

§ 4.827

§ 4.827 Depositions.

(a) A party may take the testimony of any person, including a party, by deposition upon oral examination. This may be done by stipulation or by notice, as set forth in paragraph (b) of this section. On motion of any party or other person upon whom the notice is served, the administrative law judge may for cause shown enlarge or shorten the time for the deposition, change the place of the deposition, limit the scope of the deposition or quash the notice. Depositions of persons other than parties or their representatives shall be upon consent of the deponent.

(b)(1) The party will give reasonable notice in writing to every other party of the time and place for taking depositions, the name and address of each person to be examined, if known, or a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The notice to a deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

(3) A party may name as the deponent a corporation, partnership, association, or governmental agency and may designate a particular person within the organization whose testimony is desired and the matters on which examination is requested. If no particular person is named, the organization shall designate one or more agents to testify on its behalf, and may set forth the matters on which each will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The witness shall be placed under oath by a disinterested person qualified to administer oaths by the laws of the United States or of the place where the examination is held, and the testimony taken by such person shall be recorded verbatim.

(d) During the taking of a deposition a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party or improper questions propounded. The

43 CFR Subtitle A (10-1-02 Edition)

deposition will then be adjourned. However, the objecting party or deponent must immediately move the administrative law judge for a ruling on his objections to the deposition conduct or proceedings. The administrative law judge may then limit the scope or manner of the taking of the deposition.

(e) The officer shall certify the deposition and promptly file it with the administrative law judge. Documents or true copies of documents and other items produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition.

(f) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 4.828 Use of depositions at hearing.

(a) Any part or all of a deposition so far as admissible under § 4.835 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof as follows:

(1) Any deposition may be used for contradiction or impeachment of the deponent as a witness.

(2) The deposition of a party, or of an agent designated to testify on behalf of a party, may be used by an adverse party for any purpose.

(3) The deposition of any witness may be used for any purpose if the party offering the deposition has been unable to procure the attendance of the witness because he is dead; or if the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or if the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or, upon application and notice, 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.

(b) If only part of a deposition is offered in evidence, the remainder becomes subject to introduction by any party.

(c) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

§ 4.829 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories after the notice of hearing has been filed. If the party served is a corporation, partnership, association, or governmental agency, an agent shall furnish such information as is available to the party.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within 30 days after the service of the interrogatories. The party submitting the interrogatories may move for an order under § 4.831 with respect to any objection to or other failure to answer an interrogatory.

(c) Interrogatories shall relate to any matter not privileged which is relevant to the subject matter of the hearing.

§ 4.830 Production of documents and things and entry upon land for inspection and other purposes.

(a) After the notice of hearing has been filed, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any designated documents, phonorecords, and other data compilations from which information can be obtained and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After the notice of hearing has been filed, any party may serve on any other party a request to permit entry

upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 15 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections in which case the reasons for each objection shall be stated. The party submitting the request may move for an order under § 4.831 with respect to any objection to or other failure to respond.

§ 4.831 Sanctions.

(a) A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order as follows:

(1) If a deponent fails to answer a question propounded or submitted under § 4.827(c), or a corporation or other entity fails to make a designation under § 4.827(b)(3), or a party fails to answer an interrogatory submitted under § 4.829, or if a party, under § 4.830 fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the administrative law judge may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.