

§ 28.41

4 CFR Ch. I (1–1–03 Edition)

§ 28.41 Explanation, scope and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under appeal, including the existence, description, nature, custody, condition and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including written interrogatories, depositions, production of documents or things for inspection or copying, and requests for admission addressed to parties.

§ 28.42 Discovery procedures and protective orders.

(a) *Discovery from a party.* A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. For purposes of discovery under these regulations, a party includes an intervenor.

(1) Each request for discovery shall state the time limit for responding, as prescribed in paragraph (d) of this section.

(2) In the case of a request for deposition of a party, reasonable notice in

writing shall be given to every party to the action. The notice shall:

(i) Specify the time and place of the taking of the deposition; and

(ii) Be served on the person to be deposed.

(3) When a request for discovery is directed to an officer or employee of GAO, the agency shall make the officer or employee available on official time for the purpose of responding to the request and shall assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty.* Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty may initiate the process by serving a request for discovery on that nonparty and on all other parties to the proceeding. When a party is unable to obtain voluntary cooperation, the party may request that the administrative judge issue a subpoena by following the procedures set forth in § 28.46.

(c) *Responses to discovery requests.* (1) A party shall answer a discovery request within the time provided by paragraph (d)(2) of this section either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for objection, or by requesting a protective order.

(2) Upon failure or refusal of a party to respond in full to a discovery request, the requesting party may file with the administrative judge a motion to compel discovery. The time limits applicable to a motion to compel are set forth in paragraph (d)(4) of this section. A copy of the motion shall be served on the other parties. The motion shall be accompanied by:

(i) A copy of the original request served on the party from whom discovery was sought and a statement showing the relevancy and materiality of the information sought; and

(ii) A copy of the objections to discovery or, where appropriate, a verified statement that no response has been received.

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(3) The party from whom discovery was sought shall respond to the motion to compel within the time limits set forth in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Requests for discovery shall be served within 30 days after the service list is served by the Board on all parties.

(2) A party or nonparty shall respond to a discovery request within 20 days after service of the request on the party or nonparty. Any discovery requests following the initial request shall be served within 10 days of the date of service of the prior response, unless otherwise directed. Deposition witnesses shall give their testimony at the time and place stated in the notice of deposition-taking or in the subpoena, unless the parties agree otherwise.

(3) In responding to a discovery request, a party or nonparty shall respond as fully as possible, except to the extent that the party or nonparty objects to the discovery or requests a protective order. Any objection or request for a protective order shall be filed within the time limits set forth in paragraph (d)(2) of this section. Any objection shall be addressed to the party requesting discovery and shall state the particular grounds for the objection. Any request for a protective order shall state the grounds for the protective order and shall be served on the administrative judge and any other parties to the action. The administrative judge shall rule on the request for a protective order.

(4) Motions for an order compelling discovery shall be filed with the administrative judge within 10 days of the service of objections or within 10 days of the expiration of the time limits for response when no response or an alleged inadequate response is received. Opposition to a motion to compel must be filed with the administrative judge within 10 days of the date of service of the motion.

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal. A later date may be set by the administrative judge after due consideration of the particular situation including the

dates set for hearing and closing of the case record.

§ 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under § 28.24.

§ 28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

§ 28.45 Admission of facts and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by § 28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters on which an admission is requested; and/or