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§ 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections thereto shall be made a part of the record.

(b) At the hearing, the petitioner, the petitioner's representative, GAO's legal representative, and a GAO management representative, who is not expected to testify, each have a right to be present. The Agency management representative shall be designated prior to the hearing.

[58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69301, Dec. 12, 2003]

§ 28.58 Transcript.

(a) *Preparation.* A verbatim record made under supervision of the administrative judge shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to each party. Additional copies of the transcript shall be made available to a party upon payment of costs. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the Clerk of the Board. The Clerk of the Board may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) *Corrections.* Corrections to the official transcript will be permitted. Motions for correction must be submitted within 30 days of service of the transcript upon the party. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the administrative judge. The administrative judge may make changes at any time with notice to the parties.

§ 28.59 Official record.

The transcript of testimony and the exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 28.60 Briefs.

(a) *Length.* Principal briefs shall not exceed 60 pages and reply briefs 30 pages, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown. Briefs in excess of 10 pages shall include an index and a table of authorities.

(b) *Format.* Every brief must be easily readable. Pages must be 8½ × 11 inches with margins at least one inch on all sides. Typewritten briefs must have double spacing between each line of text, except for quoted texts which may be single spaced.

(c) *Number of copies.* An original and 3 copies of each brief shall be filed with the administrative judge and one copy served on each party separately represented. When an action is before the full Board, an original and seven copies of each brief must be filed with the Board and one copy served on each party separately represented.

§ 28.61 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule, or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision shall not be sustained if the petitioner:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.