

(5) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

**§ 1720.410 Subpoenas ad testificandum.**

Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at an adjudicative hearing shall be made to the administrative law judge who may issue such subpoena.

**§ 1720.415 Subpoenas duces tecum.**

(a) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specific documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge who may issue such subpoena and shall specify as exactly as possible the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody or control of such person.

**§ 1720.420 Rulings on applications for compulsory process; appeals.**

(a) Applications for orders requiring the production of witnesses' statements pursuant to the provisions of § 1720.430, applications for orders requiring the taking of depositions pursuant to § 1720.405 and applications for the issuance of subpoenas pursuant to §§ 1720.410 and 1720.415 may be made ex parte, and, if so made, such applications and the rulings thereon shall re-

main ex parte unless otherwise ordered by the administrative law judge. Such applications shall be ruled upon by the administrative law judge assigned to hear the case or, in the event that judge is not available, by another administrative law judge designated by the Secretary.

(b) Appeals to an appeals officer from rulings denying applications within the scope of paragraph (a) of this section, or from rulings on motions to limit or quash process issued pursuant to such applications will be entertained by the appeals officer only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record, shall briefly state the grounds relied on and shall be filed within 5 days after notice of the ruling complained of. Appeals from denials of ex parte applications shall have annexed thereto copies of the applications and rulings involved. Any answer to such appeal shall not operate to suspend the hearing unless otherwise ordered by the administrative law judge or the appeals officer.

**§ 1720.425 Presentation and admission of evidence.**

(a) All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation which shall be administered by the administrative law judge. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts. The administrative law judge shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) Evidence shall not be excluded merely by application of technical rules governing its admissibility, competency, weight or foundation in the record; but evidence lacking any significant probative value, or substantially tending merely to confuse or extend the record, shall be excluded. The

administrative law judge may allow arguments on the admissibility of evidence by analogy to the Federal Rules of Evidence currently applicable in the United States District Courts of the United States.

(c) When offered evidence is excluded, the party offering the same shall be permitted to state on the record an offer of proof with respect thereto and rejected exhibits, adequately marked, shall on request of the party offering the same be retained in the record for purposes of review. Evidence may be received subject to deferred ruling on objections to its admissibility.

(d) Objections to evidence shall be timely made and shall specify the particular ground of objection without argument except as argument may be expressly required by the administrative law judge. Formal exception to an adverse ruling is unnecessary.

**§ 1720.430 Production of witnesses' statements.**

After a witness called by the attorney for the Office of Interstate Land Sales Registration has given direct testimony in a hearing, any other party may request and obtain the production of any statement, or part thereof, of such witness pertaining to the witness' direct testimony in the possession of the Office of Interstate Land Sales Registration, subject, however, to the limitations applicable to the production of witnesses' statements under the Jencks Act, 18 U.S.C. 3500.

**§ 1720.435 Official notice.**

Official notice may be taken of any material fact which might be judicially noticed by a District Court of the United States, any matter in the public official records of the Office of Interstate Land Sales Registration or any matter which is peculiarly within the knowledge of the administrative law judge. When any decision of an administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely request therefor.

HEARINGS

**§ 1720.505 Interlocutory review of administrative law judge's decision.**

(a) The appeals officer will not review a ruling of an administrative law judge prior to the appeals officer's consideration of the entire proceeding in the absence of extraordinary circumstances. Except as provided in § 1720.140 an administrative law judge shall not certify a ruling for interlocutory review to an appeals officer unless a party so requests and the administrative law judge is of the opinion and finds either on the record or in writing that:

(1) A subsequent reversal of the ruling would cause unusual delay or expense, taking into consideration the probability of such reversal, or

(2) Substantial rights are at stake and the final decision might be materially affected.

(b) The certification by the administrative law judge shall be in writing and shall specify the material relevant to the ruling involved. The appeals officer may decline to consider the ruling certified if the officer determines that interlocutory review is not warranted or appropriate under the circumstances. If the administrative law judge does not certify a matter, a party who had requested certification may apply to the appeals officer for review. An application for review shall be in writing and shall briefly state the grounds relied on and shall be filed within 2 days after notice of the ruling complained of. Review will not be granted unless the appeals officer concludes that the administrative law judge erred in failing to certify the matter. Unless otherwise ordered by the administrative law judge, the hearing shall continue whether or not such certification or application is made. Failure to request certification or to make such application will not waive the right to seek review of the ruling of the administrative law judge after the close of the hearing.

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