

**§ 76.22**

**28 CFR Ch. I (7-1-08 Edition)**

(C) In the case of a deposition, the date, time, and place of the proposed deposition.

(iii) The other party may respond to a motion to compel discovery or for issuance of a subpoena requiring a deposition or production of documents under this section by filing an opposition and/or a motion for a protective order in accordance with 28 CFR 76.24 within the time limits set forth in paragraph (c)(4)(iv) of this section.

(4) *Time limits.* (i) Discovery may be initiated after the filing of a complaint and shall be completed within the time designated by the Judge, but no later than seventy-five (75) days after the filing of the answer, unless a different time limit is set by the Judge after due consideration of the particular situation, including the dates set for hearing.

(ii) A party or nonparty shall file and serve a response to a discovery request promptly, but not later than twenty (20) days after the date of service of the request or order of the Judge.

(iii) A motion seeking a subpoena for the deposition testimony of a nonparty or for the production of documents by a nonparty, or a motion for an order compelling discovery from a party, shall be filed with the Judge and served upon the other party within ten (10) days of the date of service of objections, or within ten (10) days of the expiration of the time limit for response when no response is received, unless otherwise ordered by the Judge.

(iv) An opposition to a motion to compel, an opposition to a motion for an order to depose a nonparty or for the production of documents by a nonparty, or a motion for a protective order must be filed with the Judge and served upon the other party within ten (10) days of the date of service of the motion to which such motion relates.

(5) *Orders for discovery.* (i) Any order issued compelling discovery shall include, as appropriate:

(A) Provision for notice to the person to be deposed as to the time and place of such deposition;

(B) Such conditions or limitations concerning the conduct or scope of the discovery or the subject matter of the discovery as may be necessary to prevent undue delay or to protect a party

or other individual or entity from undue expense, embarrassment or oppression;

(C) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(D) Other restrictions upon the discovery process as determined by the Judge.

(ii) The order will be served on the parties by the Judge, together with a subpoena, if approved in the case of discovery sought from nonparties, directed to the individual or entity from which discovery is sought, specifying the manner and time limit for compliance. It shall be the responsibility of the party seeking discovery from a nonparty to serve or arrange for service of an approved discovery request and subpoena on the nonparty from whom discovery is sought and on the other party.

(iii) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under 28 CFR 76.26.

(6) *Costs.* Each party shall bear its own costs of discovery unless otherwise agreed by the parties or ordered by the Judge. The party seeking the deposition shall provide for a verbatim transcript of the description, which shall be available to all parties for inspection and copying.

**§ 76.22 Exchange of witness lists, statements and exhibits.**

(a) At least twenty-one (21) days before the hearing or at such other time as may be ordered by the Judge, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the respondent intends to offer in lieu of live testimony in accordance with 28 CFR 76.29. At the time these 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 Judge, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects to admission, the Judge may not admit into evidence

the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the Judge finds good cause for the failure and that there is no prejudice to the objecting party.

(c) Unless a party objects within the times set by the Judge, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

#### § 76.23 Subpoenas.

(a) Requests for the issuance of subpoenas requiring the attendance and testimony of witnesses or the production of documents or other evidence under 21 U.S.C. 875 and 876 shall be filed with the Judge. Subpoenas are not ordinarily required to obtain the attendance of federal employees as witnesses, but such testimony shall be sought first by filing a request with the United States Attorney.

(b) Requests for subpoenas shall be filed with the Judge in writing and shall specify with particularity the books, papers, or testimony desired, supported by a showing of general relevance and reasonable scope, and a statement of the facts expected to be proven thereby. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses or documents to be found.

(c) A party seeking a subpoena for the attendance of a witness at a hearing shall file a written request therefor not less than fifteen (15) days before the date fixed for the hearing unless otherwise allowed by the Judge upon a showing of good cause.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) Unless otherwise ordered by the Judge, the party seeking the subpoena is responsible for service of the subpoena. A subpoena may be served by any person at least eighteen (18) years of age who is not a party, including a private process server or other person authorized to serve process in actions

brought in state courts of general jurisdiction or in Federal courts. Service shall be by personal delivery. Proof of service shall be made by affidavit of the person serving a subpoena entered on a true copy of the subpoena.

(f) A party or the individual to whom the subpoena is directed may file with the Judge a motion to quash the subpoena within ten (10) days after service of the subpoena, or on or before the time specified in the subpoena for compliance if it is less than ten (10) days after service.

(g) Upon failure of any person to comply with a subpoena issued by the Judge, the Attorney General, in the name of the Judge, but on relation of the party, shall institute proceedings in the appropriate district court for the enforcement of the subpoena, unless the enforcement of the subpoena would be inconsistent with law. Neither the Attorney General nor the Judge shall be deemed thereby to have assumed responsibility for prosecution of the same before the court.

#### § 76.24 Protective order.

(a) A party or a prospective witness or deponent may seek to limit the availability or disclosure of evidence by filing a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing.

(b) In issuing a protective order, the Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to protect privileged information including one or more of the following orders:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only through a method of discovery other than that requested;
- (4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the Judge;