

may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be sustained.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, it shall be presumed that all relevant documents are authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing, and when received shall be binding on the parties with respect to the matters stipulated.

(f) *Official notice.* All matters officially noticed by the hearing officer shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or affirmative defense unless otherwise provided by law or regulation.

#### **§ 26.24 Hearing officer's determination and order.**

(a) *Scope of review.* The hearing officer shall conduct a *de novo* review of the administrative action to determine whether it is supported by a preponderance of the evidence unless a different standard of proof is required by law or regulation. Each and every charge alleged by the Department need not be proven to support the administrative action. The hearing officer may modify or vacate the administrative action under review only upon a particularized finding of facts which justifies a deviation from the administrative action.

(b) *Closing of hearing.* At the discretion of the hearing officer, the closing

of the record may be postponed in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity to respond to such evidence.

(c) *Briefs.* Upon conclusion of the hearing, the hearing officer may request the parties to file proposed findings of fact and legal briefs. The hearing officer shall make a written determination and order based upon evidence and arguments presented by the parties. The determination shall be founded upon reliable and probative evidence. This determination and order shall be served upon all parties.

(d) *Bench decisions.* Where the parties agree and where appropriate in the judgment of the hearing officer, a bench decision will be issued.

(e) *Time period for issuance of decision.* The hearing officer shall endeavor to issue a determination within sixty days from the date of the closing of the record.

(f) *Finality of decision.* The determination and order shall be final unless a party timely appeals the decision and within forty days the Secretary decides to review the determination in accordance with § 26.25, or to have the determination reviewed by a designee.

#### SECRETARIAL REVIEW

#### **§ 26.25 Review of determination of hearing officers.**

(a) *Petition for review.* Any party may request review of the hearing officer's determination or order by filing a written petition for review with the Secretary within fifteen days of receipt of the hearing officer's determination or order. A petition for review may be granted or denied in the discretion of the Secretary or designee. This petition shall not exceed ten pages and shall specifically state the issues and basis upon which the party seeks review. This petition shall be served on all parties and the Secretary simultaneously, in accordance with § 26.15.

(b) *Briefs by opposing parties.* Opposing parties may submit briefs, not to exceed ten pages, opposing review. These briefs must be filed within fifteen days of the party's receipt of a petition for review.