

same exception (for evidence obtained by subpoena or subject to a special ruling by the hearing officer), oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and reexamination following cross-examination by other parties.

(c) *Subpoenaed testimony.* Testimony of witnesses appearing under subpoena may be obtained orally.

(d) *Cross-examination.* A party may conduct cross-examination that may be required for disclosure of the facts, subject to control by the hearing officer for fairness, expedition and exclusion of extraneous matters.

(e) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay goes to the weight of evidence and does not affect its admissibility.

(f) *Admission of evidence.* The hearing officer admits evidence introduced by a party in support of its case in accordance with this section, but may exclude irrelevant, immaterial, or unduly repetitious evidence.

(g) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

§ 16.225 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The hearing officer may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial infor-

mation, or is otherwise prohibited by law.

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or rule in a party's favor only if the decision or ruling is in accordance with law and supported by a preponderance of the reliable, probative, and substantial evidence contained in the record.

[Amdt. 16-1, as amended at 78 FR 56147, Sept. 12, 2013]

§ 16.229 Burden of proof.

As used in this subpart, the burden of proof is as follows:

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

[Doc. No. 27783, 61 FR 54004, Oct. 16, 1996, as amended at Amdt. 16-1, 78 FR 56147, Sept. 12, 2013]

§ 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

§ 16.233 Record.

(a) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications requests and rulings, all documents included in the hearing record and the Director's Determination shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(b) *Examination and copy of record.* A copy of the record will be filed by the FAA Part 16 Docket Clerk in the Federal Docket Management System (FDMS). Any person desiring to review the record may then do so at <http://www.regulations.gov>.

[Amdt. 16-1, 78 FR 56147, Sept. 12, 2013]