(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the presiding officer.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the presiding officer.

§ 1264.132   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) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1264.121(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth, avoid needless consumption of time, and 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 and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without 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 shall order witnesses excluded so that they cannot hear the testimony of 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 appearing for the entity pro se or designated by the party's representative; 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 the Government engaged in assisting the representative for the Government.

[52 FR 39498, Oct. 22, 1987, as amended at 54 FR 600, Jan. 9, 1989]

§ 1264.133   Evidence.

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

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

(c) The presiding officer shall exclude irrelevant and immaterial evidence.

(d) Although 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.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 1264.123.

§ 1264.134   The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the