

the extent to which interpreters are to be used. When available, the interpreter should be court certified under 28 U.S.C. 1827.

§ 904.253 Closing of record.

At the conclusion of the hearing, the evidentiary record shall be closed unless the Judge directs otherwise. Once the record is closed, no additional evidence shall be accepted except upon a showing that the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Judge shall reflect in the record, however, any approved correction to the transcript.

§ 904.254 Interlocutory review.

(a) Application for interlocutory review shall be made to the Judge. The application shall not be certified to the Administrator except when the Judge determines that:

(1) The ruling involves a dispositive question of law or policy about which there is substantial ground for difference of opinion; or

(2) An immediate ruling will materially advance the completion of the proceeding; or

(3) The denial of an immediate ruling will cause irreparable harm to a party or the public.

(b) Any application for interlocutory review shall:

(1) Be filed with the Judge within 30 days after the Judge's ruling;

(2) Designate the ruling or part thereof from which appeal is being taken;

(3) Set forth the ground on which the appeal lies; and

(4) Present the points of fact and law relied upon in support of the position taken.

(c) Any party that opposes the application may file a response within 20 days after service of the application.

(d) The certification to the Administrator by the Judge shall stay proceedings before the Judge until the matter under interlocutory review is decided.

§ 904.255 Ex parte communications.

(a) Except to the extent required for disposition of *ex parte* matters as authorized by law, the Judge may not

consult a person or party on any matter relevant to the merits of the administrative proceeding, unless there has been notice and opportunity for all parties to participate.

(b) Except to the extent required for the disposition of *ex parte* matters as authorized by law:

(1) No interested person outside the Agency shall make or knowingly cause to be made to the Judge, the Administrator, or any Agency employee who is or may reasonably be expected to be involved in the decisional process of the administrative proceeding an *ex parte* communication relevant to the merits of the adjudication; and

(2) Neither the Administrator, the Judge, nor any Agency employee who is or may reasonably be expected to be involved in the decisional process of the administrative proceeding, shall make or knowingly cause to be made to any interested person outside the agency an *ex parte* communication relevant to the merits of the administrative proceeding.

(c) The Administrator, the Judge, or any Agency employee who is or may reasonably be expected to be involved in the decisional process who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall place in the record of decision:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (c)(1) and (c)(2) of this section.

(d)(1) Paragraphs (a), (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such *ex parte* communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the U.S. Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) *Ex parte* communications subject to this paragraph will be made a part