

### § 1503.617

With the consent of the ALJ, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(b) *Date, time, and location of the hearing.* The ALJ to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The ALJ must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The ALJ must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

### § 1503.617 Extension of time.

(a) *Oral requests.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the ALJ must grant one extension of time to each party. The party seeking the extension of time must submit a draft order to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk. The ALJ may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party must file a written motion for an extension of time not later than 7 days before the document is due unless the party shows good cause for the late filing. The ALJ may grant the extension of time if the party shows good cause.

(c) *Request for continuance of hearing.* Either party may request in writing a continuance of the date of a hearing, for good cause shown, no later than seven days before the scheduled date of the hearing. Good cause does not include a scheduling conflict involving the parties or their attorneys which by due diligence could have been foreseen.

(d) *Failure to rule.* If the ALJ fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed. If the ALJ fails to rule on a request for continuance by the scheduled hearing date, the request is deemed granted for no more

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than 10 days after the scheduled hearing date.

### § 1503.619 Intervention.

(a) A person may file a motion for leave to intervene as a party in a civil penalty action. The person must file a motion for leave to intervene not later than 10 days before the hearing unless the person shows good cause for the late filing.

(b) If the ALJ finds that intervention will not unduly broaden the issues or delay the proceedings, the ALJ may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The ALJ may determine the extent to which an intervenor may participate in the proceedings.

### § 1503.621 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the Enforcement Docket Clerk and must serve a copy of the amendment on the ALJ and all parties to the proceeding.

(b) *Time.* A party must file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the ALJ.

(2) Less than 15 days before the scheduled date of a hearing, the ALJ may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The ALJ must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the ALJ.

### § 1503.623 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a respondent may withdraw a request for a hearing without the consent of the ALJ. If an agency attorney withdraws the complaint or a

party withdraws the request for a hearing and the answer, the ALJ must dismiss the proceedings under this subpart with prejudice, unless the withdrawing party shows good cause for dismissal without prejudice, except that a party may withdraw a request for hearing without prejudice at any time before a complaint has been filed.

**§ 1503.625 Waivers.**

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

**§ 1503.627 Joint procedural or discovery schedule.**

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule with the ALJ, setting forth the dates to which the parties have agreed, and must serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The ALJ must approve the joint schedule filed by the parties. One party must submit a draft order establishing a

joint schedule to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The ALJ must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the ALJ's order establishing a joint schedule, the ALJ may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the ALJ may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

**§ 1503.629 Motions.**

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the ALJ directs otherwise.

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 30 days after service of a