

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) (Rule 13(f)(2)).

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admission.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents or electronically stored information, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)]. Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph (c) is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) *Written requests for production.* A written request for the production, inspection, and copying of any documents, electronically stored information, or things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in 6101.13(f)(2) [Rule 13(f)(2)].

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in 6101.14 (Rule 14).

(f) *Responses.* A party that has responded to written interrogatories, requests for admission, or requests for production of documents, electronically stored information, or things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents, electronically stored information, or things relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents, electronically stored information, and things as are necessary to give a complete and accurate response to the request.

[72 FR 36795, July 5, 2007, as amended at 73 FR 26951, May 12, 2008]

#### **6101.15 Depositions [Rule 15].**

(a) *When depositions may be taken.* Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in 6101.16 (Rule 16), and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. In addition, if the Board orders deposition testimony to be recorded by other than stenographic means, the Board will also determine who shall

bear the burden of the cost of such recording, and shall permit the non-moving party to arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a corporation, partnership, association, or government agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance

of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action were pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named. If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.13 (Rule 13) and in 6101.15 (Rule 15). Thereupon, the depositions may be taken and used as prescribed in the rules of this chapter for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with 6101.16 (Rule 16), for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

#### **6101.16 Subpoenas [Rule 16].**

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and