

ruling upon any oral or written motion. The Administrative Law Judge may allow a rejoinder to responses for good cause shown. If a rejoinder is permitted, it must be filed within 15 calendar days of the date the response was filed and served upon all parties.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order substantially in the form of any proposed order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory, or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

#### §515.710 Discovery.

(a) *In general.* The availability of information and documents through discovery is subject to the agency's assertion of privileges available to OFAC and/or to the Treasury and to the application of all exemptions afforded the agency pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)) and the Privacy Act (5 U.S.C. 552a) to all facets of discovery, including interrogatories, depositions that seek the release of trade secrets, proprietary materials, third-party confidential and/or commercially sensitive materials, placement of information, documents and/or materials under seal and/or protective order, and interlocutory appeals to the Secretary or the Secretary's designee from any decision of the Administrative Law Judge.

(b) *Types of discovery.* Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection; and requests for admission. All depositions of Federal employees must take place in Washington, DC, at the U.S. Treasury Department or at the location where the Federal employee to be deposed performs his duties, whichever the Federal employee's supervisor or the Office of the Chief Counsel, Foreign Assets Control shall deem appropriate. All depositions of Federal employees shall be held at a mutually agreed upon date and time, and for a mutually agreed upon length of time.

(c) *Interrogatories.* Respondent's interrogatories must be served upon the Office of the Chief Counsel, Foreign Assets Control within 20 calendar days of respondent's written request for a hearing. The Office of Foreign Assets Control's interrogatories must be served within 30 calendar days of the receipt of service of respondent's interrogatories or within 30 calendar days of the receipt of respondent's written request for a hearing if no interrogatories are filed by respondent by that time. Parties have 30 calendar days to respond to interrogatories from the date interrogatories are received. Interrogatories shall be limited to 20 questions only. Each subpart, section, or other designation of a part of a question shall be counted as one complete question in computing the permitted 20 question total. Where more than 20 questions are served upon a party, the receiving party may determine which of the 20 questions the receiving party shall answer.

(d) *Scope.* Parties may obtain discovery regarding any matter not privileged which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The Administrative Law Judge may make any order which justice requires to ensure that requests are not unreasonable, oppressive, excessive in scope or unduly burdensome, including the issuance of an order to show cause why a particular discovery request is justified upon the motion of the objecting party.

(e) *Privileged matter.* Privileged documents are not discoverable. Privileges include, inter alia, the attorney-client privilege, attorney work-product privilege, any government's or government agency's deliberative-process or classified information privilege, including materials classified pursuant to Executive Order 12958 (3 CFR, 1995 Comp., p. 333) and any future Executive orders that may be issued relating to the treatment of national security information, and all materials and information exempted from release to the public pursuant to the Privacy Act (5

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U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552(b)(1) through (9)).

(f) *Updating discovery.* Whenever a party receives new or additional information or documentation, all information produced, and all information required to be provided pursuant to the discovery and hearing process, must automatically be updated. The Administrative Law Judge may impose sanctions for failure to update, including prohibiting opposition to claims or defenses raised, striking pleadings or staying proceedings, dismissing the action or any part thereof, rendering a judgment by default, and holding a party in contempt.

(g) *Time limits.* All discovery, including all responses to discovery requests, shall be completed no later than 20 calendar days prior to the date scheduled for the commencement of the hearing. No exceptions to this time limit shall be permitted, unless the Administrative Law Judge finds on the record that good cause exists for waiving the requirements of this paragraph (g).

### §515.711 Summary disposition.

(a) *In general.* The Administrative Law Judge shall recommend that the Secretary or the Secretary's designee issue a final order granting a motion for summary disposition if the facts of the record show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that such party is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 calendar days after service of such a motion, or within such time period as allowed by the Administrative Law Judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may

take the form of admissions in pleadings, stipulations, depositions, transcripts, affidavits, and any other evidentiary materials that the moving party contends support its position. The motion must also be accompanied by a brief containing the points and authorities in support of the moving party's arguments. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which such party contends a genuine dispute exists. The opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the Administrative Law Judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the Administrative Law Judge shall determine whether the moving party is entitled to summary disposition. If the Administrative Law Judge determines that summary disposition is warranted, he or she shall submit a recommended decision to that effect to the Secretary. If the Administrative Law Judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

(e) *Interlocutory appeal.* Following receipt of the Administrative Law Judge's recommended decision relating to summary disposition, each party has the right to an interlocutory appeal to the Secretary or the Secretary's designee. The interlocutory appeal must be filed within 20 calendar days immediately following the Administrative Law Judge's recommended decision.

(f) *Partial summary disposition.* If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the Administrative Law Judge shall defer submission of a recommended decision as to those claims. A hearing on the remaining issues must be ordered