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(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 subpena. 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 subpenas;

(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.