

(b) If the request for issuance of a subpoena is granted, the "Original" and "Duplicate" copies of the subpoena are returned to the person who submitted the request. The "Triplicate" copy is retained for the Commission's files.

(c) The "Original" copy of the subpoena includes a form for proof of service. This form is to be executed by the person who effects service and returned by him to the Secretary of the Commission or, if so directed on the subpoena, to the official before whom the person named in the subpoena is required to appear.

(d) The "Duplicate" copy of the subpoena shall be served upon the person named therein and retained by him. This copy should be presented in support of any claim for witness fees or mileage allowances for testimony on behalf of the Commission.

#### § 1.339 Witness fees.

Witnesses who are subpoenaed and respond thereto are entitled to the same fees, including mileage, as are paid for like service in the courts of the United States. Fees shall be paid by the party at whose instance the testimony is taken.

#### § 1.340 Attendance of witness; disobedience.

The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpoena, the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

### EVIDENCE

#### § 1.351 Rules of evidence.

Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings. Such rules may be relaxed if the ends of justice will be better served by so doing.

#### § 1.352 Cumulative evidence.

The introduction of cumulative evidence shall be avoided, and the number of witnesses that may be heard in behalf of a party on any issue may be limited.

#### § 1.353 Further evidence during hearing.

At any stage of a hearing, the presiding officer may call for further evidence upon any issue and may require such evidence to be submitted by any party to the proceeding.

#### § 1.354 Documents containing matter not material.

If material and relevant matter offered in evidence is embraced in a document containing other matter not material or relevant, and not intended to be put in evidence, such document will not be received, but the party offering the same shall present to other counsel, and to the presiding officer, the original document, together with true copies of such material and relevant matter taken therefrom, as it is desired to introduce. Upon presentation of such matter, material and relevant, in proper form, it may be received in evidence, and become a part of the record. Other counsel will be afforded an opportunity to introduce in evidence, in like manner, other portions of such document if found to be material and relevant.

#### § 1.355 Documents in foreign language.

Every document, exhibit, or other paper written in a language other than English, which shall be filed in any proceeding, or in response to any order, shall be filed in the language in which it is written together with an English translation thereof duly verified under oath to be a true translation. Each copy of every such document, exhibit, or other paper filed shall be accompanied by a separate copy of the translation.

#### § 1.356 Copies of exhibits.

No document or exhibit, or part thereof, shall be received as, or admitted in, evidence unless offered in duplicate. In addition, when exhibits of a

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documentary character are to be offered in evidence, copies shall be furnished to other counsel unless the presiding officer otherwise directs.

#### **§ 1.357 Mechanical reproductions as evidence.**

Unless offered for the sole purpose of attempting to prove or demonstrate sound effect, mechanical or physical reproductions of sound waves shall not be admitted in evidence. Any party desiring to offer any matter alleged to be contained therein or thereupon shall have such matter typewritten on paper of the size prescribed by § 1.49, and the same shall be identified and offered in duplicate in the same manner as other exhibits.

#### **§ 1.358 Tariffs as evidence.**

In case any matter contained in a tariff schedule on file with the Commission is offered in evidence, such tariff schedule need not be produced or marked for identification, but the matter so offered shall be specified with particularity (tariff and page number) in such manner as to be readily identified, and may be received in evidence by reference subject to check with the original tariff schedules on file.

#### **§ 1.359 Proof of official record; authentication of copy.**

An official record or entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by the judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary

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of embassy or legation, consul general, consul, vice consul, or consular agent, or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

#### **§ 1.360 Proof of lack of record.**

The absence of an official record or entry of a specified tenor in an official record may be evidenced by a written statement signed by an officer, or by his deputy, who would have custody of the official record, if it existed, that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as provided in § 1.359. Such statement and certificate are admissible as evidence that the records of his office contain no such record or entry.

#### **§ 1.361 Other proof of official record.**

Sections 1.359 and 1.360 do not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

#### **§ 1.362 Production of statements.**

After a witness is called and has given direct testimony in a hearing, and before he is excused, any party may move for the production of any statement of such witness, or part thereof, pertaining to his direct testimony, in possession of the party calling the witness, if such statement has been reduced to writing and signed or otherwise approved or adopted by the witness. Such motion shall be directed to the presiding officer. If the party declines to furnish the statement, the testimony of the witness pertaining to the requested statement shall be stricken.

[33 FR 466, Jan. 12, 1968]

#### **§ 1.363 Introduction of statistical data.**

(a) All statistical studies, offered in evidence in common carrier hearing proceedings, including but not limited to sample surveys, econometric analyses, and experiments, and those parts of other studies involving statistical