

### Subpart M—Hearing Procedures (Rule 13)

#### § 201.131 Presentation of evidence.

(a) *Testimony.* Where appropriate, the Presiding officer may direct that the testimony of witnesses be prepared in written exhibit form and shall be served at designated dates in advance of the hearing. Evidence as to events occurring after the exhibit-exchange dates shall be presented by a revision of exhibits. Witnesses sponsoring exhibits shall be made available for cross-examination. However, unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. The evidentiary record shall be limited to factual and expert opinion testimony. Argument will not be received in evidence but rather should be presented in opening and/or closing statements of counsel and in briefs to the presiding officer subsequently filed.

(b) *Exhibits.* All exhibits and responses to requests for evidence shall be numbered consecutively by the party submitting same and appropriately indexed as to number and title and shall be exchanged on dates prior to the hearing prescribed in the pre-hearing rulings. Written testimony should be identified alphabetically. Two copies shall be sent to each party and two to the presiding officer. No response to a request for evidence will be received into the record unless offered and received as an exhibit at the hearing. The exhibits, other than the written testimony, shall include appropriate footnotes or narrative material explaining the source of the information used and the methods employed in statistical compilations and estimates and shall contain a short commentary explaining the conclusions which the offeror draws from the data. Rebuttal exhibits should refer specifically to the exhibits being rebutted. Where one part of a multipage exhibit is based upon another part, appropriate cross-reference should be made. The principal title of each exhibit should state precisely what it contains and may also contain a statement of the purpose for which the exhibit is offered. However, such explanatory statement, if phrased in an argumentative fashion, will not

be considered as a part of the evidentiary record. Additional exhibits pertinent to the issues may be submitted in a proceeding with the approval of the presiding officer.

(c) *Cooperation on basic data.* Parties having like interests are specifically encouraged to cooperate with each other in joint presentations particularly in such items as basic passenger, cargo, and scheduling data compiled from official or semiofficial sources, and any other evidence susceptible to joint presentation. Duplicate presentation of the same evidence should be avoided wherever possible.

(d) *Authenticity.* The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(e) *Statement of position and trial briefs.* A written statement of position should be exchanged by all counsel with copies to all other parties prior to the beginning of the hearing: *Provided, however,* That Public Counsel or counsel for a public body which has intervened as its interests may appear, may offer his statement of position at the conclusion of the evidentiary hearing, unless such is impracticable. This statement should include a showing of the theory of the case of the party submitting the statement and will not be subject to cross-examination. Trial briefs are acceptable but will not be required.

#### § 201.132 Conduct of the hearing.

(a) *Order of presentation.* Normally the order of presentation at the hearing will be alphabetical in each of the following categories:

- (1) MarAd statistical material.
- (2) Shipper interests, United States and foreign government departments.
- (3) Applicants.
- (4) Intervenor.
- (5) Public counsel.

Normally, rebuttal should be presented without any adjournment in the proceedings.

(b) *Burden of proof.* The burden of proof shall be (1) upon an applicant for any form of government aid or grant; and (2) upon a proponent for the issuance of any rule or order within the jurisdiction of the Administration. The burden of going forward with rebuttal evidence in proceedings involving matters under paragraphs (b) (1) and (2) of this section shall fall upon opposing intervenors. Whenever an intervenor is permitted by the presiding officer to raise or advance a new issue in the proceeding, the burden of proof as to such issue shall fall upon such intervenor. If the burden of proof is met as to such new issue, the other parties shall have the burden of going forward with rebuttal evidence in such regard.

(c) *Requirement for submission of corrected copies of exhibits.* Each party shall present three fully corrected copies of its exhibits to be offered in evidence, one for the docket and two for the presiding officer.

(d) *Offer of exhibits in evidence.* The exhibits and written testimony sponsored by each witness shall be offered in evidence at the close of his direct examination to the extent practicable. After ruling upon motions to strike they shall be received in evidence subject to cross-examination. The presiding officer, in his discretion, may defer such ruling until after completion of cross-examination.

(e)(1) *Cross-examination.* Cross-examination shall be limited to the scope of the direct examination and, except for Public Counsel and counsel for public bodies which have intervened as their interests may appear, to witnesses whose testimony is adverse to the party desiring to cross-examine—this being intended specifically to prohibit so-called “friendly cross-examination”. Cross-examination, which is not necessary to test the truth and completeness of the direct testimony and exhibits, will not be permitted.

(2) *Re-cross-examination.* Second rounds of cross-examination normally will not be permitted unless it is necessary to cover new matters raised by a subsequent examination. Cross-examination of any particular witness shall be limited to one attorney for each party and shall not include subjects

which are not germane to the interest represented by the cross-examiner.

(f) *Oral motions.* Oral presentation on any motion or objection shall be limited to the party or parties making the motion or objection and the party or parties against which the motion or objection is directed and Public Counsel. Such presentation shall also be limited to one attorney for each party.

(g) *Official notice; public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof.

(h) *Oral argument at hearings.* A request for oral argument at the close of testimony will be granted or denied by the presiding officer in his discretion.

#### **§201.133 Appeal from ruling of presiding officer.**

Rulings of presiding officers may not be appealed prior to, or during the course of, the hearing except where the presiding officer has granted a Motion for Summary Disposition under subpart I of this part, or in extraordinary circumstances where prompt decision by the Administration is necessary to prevent unusual delay, expense, or detriment to the public interest, in which instances the matter shall be referred forthwith by the presiding officer to the Administration. Any such appeal shall be filed within fifteen (15) days from the date of the ruling by the presiding officer.

#### **§201.134 Separation of functions.**

The separation of functions as required by section 5(c) of the Administrative Procedure Act shall be observed