

as a condition to being made a part of the record in the proceeding.

[53 FR 11854, Apr. 11, 1988]

§ 1.729 Discovery.

(a) Subject to paragraph (i) of this section governing Accelerated Docket proceedings, a complainant may file with the Commission and serve on a defendant, concurrently with its complaint, a request for up to ten written interrogatories. A defendant may file with the Commission and serve on a complainant, during the period starting with the service of the complaint and ending with the service of its answer, a request for up to ten written interrogatories. A complainant may file with the Commission and serve on a defendant, within three calendar days of service of the defendant's answer, a request for up to five written interrogatories. Subparts of any interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. Requests for interrogatories filed and served pursuant to this procedure may be used to seek discovery of any non-privileged matter that is relevant to the material facts in dispute in the pending proceeding, provided, however, that requests for interrogatories filed and served by a complainant after service of the defendant's answer shall be limited in scope to specific factual allegations made by the defendant in support of its affirmative defenses. This procedure may not be employed for the purpose of delay, harassment or obtaining information that is beyond the scope of permissible inquiry related to the material facts in dispute in the pending proceeding.

(b) Requests for interrogatories filed and served pursuant to paragraph (a) of this section shall contain a listing of the interrogatories requested and an explanation of why the information sought in each interrogatory is both necessary to the resolution of the dispute and not available from any other source.

(c) A responding party shall file with the Commission and serve on the propounding party any opposition and objections to the requests for interrogatories as follows:

(1) By the defendant, within ten calendar days of service of the requests

for interrogatories served simultaneously with the complaint and within five calendar days of the requests for interrogatories served following service of the answer;

(2) By the complainant, within five calendar days of service of the requests for interrogatories; and

(3) In no event less than three calendar days prior to the initial status conference as provided for in §1.733(a).

(d) Commission staff will consider the requests for interrogatories, properly filed and served pursuant to paragraph (a) of this section, along with any objections or oppositions thereto, properly filed and served pursuant to paragraph (b) of this section, at the initial status conference, as provided for in §1.733(a)(5), and at that time determine the interrogatories, if any, to which parties shall respond, and set the schedule of such response.

(e) The interrogatories ordered to be answered pursuant to paragraph (d) of this section are to be answered separately and fully in writing under oath or affirmation by the party served, or if such party is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. The answers shall be signed by the person making them. The answers shall be filed with the Commission and served on the propounding party.

(f) A propounding party asserting that a responding party has provided an inadequate or insufficient response to Commission-ordered discovery request may file a motion to compel within ten days of the service of such response, or as otherwise directed by Commission staff, pursuant to the requirements of §1.727.

(g) The Commission may, in its discretion, require parties to provide documents to the Commission in a scanned or other electronic format that provides:

(1) Indexing by useful identifying information about the documents; and

(2) Technology that allows staff to annotate the index so as to make the format an efficient means of reviewing the documents.

(h) The Commission may allow additional discovery, including, but not

limited to, document production, depositions and/or additional interrogatories. In its discretion, the Commission may modify the scope, means and scheduling of discovery in light of the needs of a particular case and the requirements of applicable statutory deadlines.

(i) *Discovery in Accelerated Docket proceedings.* (1) Each party to an Accelerated Docket proceeding shall serve, with its initial pleading and with any reply statements in the pre-status-conference filing (see § 1.726(g)(1)), copies of all documents in the possession, custody or control of the party that are likely to bear significantly on any claim or defense. For the purpose of this paragraph (i), document also shall include data compilations and tangible things. A document is likely to bear significantly on a claim or defense if it:

(i) Appears likely to have an influence on, or affect the outcome of, a claim or defense;

(ii) Reflects the relevant knowledge of persons who, if their potential testimony were known, might reasonably be expected to be deposed or called as a witness by any of the parties;

(iii) Is something that competent counsel would consider reasonably necessary to prepare, evaluate or try a claim or defense; or

(iv) Would not support the disclosing party's contentions.

(2) In their § 1.733(i)(4) pre-status-conference filings, parties to Accelerated Docket proceedings may request the production of additional documents. In their § 1.733(i)(4) filings, parties may also seek leave to conduct a reasonable number of depositions, including depositions of expert witnesses, if any. When requesting additional discovery, each party shall be prepared at the status conference to justify its requests by identifying the specific issue or issues on which it expects to obtain evidence from each request.

(3) Interrogatories shall not be routinely granted in Accelerated Docket proceedings. A party to an Accelerated Docket proceeding that prefers interrogatories to the other forms of available discovery, for reasons of convenience or expense, may seek leave in its § 1.733(i)(4) pre-status-conference filing

to propound a limited number of interrogatories.

(4) Expert Witnesses.

(i) Any complainant in an Accelerated Docket proceeding that intends to rely on expert testimony for a purpose other than to rebut a defendant's expert evidence, shall identify its expert witnesses in the information designation required by § 1.721(a)(10)(i). In its § 1.721(a)(10)(i) information designation, such a complainant shall also provide its expert statement. For purposes of this paragraph (i)(4), an expert statement shall include a brief statement of the opinions to be expressed by the expert, the basis and reasons therefor and any data or other information that the witness considered in forming her opinions.

(ii) Any defendant in an Accelerated Docket proceeding that intends to rely on expert testimony shall identify its expert witnesses in the information designation required by § 1.724(f)(1). Such a defendant shall provide its expert statement with its § 1.733(i)(4), pre-status-conference filing.

(iii) Any complainant in an Accelerated Docket proceeding that intends to rely on previously undisclosed expert testimony to rebut any portion of the defendant's case shall identify the expert and provide the appropriate expert statement at the initial status conference.

(iv) Expert witnesses shall be subject to deposition in Accelerated Docket proceedings under the same rules and limitations applicable to fact witnesses.

[63 FR 1038, Jan. 7, 1998, as amended at 63 FR 41447, Aug. 4, 1998]

§ 1.730 The Enforcement Bureau's Accelerated Docket.

(a) Parties to formal complaint proceedings against common carriers within the responsibility of the Enforcement Bureau (see §§ 0.111, 0.311, 0.314 of this chapter) may request inclusion on the Bureau's Accelerated Docket. As set out in §§ 1.720 through 1.736, proceedings on the Accelerated Docket are subject to shorter pleading deadlines and certain other procedural rules that do not apply to other formal complaint proceedings before the Enforcement Bureau.