

**§ 202.110**

**9 CFR Ch. II (1–13 Edition)**

the officer. If the examination is oral, the deponent shall be examined first by the party at whose instance the deposition is taken, or the representative of such party, and shall be subject to cross-examination by any other party or the representative thereof who is present at the examination; the officer shall propound any interrogatories filed with the officer by parties not present or represented at the examination.

(g) *Certification and filing by officer.* The officer shall certify on the transcript or recording that the deponent was duly sworn by the officer and that the transcript or recording is a true record of the deponent's testimony, with such exceptions as the certificate shall specify. The officer shall then securely seal the transcript or recording, together with three copies of the transcript or recording, with an extra copy for each party in excess of two, in an envelope, and mail the same by registered or certified mail to the presiding officer.

(h) *Service; correction.* After the transcript or recording is received by the presiding officer, it shall promptly be served on all parties. Any party, within 20 days after such service, may file a written motion proposing corrections to the transcript or recording. Any such motion shall be served on each party other than the one filing it, who shall have 10 days to file a written response to it. Any such response shall be served on each party other than the one filing it. Such documents, if filed, shall be a part of the record of the proceeding if any portion of the transcript or recording is made a part of the record. All portions of the transcript or recording which are not referred to in any such motion shall be presumed to be accurate except for obvious typographical errors.

(i) *Use.* If a written hearing is held, a transcript or recording, of a deposition ordered and taken in accord with this section, may be made a part of the record as evidence by any party, by written motion filed with such party's evidence. If an oral hearing is held, except as otherwise provided in these rules, such a transcript or recording may be made a part of the record as evidence, on written motion filed by

any party, or oral motion of any party made at the oral hearing, if no party objects after reasonable notice and opportunity to do so, or if the presiding officer finds that the evidence is otherwise admissible and:

(1) That the witness is dead;

(2) That the witness is unable to attend or testify for any good reason including age, sickness, infirmity, or imprisonment;

(3) That the party offering the transcript or recording has tried without success to procure the attendance of the witness by subpoena; or

(4) That such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the presiding officer, to allow the transcript or recording to be used.

If any portion of a transcript or recording of a deposition is made a part of the record as evidence on motion of any party, any other party may make a part of the record as evidence the remainder, or any other portion, of the transcript or recording.

(j) *Expenses.* Fees and reimbursements payable to an officer taking a deposition, or other person recording the testimony in the deposition, shall be paid by the party at whose instance the deposition is taken.

(k) *Subpoenas.* No subpoena can issue, to compel attendance, testimony, or production of documentary evidence, at an examination under this rule 9.

(l) *Agreement of parties.* In any case, any transcript or recording of any deposition, or any part of such a transcript or recording, may be made a part of the record as evidence by agreement of the parties other than a party failing to file an answer as required in these rules.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990; 60 FR 8465, Feb. 14, 1995]

**§ 202.110 Rule 10: Prehearing conference.**

(a) The presiding officer, at any time prior to the commencement of the hearing, may request the parties or their counsel to appear at a conference before the presiding officer to consider:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of fact and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) The negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for completion of the actions decided at the conference; or

(9) Such other matters as may expedite and aid in the disposition of the proceeding.

No transcript or recording of such a conference shall be made, but the presiding officer shall prepare and file for the record a written summary if any action is 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.

(b) *Manner of the prehearing conference.* (1) The prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing 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 prehearing conference; or

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

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

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

[43 FR 30510, July 14, 1978, as amended at 60 FR 8466, Feb. 14, 1995]

#### **§ 202.111 Rule 11: Hearing, oral or written.**

(a) *When held.* A hearing, oral or written, shall be held unless:

(1) Each respondent admits or is deemed to admit sufficient allegations of the complaint to support the full amount claimed by the complainant as reparation;

(2) Each respondent admits liability to the complainant in the full amount claimed by the complainant as reparation;

(3) Before a hearing has been completed the parties agree in writing that the proceeding may be decided on the basis of the record as it stands at the time such agreement is filed; or

(4) Before a hearing has been completed the parties settle their dispute or the complainant withdraws the complaint.

(b) *Whether oral or written.* The hearing provided for in paragraph (a) of this section shall be oral if:

(1) \$10,000 or more is in controversy and any respondent files a written request for an oral hearing with such respondent's answer; or

(2) \$10,000 or more is in controversy and any complainant files a written request for an oral hearing on or before the 20th day after service on such complainant of notice that no respondent has filed a timely request for an oral hearing; or