

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

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

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

(f) Nothing in this section shall prevent 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.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

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

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2740, §584; renumbered §574, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, §3, Oct. 19, 1996, 110 Stat. 3870.)

CODIFICATION

Section 574 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2255 of Title 7, Agriculture.

Section 574a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2226 of Title 7.

PRIOR PROVISIONS

A prior section 574 was renumbered section 594 of this title.

AMENDMENTS

1996—Subsecs. (a), (b), Pub. L. 104-320, §3(a), in introductory provisions struck out “any information concerning” after “be required to disclose”.

Subsec. (b)(7), Pub. L. 104-320, §3(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding”.

Subsec. (d), Pub. L. 104-320, §3(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (j), Pub. L. 104-320, §3(d), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “This section shall not be considered a statute specifically exempting disclosure under section 552(b)(3) of this title.”

1992—Pub. L. 102-354 renumbered section 584 of this title as this section.

§ 575. Authorization of arbitration

(a)(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(A) submit only certain issues in controversy to arbitration; or

(B) arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

(b) An officer or employee of an agency shall not offer to use arbitration for the resolution of issues in controversy unless such officer or employee—

(1) would otherwise have authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

(c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §585; renumbered §575, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, §8(c), Oct. 19, 1996, 110 Stat. 3872.)

CODIFICATION

Section 575 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2259 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 575 was renumbered section 595 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-320, §8(c)(1), (2), substituted “The” for “Any” and inserted at end “Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.”

Subsec. (b). Pub. L. 104-320, §8(c)(3), in introductory provisions substituted “shall not offer to use arbitration for the resolution of issues in controversy unless” for “may offer to use arbitration for the resolution of issues in controversy, if”, and in par. (1) substituted “would otherwise have authority” for “has authority”.

Subsec. (c). Pub. L. 104-320, §8(c)(4), added subsec. (c).
1992—Pub. L. 102-354 renumbered section 585 of this title as this section.

§ 576. Enforcement of arbitration agreements

An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §586; renumbered §576, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

CODIFICATION

Section 576 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2260 of Title 7, Agriculture, and subsequently repealed by Pub. L. 107-171, title X, §10418(a)(3), May 13, 2002, 116 Stat. 507.

PRIOR PROVISIONS

A prior section 576 was renumbered section 596 of this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 586 of this title as this section.

§ 577. Arbitrators

(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

(b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §587; renumbered §577 and amended Pub. L. 102-354, §3(b)(2), (3), Aug. 26, 1992, 102 Stat. 944, 945.)

AMENDMENTS

1992—Pub. L. 102-354, §3(b)(2), renumbered section 587 of this title as this section.

Subsec. (b). Pub. L. 102-354, §3(b)(3), substituted “section 573” for “section 583”.

§ 578. Authority of the arbitrator

An arbitrator to whom a dispute is referred under this subchapter may—

- (1) regulate the course of and conduct arbitral hearings;
- (2) administer oaths and affirmations;
- (3) compel the attendance of witnesses and production of evidence at the hearing under

the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and

- (4) make awards.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §588; renumbered §578, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 588 of this title as this section.

§ 579. Arbitration proceedings

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall—

(1) be responsible for the preparation of such record;

(2) notify the other parties and the arbitrator of the preparation of such record;

(3) furnish copies to all identified parties and the arbitrator; and

(4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless—

(1) the parties agree to some other time limit; or

(2) the agency provides by rule for some other time limit.