

(b) *Default order.* The ALJ shall issue a decision on the motion within 15 days after the expiration of the time for filing a response to the default motion. If a default order is issued, it shall constitute the final agency action.

(c) *Effect of default.* A default shall constitute an admission of all facts alleged in the Government's complaint and a waiver of respondent's right to a hearing on such allegations. The penalty proposed in the complaint shall be set forth in the default order and shall be immediately due and payable by respondent without further proceedings.

§ 26.40 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may consider the following at a prehearing conference:

- (1) Simplification of the issues;
- (2) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;
- (3) Submission of the case on briefs in lieu of an oral hearing;
- (4) Limitation of the number of witnesses;
- (5) The exchange of witness lists and of proposed exhibits;
- (6) Discovery;
- (7) The time and place for the hearing; and
- (8) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

§ 26.41 Discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the adjudication, whether it relates to the case or defense of the party seeking discovery or to the case or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at the hearing, if such information appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Discovery in Program Fraud Civil Remedies actions (24 CFR part 28), unless agreed to by the parties, shall be available only as ordered by the ALJ.

The party opposing discovery shall have 10 days to respond to a motion for discovery. The ALJ shall grant a motion for discovery only if he or she finds that discovery is necessary for the expeditious, fair, and reasonable consideration of the issues, is not unduly costly or burdensome, will not unduly delay the proceeding, and does not seek privileged information. The ALJ may grant discovery subject to a protective order under § 26.43. The request for approval sent to the Attorney General from the General Counsel or designee, as described in § 28.20 of this title, is not discoverable under any circumstances.

(c) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying. Nothing contained herein shall be interpreted to require the creation of a document.

(2) Requests for admissions.

(3) Written interrogatories. Such interrogatories shall be limited in number to 25, unless otherwise ordered by the ALJ.

(4) Depositions.

(d) *Motions to compel.* A party may file a motion to compel discovery. The motion shall describe the information sought, cite the opposing party's objection, and provide arguments supporting the motion. The opposing party may file a response to the motion, including a request for a protective order. The ALJ may issue an order compelling a response, issue sanctions pursuant to § 26.36, or issue a protective order. For purposes of paragraph (d) of this section, an evasive or incomplete answer to a request for discovery is treated as a failure to answer.

(e) Each party shall bear its own costs of discovery.

§ 26.42 Subpoenas.

(a) *General.* Upon written request of a party, the ALJ may issue a subpoena requiring the attendance of a witness at a deposition or hearing, and/or the production of documents. The request shall specify any documents to be produced and shall list the names and addresses of the witnesses.

(b) *Time of request.* A request for a subpoena in aid of discovery shall be