

§ 45.26

(1) For each of the numbered factual issues listed under § 45.21(b)(1), the answer must explain the bureau's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the bureau is willing to stipulate to the facts as alleged by the requester;

(ii) That the bureau believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the bureau believes the issue listed by the requester is not material, explaining the basis for such belief; or

(iv) That the bureau agrees that the issue is factual, material, and in dispute.

(2) The answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 45.23 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(3) If the bureau plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, it must provide a copy with its answer.

(4) The answer must also indicate whether or not the bureau consents to service by electronic means under § 45.13(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* The bureau's answer must also list the witnesses and exhibits that it intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the bureau must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the bureau must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided

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under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(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, and the statement required by paragraph (b)(4) of this section.

§ 45.26 What will DOI do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in § 45.21(a)(2) or 35 days after the expiration of any stay period under § 45.24, whichever is later, 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) Two copies of any preliminary condition or prescription under § 45.20;

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

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

(4) The original and one copy of any answer under § 45.25; and

(5) The original and one copy of a 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

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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 effective date of the case referral to the appropriate Department hearings component.

(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 (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 (2).

§ 45.27 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 the effective date stated in the referral notice under § 45.26(c)(4), 7 CFR 1.626(c)(4), or 50 CFR 221.26(c)(4):

(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 relating to any bureau'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 § 45.47;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 45.60(a)(2) can be extended only if the ALJ must be replaced under § 45.32 or 45.33;

(d) Rule on motions;

(e) Authorize discovery as provided for in this subpart;

(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 § 45.60(b) regarding any disputed issue of material fact; and

(l) 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 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.