

**§ 1.429**

(3) At any time prior to use of the deposition in accordance with paragraph (g) of this section and after consideration of any objections filed thereto, the Judge may issue an order making any corrections in the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and that the witness is dead; that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

**§ 1.429 Ex parte communications.**

(a) At no stage of the proceeding between its institution and issuance of the final decision shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss *ex parte* the merits of the proceeding with any person having an interest in the proceeding, or with any representative of such person: *Provided*, That, procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may be involved in the decisional process of the proceeding may discuss the merits of the proceeding if all parties of record have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

**7 CFR Subtitle A (1-1-15 Edition)**

(b) No interested person shall make or knowingly cause to be made to the Judge an *ex parte* communication relevant to the merits of the proceeding.

(c) If the Judge reviews an *ex parte* communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) All such written communication;

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

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(e) To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

(f) For purposes of this section *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.

**Subpart N—Policy With Regard to Indemnification of Department of Agriculture Employees**

AUTHORITY: 5 U.S.C. 301.

SOURCE: 69 FR 28042, May 18, 2004, unless otherwise noted.

**§ 1.501 Policy on employee indemnification.**

(a) Indemnification, under the context of this section, shall be the policy