

conducting the deposition by telephone or audio-visual telecommunication; (2) is necessary to prevent prejudice to a party; or (3) is necessary because of a disability of any individual expected to participate in the deposition.

However, the government is never a party in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings. Therefore, the final rule provides that in proceedings conducted under the PACA Reparation Rules and the P&S Reparation Rules the parties may agree upon the manner in which the depositions are to be conducted and the person conducting the proceeding will only determine the manner in which a deposition is to be conducted when the parties cannot agree. (See 7 CFR 47.16(b) (3) and (4) and 9 CFR 202.109(d) (4) and (5) in this final rule.)

(d) One commenter opposed the proposal, but urged the Department to modernize its rules and to form an ad hoc committee to review the rules.

We welcome any comments or petitions for rulemaking which any interested member of the public may wish to make regarding any of the Department's rules of practice, but we do not believe that it is necessary to form a committee to review the Department's rules or practice. The Department regulation regarding petitions for issuance, amendment, or repeal of a rule is set forth in 7 CFR 1.28.

(e) Two commenters supported conducting conferences by telephone when the judge decides that the use of the telephone is appropriate.

We did not make any change based on these comments. The proposed rule provided that conferences are to be held either by telephone or by correspondence unless certain findings are made by the person conducting the proceeding. The final rule retains those provisions.

Conclusion

Based on the rationale in the proposed rule and this rulemaking document, we are adopting the provisions of the proposal as a final rule except as previously discussed in this rulemaking document and except for minor editorial changes for clarity. In addition, since the preparation of the notice of proposed rulemaking 7 CFR 180.300 has been redesignated as 7 CFR 97.300. Therefore, we have removed the amendment of 7 CFR 180.300 in this final rule and, instead, amended 7 CFR 97.300.

Further, based upon the general need to allow the person conducting the proceeding to tailor the manner in which the proceeding is conducted to prevent prejudice to any party and to ensure that any hearing is a full and fair evidentiary hearing, we have eliminated all of the provisions which appeared in the proposal concerning interlocutory appeal. Specifically, we proposed to amend 7 CFR 1.143(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further, we proposed to amend 7 CFR 47.13(b) to allow any party to appeal to the Secretary an examiner's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. Further still, we proposed to amend 7 CFR 1.172(e) to allow any party to appeal to the Judicial Officer a Judge's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a conference; or (2) to conduct a hearing by audio-visual telecommunication or personally attend a hearing. Finally, we proposed to amend 9 CFR 202.118(b) to allow any party to appeal to the Judicial Officer a presiding officer's order: (1) To conduct a conference by audio-visual telecommunication or personally attend a prehearing conference; (2) to conduct an oral hearing by audio-visual telecommunication or personally attend an oral hearing; or (3) to conduct a deposition by audio-visual telecommunication or personally attend a deposition. None of these proposed amendments concerning interlocutory appeal have been adopted in this final rule.

Further, the proposed rule amended the Uniform Rules, the PACA Responsibly Connected Rules, and the P&S Reparation Rules to require hearings to be recorded verbatim by an electronic recording device. Only if a party to the proceeding requests a transcript of the hearing or a part of the hearing and the person conducting the proceeding determines that the disposition of the proceeding would be expedited by a transcript of the hearing could the person conducting the

proceeding order the verbatim transcription of the recording as requested by the party. We proposed to require that any presiding person's order to transcribe a hearing and the basis for the order be reduced to a written order and filed with the Hearing Clerk. We have eliminated the requirement that the order of the person conducting the proceeding and the basis of that order be reduced to a written order and filed with the Hearing Clerk. (See 7 CFR 1.141(i) and 47.60 and 9 CFR 202.112(i) in this final rule.) We do not believe that an order regarding transcription of a hearing must be handled in a manner different than any other order issued by the person conducting the proceeding.

Finally, the Department will bear the entire cost of audio-visual transmission and only some of the travel costs related to face-to-face hearings, conferences, and depositions. Therefore, there could be rare circumstances in which the overall cost of conducting a conference, hearing, or deposition by audio-visual telecommunication may be cheaper than conducting the same conference, hearing, or deposition in some other manner and at the same time the Department's cost of conducting the conference, hearing, or deposition by audio-visual telecommunication could be higher than conducting that conference, hearing, or deposition in some other manner. In order to avoid a measurable increase in costs to the Department, this final rule provides that if the person conducting the proceeding finds that a hearing or deposition conducted by audio-visual telecommunication would measurably increase costs to the Department, the hearing or deposition shall be conducted by personal attendance or by telephone. If the person conducting the proceeding finds that a conference conducted by audio-visual telecommunication would measurably increase costs to the Department, the conference shall be conducted by personal attendance, by telephone, or by correspondence. (See 7 CFR 1.140(c), 1.141(b), 1.148(b), 1.167(b), 1.168(b), 47.14(c), and 47.15(c), and 9 CFR 202.110(b) and 202.112(a) in this final rule.) We did not make this change with respect to depositions conducted under the PACA Reparation Rules or the P&S Reparation Rules because the government is never a party in proceedings conducted under those rules and incurs very little cost associated with depositions taken in PACA and P&S reparation proceedings.