

### § 2700.53

shall be reduced to writing within 24 hours.

(b) *Timing of hearing.* Unless all parties consent to an earlier hearing, an expedited hearing on the merits of the case shall not be held on less than 4 days notice.

[58 FR 12164, Mar. 3, 1993, as amended at 71 FR 44208, Aug. 4, 2006]

### § 2700.53 Prehearing conferences and statements.

(a) The Judge may require the parties to participate in a prehearing conference, either in person or by telephone. The participants at any such conference may consider and take action with respect to:

(1) The formulation and simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact and of documents that will avoid unnecessary proof and advance rulings from the Judge on the admissibility of evidence;

(3) The exchange of exhibits and the names of witnesses and a synopsis of the testimony expected from each witness;

(4) The necessity or desirability of amendments to the pleadings and the joinder of parties;

(5) The possibility of agreement disposing of any or all of the issues in dispute;

(6) Such other matters as may aid in the expedition of the hearing or the disposition of the case.

(b) The Judge may also require the parties to submit prehearing statements addressing one or more of the matters set forth in paragraph (a) of this section.

### § 2700.54 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, and nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing. The notice shall be mailed by certified or registered mail, return receipt requested.

### § 2700.55 Powers of Judges.

Subject to these rules, a Judge is empowered to:

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(a) Administer oaths and affirmations;

(b) Issue subpoenas authorized by law;

(c) Rule on offers of proof and receive relevant evidence;

(d) Order depositions to be taken;

(e) Regulate the course of the hearing;

(f) Hold conferences for the settlement or simplification of the issues;

(g) Dispose of procedural requests or similar matters;

(h) Make decisions in the proceedings before him, provided that he shall not be assigned to make a recommended decision; and

(i) Take other action authorized by these rules, by 5 U.S.C. 556, or by the Act.

### § 2700.56 Discovery; general.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; or requests for admissions, for production of documents or objects or for permission to enter upon property for inspecting, copying, photographing, and gathering information.

(b) *Scope of discovery.* Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to the discovery of admissible evidence.

(c) *Limitation of discovery.* Upon motion by a party or by the person from whom discovery is sought or upon his own motion, a Judge may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.

(d) *Initiation of discovery.* Discovery may be initiated after an answer to a notice of contest, an answer to a petition for assessment of penalty, or an answer to a complaint under section 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 821.

(e) *Completion of discovery.* Discovery shall not unduly delay or otherwise impede disposition of the case, and must be completed at least 20 days prior to the scheduled hearing date. For good

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cause shown, the Judge may extend or shorten the time for discovery.

[58 FR 12164, Mar. 3, 1993, as amended at 71 FR 44208, Aug. 4, 2006]

### § 2700.57 Depositions.

(a) *Generally.* Any party, without leave of the Judge, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the Judge.

### § 2700.58 Interrogatories, requests for admissions and requests for production of documents.

(a) *Interrogatories.* Any party, without leave of the Judge, may serve written interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the basis for the objection in its answer.

(b) *Requests for admissions.* Any party, without leave of the Judge, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request separately and fully in writing within 25 days of service, unless the party making the request agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the basis for the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the Judge, on motion, permits withdrawal or amendment of the admission.

(c) *Request for production, entry or inspection.* Any party, without leave of the Judge, may serve on another party a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or his agent to enter upon designated property to inspect and gather information.

A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The Judge may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the basis for the objection in its response.

### § 2700.59 Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the Judge requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the Judge may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or dismissing the proceeding in favor of the party seeking discovery. For good cause shown the Judge may excuse an objecting party from complying with the request.

### § 2700.60 Subpoenas.

(a) *Compulsory attendance of witnesses and production of documents.* The Commission and its Judges are authorized to issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by any person who is at least 18 years of age. A subpoena may also be served by registered or certified mail, return receipt requested, but, in such case, any risk of delivery is on the serving party. A copy of the subpoena bearing a certificate of service shall be filed with the Commission or the Judge.

(b) *Fees payable to witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on the motion of the Commission or a Judge. This paragraph does not apply to Government