

## § 1114.25

later than 5 days before the date it is to be so offered.

(i) *Notice.* The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) *Copies.* Upon payment of reasonable charges, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

### § 1114.25 Effect of errors and irregularities in depositions.

(a) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under § 1114.23 and 1114.24 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

## 49 CFR Ch. X (10–1–05 Edition)

### § 1114.26 Written interrogatories to parties.

(a) *Availability; procedures for use.* Subject to the provisions of § 1114.21(b)(2), any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or Governmental agency (other than this Board, except in those instances where the Board itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in § 1112.9. Objections are to be signed by the representative or counsel making them. The person upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time period designated by the party submitting the interrogatories, but not less than 15 days after the service thereof.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilation, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the act, it will be sufficient response under

these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the act.

(c) *Service of interrogatories in those proceedings not requiring a petition.* No written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 40 days prior to such date.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

**§ 1114.27 Request for admission.**

(a) *Availability; procedures for use.* Subject to the provisions of § 1114.21(b)(2), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of § 1114.21 set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents should be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested should be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission,

and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of § 1114.31, deny the matter or set forth reasons why he cannot admit or deny it.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Board enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Service of written requests for admission in those proceedings not requiring a petition.* No requests for admission should be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country they should not be served within 40 days prior to such date.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

**§ 1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.**

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken. If not