

§ 201.110

are in his possession, custody or control. The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just. In lieu of such inspections the material may be produced in exhibit form and served upon all parties to a formal proceeding. Such exhibits may also, upon request of any party, be offered in evidence at a hearing.

§ 201.110 Depositions: request for orders to take; time of filing.

The Administration or presiding officer may, upon proper request of a party to a proceeding or under circumstances deemed proper, issue an order to take a deposition regarding any matter, not privileged, which is relevant to the subject matter involved in the proceedings. A motion to take a deposition shall be filed not less than fifteen (15) days before the proposed date for taking the deposition, unless a shorter period is fixed under §201.54, and shall set forth the reason for the deposition, the place and time of taking, the officer before whom it is to be taken, the name and address of each witness to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and whether the deposition is to be based upon written interrogatories or upon oral examination. If the deposition is to be based upon oral examination, the motion shall contain a statement of the matters concerning which each witness will testify. If the deposition is to be based on written interrogatories, the motion shall be accompanied by the interrogatories to be propounded, serially numbered. Copies of all motions to take depositions, and accompanying interrogatories, if any, shall conform to the requirements of subpart D of this part. Objection to the taking of such depositions may be made in an answer to such motion. Without prejudice to objection, the answer may also state objection to any individual interrogatory, and if the deposition is permitted, the presiding officer will rule upon such objections to interrogatories. A party served with an order to take a deposition on written interro-

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gatories shall have ten (10) days after date of service of such order unless a shorter period is fixed under §201.54, within which to file and serve written cross interrogatories, which shall be served pursuant to subpart D of this part. Answers to applications for cross interrogatories may be filed in accordance with §201.80. Upon the issuance of an order by the Administration or the presiding officer for the taking of a deposition, the Docket Clerk shall mail a copy thereof to all parties, including the party who requested the deposition. An application to take a deposition in a foreign country will be entertained when necessary or convenient, and authority to take such deposition will be granted upon such notice and other terms and directions as are lawful and appropriate.

§ 201.111 Contents of order.

The order issued authorizing the taking of a deposition will state the name and address of each witness or a general description sufficient to identify him or the particular class or group to which he belongs, the matters concerning which the witness may be questioned, the place where, the time when, and the officer before whom the deposition is to be taken, any or all of which may or may not be the same as set forth in the motion filed. If the deposition is to be taken upon written interrogatories, a list of the interrogatories will accompany the order.

§ 201.112 Record of examination; oath; objections.

The officer before whom the deposition is to be taken shall put the witness under oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically, shall be translated to English, if necessary, and shall be transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objections to the proceedings, shall be noted by the officer upon the

deposition. Any party served with a notice to take an oral deposition may cross-examine a witness whose testimony is taken under such deposition. In lieu of cross-examination, parties served with notice of taking a deposition may transmit written interrogatories or cross-interrogatories to the officer taking the deposition, who shall propound them to the witness and record the answers verbatim together with any objections interposed thereto by adverse parties.

§ 201.113 Submission to witness, changes, signing.

When the testimony is fully transcribed the deposition of each witness shall be submitted to him for examination and shall be read to or by him. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless upon objection the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

§ 201.114 Certification and filing by officer; copies.

The officer taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that said officer is not of counsel or attorney to either of the parties and is not directly or indirectly interested in the outcome of the proceeding or investigation. He shall then securely seal the deposition in an envelope endorsed with the title of the proceeding and marked "Deposition of (here insert name of witness)", and shall promptly

send the original and two copies thereof, together with the original and two copies of all exhibits, by registered mail to the Administration. Parties shall make their own arrangements with the officer taking the deposition for copies of the testimony and exhibits.

§ 201.115 Waiver of objections and admissibility.

Objections to the form of question and answer shall be made before the officer taking the deposition by parties or representatives present, and if not so made, shall be deemed waived. Depositions shall, when offered at the hearing, be subject to proper legal objections.

§ 201.116 Time of filing.

Any depositions to be offered in evidence shall be filed with the presiding officer not later than the close of the offering party's presentation.

§ 201.117 Inclusion in record.

No deposition or part thereof shall constitute a part of the record in any proceeding until received in evidence.

§ 201.118 Witness fees; expenses of taking depositions.

Witnesses whose depositions are taken pursuant to the regulations in this part, and the officer taking such deposition, shall severally be entitled to the same fees and mileage as are paid in the courts of the United States. All expenses of taking such depositions shall be paid by the party at whose instance the deposition is taken.

Subpart L—Subpoenas (Rule 12)

§ 201.121 Application for subpoena ad testificandum.

An application for a subpoena requiring attendance of a witness at a hearing may be made without notice by any party to the presiding officer, or, in the event that a presiding officer has not been assigned to a proceeding or the presiding officer is not available, to the Chief Hearing Examiner, for action by him or by a member of the Administration. A subpoena for the attendance of a witness shall be issued on oral application at any time and shall be issued