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Judge) shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(f) *Filing of depositions*. The questions asked and all answers or objections shall be recorded or transcribed verbatim, and a transcript shall be prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition transcript and exhibits shall be filed with the Administrative Law Judge. A copy of the deposition transcript and exhibits shall be served on the opposing party or parties. The cost of the transcript (including copies) shall be paid by the party requesting the deposition.

§ 501.731 Depositions upon written questions.

(a) *Availability*. Depositions may be taken and submitted on written questions upon motion of any party. The motion shall include the information specified in § 501.730(a). A decision on the motion shall be governed by § 501.730(b).

(b) *Procedure*. Written questions shall be filed with the motion. Not later than 10 days after service of the motion and written questions, any party may file objections to such written questions and any party may file cross-questions. When a deposition is taken pursuant to this section no persons other than the witness, representative or counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. No party shall be present or represented unless otherwise permitted by order. The deposition officer shall propound the questions and cross-questions to the witness in the order submitted.

(c) *Additional requirements*. The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (b) through (g) of § 501.730, except that no cross-examination shall be made.

§ 501.732 Evidence.

The applicable evidentiary standard for proceedings under this subpart is proof by a preponderance of reliable, probative, and substantial evidence. The Administrative Law Judge shall admit any relevant and material oral, documentary, or demonstrative evidence. The Federal Rules of Evidence do not apply, by their own force, to proceedings under this subpart, but shall be employed as general guidelines. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

(a) *Objections and offers of proof*—(1) *Objections*. Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the Administrative Law Judge need not be noted at the time of the ruling. Such exceptions will be deemed waived on review by the Secretary's designee, however, unless raised:

(i) Pursuant to interlocutory review in accordance with § 501.741;

(ii) In a proposed finding or conclusion filed pursuant to § 501.738; or

(iii) In a petition for the Secretary's designee's review of an Administrative Law Judge's decision filed in accordance with § 501.741.

(2) *Offers of proof*. Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to § 501.739(b).

(b) *Official notice*. An Administrative Law Judge or Secretary's designee may take official notice of any material fact that might be judicially noticed by a district court of the United States, any matter in the public official records of the Secretary, or any matter that is particularly within the knowledge of the Department as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, a party, upon timely request to the Administrative Law Judge, shall be afforded an opportunity to establish the contrary.