to answer an interrogatory submitted under §4.829, or if a party, under §4.830 fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the administrative law judge may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) If a party or an agent designated to testify fails after proper service (1) to appear for his deposition, (2) to serve answers or objections to interrogatories submitted under §4.829 or (3) to serve a written response to a request for inspection, submitted under §4.830, the administrative law judge on motion may make such orders as are just, including those authorized under paragraphs (b) (1) and (2) of this section.

§4.832 Consultation and advice.

(a) The administrative law judge shall not consult any person, or party, on any fact in issue or on the merits of the matter before him unless upon notice and opportunity for all parties to participate.

(b) No employee or agent of the Federal Government engaged in the investigation and prosecution of a proceeding governed by these rules shall participate or advise in the rendering of any recommended or final decision, except as witness or counsel in the proceeding.

[38 FR 21162, Aug. 6, 1973, as amended at 50 FR 43706, Oct. 29, 1985]

PREHEARING

§4.833 Prehearing conferences.

(a) Within 15 days after the answer has been filed, the administrative law judge will establish a prehearing conference date for all parties including persons or organizations whose petition requesting party status has not been ruled upon. Written notice of the prehearing conference shall be sent by the administrative law judge.

(b) At the prehearing conference the following matters, among others, shall be considered: (1) Simplification and delineation of the issues to be heard; (2) stipulations; (3) limitation of number of witnesses; and exchange of witness lists; (4) procedure applicable to the proceeding; (5) offers of settlement; and (6) scheduling of the dates for exchange of exhibits. Additional prehearing conferences may be scheduled at the discretion of the administrative law judge, upon his own motion or the motion of a party.

HEARING

§4.834 Purpose.

(a) The hearing is directed primarily to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing will be held only in cases where issues of fact must be resolved in order to determine whether the applicant or recipient has failed to comply with one or more applicable requirements of title VI of the Civil Rights Act of 1964 (sec. 602, 42 U.S.C. 2000d–1) and part 17 of this title. However, this shall not prevent the parties from entering into a stipulation of the facts.

(b) If all facts are stipulated, the proceedings shall go to conclusion in accordance with part 17 of this title and the rules in this subpart.

(c) In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his admissions or stipulations in the record that there are no matters of material fact in dispute, the administrative law judge may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for the submission of evidence by the Government for the record. Thereafter, the proceedings shall go to conclusion in accordance with part 17 of this title and the rules in this subpart. An appeal

from such order may be allowed in accordance with the rules for interlocutory appeal in § 4.823.

§ 4.835 Evidence.

Formal rules of evidence will not apply to the proceeding. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded from the record of a hearing. Hearsay evidence shall not be inadmissible as such.

§ 4.836 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the administrative law judge.

§ 4.837 Testimony.

Testimony shall be given under oath by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the administrative law judge, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 4.838 Objections.

Objections to evidence shall be timely, and the party making them shall briefly state the ground relied upon.

§ 4.839 Exceptions.

Exceptions to rulings of the administrative law judge are unnecessary. It is sufficient that a party, at the time the ruling of the administrative law judge is sought, makes known the action which he desires the administrative law judge to take, or his objection to an action taken, and his ground therefor.

§ 4.840 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the administrative law judge excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 4.841 Official transcript.

An official reporter will be designated for all hearings. The official transcripts of testimony and argument taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the administrative law judge. Transcripts may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. Upon notice to all parties, the administrative law judge may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

POSTHEARING PROCEDURES

§ 4.842 Proposed findings of fact and conclusions of law.

Within 30 days after the close of the hearing each party may file, or the administrative law judge may request, proposed findings of fact and conclusions of law together with supporting briefs. Such proposals and briefs shall be served on all parties and amici. Reply briefs may be submitted within 15 days after receipt of the initial proposals and briefs. Reply briefs should be filed and served on all parties and amici.

§ 4.843 Record for decision.

The administrative law judge will make his decision upon the basis of the record before him. The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, shall constitute the record for decision and may be inspected and copied.

§ 4.844 Notification of right to file exceptions.

The provisions of § 17.9 of this title govern the making of decisions by administrative law judges, the Director,