

## Office of the Secretary, USDA

## § 1.602

SOURCE: 80 FR 17181, Mar. 31, 2015, unless otherwise noted.

### GENERAL PROVISIONS

#### **§ 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?**

(a) *Hearing process.* (1) The regulations in §§1.601 through 1.660 contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions that the Department of Agriculture, Forest Service (Forest Service) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions is granted by FPA section 4(e), 16 U.S.C. 797(e), which authorizes the Secretary of Agriculture to condition hydropower licenses issued by the Federal Energy Regulatory Commission (FERC).

(2) The hearing process under this part does not apply to recommendations that the Forest Service may submit to FERC under FPA section 10(a), 16 U.S.C. 803(a).

(3) The FPA also grants the Department of Commerce and the Department of the Interior the authority to develop mandatory conditions and prescriptions for inclusion in a hydropower license. Where the Forest Service and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under §1.623:

(i) A hearing conducted under this subpart will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this subpart will be conducted by one of the other Departments, pursuant to 43 CFR 45.1 *et seq.* or 50 CFR 221.1 *et seq.*, as applicable.

(4) The regulations in §§1.601 through 1.660 will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of §1.660(a).

(b) *Alternatives process.* The regulations in §§1.670 through 1.674 contain rules of procedure applicable to the submission and consideration of alternative conditions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by the Forest Service under section 4(e).

(c) *Reserved authority.* Where the Forest Service has notified or notifies FERC that it is reserving its authority to develop one or more conditions at a later time, the hearing and alternatives processes under this subpart for such conditions will be available if and when the Forest Service exercises its reserved authority.

(d) *Applicability.* (1) This subpart applies to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions have been or are filed with FERC before FERC issues the license.

(2) This subpart also applies to any exercise of the Forest Service's reserved authority under paragraph (c) of this section with respect to a hydropower license issued before or after November 17, 2005.

#### **§ 1.602 What terms are used in this subpart?**

As used in this subpart:

*ALJ* means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under this subpart.

*Alternative* means a condition that a license party other than the Forest Service or another Department develops as an alternative to a preliminary condition from the Forest Service or another Department, under FPA sec. 33, 16 U.S.C. 823d.

*Condition* means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

*Day* means a calendar day.

*Department* means the Department of Agriculture, Department of Commerce, or Department of the Interior.

*Discovery* means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

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*Ex parte communication* means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

*FERC* means the Federal Energy Regulatory Commission.

*Forest Service* means the USDA Forest Service.

*FPA* means the Federal Power Act, 16 U.S.C. 791 *et seq.*

*Hearing Clerk* means the Hearing Clerk, OALJ, USDA, 1400 Independence Ave., SW., Washington, DC 20250; phone: 202-720-4443, facsimile: 202-720-9776.

*Intervention* means a process by which a person who did not request a hearing under §1.621 can participate as a party to the hearing under §1.622.

*License party* means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

*License proceeding* means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR part 4 or 5.

*Material fact* means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

*Modified condition or prescription* means any modified condition or prescription filed by a Department with FERC for inclusion in a hydropower license.

*NEPA document* means an environmental document as defined at 40 CFR 1508.10 to include an environmental assessment, environmental impact statement (EIS), finding of no significant impact, and notice of intent to prepare an EIS. Such documents are issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and the *CEQ Regulations Implementing the Procedural Requirements of NEPA* (40 CFR parts 21500-1508).

*NFS* means the National Forest System and refers to:

(1) Federal land managed by the Forest Service; and

(2) The Deputy Chief of the National Forest System, located in the Forest Service's Washington, DC, office.

*Office of Administrative Law Judges (OALJ)* is the office within USDA in

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which ALJs conduct hearings under the regulations in this subpart.

*Party* means, with respect to USDA's hearing process:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 1.621; or

(ii) Either 43 CFR 45.21 or 50 CFR 221.21, with respect to a hearing process consolidated under §1.623;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 1.622; or

(ii) Either 43 CFR 45.22 or 50 CFR 221.22, with respect to a hearing process consolidated under §1.623;

(3) The Forest Service; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under §1.623.

*Person* means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any Federal, State, Tribal, county, district, territorial, or local government or agency.

*Preliminary condition or prescription* means any preliminary condition or prescription filed by a Department with FERC for potential inclusion in a hydropower license.

*Prescription* means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

*Representative* means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under §1.610.

*Reservation* has the same meaning as the term "reservations" in FPA sec. 3(2), 16 U.S.C. 796(2).

*Secretary* means the Secretary of Agriculture or his or her designee.

*Senior Department employee* has the same meaning as the term "senior employee" in 5 CFR 2637.211(a).

*USDA* means the United States Department of Agriculture.

*You* refers to a party other than a Department.