

§ 47.14 [Amended]

35. Section 47.14 is revised to read as follows:

(a) In any proceeding in which it appears that a conference will expedite the proceeding, the examiner, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before the examiner to consider:

- (1) The simplification of the issues;
- (2) The necessity or the desirability of amendments to the pleadings;
- (3) The possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert or other witnesses; or
- (5) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) No transcript or recording of the conference shall be made. If the conference is conducted by correspondence, the examiner shall forward copies of letters and documents to the parties as circumstances require. The correspondence in connection with a conference shall not be part of the record. The examiner shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

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

§ 47.15 [Amended]

36. Section 47.15 is amended as follows:

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

b. In paragraph (d)(2), the word "he" is removed and the words "the party" are added in its place.

c. In paragraph (d)(2), the words "or her" are added immediately after the word "his".

d. In paragraph (d)(3)(i), the words "or her" are added immediately after the word "him".

e. In paragraph (f)(2)(i), the word "he" is removed and the words "the party" are added in its place.

f. In paragraphs (f)(2)(i), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.

g. In paragraph (f)(6)(ii), "recording," is added immediately after "document," both times "document," appears.

h. In paragraph (f)(8), the words "or recording" are added immediately after the word "transcript" the three times the word "transcript" appears.

i. In paragraph (g), in the first sentence, the words "hereinafter provided" are removed and the words "provided in this part" are added in their place.

j. In paragraph (g), in the second sentence, the word "he" is removed and the words "the examiner" are added in its place.

k. Paragraphs (f), (g), and (h) are redesignated as (g), (h), and (i) respectively.

l. A new paragraph (f) is added to read as set forth below.

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

§ 47.15 Oral hearing before examiner.

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(c) *Time, place, and manner.* (1) If and when the proceeding has reached the stage of oral hearing, the examiner, giving careful consideration to the convenience of the parties, shall set a time for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. Unless the parties otherwise agree, the place of the hearing shall be the place in which the respondent is engaged in business. 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 and the examiner's determination regarding the manner of the hearing shall be made in accordance with paragraphs (c)(3) and (c)(4) of this section. If any change in the time, place, or manner of the hearing is made, the examiner shall file with the hearing clerk a notice of the change. The notice of any change in the time, place, or manner of the hearing 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) If and when the proceeding has reached the stage of oral 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 examiner issues a notice stating the manner in which the hearing is to be conducted, any party may move that the examiner 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 examiner's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the examiner determines that conducting the hearing by personal attendance of any individual expected to attend 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 examiner 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.