

testimony, unless the presiding officer finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the presiding officer's notice stating the time of the hearing.

* * * * *

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the presiding officer finds that recording the hearing verbatim would expedite the proceeding and the presiding officer orders the hearing to be recorded verbatim. The presiding officer shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the presiding officer determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the presiding officer shall order the verbatim transcription of the recording as requested by the party.

(3) Parties to the proceeding who desire copies of the transcript or recording of the oral hearing may make arrangements with the reporter, who will furnish and deliver such copies direct to such parties, upon receipt from such parties of payment for the transcript or recording, at the rate provided by the contract between the reporter and the Department for such reporting service.

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§ 202.115 [Amended]

76. Section 202.115 is amended as follows:

a. Paragraph (b), the second sentence is amended by adding the words "or recording" immediately after the word "transcript".

b. Paragraph (d) is revised to read as set forth below.

§ 202.115 Rule 15: Submission for final consideration.

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(d) *Oral argument.* There shall be no right to oral argument other than that provided in rule 12(h), § 202.112(h).

§ 202.118 [Amended]

77. Section 202.118 is amended as follows:

a. Paragraph (a)(1) is revised to read as set forth below.

b. In paragraph (a)(7), the word "and" is removed.

b. Paragraph (a)(8) is redesignated as paragraph (a)(12).

c. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added to read as set forth below.

202.118 Rule 18: Presiding officer.

(a) * * *

(1) Set the time, place, and manner of a prehearing conference and an oral hearing, adjourn the oral hearing from time to time, and change the time, place, and manner of oral hearing;

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(8) Require each party to provide all other parties and the presiding officer with a copy of any exhibit that the party intends to introduce into evidence prior to any oral hearing to be conducted by telephone or audio-visual telecommunication;

(9) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(10) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the presiding officer are able to transmit and receive documents during the hearing;

(11) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition; and

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Done in Washington, D.C., this 31st day of January, 1995.

Richard E. Rominger,

Acting Secretary of Agriculture.

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