

§ 386.46

49 CFR Ch. III (10–1–11 Edition)

§ 386.46 Depositions.

(a) *When, how, and by whom taken.* (1) The deposition of any witness may be taken at reasonable times subsequent to the appointment of an Administrative Law Judge. Prior to referral to the Office of Hearings, a party may petition the Assistant Administrator, in accordance with § 386.37, for leave to conduct a deposition based on good cause shown.

(2) Depositions may be taken by oral examination or upon written interrogatories before any person having power to administer oaths.

(3) The parties may stipulate in writing or the Administrative Law Judge may upon motion order that a deposition be taken by telephone or other remote electronic means.

(4) If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(5) If the deposition is to be recorded by videotape or audiotape, the notice shall specify the method of recording.

(b) *Application.* Any party desiring to take the deposition of a witness must indicate to the witness and all other parties the time when, the place where, and the name and post office address of the person before whom the deposition is to be taken; the name and address of each witness; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* A party desiring to take a deposition must give notice to the witness and all other parties. Notice must be in writing. Notice of the deposition must be given not less than 20 days from when the deposition is to be taken if the deposition is to be held within the continental United States and not less than 30 days from when the deposition is to be taken if the deposition is to be held elsewhere, unless a shorter time is agreed to by the parties or by leave of the Assistant Administrator or Administrative Law Judge by motion for good cause shown.

(d) *Depositions upon written questions.* Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being

served with cross-questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The Assistant Administrator or Administrative Law Judge may enlarge or shorten the time for cause shown.

(e) *Taking and receiving in evidence.* Each witness testifying upon deposition must be sworn, and any other party must be given the right to cross-examine. The questions propounded and the answers to them, together with all objections made, must be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. The person who took the deposition must seal the deposition transcript in an envelope and file it in accordance with § 386.7. Subject to objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, the deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice of it.

(f) *Witness limit.* No party may seek deposition testimony of more than five witnesses without leave of the Agency decisionmaker for good cause shown. Individual depositions are not to exceed 8 hours for any one witness.

(g) *Motion to terminate or limit examination.* During the taking of a deposition, a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. The objecting party or deponent must, however, immediately move for a ruling on his or her objections to the deposition conduct or proceedings before the Assistant Administrator or Administrative Law Judge, who then may limit the scope or manner of the taking of the deposition.

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