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the method for transmitting evidence to the Board. Such communications should be directed to the Clerk of the Board. Parties may not inquire about such matters as what defense they should use or whether their evidence is adequate, make a submission orally which is required to be in writing, or otherwise inquire as to the merits of a pending case.

(b) In this subpart—

(1) “Interested party” includes:

(i) Any party, including the General Counsel of the Board, or representative of a party involved in a proceeding before the Board;

(ii) Any person desiring to intervene in any proceeding before the Board; or

(iii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) “Decision-making personnel” means the Board, a panel of Board members, a Board member, an administrative judge, and/or an employee of the Board, who reasonably can be expected to participate in the decision-making process of the Board.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69304, Dec. 12, 2003]

§ 28.147 Prohibited communications.

Ex parte communications concerning the merits of any matter before the Board for adjudication, or which would otherwise violate rules requiring written submissions, are prohibited from the time the interested party involved has knowledge that the matter may be considered by the Board until the Board has rendered a final decision on the case.

§ 28.148 Reporting of communications.

Any communication made in violation of this section shall be made part of the record in the proceeding and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

§ 28.149 Sanctions.

The following sanctions shall be available for violations of this Subpart:

(a) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may, in the interest of justice, require the offend-

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ing party to show cause why his or her claim, interest, motion or petition should not be dismissed, denied or otherwise adversely affected.

(b) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may invoke such sanctions against any offending party as may be appropriate under the circumstances.

Subpart J—Statement of Policy or Guidance

§ 28.155 Statement of policy or guidance.

Upon petition by any person, or on its own motion, the Board may issue statements of policy or guidance. In determining whether to issue such a statement, the criteria to be considered by the Board will include, but not be limited to, the following:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether a Board statement would prevent the proliferation of cases;

(c) Whether the resolution of the question presented would have general applicability;

(d) Whether the question currently confronts the parties as part of their employee-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Board of a statement of policy or guidance would promote the purposes of the General Accounting Office Personnel Act.

Subpart K—Access to Records

SOURCE: 68 FR 69304, Dec. 12, 2003, unless otherwise noted.

§ 28.160 Request for records.

(a) Individuals may request access to records pertaining to them that are maintained as described in 4 CFR part 83, by addressing inquiry to the PAB General Counsel either by mail or by appearing in person at the Personnel Appeals Board Office of General Counsel, Room 1562, 441 G Street NW., Washington, DC 20548, during business hours

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on a regular business day. Requests in writing should be clearly and prominently marked “Privacy Act Request.” Requests for copies of records shall be subject to duplication fees set forth in 4 CFR 83.17.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual’s photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the General Counsel to determine with reasonable certainty that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their names and addresses, dates and places of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

(c) *Exemptions from disclosure.* The Personnel Appeals Board General Counsel and the Personnel Appeals Board, in deciding what records are exempt from disclosure, will follow the policies set forth in 4 CFR part 83.

[68 FR 69304, Dec. 12, 2003, as amended at 77 FR 15233, Mar. 15, 2012]

§ 28.161 Denial of access to information—Appeals.

(a) If a request for access to information under § 28.160 is denied, the Gen-

eral Counsel shall give the requester the following information:

- (1) The General Counsel’s name and business mailing address;
- (2) The date of the denial;
- (3) The reasons for the denial, including citation of appropriate authorities; and
- (4) The individual’s right to appeal the denial as set forth in paragraphs (b) and (c) of this section.

(b) Any individual whose request for access to records of the PAB General Counsel has been denied in whole or in part by the General Counsel may, within 30 days of receipt of the denial, challenge that decision by filing a written request for review of the decision with the Personnel Appeals Board, Room 1566, 441 G Street NW., Washington, DC 20548.

(c) The appeal shall describe:

- (1) The initial request made by the individual for access to records;
- (2) The General Counsel’s decision denying the request; and
- (3) The reasons why that decision should be modified by the Board.

(d) The Board, en banc, may in its discretion render a decision based on the record, may request oral argument, or may conduct an evidentiary hearing.

[68 FR 69304, Dec. 12, 2003, as amended at 77 FR 15233, Mar. 15, 2012]

PART 29 [RESERVED]

SUBCHAPTERS C–D [RESERVED]