

§ 15f.22

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