

**Surface Transportation Board, DOT**

**§ 1114.22**

(5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

(6) That discovery be conducted with no one present except persons designated in the protective order;

(7) That a deposition after being sealed be opened only by order of the Board;

(8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Board.

If the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under §§1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Board upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Board may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

(f) *Service of discovery materials.* Unless otherwise ordered by the Board, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall be served on other counsel and parties, but shall not be filed with the Board. Any such materials, or portions

thereof, should be appended to the appropriate pleading when used to support or to reply to a motion, or when used as an evidentiary submission.

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

EFFECTIVE DATE NOTE: At 72 FR 51377, Sept. 7, 2007, §1114.21 was amended by adding paragraph (a)(3), effective Oct. 7, 2007. For the convenience of the user, the added text is set forth as follows:

**§ 1114.21 Applicability; general provisions.**

(a) \* \* \*

(3) In cases using the simplified standards Three-Benchmark method, the number of discovery requests that either party can submit is limited as set forth in §§1114.22, 1114.26, and 1114.30, absent advance authorization from the Board.

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**§ 1114.22 Deposition.**

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Request.* A party requesting to take a deposition and perpetuate testimony:

(1) Should notify all parties to the proceeding and the person sought to be deposed; and

(2) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition will be taken.

[61 FR 52713, Oct. 8, 1996]

EFFECTIVE DATE NOTE: At 72 FR 51377, Sept. 7, 2007, §1114.22 was amended by adding paragraph (c), effective Oct. 7, 2007. For the convenience of the user, the added text is set forth as follows:

**§ 1114.22 Deposition.**

\* \* \* \* \*

(c) *Limitation under simplified standards.* In a case using the Three-Benchmark methodology, each party is limited to one deposition absent advance authorization from the Board.

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