

Food and Nutrition Service, USDA

§ 283.31

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply

briefs may not exceed 15 pages in length, excluding exhibits.

§ 283.31 Review of the record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.