

## **§ 96.60**

may withhold funds until the Department finds that the reason for the withholding has been removed.

[64 FR 55857, Oct. 15, 1999]

### **Subpart F—Hearing Procedure**

#### **§ 96.60 Scope.**

The procedures in this subpart apply when opportunity for a hearing is provided for by § 96.51 of this part.

#### **§ 96.61 Initiation of hearing.**

(a) A hearing is initiated by a notice of opportunity for hearing from the Department. The notice will:

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by these rules; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the Department employee to whom any request for hearing is to be addressed.

(b) A State offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 10 days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated Department employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Department will designate a presiding officer, and (subject to § 96.51 of this part) the hearing will take place at a time and location agreed upon by the State requesting the hearing, the Department, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

#### **§ 96.62 Presiding officer.**

(a) A Department employee to whom the Secretary delegates such author-

## **45 CFR Subtitle A (10–1–22 Edition)**

ity, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a hearing under this subpart.

(b) The presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Secretary, who has participated in such investigation or action.

(c) The Secretary is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing.

(d) A different presiding officer may be substituted for the one originally designated under § 96.61 of this part without notice to the parties.

#### **§ 96.63 Communications to presiding officer.**

(a) Those persons who are directly involved in the investigation or presentation of the position of the Department or any party at a hearing that is subject to this subpart should avoid any off-the-record communication on the matter to the presiding officer or his advisers if the communication is inconsistent with the requirement of § 96.68 of this part that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and the other party provided an opportunity to respond.

(b) A copy of any communications between a participant in the hearing and the presiding officer, e.g., a response by the presiding officer to a request for a change in the time of the hearing is to be sent to all parties by the person initiating the communication.

#### **§ 96.64 Intervention.**

Participation as parties in the hearing by persons other than the State and the Department is not permitted.

#### **§ 96.65 Discovery.**

The use of interrogatories, depositions, and other forms of discovery shall not be allowed.