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SERVICE DATE – AUGUST 29, 2002

SURFACE TRANSPORTATION BOARD

DECISION

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

REGULATIONS GOVERNING FEES FOR SERVICES PERFORMED  
IN CONNECTION WITH LICENSING AND RELATED SERVICES—2002 NEW FEES

Decided: August 28, 2002

The Surface Transportation Board (Board) proposes to amend its regulations at 49 CFR part 1002 to accomplish the following: (1) establish 22 new fees for services provided by the Board for which no fee currently exists, including a catch-all, "basic" fee for STB adjudicatory services not covered by a specific fee item; (2) raise the below-cost fee assessment that currently applies to six fee items; (3) update fees for nine existing fee items; and (4) amend, renumber and delete certain rules to clarify the applicability and scope of certain fee items and to reflect current and proposed fee and billing practices and tariff requirements.

**PROPOSED NEW FEE ITEMS**

The Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), is the basis for user fees charged by federal government agencies such as the Board. 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), 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.

Board staff have identified a number of services that confer special benefits and that the Board has been providing to identifiable recipients without charge. Staff have also identified two types of Board proceedings arising out of a rulemaking that confer special benefits on identifiable recipients that were not provided previously.<sup>1</sup> Finally, staff have suggested a catch-all, “basic fee,” which would apply to STB adjudicatory services not covered by an existing fee. We have cost data to serve as the basis

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<sup>1</sup> Expedited Relief for Service Inadequacies, STB Ex Parte No. 628 (STB served Dec. 21, 1998) (63 FR 71396, Dec. 28, 1998).

to calculate fees for these services. We propose that fees be assessed for these services, and request comment.<sup>2</sup>

Cost data for one fee item are based on rates related to the Board's contract with its courier service provider. Cost data for several proposed fees are based on time and motion studies conducted during the pendency of proceedings covered by the fee items. Cost data for other proposed fees are based on time and motion studies conducted after-the-fact and based on reviews of the procedures and recollection of the time spent handling the items by appropriate personnel. Finally, cost data for a few proposed fees are not supported by specific past experience, but are based on cost projections arrived at by reviewing the procedures and estimating the time reasonably expected to be spent handling the items by appropriate personnel. Complete cost study data for 20 of the proposed fees and three revised existing fee categories are presented in **APPENDIX A**.<sup>3</sup> Cost study results for the 20 proposed and nine revised fee items and the equation that is the basis for one fee are set forth in **APPENDIX B**.<sup>4</sup> The proposed amendments to the Board's regulations at 49 CFR part 1002 are set forth in **APPENDIX C**.

Outlined below is our discussion of each proposed new fee item. The discussion will refer to each new fee item as it appears in our proposed amendments to 49 CFR 1002.1 and 1002.2(f), as set forth in **APPENDIX C**.

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<sup>2</sup> In *Report on Surface Transportation Board's User Fees*, No. CE-1999-021, dated Nov. 17, 1998, the U.S. Department of Transportation Office of Inspector General recommended that, in addition to the 114 fee items then in place, the Board identify any additional services for which no fee was assessed and establish fees for those services. After compiling over time as much data as could be obtained, we are proposing new fees here in response to the Inspector General's recommendation.

<sup>3</sup> The current rate information for the proposed courier service fee is set forth in the body of this decision and not in an appendix.

<sup>4</sup> The appendices differ. **APPENDIX A** describes only cost data, while **APPENDIX B** describes the number of observations for each fee item, the direct labor and fully distributed cost, the current and proposed fee, and the history of each fee item.

**49 CFR 1002.1(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 ([www.stb.dot.gov](http://www.stb.dot.gov)), or can be obtained from the Board's Information Officer, Suite 100, Surface Transportation Board, Washington, DC 20423-0001.**

The Board regularly receives requests to inspect and copy agency records that are stored off-site, currently at the Federal Records Center (FRC) in Suitland, Maryland. Persons needing access to off-site records may either: (1) have Board staff arrange for them to view and copy the records at the storage facility, or (2) have Board staff arrange to have the records brought to the Board's offices for viewing and copying. The Board uses a courier service to retrieve and return records stored off-site, and the Board pays for the service. We propose to pass along to the record requesters the courier costs incurred by the Board because the record requesters receive the special benefit of having off-site records made available at the Board.

We propose to base the fee for this service upon the rates contained in the Board's agreement with its courier service provider, and we propose to assess the total courier fee at the time the record request is made. Typical rates include: (1) a per box charge for each trip (all records are indexed and stored in uniform boxes); (2) a trip charge to transport the box(es) from the storage site to the Board; (3) a trip charge to transport the box(es) from the Board back to the storage site; and (4) a surcharge for rush service, if requested. Rates under the Board's current contract for trips to and from Suitland are as follows: \$2 per box; \$16 per trip; \$12 rush service surcharge; and \$24 ASAP service surcharge. Because the Board consolidates return trips to the FRC, we propose to charge only one-half of the return trip fee for each record request. Thus, the fee assessed to retrieve two boxes of records would be as follows:

Retrieval fee:	$\$16 + (2 \times \$2) = \$20$
Return fee:	$\$8 + (2 \times \$2) = \$12$
Total fee:	\$32

Because service providers and their rates may change over time, rather than a codification of rates by the Board, information on the charges in effect at the time would be available at the Board's website ([www.stb.dot.gov](http://www.stb.dot.gov)), or could be obtained from the Board's Information Officer.

**Fee Item (2)(ii) - A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.**

This fee item in the amount of \$2,300 would apply to petitions filed under section 13541 to exempt persons, transactions, or services from regulation under title 49, subtitle IV, part B, which

governs motor carriers, water carriers, brokers and freight forwarders. The Board has processed a number of petitions filed under section 13541 seeking exemption from 49 U.S.C. 14303, which governs proposals to consolidate, merge, or acquire control of motor passenger carriers. Fees are warranted for petitions for exemption filed under section 13541 because the parties have the special benefit of being able to carry out specific transactions without having to seek authorization through the filing of an application.

Cost study data for this fee item are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney, and Review. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on cost data reported during the pendency of proceedings.

**Fee Item (2)(iii) - A petition to revoke an exemption under 49 U.S.C. 13541(d).**

This fee item in the amount of \$1,900 would apply when a party seeks to revoke an exemption granted under section 13541. In this type of appellate proceeding, the filing party receives the special benefit of another opportunity to persuade the Board to render a decision that satisfies the filer's interest in the proceeding.

The Board has received no filings under section 13541(d). Until cost data can be provided for this activity, we propose to apply the cost for rail petitions to revoke filed under 49 U.S.C. 10502(d), currently fee item (61), and rail petitions for exemption [fee item (46)], adjusted to reflect the same cost relationship for section 13541 (non-rail) petitions for exemption and revocation as for section 10502 (rail) petitions for exemption and revocation:

$$\frac{\text{Fee Item (46)–Rail petition for exemption}}{\text{Fee Item (61)–Rail petition to revoke}} = \frac{\text{Fee Item (2)(ii) - Non-Rail pet. for exemption}}{\text{Fee Item (2)(iii) - Non-Rail pet. to revoke}}$$

or

$$\frac{\$5,578.54}{\$4,571.35} = \frac{\$2,316.13}{\$1,897.96}$$

We believe this approach is appropriate because we expect that Board efforts for non-rail cases would be consistent with our experience in the rail area and because sections 13541(d) and 10502(d) provide virtually the same criteria for revocation of an exemption. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost data.

**Fee Item (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).**

49 U.S.C. 10901(d) provides that when a certificate has been issued by the Board under section 10901 authorizing the construction or extension of a railroad line, no carrier may block the authorized construction or extension by refusing to permit the carrier to cross its property if the construction and subsequent operation do not interfere with the operation of the crossed line and the owner of the crossed line is compensated. If the parties cannot agree on the terms of operation or the amount of payment, either party may ask the Board to resolve the matter. The party that submits the dispute to the Board receives the special benefit of having the Board resolve the matter within the 120-day period provided in the statute.

Cost study data for this fee item in the amount of \$10,100 are based on contemporaneous time and motion studies. A single fee would apply to each filing submitted for Board resolution whether the terms of operation, amount of payment, or both are at issue.

**Fee Item (27)(ii) - A request to extend the time to negotiate a trail use agreement.**

This fee item would apply to the numerous requests received by the Board to extend the time to negotiate a trail use agreement with a railroad to acquire or use a right-of-way for interim trail use and rail banking. Trail use conditions normally are imposed for a period of 180 days and have the effect of postponing the effective date of abandonment and, in turn, preserving the integrity of the rail right-of-way pending negotiation of an agreement and for the duration of the trail use agreement itself. It is not uncommon for negotiating parties to need more time than the initial 180 days to reach an agreement; indeed, in some cases there have been several extensions of the negotiation period. It is appropriate to charge a fee to handle such extension requests, and we propose to charge a fee each time one is filed. With each request the filer has the special benefit of further postponement of abandonment and additional time to reach a trail use agreement.

Cost study data for this fee item in the amount of \$300 are based on numerous time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney, and Review.<sup>5</sup> This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost data.

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<sup>5</sup> We note that this proposed fee is set at the full-cost level of \$300, which is higher than the current below-full-cost fee (\$150) or proposed below-full-cost fee (\$200) that applies to the initial trail use condition request.

**Fee Items (38)(vii) - (41)(vii) - Requests for waiver or clarification of regulations filed in major financial proceedings as defined at 49 CFR 1180.2(a).**

These proposed fee items would apply to rail financial transactions regulated under 49 U.S.C. 11323 and 49 CFR part 1180 and classified as major transactions. In these proceedings, prior to filing an application, applicants may seek relief from and clarification of certain informational requirements that must be met in order for an application to be complete. The filer receives the special benefit of having the Board consider the request for relief and, in most cases, the special benefit of being relieved of informational requirements that otherwise would apply.<sup>6</sup>

Cost study data for these fee items in the amounts of \$3,800 are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control and Paralegal/Attorney. These fee items will be included in the Board's next time and motion study to determine whether they should be adjusted based on contemporaneous cost data.

**Fee Item (56)(ii) - A formal complaint involving rail maximum rates filed by a small shipper.**

This proposed fee item would apply to formal complaints involving rail maximum rates filed by a small shipper. The proposed fee in the amount of \$150 is based on legislation introduced by Senator Rockefeller on June 26, 2001, providing that the Board may not charge a fee greater than the fee charged by district courts of the United States for a comparable filing.<sup>7</sup>

By way of background, in 1984, the Board's predecessor agency, the Interstate Commerce Commission (ICC), adopted a fee of \$500 for all complaints, reduced from the proposed fee of \$2,300, the former covering direct labor costs but not overhead costs. In 1988, the fee for complaints was proposed to be raised to \$5,200 to cover full costs, but a \$500 fee was adopted and the ICC announced that it would defer any proposal to increase the fee pending completion of further fee studies. In 1989, the fee was reset at \$500 to reflect the new approach of setting the fee at 10 percent of full cost, with annual review and consideration of 10 percent increases until full cost was reached. The fee was raised accordingly to \$550 in 1990 and to \$600 in 1991. In 1992, the ICC proposed to raise the fee to \$5,900 to cover full cost, but it adopted a \$1,000 fee out of concern over the possible chilling effect of a higher fee. The ICC indicated it would continue to gather cost data with a view to

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<sup>6</sup> The Board is proposing new fee item (65) to cover requests for waiver or clarification in all other types of proceedings except waiver requests in abandonment proceedings, which are governed by existing fee item (24).

<sup>7</sup> S. 1103, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. §201 (2001). This bill is cosponsored by Senators Burns, Dorgan, and Dayton.

raising the complaint fee, and might consider the possibility of dividing complaint proceedings into separate subcategories; but the ICC was abolished before the process was completed.<sup>8</sup>

In 1996, the Board proposed to assess two separate complaint fees based on case type. Using cost study data that showed dramatic increases in rail maximum rate case costs, the Board proposed a fee of \$233,200 for formal complaint cases filed under the coal rate guidelines and a fee of \$23,100 for all other formal complaints, with a commitment to continuing to gather additional cost data to support future adjustments. Thereafter, we tentatively concluded that filing fees for formal complaints should be increased, but that to soften the impact of the proposed increase, we should gradually increase the fee over a period of years. We decided to apply the prior policy of setting the fee at 10 percent of the fully distributed cost, and increase the fees annually by 10 percent of the fully distributed cost until the fully distributed cost level was achieved. However, the existing fee of \$1,000 was maintained for all complaints pending the on-going legislative debate regarding fees for formal complaints. Following enactment of the Federal Aviation Administration Authorization Act of 1996, Pub. L. 104-264, 110 Stat. 3213 (Oct. 9, 1996) (F4A), and in accordance with language contained in section 1219, the Board maintained for several years the \$1,000 fee for complaints filed by small shippers in connection with rail maximum rates.<sup>9</sup> During the two-year period of the \$1,000 fee, no complaints were filed. The \$1,000 fee was stricken from the fee schedule in 1999, in accordance with the timetable set forth in the F4A. Given this history, we believe that the new proposed \$150 fee is not unreasonable.

**Fee Item (56)(v) - A request for an order compelling a carrier to file a common carrier rate.**

This proposed fee item would apply to shipper requests for an order from the Board compelling a carrier to file a common carrier rate. Under 49 CFR 1300.3, a shipper may request that a carrier establish a common carrier rate in the absence of an existing rate for particular transportation, consistent

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<sup>8</sup> In the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), Congress abolished the ICC, revised the Interstate Commerce Act, and transferred remaining rail regulatory responsibilities to the Board, effective January 1, 1996.

<sup>9</sup> For all other complaints, the Board relied on the full cost of \$233,200 for formal complaint cases filed under the coal rate guidelines, and the full cost of \$23,100 for all other formal complaints. With both fees set at 10 percent of the fully distributed costs, the fees adopted were \$23,300 and \$2,300, respectively, and the fees were to be increased by 10 percent each subsequent year until achieving the fully distributed cost level.

Applying this formula today, using a 20 percent of cost figure, a fee at \$61,400 is in place for coal rate guidelines cases and a fee of \$6,000 is in place for all other complaint cases, except those filed by small shippers in connection with rail maximum rates, for which there is currently no fee.

with the common carrier obligation in 49 U.S.C. 11101 and the obligation in 49 U.S.C. 10742 to provide interchange facilities. The carrier's duty to establish an appropriate rate was enforced in West Texas Utilities Company v. Burlington Northern Railroad Company, STB Docket No. 41191 (ICC served Aug. 24, 1994). There the carrier had not provided a rate specific to the traffic involved and the shipper had filed a rate reasonableness complaint against the class rate. In FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, STB Finance Docket No. 33467 (STB served Dec. 16, 1997), the shipper sought and was granted enforcement of the carrier's duty to provide a component of a through rate (specifically, a proportional rate to be used with a prior or subsequent movement under a contract rate).

Cost study data for this fee item are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney, Economic Analysis, and Review. The full cost for this fee item would be \$35,500 based on the cost studies conducted. However, we do not propose to set the fee at this level because the cost studies reflect the extensive effort involved in the Board's handling of novel issues in cases of first impression. Thus, the cases studied for cost data are tantamount to rulemaking proceedings involving the development of new policy with a broad public impact, and we do not expect that requests that may be filed in the future under this fee item will require the same level of effort required to develop the policies underlying this fee item. With respect to this proposed fee, as with other types of complaints, we must balance the IOAA's statutory requirement of full-cost recovery for services provided by the agency against the concerns that high fees would inhibit parties' ability to file matters with the Board. Until we obtain more cost data for this new type of filing, we propose to set the fee at the newly established "basic fee" level of \$200 discussed later in this decision. This fee will ensure that the Board receives some revenue for the special benefit to the filer of having the Board consider its request. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost data.

**Fee Item (61)(ii) - An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings.**

This proposed fee item would apply when a party appeals a ruling on a procedural matter, except discovery. The ruling appealed from may be one rendered by the entire Board, an individual Board member, an Administrative Law Judge, or any other decisional body acting under authority delegated by the Chairman or the Board. The filer would receive the special benefit of having the Board take a second look at the procedural matters at issue.

Cost study data for this fee item in the amount of \$250 are based on projected time and motion estimates that included minimal direct labor costs for Case Control, Paralegal/Attorney, and Review

time. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost data.<sup>10</sup>

**Fee Item (63)(i) - Expedited relief under 49 U.S.C. 11123 and 49 CFR Part 1146 for service emergency.**

In Expedited Relief for Service Inadequacies, *supra*, the Board adopted final rules establishing procedures at 49 CFR part 1146 for obtaining localized temporary alternative rail service when there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service by the incumbent carrier. This proposed fee would apply to proceedings conducted under rules codified at part 1146, which apply to requests for expedited, short-term emergency relief under section 11123. Under section 11123, the Board may direct the handling of rail traffic and the use of rail facilities for a limited period of time when there is an "emergency situation" causing "substantial adverse effects on shippers," or "on rail service in a region" of the country, or when a rail carrier "cannot transport the traffic offered to it in a manner that properly serves the public." The filer in these proceedings would receive the special benefit of obtaining immediate, temporary relief for serious service emergencies.

Cost study data for this fee item are based on projected time and motion estimates that include direct labor costs for Case Control, Paralegal/Attorney, Economic Analysis, Operational Analysis, and Review time. A full-cost fee of \$12,800 results from our calculations. It is appropriate to charge a fee because the filer will receive the special benefit of having the Board consider its request to obtain appropriate relief from the Board. We do not propose, however, to charge the full-cost fee. With respect to this proposed fee, we again must balance the IOAA's statutory requirement of full-cost recovery for services provided by the agency with the concerns that high fees would inhibit parties' ability to request relief from the Board. The IOAA and Circular A-25 permit the setting of fees at less than full cost with justification. The emergency circumstances surrounding these filings and the temporary relief they offer persuade us to propose to charge only the "basic fee" of \$200 discussed later in this proceeding in order to receive some revenue for the special benefit to the filer of having the Board consider its request. This fee item will be included in the Board's next time and motion study to determine whether it should be further adjusted based on contemporaneous cost data.

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<sup>10</sup> Separate cost study data support current fee item (61) [appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d)], which is set below full cost, currently at \$150 and proposed to be increased to \$200 as fee item (61)(i) [appeal of a Surface Transportation Board decision on the merits, or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d)]. Proposed fee item (61)(ii) [appeal of a Surface Transportation Board decision on procedural matters except discovery rulings], on the other hand, is set at the full-cost level.

**Fee Item (63)(ii) - Temporary relief under 49 U.S.C. 10705 and 11102 and 49 CFR part 1147 for service inadequacy.**

In Expedited Relief for Service Inadequacies, *supra*, the Board adopted final rules, in addition to those found at 49 CFR part 1146, establishing procedures at 49 CFR part 1147 for obtaining localized temporary alternative rail service when there has been a substantial, measurable deterioration or other demonstrated inadequacy in rail service by the incumbent carrier. This proposed fee would apply to proceedings conducted under rules codified at part 1147, which apply to requests for temporary alternative service under sections 10705 and 11102. Under section 10705, the Board has broad authority to prescribe alternative through routes when we “consider[] it desirable in the public interest.” Under section 11102, the Board may order the use of another carrier’s terminal facilities, or order switching arrangements, when we find such arrangements “to be practicable and in the public interest.” The filer in these proceedings would receive the special benefit of having the Board consider its request to impose appropriate temporary relief for serious service problems.

Cost study data for this fee item are based on projected time and motion estimates that include direct labor costs for Case Control, Paralegal/Attorney, Economic Analysis, Operational Analysis, and Review time. A full-cost fee of \$14,300 results from our calculations. It is appropriate to charge a fee because the filer will receive the special benefit of having the Board consider its request to obtain appropriate relief from the Board. As is the case with the part 1146 rules, however, we do not propose to charge the full-cost fee but rather the “basic fee” of \$200. This fee item will be included in the Board’s next time and motion study to determine whether it should be further adjusted based on contemporaneous cost data.

**Fee Item (64)(i) - A motion to compel discovery in formal complaint proceedings under 49 U.S.C. 10704(c)(1).**

This proposed fee item would cover carrier and shipper motions to compel discovery in complaint cases where the coal rate guidelines apply and voluminous discovery materials are generated. Motions to compel are not a prerequisite to any type of discovery; they are necessary only when a party refuses to comply with a discovery request. However, when filed in these cases, the resolution of a motion to compel consumes substantial staff effort. While the Board occasionally retains an Administrative Law Judge (ALJ) from another agency to rule on discovery matters in these cases, the Board itself has ruled on many such motions and, even where an ALJ is involved, the Board has been involved in preliminary handling of the matter.<sup>11</sup> The filer of such a motion receives the special benefit of a Board ruling on the discovery issues presented.

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<sup>11</sup> The Board reimburses the other agency for the ALJ’s services, but the reimbursement costs are not included in the data that support this proposed fee item.

Cost study data for this fee item in the amount of \$2,300 are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney and Review. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost study data.

As to this fee item, however, we are for the first time proposing a "fee-shifting" approach under which the party moving to compel discovery, if it is successful, would be reimbursed for its filing fee by the party against which discovery is sought. Although the IOAA does not expressly provide for fee-shifting, it does not prohibit it either, and we believe that ruling on motions to compel discovery, and thereby moving the Board's docket forward, does provide a regulatory benefit for each identifiable fee-payor, within the meaning of the IOAA. See Seafarers Intern. Union of No. Am. v. Coast Guard, 81 F.3d 179 (D.C. Cir. 1996); Ayuda, Inc. v. Attorney General, 848 F.2d 1297, 1300 (D.C. Cir. 1988).

We have expressed our concerns over the ways in which the discovery process can be used to obstruct the resolution of cases. See, e.g., Market Dominance Determinations--Product and Geographic Competition, STB Ex Parte No. 627 (STB served Dec. 21, 1998). The parties that are involved in our cases have expressed similar concerns. And even Congress, in 49 U.S.C. 10704(d), directed the Board to establish procedures for expediting the handling of rate cases that "include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings."

Establishment of a fee for a motion to compel discovery could discourage parties from working out discovery issues amicably, as one party might conclude that it might avoid complying with discovery if its opponent was unwilling to pay the filing fee. It would be inappropriate to set up a fee system that could have the effect of discouraging parties from working out their discovery issues themselves, and that could reward behavior that we believe is counterproductive. And yet, under the IOAA, it does appear appropriate to charge a fee. Therefore, we are proposing to have the "losing" party (with respect to the motion to compel) bear the responsibility for the filing fee. We welcome comments on how we should address situations in which motions to compel are partially granted and partially denied.

**Fee Item (64)(ii) - A motion to compel discovery in all other proceedings.**

This proposed fee item would address motions to compel discovery in all cases except formal complaint cases under section 10704(c)(1). As noted with respect to complaints, motions to compel are not a prerequisite to any type of discovery; they are necessary only when a party refuses to comply with a discovery request. The filer of such a motion receives the special benefit of a Board ruling on the discovery issues it presents.

Cost study data for this fee item in the amount of \$950 are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney and

Review. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost study data.

We are also proposing a fee-shifting approach for this item, as we proposed for Item (64)(i).

**Fee Item (64)(iii) - An appeal of a discovery ruling.**

The proposed fee item would apply whenever a discovery ruling is appealed to the Board. The filer has the special benefit of having the Board take a second look at discovery issues.

Cost study data for this fee item in the amount of \$2,100 are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney and Review. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost study data.

**Fee Item (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).**

This proposed fee item would not apply to requests for waiver or clarification of Board regulations filed in abandonment or discontinuance proceedings or in major rail financial proceedings; existing fee item (24) (\$1,100) applies to the former, and proposed fee items (38)(vii) through (41)(vii) would apply to the latter. Proposed fee item (65) would apply to all other requests for waiver or clarification filed with the Board, except requests to waive filing fees, for which there is no fee at this time, either existing or proposed.<sup>12</sup> Filers have the special benefit of having the Board consider their request to be relieved from filing requirements that otherwise would apply and of being assured of precisely what information is required, and from whom, under our rules.

Cost study data for this fee item in the amount of \$400 are based on time and motion studies conducted after-the-fact. Direct labor costs were captured for Case Control, Paralegal/Attorney and

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<sup>12</sup> Under 49 CFR 1002.2(e), a person may request waiver or reduction of a filing fee. It is the general policy of the Board not to waive or reduce filing fees except where the filer shows that a waiver or a reduction is in the best interest of the public, or that payment of the fee would impose an undue hardship on the requestor. Under rule 1002.2(e)(1), filing fees are waived for matters filed by federal agencies or by certain state or local government entities. See Rules Governing Fees for Services Performed In Connection With Licensing and Related Services – Policy Statement, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000).

Review. This fee item will be included in the Board's next time and motion study to determine whether it should be adjusted based on contemporaneous cost study data.

**Fee Item (86)(ii) - Proposal to use a voting trust pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).**

This proposed fee item would cover proposals to use voting trusts pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) filed in connection with major rail control proceedings. In the past, the Board has permitted the use of voting trusts during the pendency of control applications, so long as the trust would not result in unlawful control. To facilitate the use of voting trusts, the Secretary of the Board has issued informal, non-binding opinion letters as to whether use of the voting trust would result in unauthorized control. In Major Rail Consolidation Proceedings, STB Ex Parte No. 582 (Sub-No. 1) (STB served June 11, 2001), 66 FR 32582 (June 15, 2001), we adopted rule 1180.4(b)(4)(iv) providing for a more formal and open process for applicants in major rail consolidations.<sup>13</sup> The filer receives the special benefit of a formal, binding agency ruling on whether the contemplated use of a trust would not result in unlawful control and would be consistent with the public interest. We propose a separate fee for reviews in major consolidation proceedings because they consume substantially more time than reviews of other voting trust agreements, which are discussed in the next fee item.

Cost study data for this fee item in the amount of \$3,500 are based on contemporaneous time and motion studies of the informal opinion process that include direct labor costs for Attorney/Paralegal time. Because the cost study data for this fee item are based on the informal opinion process, rather than the newly adopted formal process, and because the Board, under the new rule, also will make a public interest finding rather than only an unlawful control finding, this proposed fee underestimates the real cost to the Board of handling any filing under this fee item and will have to be reconsidered based on actual experience.

**Fee Item (86)(iii) - A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.**

This proposed fee item would apply to requests for informal opinions on voting trust agreements filed in connection with rail financial transactions not classified as major control transactions under 49 CFR 1180.2(a). Parties enter into voting trust agreements to avoid unauthorized control of a carrier pending a Board ruling on the related application. The filer receives the special benefit of an informal agency opinion on whether the voting trust agreement provides the insulation needed to preserve the independence of the trustee and, if warranted, suggestions on how to improve the document.

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<sup>13</sup> The rules governing the use of voting trusts in all other control transactions would remain unchanged and a separate fee would apply, as detailed in proposed fee item (86)(iii).

Cost study data for this fee item in the amount of \$350 are based on contemporaneous time and motion studies that include direct labor costs for Attorney/Paralegal time.

**Fee Item (88) - A basic fee for STB adjudicatory services not otherwise covered.**

This fee item would apply to filings requiring the Board to render adjudicatory services for matters not already covered by an existing fee item. While the Board has an extensive list of fee items, the list is not exhaustive. There are occasions when filings are received that are not covered by an existing fee item and require more than ministerial action on the part of the Board. We believe it is appropriate to collect fees for such occasional filings because the filer will receive the special benefit of having the Board consider the merits of the filing in an adjudicatory proceeding. We do not believe that we are foreclosed from establishing a catch-all fee merely because it will be applied to any manner of filing we might receive that requires the Board to take adjudicatory action. We are using the most conservative of cost estimates, which will permit us to cover minimal costs; we are certain that filings for which the basic fee is assessed will cost the Board more to process than we collect under the proposed fee.

The cost study data that support the proposed fee of \$200 include Case Control, Data Distribution, Clearance Unit, and Support Staff time handling an average number of filings and decisions for typical recent select case types.<sup>14</sup> Cost data also have been included to reflect minimal Attorney/Paralegal (2 hours) and Review (30 minutes), and applying average, rounded-downgrades and steps of appropriate staff.

This fee item will be included in the Board's next time and motion study to determine whether it should be further adjusted based on contemporaneous cost data.

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<sup>14</sup> Case types included trail use requests [fee item (27) - we used data for trail use extension requests because the basic data for the initial request and an extension request would be similar], Amtrak compensation cases [fee item (48)], arbitration appeals [fee item (60)] and negotiated rates cases [fee item (62)]. These case types were selected because the fees for these items currently are set at \$150, an amount the Board considered representative of a typical court filing fee. There has been no activity for Amtrak conveyance cases [fee item (47)], and thus there was no data for this case type that could be used to calculate a basic fee.

## UPDATED USER FEES

The Board is required by the regulations at 49 CFR 1002.3 to update its user fees annually. Inadvertently overlooked in past updates have been the fees codified at 49 CFR 1002.1(f)(7)<sup>15</sup> covering the per page and minimum charges for photocopies of documents provided pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended (FOIA). The cost bases for these two fees are the same as for fee items codified at 49 CFR 1002.1(d), which apply to non-FOIA records. We propose to raise the fees at section 1002.1(f)(7) to \$1 per page, with a minimum charge of \$5, to reflect current costs. In addition, we propose to raise the fee for processing returned checks, codified at 49 CFR 1002.2(g)(1)(ii), from \$6 to \$20 to better reflect our costs. A recent survey shows that local banks charge from \$20 to \$29 per returned check. We believe our proposed fee is both conservative and reasonable.

Finally, we propose to amend the current fees for three items 98(i)-(ii), 100(i)-(vii) and 101(i)-(vi) as follows.

**Fee Item (98)(i) - Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a Federal Register notice, and Fee Item (98)(ii) - Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than Surface Transportation Board or State proceeding that requires a Federal Register notice.**

For these sub-fee items, handling procedures have changed to the point where the Board believes it is appropriate to modify their fees. Requests for the Carload Waybill Sample currently reflect varying numbers of named parties. This differs from the manner in which requests used to be filed (only one or two parties per request). Research time is required for each party contained in the request and the request may contain many parties (four, six or even ten per request). As a result, the current fees do not properly reflect the time required to process these types of requests.

Based on current handling procedures for these types of requests, the Board proposes that the fees be modified to reflect a two-pronged approach. The first involves set times for various facets of a request, such as phone calls, letter preparation, letter review, and Federal Register notice preparation. The second entails a sliding timetable for research to reflect the number of parties covered by the request (20 minutes per party).

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<sup>15</sup> Current section 1002.1(f) is proposed to be redesignated as section 1002.1(g) in this proceeding. See proposed rule 1002.1(g)(7) in **APPENDIX C** for the updated fees.

Modifying current fees to reflect handling changes will improve the fee application for these types of requests. Cost study data are based on the time spent by Board staff to process these requests including direct labor costs, review time and Federal Register notice costs. Listed below is a breakdown of the direct labor costs, and the publication cost for a Federal Register notice, along with calculation of a fee for a hypothetical request involving ten parties.<sup>16</sup>

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<sup>16</sup> See **APPENDIX A** for cost detail.

(Example - 10 parties in request)

	<u>Item (98)(i)</u>	<u>Item (98)(ii)</u>
<b><u>Set Cost Portion</u></b>		
1. Phone call - involving agreements	3 min.	3 min.
2. Letter preparation -	30 min.	30 min.
3. Review letter -	30 min.	30 min.
4. Prepare FR notice -	-----	30 min.
5. Review protests -	-----	10 min.
6. Phone call - miscellaneous data	6 min.	6 min.
7. <b>Sub-Total Minutes -</b>	<b>69 min.</b>	<b>109 min.</b>
8. <b>Sub-Total Cost</b> (line 7/60 * \$39.38) =	<b>\$45.29 (a)</b>	<b>\$71.54 (a)</b>
 <b><u>Sliding Cost Portion - Research</u></b>		
9. Number of parties in request <u>10</u> times 20 min. =	<b>200 min.</b>	<b>200 min.</b>
10. Line 9/60 * \$39.38 =	<b>\$131.27 (b)</b>	<b>\$131.27 (b)</b>
 <b><u>Federal Register Notice</u></b>		
11. <u>Federal Register</u> notice publication cost =	-----	<b>\$148.00 (c)</b>
 <b><u>Cost for Request(s)</u></b>		
12. Direct Labor Cost (Set Time Portion)	\$ 45.29 (a)	\$ 71.54 (a)
13. Direct Labor Cost (Sliding Time Portion) - per party	13.13 (b)	13.13 (b)
14. Fully Distributed Cost (Set Time Portion)	112.39 (a)	325.55(a+c)
15. Fully Distributed Cost (Sliding Time Portion) - per party	32.58 (b)	32.58(b)
 <b><u>Fees</u></b>		
16. Full-Cost Fee (Set Time Portion)	\$ 100 (a)	\$ 300 (a+c)
17. Full-Cost Fee (Sliding Time Portion) - \$13.13 per party	32 (b)	32 (b)
18. Actual Fee (Set Time Portion)	100 (a)	300 (a+c)
19. Actual Fee (Sliding Time Portion) * 10 parties	320 (b)	320 (b)
20. <b>Total Fee to be Paid by the Requesting Parties</b> (Set Time plus Sliding Time Portions)	<b>\$ 420</b>	<b>\$620</b>

**Fee Item (100) - Uniform Railroad Costing System (URCS) software and information:**

- (i) **Initial PC version URCS Phase III software program and manual;**
- (ii) **Updated URCS PC version Phase III cost file, if computer disk provided by the requestor;**
- (iii) **Updated URCS PC version Phase III cost file, if computer disk provided by the Board;**
- (iv) **Public requests for Source Codes to the PC version URCS Phase III;**
- (v) **PC version or mainframe version URCS Phase II;**
- (vi) **PC version or mainframe version Updated Phase II databases; and**
- (vii) **Public requests for Source Codes to PC version URCS Phase II.**

and

**Fee Item (101) - Carload Waybill Sample data on recordable compact disk (R-CD):**

- (i) **Requests for Public Use File on R-CD - First Year;**
- (ii) **Requests for Public Use File on R-CD - Each Additional Year;**
- (iii) **Waybill - Surface Transportation Board or State proceedings on R-CD - First Year;**
- (iv) **Waybill - Surface Transportation Board or State proceedings on R-CD - Second Year on same R-CD;**
- (v) **Waybill - Surface Transportation Board or State proceedings on R-CD - Second Year on different R-CD; and**
- (vi) **User Guide for latest available Carload Waybill Sample.**

For these two items, request and handling procedures have changed to the point where the Board believes it is appropriate to modify their fees. Most sub-fee categories for these two fee items have either changed significantly or are no longer applicable. Changes and deletions mainly result from a lack of interest in computer programs that the Board's staff no longer maintain. The Board staff involved in processing these types of requests have explained to the user fee staff where these changes and/or deletions are justified. Based on that information, we propose to delete several existing sub-items and modify the remaining sub-items, as follows:

**Fee Item (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 <u>Source Codes</u> to the PC version URCS Phase III .....	\$100.

and

**Fee Item (101) - Carload Waybill Sample data on recordable compact 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 .....	\$ 76
	per hour

**MISCELLANEOUS AMENDMENTS**

We are proposing to make additional, minor housekeeping amendments, including redesignations, deletions, and nomenclature changes, including one to reflect that the Board accepts major credit cards. We propose to broaden use of the Board’s fee and billing account system to cover documents submitted for lien recording under 49 U.S.C. 11301 because it will make documentation, collection and processing of these numerous and relatively small fees more efficient for both the Board and the filers.<sup>17</sup> We also propose to amend descriptions of certain fee items at section 1002.2(f) to better identify the applicability and scope of the fee item. Specifically, we propose to amend the description of fee item (61) to clarify that it will apply only to appeals of decisions on the merits of cases. Fee item (61) no longer would be applied to appeals of procedural decisions, which are proposed to be covered by proposed fee item (61)(ii). We also clarify that we will look to the content of a filing rather than its label to determine whether a fee applies. For example, a filing labeled as a petition for clarification of a decision will be scrutinized to determine whether the filer really is seeking clarification, which would fall outside the scope of the fee, or seeking reconsideration, asking the Board to take a second look at a matter, which would be within the scope of the fee.

We also propose to amend the description of fee item (86), which currently reads “An operational interpretation.” In 1984 when the fee item was adopted,<sup>18</sup> the largest volume of work carried out by the ICC was in the area of motor carrier licensing and related services. Numerous requests for informal interpretations of operating rights were received and processed by legal staff of the former Office of Compliance and Consumer Assistance (OCCA). The notice of proposed rulemaking in ICC Fees I announced that the fee item would cover all informal interpretations processed by OCCA staff. The final decision stated that the rule covered interpretations of the statute and agency regulations “as they apply to special factual situations.” ICC Fees I, at 112.

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<sup>17</sup> In order to perfect a security interest in rail equipment, liens on rail equipment must be filed with the Board under 49 U.S.C. 11301. Once filed, liens are recorded by the Board. Such recordation obviates the need for recordation in individual States.

<sup>18</sup> See Regulations Governing Fees for Services, 1 I.C.C.2d 60 (1984) (ICC Fees I).

We propose to change the description of fee item (86) to read “Informal Opinion” to reflect that the Board’s informal opinion practice is not limited to any particular subject matter. We also clarify that we will not be foreclosed from charging a fee where the issues presented involve few if any special facts, real or hypothetical. As the ICC stated in ICC Fees I, the informal opinion requester still receives the special benefit of an expert, nonbinding opinion on a matter which can reduce legal uncertainties and risks and provide evidence of a party’s good faith in attempting to comply with applicable laws and regulations. This is true whether or not a host of facts surrounds the issues presented.

Finally, we propose to change the procedure by which we handle requests for fee waivers. Currently, any party seeking a fee waiver must first pay the fee. If the fee waiver request is granted then the fee is refunded. We recognize that this process can work a hardship on those who truly are unable to afford the fee in the first place. Moreover, in most cases, we will be able to process and act upon the fee waiver request before substantial work has been done on the subject filing. Therefore, we propose to give parties seeking fee waivers some flexibility by also permitting them either to seek fee waivers in advance of filing the fee item so that the waiver request can be acted upon before the subject filing is submitted, or to submit fee waiver requests simultaneously with the subject filing but without up front payment of the fee.

### **RAISING THE BASIC FEE ASSESSMENT**

In its *Report on Surface Transportation Board’s User Fees*, CE-1999-021, dated Nov. 17, 1998, the U. S. Department of Transportation Office of Inspector General (DOT IG) identified nine out of 114 total fee items codified at section 1002.2(f) that were, in the DOT IG’s view, reduced below full cost without support. The Report concluded that the reduced fees were unsupported by established criteria and recommended that the Board, consistent with Circular A-25, establish criteria for fee reductions below full cost and maintain records of the information used to reduce fees from full cost. In addition, in the fiscal year 1999 Office of Management and Budget (OMB) Passback, OMB expressed concern that appropriations language guaranteeing the Board a fixed level of funding might exacerbate a perceived “under-collection problem” with respect to fees set below full cost.

The Board has since taken steps that satisfy the concerns expressed by the DOT IG with respect to documenting support for fees reduced below full cost. Nevertheless, to better meet the letter and spirit of the IOAA while still permitting access to the agency under our own governing statute, we propose to raise from \$150 to \$200 the fee that applies to six fee items, specifically trail use requests [currently fee item (f)(27)], Amtrak conveyance and compensation proceedings [fee items (f)(47) and (f)(48), respectively],<sup>19</sup> labor arbitration proceedings [fee item (f)(60)], appeals to Board decisions and petitions to revoke

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<sup>19</sup> We recognize that Amtrak proceedings consume substantial agency resources, but given the ongoing debate regarding the financially struggling rail passenger corporation, we will continue to charge fees at nominal levels.

[currently fee item (f)(61)], and motor carrier undercharge proceedings [fee item (f)(62)]. The three remaining reduced fee items cover feeder line development applications [fee item (f)(13) in the amount of \$2,600] and petitions for declaratory order [fee items (f)(58)(i) and (ii) in the amounts of \$1,000 and \$1,400, respectively] and are not being adjusted in this decision.

We believe it is appropriate to raise from \$150 to \$200 the fees for the six items identified above at this time because: (1) the existing fee is based on dated assumptions; (2) the proposed fee reflects Board costs; and (3) as the chart below demonstrates, the proposed fee is substantially lower than the 2001 full-cost level.

#### COMPARISON OF FULL-COST FEES AND ACTUAL FEES - 2001 LEVEL

Fee Item	2001 Full Cost	2001 Full-Cost Fee	2001 Actual Fee	Difference
-27	\$808.95	\$800	\$150	\$650
-47	\$ 103,911.49	\$103,900	\$150	\$103,750
-48	\$126,033.55	\$126,000	\$150	\$125,850
-60	\$9,376.90	\$9,300	\$150	\$9,150
-61	\$4,571.35	\$4,500	\$150	\$4,350
-62	\$7,242.31	\$7,200	\$150	\$7,050

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 rather than significant numbers of 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.

It is ordered:

1. Notice shall be published in the Federal Register.
2. Comments are due on October 4, 2002.

3. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary

**APPENDIX A - 1998-2001 COST STUDY**

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

<b>FEE</b>	<b>2000 DIRECT LABOR</b>	<b>2001 DIRECT LABOR UPDATED</b>	<b>GOVT. FRINGES</b>	<b>TOTAL 2+3</b>	<b>OPERATIONS OVERHEAD .2407</b>	<b>OFFICE G&amp;A .2343</b>	<b>BOARD G&amp;A .0837</b>	<b>PUBLICATIO N COST</b>	<b>TOTAL SUM (4-8)</b>
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-
<b>(2)(ii)</b>	775.78	805.34	399.04	1204.38	289.89	350.11	154.37	317.37	2316.13
<b>(2)(iii)</b>	0	0	0	0	0	0	0	0	1897.96
<b>(12)(iv)</b>	3958.32	4109.13	2036.07	6145.2	1479.15	1786.39	787.68	0	10198.41
<b>(27)(ii)</b>	123.13	127.82	63.33	191.15	46.01	55.57	24.5	0	317.23
<b>(38)(vii)</b>	1482.52	1539	762.58	2301.58	553.99	669.06	295.01	0	3819.64
<b>(39)(vii)</b>	1482.52	1539	762.58	2301.58	553.99	669.06	295.01	0	3819.64
<b>(40)(vii)</b>	1482.52	1539	762.58	2301.58	553.99	669.06	295.01	0	3819.64
<b>(41)(vii)</b>	1482.52	1539	762.58	2301.58	553.99	669.06	295.01	0	3819.64
<b>(56)(ii)</b>	0	0	0	0	0	0	0	0	150
<b>(56)(v)</b>	13811.36	14337.58	7104.27	21441.85	5161.05	6233.06	2748.37	0	35584.33
<b>(61)(ii)</b>	101.23	105.08	52.07	157.15	37.83	45.68	20.14	0	260.8
<b>(63)(i)</b>	4990.65	5180.8	2567.08	7747.88	1864.91	2252.28	993.11	0	12858.18
<b>(63)(ii)</b>	5563.3	5775.26	2861.64	8636.9	2078.9	2510.71	1107.06	0	14333.58
<b>(64)(i)</b>	909.62	944.28	467.89	1412.17	339.91	410.51	181.01	0	2343.59
<b>(64)(ii)</b>	384.83	399.49	197.95	597.43	143.8	173.67	76.58	0	991.48
<b>(64)(iii)</b>	835.98	867.83	430.01	1297.85	312.39	377.28	166.36	0	2153.87
<b>-65</b>	160.14	166.24	82.37	248.61	59.84	72.27	31.87	0	412.59
<b>(86)(ii)</b>	1372.84	1425.14	706.16	2131.3	513	619.56	273.19	0	3537.05
<b>(86)(iii)</b>	140.54	145.89	72.29	218.18	52.25	63.42	27.97	0	362.08
<b>-88</b>	153.2	159.04	78.8	237.84	57.25	69.14	30.49	0	394.72

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

FEE	2000 DIRECT LABOR	2001 DIRECT LABOR UPDATED	GOVT. FRINGES	TOTAL 2+3	OPERATIONS OVERHEAD .2407	OFFICE G&A .2343	BOARD G&A .0837	PUBLICATION COST	TOTAL SUM (4-8)
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-
(98)(i)(a)	43.62	45.29	22.44	67.72	16.3	19.69	8.68	0	112.39
(98)(i)(b)	12.65	13.13	6.5	19.63	4.73	5.71	2.52	0	32.58
(98)(ii)(a)	68.91	71.54	35.45	106.99	25.75	31.1	13.71	148	325.55
(98)(ii)(b)	12.65	13.13	6.5	19.63	4.73	5.71	2.52	0	32.58
(100)(i)	0	0	0	0	0	0	0	0	50
(100)(ii)	0	0	0	0	0	0	0	0	25
(100)(iii)	0	0	0	0	0	0	0	0	100
(101)(i)	0	0	0	0	0	0	0	0	250
(101)(ii)	0	0	0	0	0	0	0	0	500
(101)(iii)	0	0	0	0	0	0	0	0	50
(101)(iv)	49.16	51.04	25.29	76.33	18.37	22.19	9.78	0	126.67



**Fee Item (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).

This new fee item also pertains to a function that has been performed by the Board or ICC for years. These types of requests require a substantial amount of staff time averaging approximately 85 hours per request. The 1998-2001 cost study data developed for three such construction crossings show the following results:

Direct Labor Cost	- \$ 4,109.13
Fully Distributed Cost	- \$ 10,198.41
Current Fee	- None
Proposed Fee	- \$ <b>10,100</b>

**Fee Item (27)(ii)** - A request to extend the period to negotiate a trail use agreement.

The Board and ICC have processed numerous extensions for trail use requests over the years and no user fees have been assessed for these requests. These requests require on average approximately four hours of staff time to complete. We are proposing a new user fee for these types of requests and the 1998-2001 cost study data for 46 such requests indicate the following:

Direct Labor Cost	- \$ 127.82
Fully Distributed Cost	- \$ 317.23
Current Fee	- None
Proposed Fee	- \$ <b>300</b>

**Fee Items (38)(vii) - (41)(vii)** - A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).

Prior to the filing of an application in a major rail financial transaction, parties may request a waiver or clarification of certain informational requirements. The Board and ICC have reviewed many of these requests in the past but have never charged a fee. The Board will now charge a user fee for this service. According to 1998-2001 cost study data for two such requests:

Direct Labor Cost	- \$ 1,539.00
Fully Distributed Cost	- \$ 3,819.64

Current Fee	- None
Proposed Fee	- \$ <b>3,800</b>

**Fee Item (56)(ii)** - A formal complaint involving rail maximum rates filed by a small shipper.

This item, involving complaints filed by a small shipper, was included in the Board's fee schedules for two years (Oct. 1, 1996 through Sept. 30, 1998) and was based on an amendment contained in the Federal Aviation Administration Authorization Act of 1996. In the Board's 1999 User Fee Update [STB Ex Parte No. 542 (Sub-No. 3)], the small shipper provision and its accompanying fee of \$1,000 were stricken from the fee schedule. Based on discussion contained in this decision, the Board proposes to institute a small shipper fee set at \$150.

Direct Labor Cost	- No Data
Fully Distributed Cost	- No Data
Old Fee	- \$ 1,000
Proposed Fee	- \$ <b>150</b>

**Fee Item (56)(v)** - A request for an order compelling a carrier to file a common carrier rate.

This is a new fee item based on a request to compel a carrier to file a common carrier rate, usually at the time a contract rate expires or soon will expire. These requests have required a substantial amount of Board staff time to complete, averaging about 295 hours for the two cases available for study. The proposed fee anticipates that these cases will require less work in the future. The 1998-2001 cost study results for these two cases reveal the following:

Direct Labor Cost	- \$ 14,337.58
Fully Distributed Cost	- \$ 35,584.33
Current Fee	- None
Full-Cost Fee	- \$ 35,500
Proposed Fee	- \$ <b>200</b>

**Fee Item (61)(ii)** - An appeal to Surface Transportation Board decision on procedural matters except discovery rulings.

This new fee item pertains to a function that the Board and ICC have performed for years. These procedural rulings require a certain amount of staff time to process (2.5 hours). Based on 1998-2001 cost study results, the following is shown:

Direct Labor Cost	- \$ 105.08
Fully Distributed Cost	- \$ 260.80
Current Fee	- None
Proposed Fee	- \$ 250

**Fee Item (63)(i)** - A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.

This new item deals with a function that has been adopted by the Board in Expedited Relief for Service Inadequacies, STB Ex Parte No. 628 (served Dec. 21, 1998). A discussion of this function is contained in the body of this decision. The 1998-2001 cost study data reveal that these types of proceedings will require approximately 135 hours for completion. The results of the study indicate the following:

Direct Labor Cost	- \$ 5,180.80
Fully Distributed Cost	- \$ 12,858.18
Current Fee	- None
Full-Cost Fee	- \$ 12,800
Proposed Fee	- \$ 200

**Fee Item (63)(ii)** - A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.

Like Fee Item (63)(i), this new item also deals with a function that has been adopted by the Board in STB Ex Parte No. 628, supra. A discussion of this function is also included in the body of this decision. Cost study data for 1998-2001 indicate that approximately 155 hours will be needed to finalize these types of proceedings, and results show the following:

Direct Labor Cost	- \$ 5,775.26
Fully Distributed Cost	- \$ 14,333.58
Current Fee	- None
Full-Cost Fee	- \$ 14,300
Proposed Fee	- \$ <b>200</b>

**Fee Item (64)(i)** - A motion to compel discovery in formal complaint proceedings under 49 U.S.C. 10704(c)(1).

This fee item involves a function that has been performed for years by both the Board and its predecessor. The 1998-2001 cost study data captured information for eight observations of this type. The average results show the following:

Direct Labor Cost	- \$ 944.28
Fully Distributed Cost	- \$ 2,343.59
Current Fee	- None
Proposed Fee	- \$ <b>2,300</b>

Note: Five additional motions were studied during the period. However, they were excluded from the summary results because their direct labor costs did not reflect the fact that the discovery was resolved by an Administrative Law Judge whose hours and costs could not be captured. All direct labor hours expended on discovery are reflected for the eight motions relied upon.

We propose a “fee-shifting” approach with respect to this fee item.

**Fee Item (64)(ii)** - A motion to compel discovery in all other proceedings.

This new fee item also involves a function that has been performed for years by the Board and ICC. This fee item is a catch-all for all motions to compel discovery (other than for formal complaints). The 1998-2001 cost study data for 10 such motions indicates the following average results:

Direct Labor Cost	- \$ 399.49
Fully Distributed Cost	- \$ 991.48
Current Fee	- None
Proposed Fee	- \$ <b>950</b>

We propose a “fee-shifting” approach with respect to this fee item.

**Fee Item (64)(iii)** - An appeal of a discovery ruling.

Again this new fee item pertains to a function long performed by the Board and ICC. Resolution of such appeals requires, on average, about 20 hours for completion. Based on the 1998-2001 cost study data for three appeals, the following results occur:

Direct Labor Cost	- \$ 867.83
Fully Distributed Cost	- \$ 2,153.87
Current Fee	- None
Proposed Fee	- \$ <b>2,100</b>

**Fee Item (65)** - A request for waiver or clarification of regulations, except those filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).

For years, the Board and its predecessor have performed a service of reviewing and ruling on various types of routine waiver requests. The 1998-2001 cost study results show that for 46 requests of these various types, the following averages are obtained:

Direct Labor Cost	- \$ 166.24
Fully Distributed Cost	- \$ 412.59
Current Fee	- None
Proposed Fee	- \$ <b>400</b>

**Fee Item (86)(ii)** - Proposal to use a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).

This new fee item pertains to formal decisions on voting trust agreements related to major rail control transactions. The Board and its predecessor have handled these types of requests on an informal basis for years without assessing a fee. The observations relied on show that about 25 staff hours are needed to complete informal opinions. Formal actions would consume at least as much staff time. According to the 1998-2001 cost study results for five informal transactions, the following results are revealed:

Direct Labor Cost	- \$ 1,425.14
Fully Distributed Cost	- \$ 3,537.05
Current Fee	- None
Proposed Fee	- \$ <b>3,500</b>

**Fee Item (86)(iii)** - A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.

Over the years, the Board and ICC have also handled other informal opinions relative to financial transactions. The 1998-2001 cost study data show that for 10 such instances the following average results occur:

Direct Labor Cost	- \$ 145.89
Fully Distributed Cost	- \$ 362.08
Current Fee	- None
Proposed Fee	- \$ <b>350</b>

**Fee Item (88)** - A basic fee for STB adjudicatory services not otherwise covered.

The Board occasionally receives filings that require adjudicatory action by the Board but are not covered by an existing fee item. This catch-all, basic fee would apply to such filings. Cost study data are based on conservative, average estimates for minimal effort by professional and support staff.

Direct Labor Cost	- \$ 159.04
Direct Labor plus Fringe Benefits	- \$ 237.84
Fully Distributed Cost	- \$ 394.72
Current Fee	- None
Proposed Fee	- \$ 200

**EXISTING FEE ITEMS**

**Fee Item (98)(i)** - Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a Federal Register notice.

This item reflects handling procedure changes for Carload Waybill Sample requests. Based on discussion contained in this decision, the Board proposes to revise the current fee for this item to reflect a two-pronged approach. One involves set times for activities such as phone calls, letter preparation, and letter review. The second entails a sliding timetable to reflect research time for the number of parties contained in the request. Below is an example relying on one party in the request.

Direct Labor Cost (Set Time Portion)	- \$ 45.29 (a)
Direct Labor Cost (Sliding Time Portion) - \$13.13 per party	- \$ 13.13 (b)
Fully Distributed Cost (Set Time Portion)	- \$ 112.39 (a)
Fully Distributed Cost (Sliding Time Portion) - per party	- \$ 32.58 (b)
Current Fee	- \$ 200
Full-Cost Fee (Set Time Portion)	- \$ 100 (a)
Full-Cost Fee (Sliding Time Portion) - per party (This Full-Cost Fee (Sliding) is multiplied times # parties)	- \$ 32 (b)
Proposed Fee (Set Time Portion)	- \$ 100 (a)
Proposed Fee (Sliding Time Portion) * <u>1</u> parties	- \$ 32 (b)
Total Proposed Fee (Set Time + Sliding Time Portions)	- \$ 132 (minimum)

**Fee Item (98)(ii)** - Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that requires a Federal Register notice.

This item reflects handling procedure changes for Carload Waybill Sample requests that require a Federal Register notice publication. Based on discussion contained in this decision, the Board proposes to revise the current fee for this item to reflect a two-pronged approach. One involves set times for activities such as phone calls, letter preparation, letter review, and Federal Register notice preparation. The second entails a sliding timetable to reflect research time for the number of parties contained in the request. In addition, the actual cost to publish in the Federal Register notice is also included in the proposed fee. Listed below is an example utilizing one party in the request.

Direct Labor Cost (Set Time Portion)	- \$ 71.54 (a)
Direct Labor Cost (Sliding Time Portion) - \$13.13 per party	- \$ 13.13 (b)
Publication Cost in <u>Federal Register</u>	- \$ 148.00 (c)
Fully Distributed Cost (Set Time Portion)	- \$ 325.55 (a+c)
Fully Distributed Cost (Sliding Time Portion) - per party	- \$ 32.58 (b)
Current Fee	- \$ 400
Full-Cost Fee (Set Time Portion)	- \$ 300 (a+c)
Full-Cost Fee (Sliding Time Portion) - per party	- \$ 32 (b)
(This Full-Cost Fee (Sliding) is multiplied times # parties)	
Proposed Fee (Set Time Portion)	- <b>\$ 300</b> (a+c)
Proposed Fee (Sliding Time Portion) * <u>1</u> parties	- <b>\$ 32</b> (b)
Total Proposed Fee (Set Time + Sliding Time Portions)	- <b>\$ 332</b> (minimum)

**Fee Item (100)(i)-(iii)** - Uniform Railroad Costing System (URCS) software and information.

This item reflects request and handling procedure changes for URCS requests. Based on discussion earlier in this decision, the Board proposes to revise and delete certain sub-item portions of the current fees for this item. Listed below are the fully distributed costs, current fees and proposed fees for each of the sub-item categories remaining for this fee item.

(i)	Initial PC version URCS Phase III software program and manual - Fully Distributed Cost	- \$ 50.00
(ii)	Updated URCS PC version Phase III cost file - per year - Fully Distributed Cost	- \$ 25.00
(iii)	Public requests for <u>Source Codes</u> to the PC version URCS Phase III - Fully Distributed Cost	- \$100.00
(i)	Current Fee	- \$ 50
(i)	Proposed Fee	- <b>\$ 50</b>
(ii)	Current Fee	- \$ 20
(ii)	Proposed Fee	- <b>\$ 25</b>
(iv)	Current Fee	- \$ 500
(iii)	Proposed Fee	- <b>\$ 100</b>

**Fee Item (101)(i)-(iv)** - Carload Waybill Sample data on recordable compact disk (R-CD).

This item also reflects request and handling procedure changes for the Carload Waybill Sample on R-CD. Based on discussion found in this decision, the Board proposes to amend and/or delete certain sub-item portions of the current fees for this item. Listed below are the fully distributed costs, current fees and proposed fees for each sub-item category remaining for this fee item.

(i) Requests for Public Use File on R-CD - per year - Fully Distributed Cost	- \$ 250.00
(ii) Waybill - Surface Transportation Board or State proceedings on R-CD - per year - Fully Distributed Cost	- \$ 500.00
(iii) User Guide for latest available Carload Waybill Sample - Fully Distributed Cost	- \$ 50.00
(iv) Specialized programming for Waybill requests to the Board - Direct Labor plus Government Fringes	- \$ 76.00 per hour.
(i) Current Fee	- \$ 450
(i) Proposed Fee	<b>- \$ 250</b>
(iii) Current Fee	- \$ 650
(ii) Proposed Fee	<b>- \$ 500</b>
(vi) Current Fee	- \$ 50
(iii) Proposed Fee	<b>- \$ 50</b>
Current Fee (Direct Labor only)	- \$ 51 per hour.
(iv) Proposed Fee (Direct Labor plus Government Fringes)	<b>- \$ 76 per hour.</b>

**APPENDIX C**

For the reasons set forth in the decision, 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. Delete 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 ([www.stb.dot.gov](http://www.stb.dot.gov)), or can be obtained from the Board's Information Officer, Suite 100, Surface Transportation Board, Washington, D.C. 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 paragraphs (f)(100)(ii) and (v)-(vii), and (f)(101)(ii), (iv) and (v).
- c. Redesignate paragraph (f)(2) as paragraph (f)(2)(i); redesignate paragraph (f)(27) as paragraph (f)(27)(i); redesignate paragraphs (f)(56)(ii) and (iii) as paragraphs (f)(56)(iii) and (iv); redesignate paragraph (f)(61) as paragraph (f)(61)(i); redesignate paragraph (f)(78)(i) as paragraph (f)(78); delete paragraph (f)(78)(ii); redesignate paragraphs (f)(100)(iii) and (iv) as paragraphs (f)(100)(ii) and (iii) and redesignate paragraphs (f)(101)(iii) and (vi) as paragraphs (f)(101)(ii) and (iii).
- d. Revise the last sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (b), and paragraphs (f)(27)(i), (f)(47), (f)(48), (f)(56)(iv), (f)(60) through (f)(62) and (f)(86).
- e. Add paragraphs (f)(2)(ii), (f)(12)(iv), (f)(27)(ii), (f)(38)(vii), (f)(39)(vii), (f)(40)(vii), (f)(41)(vii), (f)(56)(ii) and (v), (f)(63) through (f)(65) and (f)(101)(iv).

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.

(i) \* \* \*

(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)* * *	
(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 to negotiate 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)* * *	
(ii) A formal complaint involving rail maximum rates filed by a small shipper . . . . .	\$150.
(iii)* * *	
(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.
	* * * * *	
(86)	Informal opinions:	
	(i) A request for an informal opinion not otherwise covered . . . . .	\$1,100.
	(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control 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 . . . . .	\$32 per party.
(ii) Does require a Federal Register notice:	
(a) Set cost portion . . . . .	\$300.
(b) Sliding cost portion . . . . .	\$32 per party.
* * * * *	
(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 <u>Source Codes</u> 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 .....	\$76 per hour.
* * * * *	