

Office of the Secretary, USDA

§ 1.150

same by registered or certified mail to the Hearing Clerk.

(f) *Corrections to the transcript or recording.* (1) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript or recording of the deposition.

(2) Unless a party files such a motion in the manner prescribed, the transcript or recording shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript or recording of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(3) At any time prior to use of the deposition in accordance with paragraph (g) of this section and after consideration of any objections filed thereto, the Judge may issue an order making any corrections in the transcript or recording which the Judge finds are warranted, which corrections shall be entered onto the original transcript or recording by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and (1) that the witness is dead; (2) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (3) that the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or (4) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be consid-

ered with the part introduced, and any party may introduce any other parts.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§ 1.149 Subpoenas.³

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may be required by subpoena at any designated place of hearing if authorized by the statute under which the proceeding is conducted. Subpoenas shall be issued by the Judge upon a reasonable showing by the applicant of the grounds and necessity thereof; and with respect to subpoenas for the production of documents, the request shall also show their competency, relevancy, and materiality. All requests for subpoenas shall be in writing, unless waived by the Judge for good cause shown. Except for good cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8457, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§ 1.150 Fees of witnesses.

Witnesses summoned under these rules of practice shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

³This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.