

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 17 and 180

[Docket No. FR-5185-F-01]

RIN 2501 AD35

HUD Office of Hearings and Appeals; Conforming Changes To Reflect Organization Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations to reflect the organization of HUD's Office of Hearings and Appeals (OHA). HUD has established the Office of Hearings and Appeals within the Office of the Secretary. As a result of the organization of the OHA, the position of the Chief Administrative Law Judge (Chief ALJ) has been eliminated. This rule makes conforming changes to HUD regulations to reflect this change.

DATES: *Effective Date:* April 14, 2008.

FOR FURTHER INFORMATION CONTACT:

David T. Anderson, Director, Office of Hearings and Appeals, Department of Housing and Urban Development, 1707 H Street, NW., Eleventh Floor, Washington, DC 20006; telephone number (202) 254-0000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 847 of Title VIII of the National Defense Authorization Act of Fiscal Year 2006 (Pub. L. 109-613, approved January 6, 2006) (2006 NDA Act) established the Civilian Board of Contract Appeals within the General Services Administration and gave it jurisdiction to decide contract disputes from several civilian agencies. The 2006 NDA Act simultaneously terminated the Boards of Contract Appeals of eight federal agencies, including HUD.

Because of the statutory transfer of contract appeals adjudicatory responsibilities, and to provide for the non-procurement contract dispute functions performed by the HUD Board of Contract Appeals, HUD has established an Office of Hearings and Appeals (OHA) within the Office of the Secretary. OHA consists of two separate divisions, under the supervision of the director of OHA: The existing Office of Administrative Law Judges and the Office of Appeals.

II. This Final Rule

This final rule updates HUD's regulations in 24 CFR part 17, subpart C and 24 CFR part 180, to conform them to the establishment of OHA. Part 17 contains HUD's policies and procedures governing administrative claims, and subpart C of those regulations govern the collection of claims by the government. HUD's regulations at 24 CFR part 180 contain the consolidated hearing procedures for civil rights matters.

These HUD regulations contain outdated references to HUD's Chief Administrative Law Judge. That title and position are now obsolete since the establishment of OHA. This final rule updates the HUD regulations to reflect this change.

III. Justification for Final Rulemaking

Generally, HUD publishes a rule for public comment before publishing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, allows in § 10.1 for omission of notice and public comment in cases of statements of policy, interpretive rules, rules governing the Department's organization or internal practices, or if a statute expressly provides for omission of notice and comment. In this case, HUD has determined that prior public comment is unnecessary because this rule is exclusively concerned with the internal procedures of OHA. The regulatory amendments made by the final rule are technical and non-substantive in nature, limited to updating the terminology used in HUD's regulations governing administrative hearings. This rule does not affect the rights or obligations of members of the public, and therefore public comment may be omitted pursuant to § 10.1.

IV. Findings and Certifications

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule does not establish new procedures that would need to be complied with by small entities. Nor does the rule change the procedures that all entities, small and large, must adhere to in the course of certain hearings and appellate review processes. Rather, this final rule makes technical, non-substantive changes to HUD's administrative hearing

regulations. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, nor does it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications, if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 17

Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 17 and 180, as follows:

PART 17—ADMINISTRATIVE CLAIMS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

Subpart C—Procedures for the Collection of Claims by the Government

■ 2. The authority citation for subpart C continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701, 3711, 3716–3720E; and 42 U.S.C. 3535(d).

■ 3. Revise the first sentence in § 17.140 to read as follows:

§ 17.140 Miscellaneous provisions: correspondence with the Department.

The employee shall file an original and one copy of a request for a hearing with the Clerk, Office of Hearings and Appeals, 409 3rd Street, SW., 2nd Floor, Washington, DC 20024, on official work days between the hours of 8:45 a.m. and 5:15 p.m. * * *

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 4. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1 3535(d), 3601–3619; 5301–5320, and 6103.

§ 180.200 [Amended]

■ 5. In § 180.200, remove the second sentence.

■ 6. Amend § 180.210 as follows:

■ a. In paragraph (a), revise the reference to “Chief ALJ” to read “Director of the Office of Hearings and Appeals”; and

■ b. Revise paragraph (c), to read as follows:

§ 180.210 Withdrawal or disqualification of ALJ.

* * * * *

(c) *Redesignation of ALJ.* If an ALJ is disqualified, another ALJ shall be designated to preside over further proceedings.

■ 7. In § 180.315(b), revise the next to the last sentence to read as follows:

§ 180.315 Standards of conduct.

* * * * *

(b) * * * An attorney who is suspended or barred from participation may appeal to another ALJ designated by the Director of the Office of Hearings and Appeals. * * *

■ 8. Revise § 180.410(c) to read as follows:

§ 180.410 Charges under the Fair Housing Act.

* * * * *

(c) *Election of judicial determination.* If the complainant, the respondent, or the aggrieved person on whose behalf a complaint was filed makes a timely election to have the claims asserted in the charge decided in a civil action under 42 U.S.C. 3612(o), the administrative proceeding shall be dismissed.

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■ 9. In § 180.445, revise paragraph (a) and in paragraphs (b)(2) and (c) revise the references to “Chief ALJ” to read “presiding ALJ” to read as follows:

§ 180.445 Settlement negotiations before a settlement judge.

(a) *Appointment of settlement judge.* The ALJ, upon the motion of a party or upon his or her own motion, may request the Director of the Office of Hearings and Appeals to appoint another ALJ to conduct settlement negotiations. The order shall direct the settlement judge to report to the presiding ALJ within specified time periods.

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■ 10. Revise § 180.545(b) and (c) to read as follows:

§ 180.545 Subpoenas.

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(b) *Issuance of subpoena.* Upon the written request of a party, the presiding ALJ or other designated ALJ may issue a subpoena requiring the attendance of a witness for the purpose of giving testimony at a deposition or hearing and requiring the production of relevant books, papers, documents or tangible things.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted in time to permit the conclusion of discovery 15 days before the date scheduled for the hearing. If a request for subpoenas of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the presiding ALJ, or other designated ALJ as appropriate.

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Dated: March 5, 2008.

Roy A. Bernardi,

Deputy Secretary.

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