

## § 1.602

(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 1.673 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) *Reservation of authority.* Where the Forest Service notifies FERC that it is reserving its authority to develop one or more conditions during the term of the license, the hearing and alternatives processes under this subpart for such conditions will be available if and when the Forest Service exercises its reserved authority. The Forest Service will consult with FERC and notify the license parties regarding how to initiate the hearing process and alternatives process at that time.

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

(2) If the Forest Service has already filed one or more preliminary conditions or conditions as of November 17, 2005, the special applicability provisions of § 1.604 also apply.

### § 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

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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.

*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, 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 parts 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.

*NEPA document* means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

## Office of the Secretary, USDA

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*NFS* means Deputy Chief, National Forest Systems, Forest Service. The service and mailing address under this subpart is NFS, Washington Office (WO) Lands Staff, Mail Stop 1124, 1400 Independence Avenue, SW., Washington, DC 20250-0003, telephone 202-205-1248, facsimile number 202-205-1604.

*Office of Administrative Law Judges (OALJ)* is the office within USDA in 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, if it has filed a preliminary condition; 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 a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) 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.

### § 1.603 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 1.621, a notice of intervention and response under § 1.622, an answer under § 1.624, or any document under §§ 1.670 through 1.673.

(2) An extension of time to file any other document under this subpart may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 1.635 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 1.660.

### § 1.604 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which the Forest