

## Food and Nutrition Service, USDA

## § 283.13

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(f) *Failure to respond to discovery*—(1) *Motions to compel.* If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded at a deposition pursuant to paragraph (a) of this section or a party fails to respond or gives evasive or incomplete answers to written interrogatories or admissions, or fails to respond, in full or in part, to a request for production of documents served pursuant to paragraph (b) of this section, the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents.

(2) *Filing motion to compel.* (i) Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for answers to interrogatories or production of documents.

(ii) On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) *Responding to motion to compel.* A response to the motion may be filed in accordance with § 283.18(d).

(g) *Decision of the ALJ.* (1) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(2) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protective order shall become final and effective 10 days after service unless either party pursues the

options as discussed in §§ 283.17(d) and 283.20.

(h) *Failure to comply with an order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(2) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(i) *Postponements or delays.* No hearing, proceeding or other matter under this part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

### § 283.13 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal,

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(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal,

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein,

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein, or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary and service is by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

**§ 283.14 Fees of witnesses.**

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

**§ 283.15 Procedure for hearing.**

(a) *Request for hearing.* A party may request a hearing on the facts by in-

cluding such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing, except as provided for under § 283.4(i). In the event FNS denies any material facts and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is ready for hearing, shall set a time for the hearing, as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The hearing 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 hearing be held at another location. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing 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 an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Exchange of witness and rebuttal witness lists, statements and exhibits.* (1) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7), shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(2) A witness whose name does not appear on the witness list shall not be permitted to testify and exhibits which