

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (c)(3) of this section:

- (i) The prejudice to the objecting party;
- (ii) The ability of the objecting party to cure any prejudice;
- (iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;
- (iv) The importance of the evidence; and
- (v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

**§ 45.43 What are the requirements for written interrogatories?**

(a) *Motion*. Except upon agreement of the parties, a party wishing to propound interrogatories must file a motion under § 45.41(c).

(b) *ALJ order*. During or promptly after the initial prehearing conference, the ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

- (1) Grant the motion and approve the use of some or all of the proposed interrogatories; or
  - (2) Deny the motion.
- (c) *Answers to interrogatories*. Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records*. A party's answer to an interrogatory is sufficient when:

- (1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;
- (2) The burden of obtaining the information from the records is substantially the same for all parties;
- (3) The answering party specifically identifies the individual records from which the requesting party may obtain

the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

**§ 45.44 What are the requirements for depositions?**

(a) *Motion and notice*. Except upon agreement of the parties, a party wishing to take a deposition must file a motion under § 45.41(c). Any notice of deposition filed with the motion must state:

- (1) The time and place that the deposition is to be taken;
- (2) The name and address of the person before whom the deposition is to be taken;
- (3) The name and address of the witness whose deposition is to be taken; and
- (4) Any documents or materials that the witness is to produce.

(b) *ALJ order*. During or promptly after the initial prehearing conference, the ALJ will issue an order under § 45.41(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

- (1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or
- (2) Deny the motion.

(c) *Arrangements*. If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

- (i) Before the deposition begins; or
- (ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.