

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

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

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

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

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

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(g) *Written statements of direct testimony.* (1) Except as provided in paragraph (g)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance

with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

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(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

§ 1.142 [Amended]

9. Section 1.142 is amended as follows:

a. In paragraph (a), the heading is amended by adding the words "or recording" immediately after the word "transcript".

b. Paragraph (a)(1) is amended by adding the words "or recording" immediately after the word "transcript".

c. Paragraph (a)(2) is amended by adding the words "or recording" immediately after the word "transcript" both times the word "transcript" appears.

d. Paragraph (a)(3) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

e. Paragraph (c)(2) is amended by removing the words "of the record" and adding the words "or recording" in their place.

§ 1.144 [Amended]

10. Section 1.144 is amended as follows:

a. Paragraph (c)(2) is revised to read as set forth below.

b. Paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(13) and (c)(14) respectively.

c. New paragraphs (c)(9), (c)(10), (c)(11), and (c)(12) are added to read as set forth below.

§ 1.144 Judges.

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(c) * * *

(2) Set the time, place, and manner of a conference and the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

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(9) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

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§ 1.145 [Amended]

11. Section 1.145 is amended as follows:

a. In paragraph (a), the reference to "§ 1.141(g)(2)" is removed and "§ 1.141(h)(2)" added in its place.

b. In paragraph (c), the second sentence is amended by adding the words "or recording" immediately after the word "transcript".

§ 1.147 [Amended]

12. In section 1.147, paragraph (c)(2) is amended by removing the words "of this part"; and paragraph (d) is amended by removing the words "of this part".

§ 1.148 [Amended]

13. Section 1.148 is amended as follows:

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

b. In paragraph (f), the words "or recording" are added immediately after the word "transcript" in the paragraph heading; in paragraph (f)(1), once; in paragraph (f)(2), twice; and in paragraph (f)(3), twice.

§ 1.148 Depositions.

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