- (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 audiovisual telecommunication.

§ 202.112 [Amended]

- 75. Section 202.112 is be amended as follows:
- a. Paragraph (a) is revised to read as set forth below.
- b. Paragraph (b) is revised to read as set forth below.
- c. In paragraph (e)(2), in the second sentence, the words "or recording" are added immediately after the word "transcript", and the word "thereon" is removed and the words "on objections" added in its place.
- d. In paragraph (e)(3), the words "or recording" are added immediately after the word "transcript" both times the word "transcript" appears.
 e. In paragraph (e)(5), the word
- e. In paragraph (e)(5), the word "thereof" is removed and the words "of the Department" added in its place, and the word "therein" is removed and the words "in the record of the Department" added in its place.
- f. Paragraphs (e), (f), (g), (h), (i), and (j) are redesignated as (f), (g), (h), (i), (j), and (k) respectively.
- g. New paragraph (e) is added to read as set forth below.
- h. Redesignated paragraph (i) is revised to read as set forth below.
- i. In redesignated (j), the heading is revised to read "Filing, and presiding officer's certificate, of the transcript or recording."; the words "or recording" are added immediately after the word "transcript" each of the 10 times the word "transcript" appears; and the words "or recorded" are added immediately after the word "transcribed".
- j. In redesignated paragraph (k), the heading is revised to read "Keeping of copies of the transcript or recording."; and the words "or recording" are added immediately after the word "transcript" each of the three times the word "transcript" appears.

§ 202.112 Rule 12: Oral hearing.

(a) Time, place, and manner. (1) If and when the proceeding has reached the stage where an oral hearing is to be held, the presiding officer shall set a time, place, and manner for oral hearing. The time shall be set based upon careful consideration to the convenience of the parties. The place shall be set in accordance with paragraph (a)(2) of this section and careful consideration to the convenience of the parties. The manner in which the

- hearing is to be conducted shall be determined in accordance with paragraphs (a)(3) and (a)(4) of this section.
- (2) The place shall be set in accordance with paragraphs (e) and (f) of section 407 of the Act, if applicable. In essence, under paragraphs (e) and (f) of section 407 of the Act, if the complainant and the respondent, or all of the parties, if there are more than two, have their principal places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the oral hearing is to be held as near as possible to such places of business or residence, depending on the availability of an appropriate location for conducting the hearing. If the parties have such places of business or residence distant from each other, then paragraphs (e) and (f) of section 407 of the Act are not applicable.
- (3) The oral hearing shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the oral hearing by personal attendance of any individual who is expected to participate in the hearing:
- (i) Is necessary to prevent prejudice to a party:
- (ii) Is necessary because of a disability of any individual expected to participate in the hearing; or
- (iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the presiding officer determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.
- (4) The presiding officer may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the presiding officer finds that a hearing conducted by telephone:
- (i) Would provide a full and fair evidentiary hearing;
- (ii) Would not prejudice any party; and
- (iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.
- (b) *Notice*. (1) A notice stating the time, place, and manner of oral hearing shall be served on each party prior to the time of the oral hearing. The notice shall state whether the oral hearing will

- be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. If any change is made in the time, place, or manner of the oral hearing, a notice of the change shall be served on each party prior to the time of the oral hearing as changed, unless the change is made during the course of an oral hearing and shown in the transcript or on the recording. Any party may waive such notice, in writing, or orally on the record at an oral hearing and shown in the transcript or on the recording.
- (2) If the presiding officer orders an oral hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.
- (3) Within 10 days after the presiding officer issues a notice stating the manner in which the hearing is to be conducted, any party may move that the presiding officer reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the presiding officer's notice.

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(e) Written statements of direct testimony. (1) Except as provided in paragraph (e)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone: the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct