

shown that the information sought cannot be obtained by any other means.

(4) If the ALJ grants a motion permitting a deposition, he shall issue a subpoena, which may also require the witness to produce documents. The party seeking to depose shall serve the subpoena in the manner prescribed in § 1.308 of this part.

(5) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(e) Costs. The costs of discovery shall be borne by the party seeking discovery.

(f) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) That the discovery may be had only through a method of discovery other than that requested;
- (4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the ALJ;
- (6) That the contents of discovery or evidence be sealed;
- (7) That a deposition after being sealed be opened only by order of the ALJ;
- (8) That a trade secret or other confidential research, development, commercial information or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or
- (9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

(g) Exchange of witness lists, statements, and exhibits. Witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any writ-

ten statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 1.331(b) of this part, shall be exchanged at least 15 days in advance of the hearing, or at such other time as may be set by the ALJ. A witness whose name does not appear on the witness list shall not be permitted to testify and no exhibit not provided to the opposing party as provided above shall be admitted into evidence at the hearing absent a showing of good cause.

§ 1.323 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony at the hearing of any individual may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at such hearing.

(c) A party who desires the issuance of a subpoena shall file with the ALJ a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses whose attendance is sought to be required and describe their addresses and locations with sufficient particularity to permit such witnesses to be found. The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce. Such a request may be made *ex parte*.

(d) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(e) A subpoena shall be served by delivery, or by registered mail or by certified mail in the manner prescribed in § 1.308 of this part. A subpoena upon a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within five days of service or on or before the time

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specified in the subpoena for compliance if it is less than five days after service.

§ 1.324 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of USDA, a check for witness fees and mileage need not accompany the subpoena.

§ 1.325 Form, filing and service of papers.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the ALJ assigned to the case.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by and shall contain the address and telephone number of the representative for the party or the person on whose behalf the paper was filed.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or his representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

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§ 1.326 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is ten or fewer calendar days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

§ 1.327 Motions.

(a) Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) The ALJ may require written motions to be accompanied by supporting memorandums.

(d) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(e) The ALJ may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting a response.

(f) The ALJ shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1.328 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with a lawful order, subpoena, or procedure;

(2) Failing to prosecute or defend an action; or