

§ 20.606

33 CFR Ch. I (7-1-05 Edition)

recording are provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the ALJ. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

§ 20.606 Protective orders.

(a) In considering a motion for an order of discovery—or a motion, by a party or other person from whom discovery is sought, to reconsider or amend an order of discovery—the ALJ may enter any order that justice requires, to protect a person from annoyance, embarrassment, oppression, or undue burden or expense. This order may—

- (1) Confine discovery to specific terms and conditions, such as a particular time and place;
- (2) Confine discovery to a method other than that selected by the party seeking it;
- (3) Preclude inquiry into certain matters;
- (4) Direct that discovery occur with no one present except persons designated by the ALJ;
- (5) Preclude the disclosure of a trade secret or other proprietary information, or allow its disclosure only in a designated way or only to designated persons; or
- (6) Require that the person from whom discovery is sought file specific documents or information under seal for opening at the direction of the ALJ.

(b) When a person from whom discovery is sought seeks a protective order, the ALJ may let him or her make all or part of the showing of good cause *in camera*. The ALJ shall record any proceedings *in camera*. If he or she enters a protective order, he or she shall seal any proceedings so recorded. These shall be releasable only as required by law.

(c) Upon motion by a person from whom discovery is sought, the ALJ may—

- (1) Restrict or defer disclosure by a party either of the name of a witness or, if the witness comes from the Coast Guard, of any prior statement of the witness; and
 - (2) Prescribe other appropriate measures to protect a witness.
- (d) The ALJ will give any party an adequate opportunity to prepare for cross-examination or other presentation concerning witnesses and statement subject to protective orders.

§ 20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the ALJ may take such action as is just. This may include the following:

- (a) Infer that the testimony, document, or other evidence would have been adverse to the party.
- (b) Order that, for the purposes of the proceeding, designated facts are established.
- (c) Order that the party not introduce into evidence—or otherwise rely upon, in support of any claim or defense—the evidence that was withheld.
- (d) Order that the party not introduce into evidence, or otherwise use in the hearing, information obtained in discovery.
- (e) Allow the use of secondary evidence to show what the evidence withheld would have shown.

§ 20.608 Subpoenas.

(a) Any party may request the ALJ to issue a subpoena for the attendance of a person, the giving of testimony, or the production of books, papers, documents, or any other relevant evidence during discovery or for any hearing. Any party seeking a subpoena from the ALJ shall request its issuance by motion.

(b) An ALJ may, for good cause shown, apply to the United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence.

(c) A person serving a subpoena shall prepare a written statement setting forth either the date, time, and manner