

**§ 498.207**

**20 CFR Ch. III (4-1-11 Edition)**

- (1) Simplification of the issues;
  - (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
  - (3) Stipulations and admissions of fact as to the contents and authenticity of documents and deadlines for challenges, if any, to the authenticity of documents;
  - (4) Whether the parties can agree to submission of the case on a stipulated record;
  - (5) Whether a party chooses to waive appearance at a hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
  - (6) Limitation of the number of witnesses;
  - (7) The time and place for the hearing and dates for the exchange of witness lists and of proposed exhibits;
  - (8) Discovery of documents as permitted by this part;
  - (9) Such other matters as may tend to encourage the fair, just, and expeditious disposition of the proceedings; and
  - (10) Potential settlement of the case.
- (c) The ALJ shall issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a pre-hearing conference.

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**§ 498.207 Discovery.**

- (a) For the purpose of inspection and copying, a party may make a request to another party for production of documents which are relevant and material to the issues before the ALJ.
- (b) Any form of discovery other than that permitted under paragraph (a) of this section, such as requests for admissions, written interrogatories and depositions, is not authorized.
- (c) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers, memos, notes and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.

- (d)(1) A party who has been served with a request for production of documents may file a motion for a protective order. The motion for protective order shall describe the document or class of documents to be protected, specify which of the grounds in § 498.207(d)(2) are being asserted, and explain how those grounds apply.
- (2) The ALJ may grant a motion for a protective order if he or she finds that the discovery sought:
  - (i) Is unduly costly or burdensome;
  - (ii) Will unduly delay the proceeding; or
  - (iii) Seeks privileged information.
- (3) The burden of showing that discovery should be allowed is on the party seeking discovery.

[61 FR 65469, Dec. 13, 1996]

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

- (a) At least 15 days before the hearing, the parties shall exchange:
  - (1) Witness lists;
  - (2) Copies of prior written statements of proposed witnesses; and
  - (3) 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 § 498.216.
- (b)(1) Failure to comply with the requirements of paragraph (a) of this section may result in the exclusion of evidence or testimony upon the objection of the opposing party.
- (2) When an objection is entered, the ALJ shall determine whether good cause justified the failure to timely exchange the information listed under paragraph (a) of this section. If good cause is not found, the ALJ shall exclude from the party's case-in-chief:
  - (i) The testimony of any witness whose name does not appear on the witness list; and
  - (ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.
- (3) If the ALJ finds that good cause exists, the ALJ shall determine whether the admission of such evidence would cause substantial prejudice to the objecting party due to the failure to comply with paragraph (a) of this section. If the ALJ finds no substantial