

## FRCP Changes

**Rule 16(b)** -- Allows the court to establish rules around disclosure, privilege and methods and work product prior to e-discovery.

**Rule 26(a)** -- Adds "electronically stored information" (ESI) as a category.

**Rule 26(b)(2)** -- Sets up two-tier discovery for accessible and inaccessible data. Provides procedures for cost shifting on inaccessible data.

**Rule 26(b)(5)** -- Allows "clawback" of privileged material inadvertently sent to the requesting party. Asserts privileges and work-product protections following production.

**Rule 26(f)** -- "Meet and Confer." Requires parties to meet and agree on protocol, focusing on e-discovery earlier in the litigation process.

**Rule 33(d)** -- Includes ESI as part of the business records related to interrogatories.

**Rule 34(b)** -- Specifies the form in which data are to be produced.

**Rule 35** -- Standardizes discovery agreements, requiring a report about the results of discussions.

**Rule 37(f)** -- "Safe harbor" provision regarding deleted or lost data (and unrecoverable) as a matter of regular business processes.

**Rule 45** -- Subpoenas to produce documents include ESI.