

must set forth, in detail, each indefinite or uncertain allegation contained in a pleading or response and must submit the details that would make each allegation definite and certain.

(6) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike and must serve a copy on each party before a response to that pleading is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(7) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(8) *Motion for disqualification.* A party may file a motion for disqualification. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing reason for disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party may respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must issue a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is granted.

§ 406.143 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, at any time after a complaint has been filed.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and responses with the Docket Management System or submit any of them to the administrative law judge. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion filed under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee with the agency attorney.

(d) *Time for response to discovery request.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later

than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidentiality order.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file and serve a motion for a confidentiality order in accordance with § 406.117.

(h) *Protective order.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party.

The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend response.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* The following rules apply to all depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In a foreign country, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, must submit the notice to the administrative law judge, and must file the notice with the Docket Management System, and must serve the notice on each party, not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. If a subpoena duces tecum is to be served on the person to be examined, the party must attach to the notice of deposition a copy of the subpoena duces tecum that describes the materials to be produced at the deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* (1) A party may not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve more than 30 interrogatories on a party before serving additional interrogatories on a party. The administrative law judge must grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(3) A party must answer each interrogatory separately and completely in writing.

(4) A party, or the party's attorney or representative of record, must sign the party's responses to interrogatories.

(5) If a party objects to an interrogatory, the party must state the objection and the reasons for the objection.

(6) An opposing party may offer into evidence any part or all of a party's responses to interrogatories at a hearing under this subpart to the extent that

the response is relevant, material, and not repetitious.

(1) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve a copy of each document referenced in the request for admission unless the document has been provided or is reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission is not later than 30 days after service of the request constitutes an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission does not constitute an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney or representative.

(2) *Response.* A party may object to a request for admission. The objection must be in writing and signed by the party or the party's attorney or representative of record, and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If an administrative law judge determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is admitted.

(3) *Effect of admission.* Any matter admitted or treated as admitted under this section is conclusively established for the purpose of the hearing and appeal.

§ 406.147

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer.

(n) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(1) Strike that portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of that portion of a party's evidence at the hearing; or

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 406.147 Notice of hearing.

(a) *Notice.* The administrative law judge must give each party at least 60 days notice of the date, time, and location of the hearing.

(b) *Date, time, and location of the hearing.* The administrative law judge must set a reasonable date, time, and location for the hearing within the United States. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether a scheduled air carrier serves the location.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

14 CFR Ch. III (1-1-07 Edition)

(d) *Space hearing consolidated with aviation hearing under 14 CFR part 13 subpart G.* With the consent of the administrative law judge, the parties may agree to hold the hearing, or parts of the hearing, together with a hearing under 14 CFR part 13 subpart G if the cases involve some common issues of fact. If the hearings are consolidated, the administrative law judge may issue a consolidated initial decision covering both cases. The Administrator will serve as the FAA decisionmaker on appeal for both cases and will issue a consolidated decision, with the Associate Administrator for Commercial Space Transportation serving as an advisor to the FAA decisionmaker.

§ 406.149 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 406.151 Standard of proof.

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.