

27 Subpoenas:

27.1 General: Section 2429.7 of the regulations provides that Regional Directors may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued which requires disclosure of intra-management guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

A subpoena (FLRA Form 62) directs a witness to appear at a specified time and place to give oral testimony. A subpoena duces tecum (FLRA Form 61) requires a witness to appear and bring certain specified documents and to give oral testimony.

See *CHM 23.5.3* for a discussion of investigatory subpoenas. *HOG 27* concerns subpoenas issued in preparation for a hearing.

27.2 Application for subpoena: Where the parties are in agreement that the appearance of a witness or the production of documents at the hearing is necessary, and the witness agrees to appear, no subpoena is necessary. See § 2429.7(b).

When necessary, any subpoena requested by any person, as defined by 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Regional Director, not less than ten (10) days prior to the opening of the hearing. Requests for subpoenas made less than 10 days prior to the opening of the hearing are granted on sufficient explanation of why the request was not timely filed [§ 2429.7(c)]. The Regional Director or the Hearing Officer furnishes the requester the subpoenas sought, provided the request is timely made. Requests for subpoenas may be made ex parte.

27.3 Preparation of subpoena: Completion of the specific information in the subpoena and service of the subpoena are the responsibility of the party on behalf the subpoena was issued. See § 2429.7(d) for procedures for serving a subpoena.

27.4 Issuance and control of subpoenas: A copy of any subpoenas issued and served by the Regional Director or the Hearing Officer is retained in the case file.

27.5 Issuance of subpoena during the hearing: If it becomes necessary during the hearing for the Hearing Officer to issue a subpoena on his/her own motion or that of any party, the Hearing Officer recesses the hearing in order to prepare the subpoena. The subpoena form is either typed or handwritten.

27.6 Service of subpoena: Service of a subpoena is the responsibility of the requesting party. A subpoena is 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 certifies that he or she did so:

- a) By delivering it to the witness in person,
- b) By registered or certified mail, or
- c) 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 shows on its face the name and address of the party on whose behalf the subpoena was issued. (see § 2429.7 of the regulations).

A subpoena is served in sufficient time to enable the witness to make necessary arrangements and to allow the witness or a party, five (5) days after the date of service to petition to revoke the subpoena pursuant to § 2429.7(e) of the regulations.

27.7 Witness fees: See *HOG 6* for information on witness fees and reimbursement procedures.

27.8 Petition to revoke subpoena:

27.8.1 Filing: Any person served with a subpoena who does not intend to comply, is required to, within five (5) days after the date of service of the subpoena, petition in writing to revoke the subpoena. When a petition to revoke is made prior to hearing, the petition and a written statement of service is filed with the Regional Director for ruling. A petition to revoke a subpoena filed during the hearing shall be accompanied by a written statement of service and shall be filed with the Hearing Officer. § 2429.7(e)(1).

27.8.2 Service: A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. The Regional Director or the Hearing Officer, as a matter of course, serves a copy of the petition to

revoke the subpoena on the party on whose behalf the subpoena was issued, but are not deemed to assume responsibility for such service. See § 2429.7(e) of the regulations for further guidance.

27.8.3 Ruling: The Regional Director or Hearing Officer or any other employee 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 Regional Director, Hearing Officer, 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. § 2429.7(e)(2).

27.9 Enforcement of subpoena: Pursuant to § 2429.7(f) of the regulations, when any person fails to comply with a subpoena, the Solicitor of the Authority, upon request of the party on whose behalf the subpoena was issued, shall institute proceedings on behalf of such party in the appropriate district court for enforcement thereof, unless to do so would be inconsistent with law and the policies of the Statute. See § 2429.7(f) of the Statute and Litigation Manual, Part 2, Chapter J.

27.10 Delays for enforcement: If the Hearing Officer is faced with a request for adjournment so that a subpoena may be served or to enforce a subpoena not complied with, s/he reconciles the objective of resolving representation questions quickly with the objective of obtaining a full and complete record upon which the Regional Director can make a reasoned decision. The following guidance is provided:

- a) The Hearing Officer asks the party seeking the delay what the testimony of the witness would add, whether it is necessary, and whether there are any satisfactory substitutes.
- b) The Hearing Officer obtains the other party's(ies') position(s) and reviews the record to determine whether it contains all relevant facts and/or is otherwise complete.
- c) The Hearing Officer consults with the Regional Director.
- d) If, upon consideration, the Hearing Officer concludes that the

testimony sought is relevant and necessary, s/he adjourns the hearing.

- e) If, upon consideration, the Hearing Officer concludes that the testimony sought is not relevant and necessary, s/he denies the request for the delay.