

§ 17.37

21 CFR Ch. I (4-1-03 Edition)

legal counsel, party, or witness who refuses to obey an order of the presiding officer. In the case of repeated refusal, the presiding officer may grant judgment to the opposing party.

(e) If a party fails to prosecute or defend an action under this part after service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(f) The presiding officer may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion or in compliance with the rules of this part.

(g) Sanctions imposed under this section may be the subject of an interlocutory appeal as allowed in §17.18(b), provided that no such appeal will stay or delay a proceeding.

§ 17.37 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) Direct testimony shall be admitted in the form of a written declaration submitted under penalty of perjury. Any such written declaration must be provided to all other parties along with the last known address of the witness. Any prior written statements of witnesses proposed to testify at the hearing shall be exchanged as provided in §17.25(a).

(c) The presiding officer shall exercise reasonable control over the manner and order of questioning witnesses and presenting evidence so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid undue consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on relevant matters without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, a witness may be cross-examined on relevant matters

with regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer may order witnesses excluded so that they cannot hear the testimony of the other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated to be the party's sole representative for purposes of the hearing; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by a party engaged in assisting counsel for the party.

(g) If a witness' testimony is submitted in writing prior to cross-examination, the cross-examining party need not subpoena the witness or pay for his or her travel to the hearing. The sponsoring party is responsible for producing the witness at its own expense, and failure to do so shall result in the striking of the witness' testimony.

§ 17.39 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the "Federal Rules of Evidence." However, the presiding officer may apply the "Federal Rules of Evidence" when appropriate, e.g., to exclude unreliable evidence.

(c) The presiding officer shall exclude evidence that is not relevant or material.

(d) Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.