

## **§ 99.24**

### **§ 99.24 Evidentiary purpose.**

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather, it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

### **§ 99.25 Evidence.**

(a) Testimony. Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) Stipulations and exhibits. Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) Rules of evidence. Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

### **§ 99.26 Unsponsored written material.**

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

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

### **§ 99.27 Official transcript.**

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

### **§ 99.28 Record for decision.**

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

## **Subpart D—Posthearing Procedures, Decisions**

### **§ 99.31 Posthearing briefs.**

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

### **§ 99.32 Decisions following hearing.**

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions