

§ 700.297

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 700.297 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Commission, a brief statement by the Commission summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Commission's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 700.297 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Executive Director under § 700.295 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record, a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Com-

25 CFR Ch. IV (4-1-06 Edition)

mission for not making the requested amendments may also be provided to recipient.

Subpart L—Determination of Eligibility, Hearing and Administrative Review (Appeals)

SOURCE: 46 FR 46801, Sept. 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.301 Definitions.

(a) Certifying Officer, as used in this subpart, means that member of the Commission staff who certifies eligibility for relocation assistance benefits and/or for life estate leases.

(b) An aggrieved person, as used in this subpart, means a person who has been denied any relocation assistance benefits for which he/she has applied.

§ 700.303 Initial Commission determinations.

(a) Initial Commission Determination concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of life estate leases shall be made by the Certifying Officer. The Determination shall include the amount, if any, to which the individual is entitled, and shall state the reasons therefor. Such Determination shall be communicated to the Applicant by certified letter or in person by Commission staff. A record of personal notice shall be maintained by the Commission.

(b) An explanatory conference shall be scheduled by and with the Certifying Officer, if requested by the Applicant or the Certifying Officer, within thirty days of the communication of the Determination; the right to a hearing is not dependent on the holding of such a conference. The Certifying Officer may reverse, amend, or leave standing the Initial Determination as a result of such conference: *Provided, however,* his/her decision shall be communicated in writing to the Applicant by certified letter or in person by Commission staff within five days after such conference.

(c) Communications of Determinations to the Applicant as provided for in § 700.303(a) shall include an explanation of the availability of grievance

procedures, including hearings and representation of counsel and the fact that a hearing must be requested within 30 (thirty) days of receipt of the determination.

(d) No decision which at the time of its rendition is subject to appeal to the Commission shall be considered final agency action subject to judicial review under 5 U.S.C. 704, *Provided* that in the event of a whole or partial denial, no benefits shall be paid unless and until said Determination is reversed or modified as provided for herein.

§ 700.305 Availability of hearings.

All persons aggrieved by Initial Commission Determinations concerning eligibility, benefits, or for granting of life estate leases may have a Hearing to present evidence and argument concerning the Determination. Parties seeking such relief from the Commission's Initial Determination shall be known as "Applicants." When multiple Applicants claim interest in one benefit, determination, or question of eligibility, their hearings may be consolidated at the Presiding Officer's discretion.

§ 700.307 Request for hearings.

Hearing requests shall be made in person or by letter and must be received by the Commission within thirty days after the notice letter was received, the personal notice was given, or if an explanatory conference is held, after the decision of the Certifying Officer. The request shall also contain a specific statement indicating the basis for the request.

§ 700.309 Presiding officers.

The hearing shall be presided over and conducted by one of the Commissioners appointed pursuant to 25 U.S.C. 640d-11(b) or by such other person as the Commission may designate.

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the

hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, *Provided*, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g) A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to §700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate