

§ 26.43

filed in time to permit the conclusion of discovery 15 days before the date fixed for the hearing. A request for a subpoena to testify at the hearing shall be filed at least 3 days prior to the hearing, unless otherwise allowed by the ALJ for good cause shown.

(c) *Content.* The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(d) *Service and fees.* Subpoenas shall be served, and fees and costs paid to subpoenaed witnesses, in accordance with Rule 45(b)(1) of the Federal Rules of Civil Procedure.

(e) *Motion to quash.* The individual to whom the subpoena is directed or a party may file a motion to quash the subpoena within 10 days after service, or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 26.43 Protective order.

(a) A party, a prospective witness, or a deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, as provided in Rule 26(c) of the Federal Rules of Civil Procedure.

HEARINGS

§ 26.44 General.

(a) *Time of hearing.* The hearing shall commence not later than 90 days following the Government's filing of the complaint and response under § 26.37, unless the time is extended for good cause. The ALJ shall provide written notice to all parties of the reasons for any extension of time.

(b) *Location of hearing.* The hearing shall be held where the respondent resides or transacts business, or in such other place as may be agreed upon by the parties and the ALJ. Hearings for Program Fraud Civil Remedies Act cases shall be located in accordance with 31 U.S.C. 3803(g)(4).

24 CFR Subtitle A (4-1-04 Edition)

(c) *Notice of hearing.* The ALJ shall issue a notice of hearing to all parties specifying the time and location of the hearing, the matters of fact and law to be heard, the legal authority under 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