

§ 12.60

in the office of the Chief Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commissioner to respond to inquiries from other participants in the hearing, for such participants may be urging views contrary to those of the center involved or to what may ultimately be the final conclusions of the Commissioner. Accordingly, members of the office of the Chief Counsel, other than the attorneys responsible for representing the center whose action is the subject of the hearing, will not answer questions about the hearing from any participant or potential participant.

(e) *Communication between participants and attorneys.* Participants in a hearing may communicate with the attorneys responsible for representing the center whose action is the subject of the hearing, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Division of Dockets Management.

[44 FR 22329, Apr. 13, 1979, as amended at 50 FR 8994, Mar. 6, 1985; 54 FR 9035, Mar. 3, 1989; 58 FR 17096, Apr. 1, 1993]

Subpart D—Presiding Officer

§ 12.60 Presiding officer.

The presiding officer in a hearing will be the Commissioner, a member of the Commissioner's office to whom the responsibility for the matter involved has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105.

§ 12.62 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

21 CFR Ch. I (4–1–07 Edition)

§ 12.70 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 12.92(b) and to rule on the need for oral testimony and cross-examination under § 12.87(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions;

(h) Rule on, admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 12.93;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any rule in this subpart under § 10.19 if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 12.45(e) or exclude any person from the hearing under § 12.90, or take other reasonable disciplinary action; and

(o) Take any action for the fair, expeditious, and orderly conduct of the hearing.

§ 12.75 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/