

hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of the change, which notice shall be served on 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) 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 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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(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(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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(h) *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.

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**§ 1.169 [Amended]**

21. Section 1.169 is amended as follows:

- a. In paragraph (a), the heading is revised to read "*Corrections to transcript or recording.*"
- b. In paragraph (a)(1), the words "or recording" are added immediately after the word "transcript".
- c. In paragraph (a)(2), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.
- d. In paragraph (a)(3), the words "or recording" are added immediately after the word "transcript" each of the three times the word "transcript" appears.
- e. In paragraph (c), in the last sentence, the word "herein" is removed.

**§ 1.170 [Amended]**

22. Section 1.170 is amended as follows:

- a. In paragraph (a), in the second sentence, the reference to "§ 1.167(e)(2)" is removed and "§ 1.168(g)(2)" added in its place.
- b. In paragraph (c), the words "or recording" are added immediately after the word "transcript".
- c. In paragraph (i), in the last sentence, the word "herein" is removed.

**§ 1.171 [Amended]**

23. Section 1.171 is amended by removing the word "herein".

**§ 1.172 [Amended]**

24. In § 1.172, paragraph (a) is amended by adding the words "or recording" immediately after the word "transcript".

**§ 1.173 [Amended]**

25. Section 1.173 is amended as follows:

- a. In paragraph (b)(1), the words "or herself" are added immediately after the word "himself".
- b. In paragraph (b)(2), the word "he" is removed and the words "the Judge" added in its place.
- c. In paragraph (b)(2), the words "or herself" are added immediately after the word "himself".
- d. In paragraph (d), in the introductory language, the words "or her," are added immediately after the word "him".
- e. Paragraph (d)(2) is revised to read as set forth below.