

**PART 2414—EX PARTE COMMUNICATIONS**

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**AUTHORITY:** 5 U.S.C. 7134.

**SOURCE:** 45 FR 3495, Jan. 17, 1980, unless otherwise noted.

**§ 2414.1 Purpose and scope.**

This part contains the regulations of the Federal Labor Relations Authority relating to ex parte communications.

**§ 2414.2 Unauthorized communications.**

(a) No interested person outside this agency shall, in any agency proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

**§ 2414.3 Definitions.**

When used in this part:

(a) The term "person outside this agency," to whom the prohibitions apply, shall include any individual outside the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding

before the Authority pursuant to 5 U.S.C. 7118.

(b) The term "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, subject however, to the provisions of §§ 2414.5 and 2414.6.

**§ 2414.4 Duration of prohibition.**

Unless otherwise provided by specific order of the Authority entered in the proceeding, the prohibition of § 2414.2 shall be applicable in any agency proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

**§ 2414.5 Communications prohibited.**

Except as provided in § 2414.6, ex parte communications prohibited by § 2414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of Part 2429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

**§ 2414.6 Communications not prohibited.**

Ex parte communications prohibited by § 2414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Authority is authorized by law or Authority rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official

formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Authority when the General Counsel is acting on behalf of the Authority under 5 U.S.C. 7123(d).

#### **§ 2414.7 Solicitation of prohibited communications.**

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

#### **§ 2414.8 Reporting of prohibited communications; penalties.**

(a) Any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (1) The communication, if it was written; (2) a memorandum stating the substance of the communication, if it was oral; (3) all written responses to the prohibited communication; and (4) memoranda stating the substance of all oral responses to the

prohibited communication. The Executive Director, if the proceeding is then pending before the Authority, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Authority to impose an appropriate penalty under § 2414.9.

#### **§ 2414.9 Penalties and enforcement.**

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Authority, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Authority, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Authority, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregard-

ed or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Authority may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Authority institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Authority may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Authority agent who knowingly and willfully violates the prohibitions and requirements of this rule.

**PART 2415—EMPLOYEE RESPONSIBILITIES AND CONDUCT**

**§ 2415.1 Employee responsibilities and conduct.**

The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, respectively, hereby adopt the rules and regulations contained in Parts 735 and 737 of title 5 of the Code of Federal Regulations, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests for officers and employees, including special Government employees, for application, as appropriate, to the officers and employees, including special Government employees, of the Authority, the General Counsel and the Panel.

(E.O. 11222, 30 FR 6469, 3 CFR, 1964-65 Comp., p. 306; 5 CFR 735.101 *et seq.* and 737.1 *et seq.*; Pub L. 95-521; 44 FR 19974)

[45 FR 3496, Jan. 17, 1980]

**PART 2416—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY**

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25881 and 25885, July 8, 1988, unless otherwise noted.

**§ 2416.101 Purpose.**

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

**§ 2416.102 Application.**

This regulation (§§ 2416.101-2416.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.