

§ 2423.28 Subpoenas.

(a) *When necessary.* Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no subpoena need be sought.

(b) *Requests for subpoenas.* A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Office of Administrative Law Judges not less than 10 days prior to the hearing, or with the Administrative Law Judge during the hearing. Requests for subpoenas made less than 10 days prior to the hearing shall be granted on sufficient explanation of why the request was not timely filed.

(c) *Subpoena procedures.* The Office of Administrative Law Judges, or any other employee of the Authority designated by the Authority, as appropriate, shall furnish the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte. Completion of the specific information in the subpoena and the service of the subpoena are the responsibility of the party on whose behalf the subpoena was issued.

(d) *Service of subpoena.* A subpoena may be served by any person who is at least 18 years old and who is not a party to the proceeding. The person who served the subpoena must certify that he or she did so:

(1) By delivering it to the witness in person,

(2) By registered or certified mail, or

(3) By delivering the subpoena to a responsible person (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e)(1) *Petition to revoke subpoena.* Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the

hearing, and a written statement of service, shall be filed with the Office of Administrative Law Judges for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the Administrative Law Judge.

(2) The Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the person or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Administrative Law Judge, or any other employee of the Authority designated by the Authority, as appropriate, shall state the procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) *Failure to comply.* Upon the failure of any person to comply with a subpoena issued and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the Authority shall institute proceedings on behalf of such party in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the Federal Service Labor-Management Relations Statute.

§ 2423.29 [Reserved]**Subpart C—Hearing Procedures****§ 2423.30 General rules.**

(a) *Open hearing.* The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) *Administrative Procedure Act.* The hearing shall, to the extent practicable, be conducted in accordance with 5 U.S.C. 554-557, and other applicable provisions of the Administrative Procedure Act.

(c) *Rights of parties.* A party shall have the right to appear at any hearing in person, by counsel, or by other representative; to examine and cross-examine witnesses; to introduce into the record documentary or other relevant evidence; and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge.

(d) *Objections.* Objections are oral or written complaints concerning the conduct of a hearing. Any objection not raised to the Administrative Law Judge shall be deemed waived.

(e) *Oral argument.* Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

(f) *Official transcript.* An official reporter shall make the only official transcript of such proceedings. Copies of the transcript may be examined in the appropriate Regional Office during normal working hours. Parties desiring a copy of the transcript shall make arrangements for a copy with the official hearing reporter.

§ 2423.31 Powers and duties of the Administrative Law Judge at the hearing.

(a) *Conduct of hearing.* The Administrative Law Judge shall conduct the hearing in a fair, impartial, and judicial manner, taking action as needed to avoid unnecessary delay and maintain order during the proceedings. The Administrative Law Judge may take any action necessary to schedule, conduct, continue, control, and regulate the hearing, including ruling on motions and taking official notice of material facts when appropriate. No provision of these regulations shall be construed to limit the powers of the Administrative Law Judge provided by 5 U.S.C. 556, 557, and other applicable provisions of the Administrative Procedure Act.

(b) *Evidence.* The Administrative Law Judge shall receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the hearing. The Administrative Law Judge may exclude any evidence that is immaterial, irrele-

vant, unduly repetitious, or customarily privileged. Rules of evidence shall not be strictly followed.

(c) *Interlocutory appeals.* Motions for an interlocutory appeal shall be filed in writing with the Administrative Law Judge within 5 days after the date of the contested ruling. The motion shall state why interlocutory review is appropriate, and why the Authority should modify or reverse the contested ruling.

(1) The Judge shall grant the motion and certify the contested ruling to the Authority if:

(i) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(ii) Immediate review will materially advance completion of the proceeding, or the denial of immediate review will cause undue harm to a party or the public.

(2) If the motion is granted, the Judge or Authority may stay the hearing during the pendency of the appeal. If the motion is denied, exceptions to the contested ruling may be filed in accordance with § 2423.40 of this subchapter after the Judge issues a decision and recommended order in the case.

(d) *Bench decisions.* Upon joint motion of the parties, the Administrative Law Judge may issue an oral decision at the close of the hearing when, in the Judge's discretion, the nature of the case so warrants. By so moving, the parties waive their right to file posthearing briefs with the Administrative Law Judge, pursuant to § 2423.33. If the decision is announced orally, it shall satisfy the requirements of § 2423.34(a)(1)–(5) and a copy thereof, excerpted from the transcript, together with any supplementary matter the judge may deem necessary to complete the decision, shall be transmitted to the Authority, in accordance with § 2423.34(b), and furnished to the parties in accordance with § 2429.12 of this subchapter.

(e) *Settlements after the opening of the hearing.* As set forth in § 2423.25(a), settlements may be either informal or formal.

(1) *Informal settlement procedure: Judge's approval of withdrawal.* If the