

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I--THE AGENCIES GENERALLY

CHAPTER 5--ADMINISTRATIVE PROCEDURE

SUBCHAPTER II--ADMINISTRATIVE PROCEDURE

Sec. 556. Hearings; presiding employees; powers and duties;
burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence--

(1) the agency;

(2) one or more members of the body which comprises the agency;

or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may--

(1) administer oaths and affirmations;

(2) issue subpoenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not

be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 386; Pub. L. 94-409, Sec. 4(c), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-251, Sec. 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 101-552, Sec. 4(a), Nov. 15, 1990, 104 Stat. 2737.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1006.	June 11, 1946, ch. 324, Sec. 7, 60 Stat. 241.

In subsection (b), the words ``hearing examiners'' are substituted for ``examiners'' in paragraph (3) for clarity. The prohibition in the second sentence is restated in positive form and the words ``This subchapter does not'' are substituted for ``but nothing in this chapter shall be deemed to''. The words ``employee'' and ``employees'' are substituted for ``officer'' and ``officers'' in view of the definition of ``employee'' in section 2105. The sentence ``A presiding or participating employee may at any time disqualify himself.'' is substituted for the words ``Any such officer may at any time withdraw if he deems himself disqualified.''

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments

1990--Subsec. (c)(6). Pub. L. 101-552, Sec. 4(a)(1), inserted before semicolon at end ``or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter''.

Subsec. (c)(7) to (11). Pub. L. 101-552, Sec. 4(a)(2), added pars. (7) and (8) and redesignated former pars. (7) and (8) and redesignated former pars. (7) to (9) as (9) to (11), respectively.

1978--Subsec. (b)(3). Pub. L. 95-251 substituted ``administrative law judges'' for ``hearing examiners''.

1976--Subsec. (d). Pub. L. 94-409 inserted provisions relating to consideration by agency of a violation under section 557(d) of this title.

Effective Date of 1976 Amendment

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

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Hearing Examiners Employed by Department of Agriculture

Functions vested by this subchapter in hearing examiners employed by Department of Agriculture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, Sec. 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

Hearing Examiners Employed by Department of Commerce

Functions vested by this subchapter in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, Sec. 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

Hearing Examiners Employed by Department of the Interior

Functions vested by this subchapter in hearing examiners employed by Department of the Interior not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Interior by 1950 Reorg. Plan No. 3, Sec. 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to this title.

Hearing Examiners Employed by Department of Justice

Functions vested by this subchapter in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, Sec. 1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

Hearing Examiners Employed by Department of Labor

Functions vested by this subchapter in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, Sec. 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

Hearing Examiners Employed by Department of the Treasury

Functions vested by this subchapter in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Treasury by 1950 Reorg. Plan. No. 26, Sec. 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to this title.