

then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(f) *Corrections to the transcript.* (1) At any time prior to the hearing any party may file a motion proposing corrections to the transcript of the deposition.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(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.

(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.

§ 1.501

(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: At 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 whereby the Department of Agriculture compensates an employee for the legal consequences of conduct, taken within the scope of his or her employment, giving rise to a verdict, judgment, or other monetary award rendered against the employee.

(b) The Department of Agriculture may indemnify a Department employee (which for the purposes of this regulation shall include a former employee) for any verdict, judgment, or other monetary award rendered against such employee, provided the Secretary or the Secretary’s designee determines, in his or her discretion, that the conduct giving rise to such verdict, judgment, or award was taken within the scope of his or her employment with the Department, and such indemnification is in the interest of the United States.

(c) The Department of Agriculture may pay for the settlement or compromise of a personal damage claim against a Department employee by the payment of available funds, at any time, provided that the Secretary or the Secretary’s designee determines, in his or her discretion, that the alleged conduct giving rise to the personal damage claim was taken within the scope of the employee’s employment, and such settlement or compromise is in the interest of the United States.

(d) Absent exceptional circumstances, as determined by the Sec-

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retary or his or her designee, the Department will not entertain a request to agree to indemnify or pay for a settlement of a personal damage claim before entry of an adverse judgment, verdict, or other monetary award.

(e) When a Department employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the Office of the General Counsel.

(f) A Department employee may request indemnification to satisfy a verdict, judgment, or monetary award entered against the employee or to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with appropriate documentation that includes a copy of the verdict, judgment, award or settlement proposal, as appropriate, to the head of his or her employing component, who shall thereupon submit it to the General Counsel, in a timely manner, a recommended disposition of the request. The Office of the General Counsel shall seek the views of the Department of Justice. The Office of the General Counsel shall forward the employee’s request, the employing component’s recommendation, and the General Counsel’s recommendation, along with the time frame in which a decision is needed, to the Secretary or his or her designee for decision. The Secretary or his or her designee will decide promptly whether to indemnify or pay for a settlement of a personal damage claim.

(g) Any payment under this section to indemnify a Department employee for a personal damage verdict, judgment, or award or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the employing component of the United States Department of Agriculture.