

## Surface Transportation Board

## § 1113.17

unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies should be furnished to counsel in attendance at the hearing.

(b) *Interchange prior to hearing.* Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Board or presiding officer may so direct.

(c) *When excluded how treated.* When exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.

[47 FR 49559, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988; 61 FR 52712, Oct. 8, 1996]

### § 1113.13 Filing evidence subsequent to hearing.

Except as provided in this section or as expressly may be permitted in a particular instance, the Board will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence that supplements the existing record, within a stated period of time. Documentary evidence to be furnished in this way will be given an exhibit number at the time of filing and the parties advised accordingly.

[47 FR 49559, Nov. 1, 1982, as amended at 53 FR 19301, May 27, 1988; 61 FR 52712, Oct. 8, 1996; 84 FR 12944, Apr. 3, 2019]

### § 1113.14 Objections to rulings.

It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the

officer to take or his objection to the action of the officer and his grounds for that objection. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in an appeal or reply to an appeal, if filed, or in a separate petition dealing only with that objection.

### § 1113.15 Interlocutory appeals.

Rulings of the presiding officer may be appealed prior to service of the initial decision only if:

(a) The ruling denies or terminates any person's participation,

(b) The ruling grants a request for the inspection of documents not ordinarily available for public inspection,

(c) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or

(d) The presiding officer finds that the ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

### § 1113.16 Oral argument before the hearing officer.

At the discretion of the hearing officer and upon reasonable notice to the parties, oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs. Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Board for consideration in deciding the case. The making of such argument will not preclude oral argument before the Board.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

### § 1113.17 Transcript of record.

(a) *Filing.* After the close of the hearing, the complete transcript of the testimony taken and the exhibits shall be part of the record in the proceeding.

(b) *Corrections.* A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Board. A copy of the letter (original only need be filed

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with the Board) requesting the suggested corrections should be served upon all parties of record and with 2 copies to the official reporter.

(c) *Objections to corrections.* Parties disagreeing with corrections suggested pursuant to paragraph (b) of this section should file written objections in the same manner as suggested corrections are to be filed. Objections to suggested corrections should be filed not later than 15 days after the filing with the Board of suggested corrections. If no objections are timely filed, the Office of Proceedings shall make the suggested corrections to the transcript. If objections are timely filed, the officer who presided at the hearing shall determine the merits of the suggested correction and enter an appropriate decision in the proceeding.

(d) *No free copies.* The Board will not furnish free copies of the transcript to any party to any proceeding.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996; 74 FR 52907, Oct. 15, 2009]

## § 1113.18 Briefs.

(a) *When filed.* In a proceeding which has been the subject of oral hearing, and in which briefs are to be filed, that fact will be stated by the officer on the record. The officer shall fix the time for filing briefs. Simultaneous filing will normally be required, and reply briefs will not normally be permitted.

(b) *Evidence abstract.* A brief filed after a hearing may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief.

(c) *Requested findings.* Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Board to make.

(d) *Exhibit reproduction.* Exhibits should not be reproduced in the brief, but may be shown, within reasonable

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limits, in an appendix to the brief. Analysis of such exhibits should be included in the brief where pertinent.

[47 FR 49559, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

## § 1113.19 Pleadings: part of the record.

Matters of fact that are verified and filed prior to oral hearing and that are not specifically denied constitute evidence and are part of the record. A witness, who would present such evidence, must be made available for cross-examination if a request is reasonably made. This rule does not apply to protests against tariffs or schedules.

[47 FR 49559, Nov. 1, 1982, as amended at 64 FR 53268, Oct. 1, 1999]

## §§ 1113.20–1113.30 [Reserved]

## PART 1114—EVIDENCE; DISCOVERY

### Subpart A—General Rules of Evidence

Sec.

- 1114.1 Admissibility.
- 1114.2 Official records.
- 1114.3 Admissibility of business records.
- 1114.4 Documents in Board's files.
- 1114.5 Records in other Board proceedings.
- 1114.6 Official notice of corroborative material.
- 1114.7 Exhibits.

### Subpart B—Discovery

- 1114.21 Applicability; general provisions.
- 1114.22 Deposition.
- 1114.23 Depositions; location, officer, time, fees, absence, disqualification.
- 1114.24 Depositions; procedures.
- 1114.25 Effect of errors and irregularities in depositions.
- 1114.26 Written interrogatories to parties.
- 1114.27 Request for admission.
- 1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.
- 1114.29 Supplementation of responses.
- 1114.30 Production of documents and records and entry upon land for inspection and other purposes.
- 1114.31 Failure to respond to discovery.

AUTHORITY: 5 U.S.C. 559; 49 U.S.C. 1321.

SOURCE: 47 FR 49562, Nov. 1, 1982, unless otherwise noted.