

(2) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

(b) The presiding officer, for all hearings, shall be bound by all applicable laws and regulations.

**§ 99.3 Records to be public.**

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Assistant Secretary. Inquiries may be made at the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

**§ 99.4 Suspension of rules.**

With notice to all parties, the Assistant Secretary for Children and Families or the presiding officer, with respect to pending matters, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

**§ 99.5 Filing and service of papers.**

(a) An original and two copies of all papers in the proceedings shall be filed with the presiding officer. For exhibits and transcripts of testimony, only the originals need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by certified mail. Service on the party's designated attorney will be deemed service on the party.

**Subpart B—Preliminary Matters—  
Notice and Parties**

**§ 99.11 Notice of hearing or opportunity for hearing.**

Proceedings commence when the Assistant Secretary mails a notice of hearing or opportunity for hearing to the Lead Agency. The notice shall state the time and place for the hearing, and the issues which will be considered. A copy of the notice shall be published in the FEDERAL REGISTER.

**§ 99.12 Time of hearing.**

The hearing shall be scheduled not less than 30 days nor more than 90 days after the date of the notice of the hearing furnished to the applicant or Lead Agency, unless otherwise agreed to, in writing, by the parties.

**§ 99.13 Place.**

The hearing shall be held in the city in which the regional office of the Department responsible for oversight of the Lead Agency is located or in such other place as the Assistant Secretary determines, considering both the circumstances of the case and the convenience and necessity of the parties or their representatives.

**§ 99.14 Issues at hearing.**

(a) The Assistant Secretary may, prior to a hearing under § 98.91 of this part, notify the Lead Agency in writing of additional issues which will be considered at the hearing. Such notice shall be published in the FEDERAL REGISTER. If such notice is received by the Lead Agency less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Lead Agency or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(b) If, as a result of negotiations between the Department and the Lead Agency, the submittal of a Plan amendment, a change in the Lead Agency program, or other action by the Lead Agency, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Assistant Secretary, the hearing shall proceed on such new or modified issues. A notice of such new or modified issues shall be published in the FEDERAL REGISTER. If such notice is received by the Lead Agency less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Lead Agency or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(c)(1) If, at any time, the Assistant Secretary finds that the Lead Agency

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has come into compliance with Federal statutes and regulations on any issue, in whole or in part, the Assistant Secretary shall remove such issue from the proceedings, in whole or in part, as may be appropriate. If all issues are removed, the Assistant Secretary shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Assistant Secretary shall provide all parties other than the Department and the Lead Agency (see §99.15(b)) with written notice of the intention, and the reasons for it. Such notice shall include a copy of the proposed CCDF Plan provision on which the Lead Agency and Assistant Secretary have settled. The parties shall have 15 days from the receipt of such notice to file their views or any information on the merits of the proposed Plan provision and the merits of the Assistant Secretary's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the Lead Agency is notified, as provided in paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section; they shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

**§ 99.15 Request to participate in hearing.**

(a) The Department and the Lead Agency are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have directly caused them injury and their interest is immediately within the zone of interests to be protected by the governing Federal statute and regulations.

(2) Any individual or group wishing to participate as a party shall file a petition with the presiding officer within 15 days after notice of the hearing has been published in the FEDERAL REGISTER and shall serve a copy on each party of record at that time, in accordance with §99.5(b). Such petition shall concisely state:

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(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues on which petitioner wishes to participate; and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments on it.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, at the presiding officer's discretion, the presiding officer may request that all such petitioners designate a single representative or may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on the petition, and if the petition is denied, the presiding officer shall briefly state the grounds for denial. If the petition is denied, the presiding officer may recognize the petitioner as an amicus curiae.

(c)(1) Any interested person or organization wishing to participate as an amicus curiae shall file a petition with the presiding officer before the commencement of the hearing. Such petition shall concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which petitioner intends to present argument.

An amicus curiae is not a party but may participate as provided in this paragraph.

(2) The presiding officer may grant the petition upon finding that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and it may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. The amicus curiae may submit a written statement of position to the presiding officer

prior to the beginning of a hearing and shall serve a copy on each party. The amicus curiae may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

### Subpart C—Hearing Procedures

#### § 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

- (1) Change the date, time, and place of the hearing, upon due notice to the parties. This authority includes the power to continue the hearing in whole or in part;
- (2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (3) Regulate participation of parties and *amici curiae* and require parties and *amici curiae* to state their position with respect to the various issues in the proceeding;
- (4) Administer oaths and affirmations;
- (5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;
- (6) Regulate the course of the hearing and conduct of counsel therein;
- (7) Examine witnesses;
- (8) Receive, rule on, exclude or limit evidence or discovery;
- (9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;
- (10) If the presiding officer is the Assistant Secretary, make a final decision;
- (11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and
- (12) Take any action authorized by the rules in this part or in conformance

with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

#### § 99.22 Rights of parties.

All parties may:

- (a) Appear by counsel or other authorized representative, in all hearing proceedings;
- (b) Participate in any prehearing conference held by the presiding officer;
- (c) Agree to stipulations as to facts which will be made a part of the record;
- (d) Make opening statements at the hearing;
- (e) Present relevant evidence on the issues at the hearing;
- (f) Present witnesses who then must be available for cross-examination by all other parties;
- (g) Present oral arguments at the hearing; and
- (h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

#### § 99.23 Discovery.

The Department, the Lead Agency, and any individuals or groups recognized as parties shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26-37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.