

## § 45.50

the request of any party without having been subpoenaed is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to Federal employees who are called as witnesses by a bureau or other Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires production of information during discovery that is not discoverable; or

(iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

### HEARING, BRIEFING, AND DECISION

## § 45.50 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 45.40, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

## 43 CFR Subtitle A (10–1–24 Edition)

## § 45.51 What are the parties' rights during the hearing?

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present testimony and exhibits, consistent with the requirements in §§ 45.21(c), 45.22(c), 45.25(c), 45.42(b), and 45.52;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

## § 45.52 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and submitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 10 days after the date set for completion of discovery; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 45.47 directing a witness to testify by telephonic conference call.