

Subpart B—Hearings Pursuant to the Administrative Procedure Act

§ 26.28 Purpose and scope.

Unless otherwise specified in this title, the rules in this subpart B of this part apply to hearings that HUD is required by statute to conduct pursuant to the Administrative Procedure Act (5 U.S.C. 554 *et seq.*)

§ 26.29 Definitions.

The following definitions apply to subpart B of this part:

Complaint means the notice from HUD alleging violations of a HUD statute and/or regulation, citing the legal authority upon which it is issued, stating the relief HUD seeks, and informing a respondent of his or her right to submit a response to a designated office and to request an opportunity for a hearing before an Administrative Law Judge.

Docket Clerk means the Docket Clerk of the Office of Administrative Law Judges, located at the following address—409 Third Street, SW., Second Floor, Washington, DC 20024; mailing address is 451 7th Street, SW., Room B-133, Washington, DC 20410.

Respondent, unless otherwise identified by other governing statute, rule, or regulation, is the party against whom the administrative action is taken.

Response means the written response to a complaint, admitting or denying the allegations in the complaint and setting forth any affirmative defense and any mitigating factors or extenuating circumstances. The response shall be submitted to the division of the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.30 Service and filing.

(a) *Filing*. Unless otherwise provided by statute, rule, or regulation, all documents shall be filed with the Docket Clerk. Filing may be by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means; however, the ALJ may place reasonable limits on filing by facsimile transmission or electronic means. All

documents shall clearly designate the docket number and title of the proceeding. Duplicate copies are not required unless ordered by the ALJ.

(b) *Service*. One copy of all documents filed with the Docket Clerk shall be served upon each party by the persons filing them and shall be accompanied by a certificate of service stating how and when such service has been made. Service may be made by delivery, first-class mail, overnight delivery, facsimile transmission, or electronic means; however, the ALJ may place reasonable limits on service by facsimile transmission or electronic means. Documents shall be served upon a party's address of residence or principal place of business, or, if the party is represented by counsel, upon counsel of record at the address of counsel. Service is complete when handed to the person or delivered to the person's office or residence and deposited in a conspicuous place. If service is by first-class mail, overnight delivery, facsimile transmission, or electronic means, service is complete upon deposit in the mail or upon electronic transmission.

§ 26.31 Time computations.

(a) *General*. In computing any period of time under subpart B of this part, the time period begins the day following the act, event, or default, and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which case the time period includes the next business day. When the prescribed time period is 7 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Entry of orders*. In computing any time period involving the date of the issuance of an order or decision by an Administrative Law Judge, the date of issuance is the date the order or decision is served by the Docket Clerk.

(c) *Service by mail*. If a document is served by mail, 3 days shall be added to the time permitted for a response.

§ 26.32

ADMINISTRATIVE LAW JUDGE

§ 26.32 Powers and duties of the Administrative Law Judge (ALJ).

The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made. The ALJ is authorized to:

- (a) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
- (b) Continue or recess the hearing, in whole or in part, for a reasonable period of time;
- (c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (d) Administer oaths and affirmations;
- (e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
- (f) Rule on motions and other procedural matters;
- (g) Regulate the scope and timing of discovery;
- (h) Regulate the course of the hearing and the conduct of representatives and parties;
- (i) Examine witnesses;
- (j) Receive, rule on, exclude, or limit evidence;
- (k) Upon motion of a party, take official notice of facts;
- (l) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;
- (m) Conduct any conference, argument, or hearing on motions in person or by telephone;
- (n) Upon motion, except where mandated by statute, extend the time within which any act required by these rules must be performed where necessary to avoid prejudicing the public interest or the rights of the parties, or upon showing of good cause; and
- (o) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under subpart B of this part.

§ 26.33 Ex parte communications.

No party or person (except employees of the ALJ's office) shall communicate

24 CFR Subtitle A (4-1-13 Edition)

in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 26.34 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any sanction, including, but not limited to, those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order compelling discovery, the ALJ may impose an appropriate sanction for such noncompliance, including, but not limited to, the following:

(1) Drawing an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deeming any matter about which an admission is requested to be admitted;

(3) Prohibiting the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or

(4) Striking any part of the pleadings or other submissions of the party failing to comply with the order.

(d) If a party fails to prosecute or defend an action brought under subpart B of this part, the ALJ may dismiss the action or may issue a decision against the non-prosecuting or defending party. Such decision of the ALJ shall constitute final agency action and shall not be appealable to the Secretary under § 26.52 of this part.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.