

(b) Judge's order for taking deposition.

(1) If the Judge finds that the testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be filed with the Hearing Clerk and shall state:

- (i) The time of the deposition;
- (ii) The place of the deposition;
- (iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);
- (iv) The name of the officer before whom the deposition is to be made; and
- (v) The name of the deponent. The officer and the time, place, and manner need not be the same as those suggested in the motion for the deposition.

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

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

- (i) Is necessary to prevent prejudice to a party;
- (ii) Is necessary because of a disability of any individual expected to participate in the deposition; or
- (iii) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

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§ 1.149 [Amended]

14. In § 1.149, paragraph (b), the last sentence is amended by removing the words "of this part".

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

Authority: 7 U.S.C. 291, 292; 7 CFR 2.35, 2.41.

§ 1.161 [Amended]

16. Section 1.161 is amended as follows:

a. In paragraph (c), the words "or her" are added immediately after the word "his".

b. In paragraph (g), the reference to "1976 ed., appendix, p. 764" is removed and "App. (1988)" added in its place.

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

d. In paragraph (g), the words "or she" are added immediately after the word "he".

e. Section 1.161 is amended by removing all alphabetical paragraph designations and placing the definitions in alphabetical order.

§ 1.162 [Amended]

17. Section 1.162 is amended as follows:

a. In paragraph (b), in the first sentence, the word "part" is removed and the word "paragraph" added in its place.

b. In paragraph (b), in the first sentence, the word "he" is removed and the words "the Secretary" added in its place.

c. In paragraph (b), in the second sentence, the word "he" is removed and ", the Secretary" added in its place.

§ 1.164 [Amended]

18. In § 1.164, paragraph (a), the first sentence is amended by removing the word "his" and adding the words "the respondent's" in its place.

§ 1.167 [Amended]

19. Section 1.167 is revised to read as follows:

§ 1.167 Conference

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure and/or possible stipulations. The conference may include discussions regarding:

- (1) Simplification of the issues;
- (2) Limitation of expert or other witnesses;
- (3) The orderly presentation of evidence; and
- (4) Any other matters that may expedite and aid in the disposition of the proceeding.

(b) *Manner of the 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.

§ 1.168 [Amended]

20. Section 1.168 is amended as follows:

a. In paragraph (e)(1), the first sentence is amended by removing the word "reported" and adding the words "transcribed or recorded" in its place.

b. In paragraph (e)(2), the first sentence is amended by removing the word "he" and by adding the words "the party" in its place.

c. In paragraph (e)(2), the second sentence is amended by adding the words "or recording" immediately after the word "transcript".

d. Paragraph (e)(6) is amended by adding the words "or recording" immediately after the word "transcript" each of the three times the word "transcript" appears.

e. Paragraphs (b), (c), (d), and (e) are redesignated as (c), (d), (e), and (g) respectively.

f. New paragraphs (b), (f), and (h) are added to read as follows:

§ 1.168 Procedure for hearing.

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(b) *Manner of hearing.* (1) The Judge shall file with the Hearing Clerk a notice stating whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing and the Judge's determination regarding the manner of