

(c) *Court appointment* means an appointment in a criminal or civil case made by a court or administrative agency under a statute or court rule or practice.

#### **§ 1604.3 General policy.**

(a) A recipient shall adopt written policies governing the outside practice of law by full-time attorneys that are consistent with the applicable rules of professional responsibility.

(b) A recipient's policies may permit the outside practice of law by full-time attorneys only to the extent allowed by this part, but may impose additional restrictions as necessary to meet the recipient's responsibilities to clients.

(c) A recipient may also adopt policies that apply to outside practice by attorneys employed part-time by the recipient, but are not required to do so under the provisions of this part.

#### **§ 1604.4 Permissible outside practice.**

A recipient may permit a full-time attorney to engage in a specific case or matter that constitutes the outside practice of law if:

(a) The director of the recipient or the director's designee determines that representation in such case or matter is consistent with the attorney's responsibilities to the recipient's clients;

(b) Except as provided in § 1604.7, the attorney does not intentionally identify the case or matter with the Corporation or the recipient; and

(c) The attorney is—

(1) Newly employed and has a professional responsibility to close cases from a previous law practice, and does so on the attorney's own time as expeditiously as possible; or

(2) Acting on behalf of him or herself, a close friend, family member or another member of the recipient's staff; or

(3) Acting on behalf of a religious, community, or charitable group; or

(4) Participating in a *pro bono* or legal referral program affiliated with or sponsored by a bar association, other legal organization or religious, community or charitable group; or

(5) Satisfying an obligation to participate in *pro bono* work under applicable State or local rules or practices of professional responsibility.

#### **§ 1604.5 Compensation.**

(a) A recipient may permit a full-time attorney to seek and receive personal compensation for work performed pursuant to § 1604.4(c)(1).

(b) A recipient may permit a full-time attorney to seek and accept a fee paid by, awarded or approved by a court or administrative body or included in a settlement if—

(1) The attorney is acting pursuant to § 1604.4(c)(2) through (5);

(2) Subject to the applicable law and rules of professional responsibility, any such fees paid to the attorney are remitted to the recipient; and

(3) The fee is not deducted from the individual client's recovery of compensatory damages or retroactive benefits.

(c) From the fees remitted to the recipient pursuant to paragraph (b)(2) of this section, the recipient may reimburse any individual or organization for actual costs or out-of-pocket expenses incurred in the representation.

#### **§ 1604.6 Use of recipient resources.**

(a) For cases undertaken pursuant to § 1604.4(c)(1), a recipient's written policies may permit a full-time attorney to use *de minimis* amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

(b) For cases undertaken pursuant to § 1604.4(c)(2) through (5), a recipient's written policies may permit a full-time attorney to use limited amounts of the recipient's resources for permissible outside practice if necessary to carry out the attorney's professional responsibilities, as long as the recipient's Corporation or private funds are not used for any activities for which the use of such funds is prohibited.

#### **§ 1604.7 Court appointments.**

(a) A recipient may permit a full-time attorney to accept a court appointment if the director of the recipient determines that:

(1) Such an appointment or case is consistent with the attorney's responsibilities to the recipient's clients;

(2) The appointment was made and the attorney will receive compensation for the court appointment under the same terms and conditions as are applied generally to attorneys practicing in the court where the appointment is made; and

(3) Subject to the applicable law and rules of professional responsibility, the attorney agrees to remit to the recipient any compensation received.

(b) A recipient may permit a full-time attorney to use program resources to undertake representation pursuant to a court appointment.

(c) A full-time attorney may identify the recipient as his or her employer when engaged in representation pursuant to a court appointment.

(d) If, under the applicable State or local court rules or practices or rules of professional responsibility, legal services attorneys are mandated to provide *pro bono* legal assistance in addition to the attorneys' work on behalf of the recipient's clients, such legal assistance shall be treated in the same manner as court appointments under paragraphs (a)(1), (a)(3), (b) and (c) of this section.

**Victor M. Fortunato,**

*Vice President for Legal Affairs and General Counsel.*

[FR Doc. 02-23089 Filed 9-10-02; 8:45 am]

BILLING CODE 7050-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

#### **49 CFR Part 1002**

[STB Ex Parte No. 542 (Sub-No. 4)]

### **Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees**

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Board proposes to: establish 22 fees for services for which no fee currently is assessed; raise the below-cost fee that currently applies to six fee items; update fees for nine existing fee items; and amend, renumber and delete certain rules to conform to existing and proposed fee collection policies and processes. The Board proposes these changes under the Independent Offices Appropriations Act and OMB Circular A-25, User Fees. We request comments on these proposals.

**DATES:** Comments are due on October 11, 2002.

**ADDRESSES:** Send comments (an original plus 10 copies) referring to *Ex Parte* No. 542 (Sub-No. 4) to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan (202) 565-1727 or David T. Groves (202) 565-1551. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877-8339.)

**SUPPLEMENTARY INFORMATION:** The Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by Federal agencies. Under the IOAA, agencies are

required to ensure that “\* \* \* each service or thing of value provided by an agency \* \* \* to a person \* \* \* be self-sustaining to the extent possible.” 31 U.S.C. 9701(a). Office of Management and Budget (OMB) Circular No. A–25 User Fees, revised July 8, 1993 (Circular A–25), establishes federal policy regarding fees assessed for government services pursuant to the IOAA. Circular A–25 states that the general policy of the federal government is that “[a] user charge will be assessed against each identifiable recipient for special benefits derived from federal activities beyond those received by the general public.” Circular A–25, section 6.

Pursuant to these directives, the Board is proposing to establish 22 new fees to cover services and activities that have not previously been included in the Board’s user fee regulations, including a catch-all “basic” fee for STB adjudicatory services not already covered by a specific fee. Specifically, the Board proposes to establish new fees to cover the following services, which confer special benefits on identifiable recipients. Under section 1002.1, we propose to charge a fee for courier services involved in retrieval of off-site agency records [rule 1002.1(e)]. Under section 1002.2, we propose to charge fees to address: petitions for exemption, and petitions to revoke exemptions, under 49 U.S.C. 13541 [fee items (f)(2)(ii) and (iii)]; requests for dispute determinations under 49 U.S.C. 10901(d) [fee item (f)(12)(iv)]; requests to extend trail use negotiation periods [fee item (f)(27)(ii)]; requests for waiver or clarification of Board regulations in major rail finance transactions under 49 U.S.C. 11323, and in other cases not otherwise covered [fee items (f)(38)(vii)–(41)(vii) and (f)(65), respectively]; formal complaints by small shippers in rail maximum rate cases [fee item (f)(56)(ii)]; requests for orders compelling a carrier to file a common carrier rate [fee item (f)(56)(v)]; appeals from procedural and discovery rulings [fee items (f)(61)(ii) and (f)(64)(iii), respectively]; requests for expedited relief under 49 CFR parts 1146 and 1147 [fee items (f)(63)(i) and (ii), respectively]; motions to compel discovery [fee items (f)(64)(i) and (ii)]; requests to use voting trust agreements [fee items (f)(86)(ii) and (iii)]; and a catch-all, basic fee for STB adjudicatory services not otherwise covered [fee item (f)(88)].

The Board currently assesses a below-full cost fee of \$150 (comparable to the fee for filing a matter with a court system) for six fee items, specifically: trail use requests [fee item (f)(27)]; Amtrak conveyance proceedings [fee

item (f)(47)]; Amtrak compensation proceedings [fee item (f)(48)]; labor arbitration proceedings [fee item (f)(60)]; appeals to Board decisions and petitions to revoke exemptions [fee item (f)(61)]; and motor carrier undercharge proceedings [fee item (f)(62)]. We propose to raise this fee to the basic fee level of \$200 to better reflect Board costs.

Cost data for the above proposed fees are based on contemporaneous time and motion studies for some fee items, based on after-the-fact interviews with staff involved in the proceedings for other fee items, and, for a few fee items, based on what we believe are conservative projections by informed staff.

Finally, the Board proposes to amend several fee regulations to accomplish the following: (1) Reflect current business practices with respect to fee processing; (2) permit use of the billing account system to collect fees for documents filed for recording under 49 U.S.C. 11301; (3) change the process for handling fee waiver requests; (4) update two fees previously overlooked; (5) revise three fee items; and (6) delete a few obsolete regulations. The proposed regulations are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b) we certify that the proposed rules will not have a significant economic impact on a substantial number of small entities. The economic impact of the proposed fees will not be significant because the Board fee would represent only a small portion of the overall cost of the related endeavor. Moreover, few small entities avail themselves of the services to which the proposed fees apply. Finally, the Board’s regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

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

Additional information is contained in the Board’s decision. To obtain a free copy of the full decision, visit the Board’s website at <http://www.stb.dot.gov>; call the Board’s Information Officer at (202) 565–1674; or pick up in person from the Information Officer, Suite 100, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. To purchase a copy of the decision, write to, call, email, or pick up in person from Dã-2-Dã Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293–7776, [da2dalegal@earthlink.net](mailto:da2dalegal@earthlink.net). [Assistance for the hearing impaired is available

through Federal Information Relay Services (FIRS): (800) 877–8339.]

## List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 28, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 49 CFR part 1002 as follows:

## PART 1002—FEES

1. The authority citation for part 1002 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553, 31 U.S.C. 9701, and 49 U.S.C. 721.

Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

2. Amend section 1002.1 as follows:
  - a. Redesignate paragraphs (e) through (h) as paragraphs (f) through (i);
  - b. Remove newly redesignated paragraph (f)(2) and designate newly redesignated paragraph (f)(3) as paragraph (f)(2);
  - c. Add new paragraph (e) and revise newly redesignated paragraphs (g)(7), (g)(8) and (h) to read as follows:

### § 1002.1 Fees for records search, review, copying, certification, and related services.

\* \* \* \* \*

(e) Fees for courier services to transport agency records to provide on-site access to agency records stored off-site will be set at the rates set forth in the Board’s agreement with its courier service provider. Rate information is available on the Board’s website (<http://www.stb.dot.gov>), or can be obtained from the Board’s Information Officer, Suite 100, Surface Transportation Board, Washington, DC 20423–0001.

\* \* \* \* \*

(g) \* \* \*

(7) The fee for photocopies shall be \$1.00 per letter or legal size exposure with a minimum charge of \$5.00.

(8) The fees for ADP data are set forth in paragraph (f) of this section.

\* \* \* \* \*

(h) Fees for services described in paragraphs (a) through (g) of this section may be charged to accounts established in accordance with 49 CFR 1002.2(a)(2), or paid for by check, money order, currency, or credit card in accordance with 49 CFR 1002.2(a)(3).

\* \* \* \* \*

3. Amend section 1002.2 as follows:

a. From paragraph (g)(1)(ii) remove "\$6.00" and in its place add "\$20.00";

b. Remove paragraph (f)(78)(ii) and redesignate paragraph (f)(78)(i) as paragraph (f)(78);

c. Revise the last sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (b), and paragraphs (f)(2), (f)(27), (f)(47), (f)(48), (f)(56), (f)(60) through (f)(62), (f)(86), (f)(98), (f)(100) and (f)(101).

d. Add paragraphs (f)(12)(iv), (f)(38)(vii), (f)(39)(vii), (f)(40)(vii),

(f)(41)(vii), (f)(63) through (f)(65), and (f)(88).

The added and revised text is set forth as follows:

**§ 1002.2 Filing fees.**

(a) \* \* \*

(1) \* \* \* Filing fees for tariffs, including schedules, and contract summaries, including supplements (Item 78), and filing fees for documents submitted for recording (Item 83) may be charged to accounts established by the Board in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* Form STB-1032 must be submitted to the Board's Section of Financial Services to establish STB billing accounts for filing fees for tariffs and for documents submitted for recording.

\* \* \* \* \*

(b) Any filing, other than a tariff filing, that is not accompanied by the appropriate filing fee, payment via credit card or STB billing account, or a request for waiver of the fee, is deficient. \* \* \*

\* \* \* \* \*

(f) *Schedule of filing fees.*

Type of proceeding	Fee
(2)(i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303 .....	1,500
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered .....	2,300
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d) .....	1,900
(12) * * *	
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10901(d) .....	10,100
(27)(i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d) .....	200
(ii) A request to extend the period for negotiation of a trail use agreement .....	300
(38) * * *	
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) .....	3,800
(39) * * *	
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) .....	3,800
(40) * * *	
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) .....	3,800
(41) * * *	
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a) .....	3,800
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562 .....	200
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act .....	200
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1) .....	61,400
(ii) A formal complaint involving rail maximum rates filed by a small shipper .....	150
(iii) All other formal complaints (except competitive access complaints) .....	6,000
(iv) Competitive access complaints .....	150
(v) A request for an order compelling a carrier to file a common carrier rate .....	200
(60) A labor arbitration proceeding .....	200
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d) .....	200
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings .....	250
(62) Motor carrier undercharge proceeding .....	200
(63) Expedited relief for service inadequacies:	
(i) A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency .....	200
(ii) A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy .....	200
(64) Discovery:	
(i) A motion to compel discovery in formal complaint proceedings under 49 U.S.C. 10704(c)(1) .....	2,300
(ii) A motion to compel discovery in all other proceedings .....	950
(iii) An appeal of discovery ruling .....	2,100
(65) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a) .....	400

Type of proceeding	Fee
(86) Informal opinions:	
(i) A request for an informal opinion not otherwise covered .....	1,100
(ii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) in connection with a major financial proceeding as defined at 49 CFR 1180.2(a) .....	3,500
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered .....	350
(88) Basic fee for STB adjudicatory services not otherwise covered .....	200
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Board or State proceeding that:	
(i) Does not require a FEDERAL REGISTER notice:	
(A) Set cost portion .....	100
(B) Sliding cost portion .....	1 <sup>32</sup>
(ii) Does require a FEDERAL REGISTER notice:	
(a) Set cost portion .....	300
(b) Sliding cost portion .....	32
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual .....	50
(ii) Updated URCS PC version Phase III cost file—per year .....	25
(iii) Public requests for <i>Source Codes</i> to the PC version URCS Phase III .....	100
(101) Carload Waybill Sample data or recordable disk (R-CD):	
(i) Requests for Public Use File on R-CD—per year .....	250
(ii) Waybill—Surface Transportation Board or State proceedings on R-CD—per year .....	500
(iii) User Guide for latest available Carload Waybill Sample .....	50
(iv) Specialized Programming for Waybill requests to the Board .....	2 <sup>76</sup>

<sup>1</sup> Per party.<sup>2</sup> Per hour.

[FR Doc. 02–22918 Filed 9–10–02; 8:45 am]

BILLING CODE 4915–00–P

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****49 CFR 1109 and 1114****[STB Ex Parte No. 638]****Procedures To Expedite Resolution of Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology****AGENCY:** Surface Transportation Board, Transportation.**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Board proposes to amend its regulations at parts 1109 and 1114 to expedite the resolution of rate challenges considered under the stand-alone cost (SAC) methodology. We are proposing to change both our discovery standard and the way we handle discovery disputes in rate cases considered under the SAC methodology. We are also proposing to institute a requirement that a shipper seeking rate relief from a railroad in such cases

engage in non-binding mediation of its dispute with the railroad prior to filing its complaint with us. We request comments on these proposals.

**DATES:** Comments are due October 11, 2002, with reply comments due 20 days thereafter.

**ADDRESSES:** Send comments (an original plus 10 copies) referring to *Ex Parte* No. 638 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Stilling (202) 565–1567. [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov); call the Board's Information Officer at (202) 565–1674; or pick up in person from the Information Officer, Suite 100, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from Dã-2-Dã Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293–7776,

[da2dalegal@earthlink.net](mailto:da2dalegal@earthlink.net). [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877–8339.]

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

We tentatively conclude that our action will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**List of Subjects in 49 CFR Parts 1109 and 1114**

Practice and procedure, Railroads.

Decided: September 3, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

**Vernon A. Williams,**  
*Secretary.*

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend 49 CFR parts 1109 and 1114 as follows:

**PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY**

Add new § 1109.4, *Mandatory Mediation in Rate Cases To Be*