

**§ 801.305**

(b) The challenger shall file his challenge in triplicate and shall have a copy of it served on the challenged person. That service may be in person or by first-class mail properly addressed with charges prepaid.

**§ 801.305 Rejection and docketing of challenge.**

(a) When a challenge is not timely filed or served or does not meet the requirements of § 801.304, it shall not be entertained but shall be rejected.

(b) When a challenge is not rejected under paragraph (a) of this section, the hearing officer shall place it on the docket.

**§ 801.306 Summary denial of challenge by hearing officer.**

If on review of a challenge a hearing officer determines that the information, even if true and known at the time of listing, would not have disqualified the challenged person, he shall issue a decision denying the challenge without further proceeding and notify the parties of his reasons for this decision.

**§ 801.307 Notice of hearing.**

After docketing, and if not denied under § 801.306, the challenge shall be set for hearing. The challenger and the challenged person shall be sent a notice of the date, time, and place of the hearing and advised of the rights and duties of the parties including the right to request a subpoena. The notice of hearing shall be dated and the date of the hearing shall not be less than 5 days from the date of that notice. The notice of hearing shall be served on the challenger and the challenged person either personally or by mail.

**§ 801.308 Rights and duties of parties.**

(a) The challenger has the burden of proceeding and proof at the hearing and shall appear personally or with a representative to prosecute the challenge, except that when a continuance is sought the challenger may appear by a representative. If a challenger fails to appear personally to prosecute the challenge, the hearing officer shall issue a decision denying the challenge or make such other disposition as is warranted by the circumstances.

(b) The challenged person has the right to appear at the hearing personally or by or with a representative, and to present witnesses and documentary evidence in his behalf.

**§ 801.309 Continuance.**

A request for a continuance of a hearing shall be filed with the hearing officer at the place and on the day of the hearing. The hearing officer shall not grant a continuance except under extraordinary circumstances.

**§ 801.310 Hearing.**

A hearing shall be open to the public and held at the time and place specified in the notice of hearing. A hearing shall be recorded by an official reporter designated by the OPM, under the supervision of the hearing officer. A party may obtain a copy of the transcript from the official reporter at a rate not in excess of the maximum rate fixed by contract between the OPM and the reporter.

**§ 801.311 Powers of hearing officer.**

In addition to the powers otherwise vested in a hearing officer by this subpart, a hearing officer shall have the power to:

- (a) Administer oaths and affirmations;
- (b) Issue and quash subpoenas;
- (c) Regulate the course of the hearing;
- (d) Rule on offers of proof;
- (e) Permit a party to withdraw from a hearing on a showing of good cause;
- (f) Limit the number of witnesses whose testimony would be cumulative;
- (g) Deny a challenge for failure to prosecute;
- (h) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing; and
- (i) Take any other action in the course of the hearing consistent with law that is necessary to carry out the spirit and intent of the Act.

**§ 801.312 Witnesses.**

(a) A witness shall testify under oath or affirmation and shall be subject to cross-examination.

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(b) A witness who is summoned and responds is entitled to the same witness and mileage fees as are paid for like service in the courts of the United States. The party at whose instance the testimony is taken shall pay the witness and mileage fees.

### § 801.313 Subpena.

(a) On the request of a party and for good cause shown, a hearing officer may issue a subpoena for the appearance of a witness or for the production of documentary evidence.

(b) A hearing officer may quash a subpoena for good cause shown.

(c) The party at whose request a subpoena is issued is responsible for arranging for service. The officer or person making service shall show the original subpoena to the person served, read the subpoena to him if he is unable to read, and deliver a copy of the subpoena to him.

(d) When a U.S. Marshal or his deputy serves a subpoena, he shall evidence the service by his return on the subpoena. When someone other than a U.S. Marshal or his deputy serves a subpoena, the person serving the subpoena shall make an affidavit, stating the date, time, and the manner of service, and shall return the affidavit on, or with, the original subpoena in accordance with the form thereon. When the U.S. Marshal, his deputy, or other person, as appropriate, cannot serve the subpoena, he shall state his reason for the failure on the original subpoena. When the person named in the subpoena accepts service of the subpoena in writing, no other evidence of return is necessary. The person responsible for serving a subpoena shall return the original subpoena, bearing or accompanied by the required return, affidavit, statement, or acceptance of service, to the officer presiding at the hearing at which the person subpoenaed is required to appear.

### § 801.314 Evidence.

(a) The application of the challenged person is prima facie evidence that he has the qualifications that are stated in the application.

(b) Rules of evidence are not strictly applied but the hearing officer shall ex-

clude irrelevant or unduly repetitious evidence.

(c) Each exhibit of a documentary character shall be submitted to the hearing officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the hearing officer.

### § 801.315 Decision.

The hearing officer who presided at the hearing, unless he has become unavailable, shall decide the case on the record. If no hearing is held, the hearing officer to whom the challenge was assigned shall decide the case on the record. The decision shall be in writing and shall state the reasons or basis for the decision. Copies of the decision shall be served on the parties. The decision shall be issued not more than 15 days after the challenge is docketed under § 801.305. The record, including the decision, shall be certified as true and complete by the hearing officer and forwarded to the Examiner (State Supervisor), U.S. Office of Personnel Management in the State involved at the address set out in appendix C to this part. It shall be available to interested persons at that office.

### § 801.316 Action after challenge is sustained.

When a hearing officer sustains a challenge, he shall, after the courts have finally sustained his decision or the time for petitioning for a court review of that decision has expired, instruct an examiner to remove the name of the challenged person from the eligibility list and cancel that person's certificate evidencing his eligibility to vote. The examiner shall notify the challenged person, the appropriate election official, the Attorney General, and the attorney general of the appropriate State of his action.

### § 801.317 Appeal.

There is no administrative appeal from the decision of a hearing officer or from any of his rulings. A petition for review of the decision of a hearing officer may be filed in court as provided in the Act.