

§ 386.36

(d) *Argument.* Oral argument or briefs on a motion may be ordered by the Assistant Administrator or the administrative law judge.

(e) *Disposition.* Motions may be ruled on immediately or at any other time specified by the administrative law judge or the Assistant Administrator.

(f) *Suspension of time.* The pendency of a motion shall not affect any time limits set in these rules unless expressly ordered by the Assistant Administrator or administrative law judge.

§ 386.36 Motions to dismiss and motions for a more definite statement.

(a) Motions to dismiss must be made within the time set for reply or petition to review, except motions to dismiss for lack of jurisdiction, which may be made at any time.

(b) Motions for a more definite statement may be made in lieu of a reply. The motion must point out the defects complained of and the details desired. If the motion is granted, the pleading complained of must be remedied within 15 days of the granting of the motion or it will be stricken. If the motion is denied, the party who requested the more definite statement must file his/her pleading within 10 days after the denial.

§ 386.37 Discovery methods.

Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or other evidence for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge orders otherwise, the frequency or sequence of these methods is not limited.

§ 386.38 Scope of discovery.

(a) Unless otherwise limited by order of the Assistant Administrator or, in cases that have been called for a hearing, the administrative law judge, in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the exist-

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ence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Assistant Administrator or the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 386.39 Protective orders.

Upon motion by a party or other person from whom discovery is sought, and for good cause shown, the Assistant Administrator or the administrative law judge, if one has been appointed, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) The discovery not be had;

(b) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(e) Discovery be conducted with no one present except persons designated by the Assistant Administrator or the administrative law judge; or

(f) A trade secret or other confidential research, development, or commercial information may not be disclosed or be disclosed only in a designated way.

§ 386.40 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(a) A party is under a duty to supplement timely his/her response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he or she is expected to testify and the substance of his or her testimony.

(b) A party is under a duty to amend timely a prior response if he or she later obtains information upon the basis of which:

(1) he or she knows the response was incorrect when made; or

(2) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the Assistant Administrator or the administrative law judge or agreement of the parties.

§ 386.41 Stipulations regarding discovery.

Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Assistant Administrator or the administrative law judge, if one has been appointed, may:

(a) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner, and when so taken may be used like other depositions, and

(b) Modify the procedures provided by these rules for other methods of discovery.

§ 386.42 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any authorized officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the Assistant Administrator or, in cases that have been called to a hearing, on the administrative law judge, and upon all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answer and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within such shortened or longer period as the Assistant Administrator or the administrative law judge may allow.

(c) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Assistant Administrator or administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

§ 386.43 Production of documents and other evidence; entry upon land for inspection and other purposes; and physical and mental examination.

(a) Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting on his or her behalf, to inspect and