

Federal Property Management Regulations

§ 101-6.212-5

or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(a) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible GSA official that the matter be scheduled for hearing, or (b) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 101-6.211-3, and consent to the making of a decision on the basis of such information as is available.

(b) [Reserved]

§ 101-6.212-2 Time and place of hearing.

Hearings shall be held, at a time fixed by the responsible GSA official, at the offices of GSA in Washington, DC, unless such official determines that the convenience of the applicant or recipient or of GSA requires that another place be selected. Hearings shall be held before the responsible GSA official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 or 3344 (section 11 of the Administrative Procedure Act).

[38 FR 17974, July 5, 1973]

§ 101-6.212-3 Right to counsel.

In all proceedings under this § 101-6.212 the applicant or recipient and GSA shall have the right to be represented by counsel.

§ 101-6.212-4 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 101-6.212-1, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both GSA and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart 101-6.2, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

[29 FR 16287, Dec. 4, 1964, as amended at 38 FR 17974, July 5, 1973]

§ 101-6.212-5 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this subpart 101-6.2 with respect to two or more programs to which this subpart applies, or non-compliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator may, by agreement with such

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other departments, or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this regulation. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 101-6.213.

§ 101-6.213 Decisions and notices.

§ 101-6.213-1 Decision by person other than the responsible GSA official.

If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible GSA official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible GSA official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible GSA official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible GSA official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible GSA official.

§ 101-6.213-2 Decisions on record or review by the responsible GSA official.

Whenever a record is certified to the responsible GSA official for decision or he reviews the decision of a hearing examiner pursuant to § 101-6.213-1, or whenever the responsible GSA official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible GSA official shall be

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given in writing to the applicant or recipient, and to the complainant, if any.

§ 101-6.213-3 Decisions on record where a hearing is waived.

Whenever a hearing is waived pursuant to § 101-6.212 a decision shall be made by the responsible GSA official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

§ 101-6.213-4 Rulings required.

Each decision of a hearing officer or responsible GSA official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart 101-6.2 with which it is found that the applicant or recipient has failed to comply.

§ 101-6.213-5 Approval by Administrator.

Any final decision of a responsible GSA official (other than the Administrator) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart 101-6.2 or the Act, shall promptly be transmitted to the Administrator, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

§ 101-6.213-6 Content of orders.

The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this subpart 101-6.2, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until it corrects its