

§ 26.45

which the hearing is to be held, a description of the procedures for the conduct of the hearing, and such other matters as the ALJ determines to be appropriate.

(d) *Limitations for Program Fraud Civil Remedies Act cases.* The notice of hearing must be served upon the respondent within 6 years after the date on which the claim or statement is made. If the respondent fails to file a timely response to the Government's complaint, service of a default judgment under § 26.39 shall be regarded as a notice of hearing for purposes of this section. The statute of limitations may be waived by agreement of the parties.

(e) *Burden and standard of proof.* HUD shall prove the respondent's liability and any aggravating factors by a preponderance of the evidence. Respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(f) *Public hearings.* Unless otherwise ordered by the ALJ for good cause shown, the hearing shall be open to the public.

§ 26.45 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. In order to be admissible, any written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

§ 26.46 Evidence.

The ALJ shall admit any relevant oral or documentary evidence that is not privileged. The ALJ may, however, exclude evidence if its probative value is substantially outweighed by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 26.47 The record.

The hearing will be recorded and transcribed. The transcript of testi-

24 CFR Subtitle A (4-1-03 Edition)

mony, exhibits, and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary or designee.

§ 26.48 Posthearing briefs.

Posthearing briefs shall be filed only upon order by the ALJ.

§ 26.49 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the relief granted.

(b) The ALJ shall serve the initial decision on all parties within 60 days after either the close of the record or the expiration of time permitted for submission of posthearing briefs, whichever is later. The initial decision shall include a statement of each party's right to file a request for Secretarial review. The ALJ may extend the 60-day period for serving the initial decision in writing for good cause.

(c) If no appeal is timely filed with the Secretary or designee, the initial decision shall become the final agency action.

§ 26.50 Appeal to the Secretary.

(a) Except as otherwise set forth in paragraph (b) of this section, either party may file with the Secretary a petition for review within 30 days after the ALJ issues an initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 90 days of its service, then the initial decision shall become final.

(b) Appeals of Program Fraud Civil Remedies Act decisions (24 CFR part 28). Only the respondent may file a petition for Secretarial review. The petition must be filed within 30 days after the ALJ issues the initial decision. The Secretary or designee may extend the 30-day period for good cause. If the Secretary or designee does not act upon the petition for review within 30 days of its service, then the initial decision shall become final.

(c) *Brief in support of petition.* The petition for review shall be accompanied by a written brief, not to exceed 10