of this subpart with respect to form, content, filing, and service; and
 - (iii) Not exceed 10 pages.
- (b) *Content.* (1) Each motion must state clearly and concisely:
- (i) Its purpose and the relief sought;
 - (ii) The facts constituting the grounds for the relief sought; and
 - (iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part or by order of the ALJ, any other party may file a response to a written motion within 10 days after service of the motion. When a party presents a motion at a hearing, any other party may present a response orally on the record.