

13.23, the term *Documents* includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence.

(2) Nothing in this part will be interpreted to require the creation of a Document.

(c) *Motions for discovery.* (1) A party seeking discovery may file a motion. Such a motion will be accompanied by a copy of the request for production of Documents, request for admissions, or interrogatories or, in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion or a motion for protective order as provided in § 13.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 13.24.

(d) *Depositions.* (1) If a motion for deposition is granted, the ALJ will issue a subpoena for the deponent, which may require the deponent to produce Documents. The subpoena will specify the time and place at which the deposition will be held. Deposition requests for senior level DHS officials (including career and non-career senior executive level employees) shall not be approved absent showing of compelling need that cannot be met by any other means.

(2) The party seeking to depose will serve the subpoena in the manner prescribed in § 13.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service. If the ALJ has not acted on such a motion by the return date, such date will be suspended pending the ALJ's final action on the motion.

(4) The party seeking to depose will provide for the taking of a verbatim transcript of the deposition, which it will make available to all other parties for inspection and copying.

(e) Each party will bear its own costs of discovery.

#### § 13.22 Exchange of witness lists, Statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties will exchange witness lists, copies of prior Statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written Statements that the party intends to offer in lieu of live testimony in accordance with § 13.33(b). At the time the above Documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, will provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list of any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, Documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

#### § 13.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any Individual at the hearing may request that the ALJ issue a subpoena. Requests for witness testimony of senior level DHS officials (including career and non-career senior executive level employees) shall not be approved absent a showing of compelling need that cannot be met by any other means.

(b) A subpoena requiring the attendance and testimony of an Individual may also require the Individual to produce Documents at the hearing.