

## § 221.55

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of NMFS and any other Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

### § 221.55 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of § 221.42(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

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(b) *Objections.* Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

### § 221.56 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Department of Commerce's designated ALJ office will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the Department of Commerce's designated ALJ office on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript Corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

### § 221.57 What is the standard of proof?

The standard of proof is a preponderance of the evidence.

### § 221.58 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 221.56(b).

### § 221.59 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 10 days after the close of the hearing, unless the ALJ sets a different deadline.