

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 USC 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat 1070, as amended, 1077; 47 USC 201, 218, 226, 228 unless otherwise noted.

2. Section 64.1501(b) is revised to read as follows:

§ 64.1501 Definitions.

* * * * *

(b) *Presubscription or comparable arrangement* means an agreement to purchase information services evidenced by:

(1) A written contractual agreement (including one transmitted through electronic medium) between an information services provider and a legally competent individual that is executed for the sole purpose of arranging purchase of information services and is separate or easily severable from any promotions or inducements, and in which:

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer at least one billing cycle in advance of any future rate changes;

(iii) The consumer agrees to use the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers; or

(2) Disclosure of a pre-existing credit, prepaid account, debit, charge, or calling card number, along with authorization to bill that number: *Provided*, that an actual credit, charge, or calling card:

(i) Has, upon request or application, been delivered to the party to be billed prior to assessment of charges; and

(ii) Does not operate to assess charges through automatic number identification;

(3) *Provided*, that a presubscription arrangement to obtain information services provided by means of a toll-free number shall conform to the requirements of § 64.1504(c).

3. Section 64.1504 is amended by revising introductory text of paragraph (c) and paragraphs (d) and (e) to read as follows:

§ 64.1504 Restrictions on the use of toll-free numbers.

* * * * *

(c) The calling party or subscriber to the originating line being charged for information conveyed during the call unless:

* * * * *

(d) The calling party or subscriber to the originating line being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products; and

(e) The calling party or subscriber to the originating line being assessed by virtue of the caller being asked to connect or otherwise transfer to a pay-per-call or other information service, a charge for the call.

* * * * *

4. Section 64.1510 is amended by revising paragraph (c)(2) to read as follows:

§ 64.1510 Billing and collection of pay-per-call and similar service charges.

* * * * *

(c) * * *

(2) Clearly list the 800 or other toll-free number dialed in a location separate from local and long distance telephone charges.

[FR Doc. 96-19137 Filed 7-25-96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1104, 1111, 1112, 1113, 1114, 1115 and 1121

[STB Ex Parte No. 527]

Expedited Procedures For Processing Rail Rate Reasonableness, Exemption And Revocation Proceedings

AGENCY: Surface Transportation Board.

ACTION: Notice Of Proposed Rulemaking.

SUMMARY: Under new 49 U.S.C. 10704(d), enacted as part of section 102(a) of the ICC Termination Act of 1995 (ICCTA), the Surface Transportation Board (Board) is

required to establish procedures to expedite the handling of challenges to the reasonableness of railroad rates and of railroad exemption and revocation proceedings. This publication contains our proposed regulations.

DATES: Comments are due on August 21, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 527 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., NW., Washington, DC 20423. Parties are encouraged to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 927-7312. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The Board's decision discussing this proposal is available to all persons for a charge by calling DC NEWS & DATA INC. at (202) 289-4357. The Board certifies that the rules proposed, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed rules should result in easier and quicker discovery and record-building. The Board, however, seeks comments on whether there would be effects on small entities that should be considered. If comments provide information that there would be a significant effect on small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Parts 1104, 1112, 1113, 1114, and 1115

Administrative practice and procedure.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: July 18, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1104, 1111, 1112, 1113, 1114, 1115 and 1121 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 13702.

§ 1011.7 [Amended]

2. Section 1011.7 is amended as follows:

a. In paragraph (b)(1), remove the words "The Chairman of the Commission" and add in their place the words "The Commission (Board)".

b. Paragraph (b)(2) is removed.

PART 1104—FILING WITH THE BOARD-COPIES-VERIFICATIONS-SERVICE-PLEADINGS, GENERALLY

3. The heading of part 1104 is revised as set forth above.

4. The authority citation for part 1104 is revised to read as follows:

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; 49 U.S.C. 721.

5. Part 1104 is amended as follows:

§§ 1104.3—1104.8, 1104.10 and 1104.12—1104.14 [Amended]

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1104.3(a), 1104.3(b), 1104.4(b), 1104.5(b), 1104.6, 1104.7(b), 1104.8, 1104.10(a), 1104.10(b), 1104.12(a), 1104.12(b), 1104.13(a) and 1104.14(b).

§ 1104.3, 1104.6 and 1104.11 [Amended]

b. Remove the word "Commission's" and add the word "Board's" in the following sections: §§ 1104.3(b), 1104.6 and 1104.11.

§ 1104.1 [Amended]

c. Remove the words "Interstate Commerce Commission" and add the words "Surface Transportation Board" in § 1104.1(a).

§ 1104.3 [Amended]

6. Section 1104.3 is amended by adding the following sentence to the end of paragraph (a):

(a) * * * In addition to the paper copies required to be filed with the Board, 3 copies of: (1) Textual submissions of 20 or more pages and (2)

All electronic spreadsheets should be submitted on 3.5 inch, IBM compatible formatted diskettes or QIC-80 tapes. Textual materials must be in WordPerfect 5.1 format, and electronic spreadsheets must be in LOTUS 1-2-3 release 5 or earlier format.

* * * * *

7. In § 1104.15, paragraph (a) is revised to read as follows:

§ 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 853a.

(a) An individual who is applying in his or her name for a certificate, license or permit to operate as a rail carrier must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceeding under 49 U.S.C. 11323 and 11324 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

* * * * *

8. Part 1111 is revised to read as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.

1111.1 Content of formal complaints; joinder.

1111.2 Amended and supplemental complaints.

1111.3 Service.

1111.4 Answers and cross complaints.

1111.5 Motions to dismiss or to make more definite.

1111.6 Satisfaction of complaint.

1111.7 Investigations on the Board's own motion.

1111.8 Meeting to discuss procedural matters.

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail

rate, the complainant must file evidence on the absence of effective intramodal and intermodal competition with the complaint. The complainant also must make available to counsel for the defendant(s) all underlying workpapers and related documents supporting its market dominance evidence. In addition, the complainant should indicate in the complaint whether it intends to contest the rate level based on a constrained market pricing presentation and, if so, which of the constraints it will contend the railroad violated, or whether it intends to contest the rate level based on the procedures adopted pursuant to 49 U.S.C. 10701(d)(3).

(b) *Requests for oral hearing.* A formal complaint may include a request that the proceeding be handled either under the modified procedure or at oral hearing. A request for oral hearing should detail why oral hearing is required.

(c) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(d) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

§ 1111.2 Amended and supplemental complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5 of this part, as if the amended or supplemental complaint was an original complaint.

§ 1111.3 Service.

A complainant is responsible for serving formal complaints, amended or supplemental complaints, and cross complaints on the defendant(s). Service may be personal or by mail. Ten copies of the complaint should be filed with the Board together with an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to

which the papers were mailed or at which they were delivered, certified by the person who made service. If complainant cannot serve the complaint, an original of each complaint accompanied by a sufficient number of copies to enable the Board to serve one upon each defendant and to retain 10 copies in addition to the original should be filed with the Board.

§ 1111.4 Answers and cross complaints.

(a) *Generally.* An answer shall be filed within the time provided in paragraph (b) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition. Evidence supporting such a contention is due 45 days after the complaint is served or within such additional time as the Board may provide. In addition, if the defendant intends to reply to a complainant's evidence on the absence of effective intramodal or intermodal competition filed with the complaint, such a reply is due 45 days after the complaint is served or within such additional time as the Board may provide. The defendant also must make available to counsel for the complainant all underlying workpapers and related documents supporting its market dominance evidence. The complaint may reply to the defendants' product or geographic competition or revenue-variable cost evidence within 20 days after such evidence is filed with the Board or within such additional time as the Board may provide.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Board may provide. The original and 10 copies of an answer must be filed with the Board. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint shall be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

§ 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. At the time the answer is filed, if the defendant has reason to believe that the complaint or cross complaint should be dismissed, a motion to dismiss should be filed with the answer. If grounds for dismissing the complaint or cross complaint arise subsequent to the filing of the answer, a motion to dismiss shall be filed within 20 days of when the grounds arise. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

§ 1111.7 Investigations on the Board's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Board's own motion will be served by the Board upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

§ 1111.8 Meeting to discuss procedural matters.

Within 7 days after an answer to a complaint is filed, the parties shall meet, or discuss by telephone, discovery and procedural matters. Within 14 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

PART 1112—MODIFIED PROCEDURES

9. The authority citation for part 1112 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 701.

10. Part 1112 is amended as follows:

§§ 1112.1, 1112.4 and 1112.7 [Amended]

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1112.1, 1112.4(a), introductory text, and 1112.7.

§ 1112.1 [Amended]

b. Remove the word "Commission's" and add the word "Board's" in § 1112.1.

§ 1112.4 [Amended]

c. Section 1112.4 is amended by removing paragraph (c).

d. Section 1112.10 is revised to read as follows:

§ 1112.10 Requests for oral hearings and cross examination.

(a) *Requests.* Requests for oral hearings in matters originally assigned for handling under modified procedure must include the reasons why the matter cannot be properly resolved under modified procedure. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) *Disposition.* Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.

PART 1113—ORAL HEARING

11. The authority citation for part 1113 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

12. Part 1113 is amended as follows:

§§ 1113.1, 1113.2, 1113.4—1113.8, 1113.10, 1113.12, 1113.13, 1113.16—1113.11 [Amended]

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1113.1(a), 1113.2(a), 1113.2(b)(1), 1113.2(d), 1113.4(a), introductory text, 1113.4(b), 1113.5, 1113.6(b), 1113.7(e), 1113.8, 1113.10, 1113.12(a), 1113.12(b), 1113.13, 1113.16, 1113.17(b) and 1113.18(c).

§ 1113.1 [Amended]

b. In § 1113.1, paragraph (c)(3) is removed.

§ 1113.3 [Amended]

c. In § 1113.3, paragraph (b)(2), add a period after the word "complaint" and remove the remainder of the paragraph.

§ 1113.11 [Amended]

d. In § 1113.11, first sentence, remove the words "and in evidence" and add the words "in evidence and".

§ 1113.31 [Removed]

e. Section 1113.31 is removed.

PART 1114—EVIDENCE; DISCOVERY

13. The authority citation for part 1114 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

14. Subpart A is revised to read as follows:

Subpart A—General Rules of Evidence

Sec.

1114.1 Generally.

1114.2 Suspension of rules.

Subpart A—General Rules of Evidence**§ 1114.1 Generally.**

Unless a different requirement is imposed by these rules, the Board will follow the Federal Rules of Evidence and the Federal Rules of Civil Procedure used in United States district courts.

§ 1114.2 Suspension of rules.

In the interest of expediting a decision, or for other good cause shown, the Board may suspend the requirements or provisions of any of these rules in a particular case on application of a party or in its own motion and may order proceedings in accordance with its direction.

15. Subpart B is amended as follows:

§§ 1114.21, 1114.23, 1114.24, 1114.26, 1114.27, and 1114.31 [Amended]

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1114.21(c)(3), 1114.21(c)(9) and the concluding text, 1114.21(d), 1114.21(e), introductory text, 1114.23(b), 1114.23(c), 1114.23(d)(1), 1114.23(d)(2), 1114.24(b)(2), 1114.24(b)(3), 1114.24(d), 1114.24(h), 1114.26(a), 1114.27(b), 1114.31(a), 1114.31(b)(1), 1114.31(b)(2), 1114.31(c) and 1114.31(d).

§ 1114.31 [Amended]

b. Remove the word "Commission's" and add the word "Board's" in § 1114.31(b), introductory text.

§ 1114.21 [Amended]

c. In § 1114.21, paragraph (a)(1), remove the words "(except the review boards)".

§ 1114.26 [Amended]

d. In § 1114.26, paragraph (a), remove the second sentence.

§ 1114.26 [Amended]

e. In § 1114.26, paragraph (c), remove the words "In those proceedings not requiring a petition for interrogatories, and unless under special circumstances and for good cause," and capitalize the word "no".

§ 1114.27 [Amended]

f. In § 1114.27, paragraph (a), remove the third and last sentences.

§ 1114.27 [Amended]

g. In § 1114.27, paragraph (c), remove the words "In those proceedings not requiring a petition for requests for admission, and unless under special circumstances and for good cause shown," and capitalize the word "no".

§ 1114.31 [Amended]

h. In § 1114.31, paragraph (a), remove the last two sentences.

§ 1114.31 [Amended]

i. In § 1114.31, paragraph (b)(1), remove the words "49 U.S.C. 10321 (c)(3) and (d)(4)" and add in their place the words "49 U.S.C. 721 (c) and (d)".

16. The additions and revisions to subpart B are as follows:

a. Section 1114.21 is amended by revising paragraph (b) and adding a new paragraph (f) as follows:

§ 1114.21 Applicability; general provisions.

* * * * *

(b) *How discovery is obtained.* All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.

* * * * *

(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.

b. Section 1114.22 is revised to read as follows:

§ 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.

c. Section 1114.30 is revised to read as follows:

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served, but if the writings or data compilations include privileged or proprietary information or information the disclosure of which is proscribed by the Act, such writings or data compilations need not be produced under this rule but may be provided pursuant to § 1114.26(b) of this part; or

(2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) *Procedure.* Any request filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request should specify a reasonable time, place, and manner of making the inspection and performing the related acts.

d. Section 1114.31 is amended by adding a new paragraph (b)(2)(iv) and adding concluding text to paragraph (d) as follows:

§ 1114.31 Failure to respond to discovery.

* * * * *

(b) * * *

(2) * * *

(iv) In lieu of any of the foregoing orders, or in addition thereto, the Board shall require the party failing to obey the order or the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

* * * * *

(d) * * *. In lieu of any such order or in addition thereto, the Board shall require the party failing to act or the attorney advising that party or both to

pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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PART 1115—APPELLATE PROCEDURES

17. The authority citation for part 1115 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

18. Part 1115 is amended as follows:

§§ 1115.1, 1115.2 and 1115.5–1115.8 [Amended]

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1115.1(b), 1115.1(c), 1115.2(b)(2), 1115.2(g), 1115.5(a), 1115.5(b), 1115.6, 1115.7 and 1115.8.

§ 1115.1 [Amended]

b. In § 1115.1, paragraph (c), remove the words "Chairman of the Commission." at the end of the first sentence and add in their place the words "entire Board.".

§ 1115.7 [Amended]

c. In § 1115.7, remove the words "Interstate Commerce Commission" and add in their place the words "Surface Transportation Board".

19. The additions and revisions to part 1115 are as follows:

a. Section 1115.1, paragraph (a), is revised to read as follows:

§ 1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Board action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature. Abandonments and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR part 1152)

* * * * *

b. In § 1115.2, the introductory text and paragraph (e) are revised to read as follows:

§ 1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Commissioner or employee board.

* * * * *

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period

(not to exceed 20 days) the Board may authorize. Replies must be filed within 20 days of the date the appeal is filed.

* * * * *

c. Section 1115.3 is revised to read as follows:

§ 1115.3 Board actions other than initial decisions.

(a) A discretionary appeal of an entire Board action is permitted.

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

(c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date. On the day the action is served parties may initiate judicial review.

d. Section 1115.4 is revised to read as follows:

§ 1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of § 1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new

evidence, or substantially changed circumstances and must include a request that the Board make such a determination.

e. A new § 1115.9 is added to read as follows:

§ 1115.9 Interlocutory Appeals.

(a) Rulings of Board employees, including administrative law judges, may be appealed prior to service of the initial decision only if:

(1) The ruling denies or terminates any person's participation;

(2) The ruling grants a request for the inspection of documents not ordinarily available for public inspection and the requested documents are not otherwise subject to a protective order entered by the Board pursuant to 49 CFR 1114.21(c);

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

(4) The ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

(b) Any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. Replies to any interlocutory appeal shall be filed with the Board within three (3) business days after the filing of any such appeal.

20. Part 1121 is revised to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

Sec.

1121.1 Scope.

1121.2 Discovery.

1121.3 Content.

1121.4 Procedures.

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

§ 1121.1 Scope.

These procedures generally govern petitions filed under 49 U.S.C. 10502 to exempt a transaction or service from 49 U.S.C. subtitle IV, or any provision of 49 U.S.C. subtitle IV, or to revoke an exemption previously granted. These procedures also apply to notices of exemption.

§ 1121.2 Discovery.

Discovery may begin upon the filing of the petition for exemption or petition for revocation of an exemption. A party may begin discovery prior to filing a petition to revoke an exemption or a notice of exemption by filing a notice of intent to file a petition for revocation. Discovery shall follow the procedures set forth at 49 CFR part 1114, subpart B.

§ 1121.3 Content.

(a) A party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition.

(b) A petition must comply with environmental or historic reporting and notice requirements of 49 CFR part 1105, if applicable.

§ 1121.4 Procedures.

(a) Exemption proceedings are informal, and public comments are generally not sought during consideration of exemption petition proposals, except as provided in paragraph (d) of this section. However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption.

(b) If the Board determines that the criteria in 49 U.S.C. 10502 are met for the proposed exemption, it will issue the exemption and publish a notice of exemption in the Federal Register.

(c) If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions or if significant adverse impacts might occur if the proposed exemption were granted, the Board, in its discretion, may:

(1) Direct that additional information be filed; or

(2) Publish a notice in the Federal Register requesting public comments.

(d) Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.

(e) Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions to reopen under 49 CFR part 1115 or 49 CFR 1152.25(e) must be filed within 20 days of the service date.

(f) Petitions to revoke an exemption or the notice of exemption may be filed at any time. The person seeking revocation has the burden of showing that the revocation criteria of section 10502(d) have been met. A party seeking revocation of an exemption or a notice of exemption shall provide all of its supporting information at the time it files its petition.

(g) In abandonment exemptions, petitions to revoke in part to impose public use conditions under 49 CFR 1152.28, or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time prior to the consummation of the abandonment, except that public use conditions may not prohibit disposal of the properties for any more than the statutory limit of 180 days after the effective date of the decision granting the exemption.

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