

## § 92.56

## 22 CFR Ch. I (4–1–05 Edition)

genuineness of foreign documents which it is desired to introduce in evidence in any criminal action or proceeding is a United States federal court, see 18 U.S.C. 3491 through 3496.

(c) *Procedure where laws of the foreign country do not permit the taking of depositions.* In countries where the right to take depositions is not secured by treaty, notarizing officers may take depositions only if the laws or authorities of the national government will permit them to do so. Notarizing officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents to the parties from whom they are received explaining why they are returning them, and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

[60 FR 51722, Oct. 3, 1995]

### § 92.56 Summary of procedure for taking depositions.

In taking a deposition on notice or executing a commission to take depositions, a notarizing officer should conform to any statutory enactments on the subject in the jurisdiction in which the depositions will be used. He should also comply with any special instructions which accompany the request for a deposition on notice or a commission. Unless otherwise directed by statutory enactments or special instructions, the officer should proceed as follows in taking depositions:

(a) Request the witnesses, whose testimony is needed, to appear before him; or, at the request of any party to the action or proceeding, request designated persons to supply him or the requesting party with needed records or documents in their possession, or copies thereof;

(b) When necessary, act as interpreter or translator, or see that arrangements are made for some qualified person to act in this capacity;

(c) Before the testimony is taken, administer oaths (or affirmations in lieu thereof) to the interpreter or translator (if there is one), to the stenographer taking down the testimony, and to each witness;

(d) Have the witnesses examined in accordance with the procedure described in §§ 92.57 to 92.60;

(e) Either record, or have recorded in his presence and under his direction, the testimony of the witnesses;

(f) Take the testimony, or have it taken, stenographically in question-and-answer form and transcribed (see § 92.58) unless the parties to the action agree otherwise (rules 30(c) and 31(b), Rules of Civil Procedure for the District Courts of the United States);

(g) Be actually present throughout the examination of the witnesses, but recess the examination for reasonable periods of time and for sufficient reasons;

(h) Mark or cause to be marked, by identifying exhibit numbers or letters, all documents identified by a witness or counsel and submitted for the record.

[22 FR 10858, Dec. 27, 1957, as amended at 60 FR 51723, Oct. 3, 1995]

### § 92.57 Oral examination of witnesses.

When a witness is examined on the basis of oral interrogatories, the counsel for the party requesting the deposition has the right to conduct a direct examination of the witness without interruption except in the form of objection by opposing counsel. The opposing counsel has the same right on cross-examination. Cross-examination may be followed by redirect and recross-examinations until the interrogation is complete. The notarizing officer taking the deposition should endeavor to restrain counsel from indulging in lengthy colloquies, digressions, or asides, and from attempts to intimidate or mislead the witness. The notarizing officer has no authority to sustain or overrule objections but should have them recorded as provided in § 92.59. Instead of taking part in the oral examination of a witness, the parties notified of the taking of a deposition may transmit written interrogatories to the notarizing officer. The notarizing officer should then question the witness on the basis of the written interrogatories and should record the answers verbatim. (Rules 30 (c) and 31