

conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any participant;

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant concerning information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant;

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant;

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute;

(5) Grouping parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer;

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding, each factor stated in section 3622 or 3623 of the Act;

(7) Limitation of the scope of the evidence and the number of witnesses to eliminate irrelevant, immaterial, or cumulative and repetitious evidence;

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare min-

imum the amount of hearing time required for oral cross-examination of witnesses;

(9) Division of the proceeding where practicable into two or more phases for separate simultaneous hearings;

(10) Fixing dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing;

(11) Order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible; and

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he/she is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993]

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of

§ 3001.26

39 CFR Ch. III (7-1-03 Edition)

this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

[65 FR 6543, Feb. 10, 2000]

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other par-

ticipant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall file the answers in conformance with §§3001.9 through 3001.12 within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order