

(c) No testimony taken by depositions will be considered as part of the evidence in the hearing until such testimony is offered and received in evidence at the hearing, and ordinarily it will not be received into evidence if the deponent is present and can testify at the hearing. However, when the deponent is present and can testify, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. Where you have requested a final determination by the ALJ based on the written record without a hearing, the ALJ, in his or her discretion, may receive depositions to supplement the record.

(d) Each party will bear its own expenses associated with the taking of any deposition.

**§ 15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?**

In most cases, there will be no parties to a proceeding under these rules, other than the complainant, OCR, and, and if it so desires, the agency. However, if there are circumstances in which additional parties have an interest in the proceeding, such as a bank which participated in a case involving a guaranteed loan, such other interested parties may be permitted to participate in the proceeding at the discretion of the ALJ.

**§ 15f.20 May I subpoena witnesses to the hearings?**

No. USDA has no statutory authority to subpoena witnesses to testify at the hearing.

**§ 15f.21 What rules are applicable to the actual conduct of the hearing?**

(a) *Who may appear at the hearing?* You may appear at the hearing in person or through your attorney. OCR or the agency will appear through a designated representative, which may include a USDA attorney. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) *What happens if I fail to show up?* If, after having received notice of the hearing under § 15f.14, you fail to ap-

pear at the hearing without good cause, you will have waived your right to a hearing in the proceeding and the ALJ may proceed to issue a final determination based on the written record as provided for under § 15f.16.

(c) *Which party presents its case first at the hearing?* You, as the complainant, will proceed first at the proceeding, unless otherwise determined by the ALJ.

(d) *What kind of evidence will be admitted and how will it be handled?* (1) *In general.* The hearing will be conducted by the ALJ in the manner he or she determines most likely to obtain the facts relevant to the matter or matters at issue. The ALJ may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Each party will have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. The testimony of witnesses at a hearing will be on oath or affirmation and will be subject to cross-examination. Any evidence may be received by the ALJ without regard to whether that evidence could be admitted in judicial proceedings. Upon a finding of good cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the ALJ, the party must state briefly the grounds of such objection.

(ii) Only objections made before the ALJ may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness will be admitted in the manner provided in and subject to the provisions of § 15f.18(c) of these rules.

(4) *Exhibits.* Unless the ALJ finds that the furnishing of copies is impracticable, two copies of each exhibit must be filed with the ALJ. A party submitting an exhibit must provide every other party (except interested parties)

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a copy of the exhibit one week before the hearing. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, will be admissible in evidence without the production of the person who made or prepared the same, and will be *prima facie* evidence of the relevant facts stated therein. Such record or document must be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice will be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character if the parties are given adequate notice of matters so noticed, and the parties will be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which must be included in the transcript. The offer of proof should consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it must be included in the transcript in its entirety. If the evidence consists of an exhibit, it must be marked for identification and inserted in the hearing record.

(8) *Interlocutory review.* Interlocutory review of rulings by the ALJ will not be permitted.

(9) *Transcript or recording.* (i) Hearings to be conducted by telephone will be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or by the personal attendance of parties and witnesses must be transcribed, unless the ALJ finds that recording the hearing verbatim would expedite the proceeding and the ALJ orders the hearing to be recorded verbatim. The ALJ must certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(ii) If a hearing is recorded verbatim, a party requests the transcript of a

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hearing or part of a hearing, and the ALJ determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the ALJ shall order the verbatim transcription of the recording as requested by the party.

(iii) The costs of transcription or verbatim recordings will be paid for by USDA and charged to the agency whose action gave rise to the complaint at issue. Copies of recordings or transcripts of hearings will be made available to any party at the actual cost of duplication.

### § 15f.22 What happens after the hearing?

The ALJ will fix a reasonable time for filing posthearing briefs, proposed findings of fact and conclusions of law, and if permitted, reply briefs. Briefs should include a summary of evidence relied upon together with references to exhibit numbers and citations to the transcript and authorities relied upon. Briefs must be filed with the Docketing Clerk with copies to all parties.

### § 15f.23 What will constitute the record for the final determination?

The original complaint, the Section 741 Complaint Request, the OCR report, the agency answer, the transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, including rulings, and the proposed determination by an ALJ (if applicable) shall constitute the exclusive record for the final determination.

### § 15f.24 When and in what form will a final determination be made on my complaint by USDA?

(a) The ALJ will make a proposed determination orally at the close of a hearing, or in writing within 35 days. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible