

b. In paragraph (b)(7), by adding the words "or such monitoring or recording occurs in the course of a Department of Agriculture proceeding conducted by telephone or audio-visual telecommunication and the person conducting the proceeding is an administrative law judge, hearing officer, examiner, or presiding officer" immediately before the semicolon.

PART 1—ADMINISTRATIVE REGULATIONS

3. The authority citation for part 1, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

4. In § 1.131, paragraph (a), the second sentence is revised to read "Section 1.26 shall be inapplicable to proceedings covered by this subpart."

§ 1.132 [Amended]

5. Section 1.132 is amended as follows:

a. In paragraph (d), the reference to "459g" is removed and "450g" added in its place.

b. In paragraph (d), the reference to "1970 ed. appendix, p. 550" is removed and "App. (1988)" added in its place.

c. In paragraph (d), the reference to "7 CFR 2.35(a)" is removed and "§ 2.35(a) of this chapter" added in its place.

d. Section 1.132 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.133 [Amended]

6. In § 1.133, paragraph (a)(1), the first sentence is amended by removing the words "of this subpart".

§ 1.140 [Amended]

7. In § 1.140, the section heading is revised to read as set forth below; paragraph (a)(1) introductory text is amended by removing the word "prehearing" and revising the second sentence to read "Reasonable notice of the time, place, and manner of the conference shall be given."; paragraph (b) is amended by removing the word "prehearing"; and paragraph (c) is revised to read as follows:

§ 1.140 Conferences and procedure.

* * * * *

(c) *Manner of Conference.* (1) The conference shall be conducted by telephone or correspondence unless the

Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

* * * * *

§ 1.141 [Amended]

8. Section 1.141 is amended as follows:

a. Paragraph (b) is revised to read as set forth below.

b. Paragraph (e) is amended by removing the words "of these rules" both times they appear.

c. Paragraph (g)(7) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

d. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i) respectively.

e. New paragraph (g) is added to read as set forth below.

f. Redesignated paragraph (i) is revised to read as set forth below.

§ 1.141 Procedure for hearing.

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(b) *Time, place, and manner.* (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed,

with due regard for the public interest and the convenience and necessity of the parties. The Judge shall file with the Hearing Clerk a notice stating the time and place of the hearing.³ This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Judge's determination regarding the manner of the hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the time, place, or manner of the hearing is made, the Judge shall file with the Hearing Clerk 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 part of the transcript or recording, or actual notice is given to the parties.

(2) (i) If any material issue of fact is joined by the pleadings and the matter is at issue and is ready for hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judge's notice.

³ The place of hearing in a proceeding under the Packers and Stockyards Act shall be set in accordance with the Packers and Stockyards Act (7 U.S.C. 228 (e) and (f)). In essence, if there is only one respondent, the hearing is to be held as near as possible to the respondent's place of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent and they have their places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the hearing is to be held as near as possible to their places of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent, and they have their places of business or residence distant from each other, 7 U.S.C. 228 (e) and (f) have no applicability.