

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I--THE AGENCIES GENERALLY

CHAPTER 5--ADMINISTRATIVE PROCEDURE

SUBCHAPTER II--ADMINISTRATIVE PROCEDURE

Sec. 557. Initial decisions; conclusiveness; review by agency;
submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses--

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions--

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of--

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law--

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communica

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tion prohibited by this subsection shall place on the public record of the proceeding:

- (i) all such written communications;
- (ii) memoranda stating the substance of all such oral communications; and
- (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387; Pub. L. 94-409, Sec. 4(a), Sept. 13, 1976, 90 Stat. 1246.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 1007.	June 11, 1946, ch. 324, Sec. 8, 60 Stat. 242.

In subsection (b), the word ``employee'' is substituted for ``officer'' and ``officers'' in view of the definition of ``employee'' in section 2105. The word ``either'' is added after the word ``requires'' in the first sentence to eliminate the need for parentheses. The words ``the presiding employee or an employee qualified to preside at hearings under section 556 of this title'' are substituted for ``such officers'' in the last sentence. The word ``initial'' is omitted before ``decision'', the final word in the first sentence and the sixth word of the fourth sentence, to avoid confusion between the ``initial decision'' of the presiding employee and the ``initial decision'' of the agency.

In subsection (c), the word ``employees'' is substituted for ``officers'' in view of the definition of ``employee'' in section 2105. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Codification

Section 557 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2207 of Title 7, Agriculture.

Section 557a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2208 of Title 7.

Amendments

1976--Subsec. (d). Pub. L. 94-409 added subsec. (d).

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.