

§ 2700.57

under section 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 30 U.S.C. 821. For good cause shown, the Judge may permit discovery to be initiated after that date.

(e) *Completion of discovery.* Discovery shall be completed within 40 days after its initiation. For good cause shown, the Judge may extend the time for discovery.

§ 2700.57 Depositions.

(a) *Generally.* Any party, without leave of the Judge, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the Judge.

§ 2700.58 Interrogatories, requests for admissions and requests for production of documents.

(a) *Interrogatories.* Any party, without leave of the Judge, may serve written interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the basis for the objection in its answer.

(b) *Requests for admissions.* Any party, without leave of the Judge, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request separately and fully in writing within 25 days of service, unless the party making the request agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the basis for the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the Judge, on motion, permits withdrawal or amendment of the admission.

(c) *Request for production, entry or inspection.* Any party, without leave of the Judge, may serve on another party

29 CFR Ch. XXVII (7-1-06 Edition)

a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or his agent to enter upon designated property to inspect and gather information. A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The Judge may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the basis for the objection in its response.

§ 2700.59. Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the Judge requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the Judge may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or dismissing the proceeding in favor of the party seeking discovery. For good cause shown the Judge may excuse an objecting party from complying with the request.

§ 2700.60 Subpoenas.

(a) *Compulsory attendance of witnesses and production of documents.* The Commission and its Judges are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least 18 years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the Commission or the Judge.

(b) *Fees payable to witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The

witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or a Judge. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the Judge, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery as set forth in §2700.56(b); or if it does not describe with sufficient particularity the evidence required to be produced; or if for any other reason it is found to be invalid or unreasonable. The Commission or the Judge shall set forth a concise statement of the grounds for such ruling.

(d) *Availability of transcript.* Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that sets forth their testimony or refers to their production of evidence.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or with a subpoena issued by the Commission or the Judge, the Judge or the Commission's General Counsel, at the request of the Judge or at the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

§ 2700.61 Name of miner informant.

A Judge shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or his agent the name of an informant who is a miner.

§ 2700.62 Name of miner witness.

A Judge shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or his agent the name of a miner who is expected by the Judge to testify or whom a party expects to summon or call as a witness.

§ 2700.63 Evidence; presentation of case.

(a) Relevant evidence, including hearsay evidence, that is not unduly repetitious or cumulative is admissible.

(b) The proponent of an order has the burden of proof. A party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 2700.64 Retention of exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be retained with the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the Judge, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

§ 2700.65 Proposed findings, conclusions and orders.

The Judge may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

§ 2700.66 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of a Judge or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be mailed by registered or certified mail, return receipt requested.

(b) *Failure to attend hearing.* If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) *Penalty proceedings.* When the Judge finds a party in default in a civil penalty proceeding, the Judge shall