

§ 501.733

present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.

§ 501.733 Evidence; confidential information, protective orders.

(a) *Procedure.* In any proceeding as defined in § 501.702, a respondent; the Director; any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence; or any witness who testifies at a hearing may file a motion requesting a protective order to limit from disclosure to other parties or to the public documents or testimony containing confidential information. The motion should include a general summary or extract of the documents without revealing confidential details. If a person seeks a protective order against disclosure to other parties as well as the public, copies of the documents shall not be served on other parties. Unless the documents are unavailable, the person shall file for inspection by the Administrative Law Judge a sealed copy of the documents as to which the order is sought.

(b) *Basis for issuance.* Documents and testimony introduced in a public hearing are presumed to be public. A motion for a protective order shall be granted only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.

(c) *Requests for additional information supporting confidentiality.* A person seeking a protective order under paragraph (a) of this section may be required to furnish in writing additional information with respect to the grounds for confidentiality. Failure to supply the information so requested not later than 5 days from the date of receipt by the person of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the documents to which the additional information relates, unless the Administrative Law Judge shall otherwise order for good cause shown at or before the expiration of such 5-day period.

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(d) *Confidentiality of documents pending decision.* Pending a determination of a motion under this section, the documents as to which confidential treatment is sought and any other documents that would reveal the confidential information in those documents shall be maintained under seal and shall be disclosed only in accordance with orders of the Administrative Law Judge. Any order issued in connection with a motion under this section shall be made public unless the order would disclose information as to which a protective order has been granted, in which case that portion of the order that would reveal the protected information shall not be made public.

§ 501.734 Introducing prior sworn statements of witnesses into the record.

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness who is not a party to the proceeding, that is otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the Administrative Law Judge may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the Administrative Law Judge may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

- (1) The witness is dead;
- (2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;
- (3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;
- (4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Administrative Law Judge, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify