

561—7.16(17A,455A) Evidence.

7.16(1) *Ruling on evidence.* The presiding officer shall rule on admissibility of evidence.

7.16(2) *Admissibility in general.* Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial.

7.16(3) *Issues restricted.* Evidence in the proceeding shall be confined to the issues that have been expressed in the appealed action, the appeal, the petition and the answer.

7.16(4) *Stipulation.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.16(5) *Privilege.* The rules of privilege recognized by law shall be given effect.

7.16(6) *Examination of exhibits.* The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.16(7) *Documentary evidence.* Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

7.16(8) *Examination and cross-examination.* Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

7.16(9) *Sequestration of witnesses.* Witnesses may be sequestered during the hearing.

7.16(10) *Objections to evidence.* Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

7.16(11) *Offer of proof.* Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

7.16(12) *Official notice.* Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before a decision is announced.

7.16(13) *Evaluation of evidence.* The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.