

(d) *Delivery and service.* (1) NFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 1.612(b)(1)(i) and (b)(1)(ii).

(2) The Forest Service must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 1.613(c)(1) and (c)(2).

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

(a) If NFS refers the case to the OALJ, these regulations will continue to apply to the hearing process.

(b) If NFS refers the case to the Department of Interior's Office of Hearing and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

(c) If NFS 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

§ 1.630 What will OALJ do with a case referral?

Within 5 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4):

(a) The Hearing Clerk 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 § 1.640. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 1.631 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under § 1.647;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 1.660(a)(2) can be extended only if the ALJ must be replaced under § 1.632 or 1.633;

(d) Rule on motions;

(e) Authorize discovery as provided for in §§ 1.641 through 1.647;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with § 1.660(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 1.631, the Hearing Clerk will 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.

§ 1.633 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.

§ 1.634

(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.

§ 1.634 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.

§ 1.635 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 Hearing Clerk issues a docketing notice under § 1.630.

(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 §§ 1.610 through 1.613 with respect to form, content, filing, and service; and

(iii) Not exceed 15 pages, including all supporting arguments.

(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, any other party

7 CFR Subtitle A (1-1-16 Edition)

may file a response to a written motion within 10 days after service of the motion. The response may not exceed 15 pages, including all supporting arguments. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

PREHEARING CONFERENCES AND DISCOVERY

§ 1.640 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the notice under § 1.630, on or about the 20th day after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 1.641 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set deadlines for submission of written testimony under § 1.652 and exchange of exhibits to be offered as evidence under § 1.654; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;