

§ 7.6

22 CFR Ch. I (4-1-02 Edition)

(i) *Record of proceedings.* The record of proceedings before the Board shall consist of the Department's case record, briefs and other written submissions of the parties, the stipulation of facts, if any, the evidence admitted, and the transcript of the hearing if there is a hearing. The record shall be available for inspection by the parties at the Office of the Board.

(j) *Scope of review.* Except as otherwise provided in §§ 7.7 and 7.8, the Board shall review the record in the case before it. The Board shall not consider argument challenging the constitutionality of any law or of any regulation of the Department of State or take into consideration any classified or administratively controlled material.

(k) *Appearance before the Board.* Any party to any proceeding before the Board is entitled to appear in person or by or with his or her attorney, who must possess the requisite qualifications, set forth in § 7.12, to practice before the Board.

(l) *Failure to prosecute an appeal.* Whenever the record discloses the failure of an appellant to file documents required by these regulations, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution of an appeal, the Board may in its discretion terminate the proceedings without prejudice to the later reinstatement of the appeal for good cause shown.

[44 FR 68825, Nov. 30, 1979, as amended at 51 FR 15319, Apr. 23, 1986; 52 FR 41560, Oct. 29, 1987]

§ 7.6 Hearings.

(a) *Notice and place of hearing.* The parties shall be given at least 15 days notice in writing of the scheduled date and place of a hearing on an appeal. The Board shall have final authority to fix or change any hearing date giving consideration to the convenience of the parties. Hearings shall be held at the Department of State, Washington, DC, unless the Board determines otherwise.

(b) *Conduct of hearing.* The appellant may appear and testify on his own behalf. The parties may present witnesses, offer evidence and make argument. The appellant and witnesses may be examined by any member of the

Board, by the Department, and by the appellant's attorney, if any. If any witness whom the appellant or the Department wishes to call is unable to appear personally, the Board in its discretion, may accept an affidavit by the witness or grant leave to take the deposition of such witness. Any such witness will be subject to cross examination by means of sworn responses to interrogatories posed by the opposing party. The appellant and the Department shall be entitled to be informed of all evidence before the Board and of the source of such evidence, and to confront and cross-examine any adverse witness. The Board may require a stipulation of facts prior to or at the beginning of the hearing and may require supplemental statements on issues presented to it, or confirmation, verification or authentication of any evidence submitted by the parties. The parties shall be entitled to reasonable continuances upon request for good cause shown.

(c) *Privacy of hearing.* The hearing shall be private unless an appellant requests in writing that the hearing be open to the public. Attendance at the hearing shall be limited to the appellant, attorneys of the parties, the members of the Board, Department personnel who are directly involved in the presentation of the case, official stenographers, and the witnesses. Witnesses shall be present at the hearing only while they are giving testimony or when otherwise directed by the Board.

(d) *Transcript of hearing.* A complete verbatim transcript shall be made of the hearing by a qualified reporter, and the transcript shall constitute a permanent part of the record. Upon request, the appellant shall have the right to inspect the complete transcript and to purchase a copy thereof.

(e) *Nonappearance of a party.* The unexcused absence of a party at the time and place set for a hearing shall not be occasion for delay. In the event of such absence, the case will be regarded as having been submitted by the absent party on the record before the Board.

[44 FR 68825, Nov. 30, 1979, as amended at 53 FR 39589, Oct. 11, 1988]