

§ 385.701

the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (a) of this section shall apply.

(2) To qualify for the exemption established under paragraph (1) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a participant regarding a dispute resolution communication, the participant will make reasonable efforts to notify the neutral and the other participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(f) Nothing in Rule 606 prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding. See sections 385.410 and 388.112 of this chapter.

(g) Paragraphs (a) and (b) of this section do not preclude disclosure of information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section do not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section do not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

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(j) Nothing in this section precludes parties from seeking privileged treatment for documents under section 388.112 of this chapter.

(k) Where disclosure is authorized by this section, nothing in this section precludes use of a protective agreement or protective orders.

(1) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

[Order 578, 60 FR 19508, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999]

Subpart G—Decisions

§ 385.701 Applicability (Rule 701).

This subpart applies to decisions in proceedings set for hearing under subpart E of this part, including any decision on a certified question, interlocutory appeal, or reopening, and to any decision on rehearing, except that:

(a) The provisions of this subpart, other than those relating to rehearing or reopening, do not apply to consideration of an offer of settlement; and

(b) This subpart applies to summary disposition only to the extent provided in Rule 217.

§ 385.702 Definitions (Rule 702).

For purposes of this subpart:

(a) *Initial decision* means any decision rendered by a presiding officer in accordance with Rule 708;

(b) *Final decision* means any decision referred to in Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.703 Contents of decisions (Rule 703).

Any decision in a proceeding is part of the record of that proceeding and will contain:

(a) A ruling on each exception presented and any finding or conclusion, with supporting reasons, on any material issue of fact, law, or discretion presented on the record; and

(b) The appropriate rule, order, sanction, relief, or a denial of any rule, order, motion, or relief.