

## STB EX PARTE NO. 570

## TECHNICAL AMENDMENTS CONCERNING EMPLOYEE BOARDS

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*Decided September 17, 1997*

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AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Board revises its regulations to remove obsolete delegations of authority; update references to statutory provisions; eliminate several employee boards; delegate to designated offices and individuals certain of the matters formerly delegated to employee boards; and reserve to the Board the initial decision making authority for certain formerly delegated matters.

EFFECTIVE DATE: These rules are effective September 29, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565-1578. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Board is revising its delegations of authority to reflect changes implemented by the *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 803 (1995) (*ICCTA*). The *ICCTA* abolished the Interstate Commerce Commission (ICC) and established the Board. Some of the ICC's functions were transferred to the Board and others were transferred to the Secretary of Transportation (and subsequently delegated to the Federal Highway Administration (FHWA)).

49 CFR 1011.6, the employee board section, establishes 10 employee boards: the Suspension/Special Permission (section 1011.6(a)), the Insurance Board (section 1011.6(b)(1)), the Motor Carrier Leasing Board (section 1011.6(b)(2)), the Railroad Service Board (section 1011.6(b)(3)), the Revocation Board (section 1011.6(b)(4)), the Released Rates Board (section 1011.6(c)), the Accounting Board (section 1011.6(d)), the Special Docket Board (section

1011.6(e)), the Regional Motor Carrier Boards (section 1011.6(f)), and the Motor Carrier Board (section 1011.6(g)).

Some of the delegations of authority under which these employee boards were established include matters over which the Board does not exercise jurisdiction. In particular, the remaining statutory bases for the Insurance Board, the Motor Carrier Leasing Board, the Revocation Board, and the Regional Motor Carrier Boards have been transferred to the Department of Transportation. Therefore, we are removing from the *Code of Federal Regulations* the regulations providing for these employee boards.

The other employee boards perform functions that continue under the Board's jurisdiction.<sup>1</sup> Except for the Accounting Board,<sup>2</sup> these employee boards are being eliminated, but their duties will be handled by the Board Members, Offices of the Board, or individuals to whom authority is being delegated.

Employee boards performed essential functions at a time when more comprehensive transportation regulation required the ICC to make a significantly greater number of decisions, and when literally thousands of decisions were made under delegations of authority each year. The elimination of much transportation regulation in recent years and the transfer of certain responsibilities to other agencies have, however, reduced the need for employee boards at the Board. In the current, less regulated environment, we believe that either delegating authority to individual Offices and employees of the Board or reserving matters for the entire Board will be a fully adequate and more efficient way of processing cases.

While the quantity of decisions issued by the agency has been reduced, certain delegations of authority continue to be warranted in areas where the action to be taken is clear under existing Board policies, and where prompt action is needed. By continuing to delegate authority in these areas, we can reduce both the time that Board members would otherwise be required to spend

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<sup>1</sup> While some of the functions of the Motor Carrier Board have either been eliminated or transferred to the Federal Highway Administration, under new 49 U.S.C. 14303, the Board has jurisdiction over motor passenger carrier finance applications and interim approval requests. These matters will be handled by the entire Board.

<sup>2</sup> The Accounting Board is an employee board that rules on technical issues dealing with accounting, reporting and record retention rules, and prescribes depreciation rates used by railroads. This board consists of three employees within the Office of Economics, Environmental Analysis and Administration who have strong accounting backgrounds, and, in light of the technical nature of the issues that are considered, we believe that the retention of this employee board is desirable. Procedural rules for this board are found in revised 49 CFR part 1118.

on routine matters, and the time and cost associated with taking the necessary actions. Nevertheless, we believe our current requirements can be more effectively met by delegations of authority to Offices and individual employees, rather than to employee boards. Actions to be taken under delegated authority can be handled more simply by an individual employee than by an employee board. Where more significant policy issues are involved, it is anticipated that staff will certify the cases to the Board for consideration in the first instance. Additionally, all actions taken pursuant to delegated authority can be appealed to the Board by the affected parties.

In some situations, cases that arise are likely to involve significant or difficult policy or legal issues. We believe that these matters should be handled by the Board in the first instance. We also note that such Board action is not unduly burdensome, because it is unlikely that there will be large numbers of these types of cases.

*Specific Disposition of Retained Authority.* As indicated previously, we are retaining the Accounting Board. We are eliminating the Motor Carrier Board, and relevant authorities retained at this agency pursuant to the *ICCTA* will be implemented by the entire Board in the first instance.

We are eliminating the Suspension/Special Permission Board, because its remaining functions can be effectively handled elsewhere.<sup>3</sup> The entire Board will consider investigation and suspension of collectively set motor carrier rates under 49 U.S.C. 13703(a)(5),<sup>4</sup> the reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2), and petitions for discovery of railroad transportation contracts submitted pursuant to 49 CFR 1313.10. We are delegating to the Office of Compliance and Enforcement (OCE) the determination of motor common carrier applicability disputes under 49 U.S.C. 13710(a)(2) and special tariff authority applications under 49 CFR 1312.2(e). See, 49 CFR 1011.8(d)(3) and (4).

We are also eliminating the Released Rates Board. 49 CFR 1011.6(c). While under 49 U.S.C. 14706(f), household goods motor carriers and freight forwarders need Board authority to modify, establish, or eliminate rates limiting

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<sup>3</sup> Because 49 U.S.C. 10726, concerning long and short haul transportation, has been eliminated, the functions at 49 CFR 1011.6(a)(2) are no longer necessary. We will remove a section not pertaining to employee boards, 49 CFR 1011.5(b)(3)(iii), because this section is also based on former 49 U.S.C. 10726.

<sup>4</sup> We are also amending the investigation and suspension rules in part 1132.

liability, we believe that this function can be handled efficiently by the entire Board and does not have to be delegated to an employee board.<sup>5</sup>

The Special Docket Board (49 CFR 1011.6(e)) handled carrier and shipper resolutions of undercharge and overcharge claims.<sup>6</sup> Tariff filing requirements are now found at 49 U.S.C. 13702 (noncontiguous domestic trade), and the authority to resolve undercharge and overcharge claims is found in 49 U.S.C. 14709. Because we do not believe that there will be many filings under section 14709, we are eliminating this board. Instead, uncontested requests formerly handled by the Special Docket Board will be processed by OCE. We are amending 49 CFR 1132.2 to reflect this change. Contested matters will be decided by the Board. 49 CFR 1132.2(g)(4).

The Railroad Service Board (49 CFR 1011.6(b)(3) and (b)(6)) was delegated authority to act in equipment supply complaints and to issue emergency service orders. In recent years, the entire Board has acted on these matters. We will continue this practice and eliminate the employee board.

We are also eliminating other delegations. Under 49 CFR 1011.7(e), the Director of the former Office of Tariffs was delegated authority to enter reparation orders following the conclusion of a formal case where the amount of reparations could not be determined from the existing record. We will eliminate this provision, and reparation issues will be decided by the entire Board. Under 49 CFR 1011.8(d)(1), OCE, as successor to the Office of Tariffs, was delegated authority to reject tariffs, schedules, railroad contracts, and railroad contract summaries. We are maintaining this delegation but eliminating the obsolete references to schedules and rail contracts.<sup>7</sup>

We believe the revised delegations and procedures strike an appropriate balance between matters that should be handled by staff in the first instance and those that warrant consideration by the Board in the first instance. Further, the elimination of employee boards will produce operating efficiencies for the actions that continue to be taken under delegated authority. Because the substantive changes in the regulations relate solely to rules of agency organization, procedure or practice, they are being implemented without requesting public comment.

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<sup>5</sup> Currently, most carriers use the authority granted by the ICC in *Released Rates of Motor Carriers of HHG*, 9 I.C.C. 2d 523 (1993) as the basis for limiting their liability.

<sup>6</sup> These claims resulted from incorrect tariff provisions or billing errors due to the inadvertent failure to appropriately file and maintain agreed-upon rates in compliance with statutory provisions.

<sup>7</sup> Rail contracts are no longer filed with the Board.

**Small Entities**

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities.

**Environment**

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

**List of Subjects****49 CFR Part 1011**

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

**49 CFR Part 1118**

Administrative practice and procedure.

**49 CFR Part 1130**

Administrative practice and procedure.

**49 CFR Part 1132**

Administrative practice and procedure.

By the Board, Chairman Morgan and Vice Chairman Owen.

## APPENDIX

For the reasons set forth in the preamble, parts 1011, 1118, 1130 and 1132 of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

## PART 1011 — BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

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

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

2. In section 1011.5, paragraph (b)(3)(iii) is removed.

3. Section 1011.6 is revised to read as follows:

§ 1011.6 Employee boards.

This section covers matters assigned to the Accounting Board, a board of employees of the Board.

- (a) The Accounting Board has authority:

- (1) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the revised Interstate Commerce Act (IC Act), subtitle IV of title 49 of the U.S. Code, and from the regulations governing accounting and reporting forms;

- (2) To prescribe rates of depreciation to be used by railroad and water carriers;

- (3) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the IC Act; and

- (4) To grant extensions of time for filing annual, periodic, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

- (b) The board may certify any matter assigned to it to the Board.

4. In section 1011.7, paragraph (e) is removed and reserved.

5. In section 1011.8, paragraph (d) is revised to read as follows:

§ 1011.8 Delegations of authority by the Board to specific offices of the Board.

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- (d) *Office of Compliance and Enforcement.* The Office of Compliance and Enforcement is delegated the authority to:

- (1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).

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6. Part 1118 is revised to read as follows:

PART 1118 — PROCEDURES IN INFORMAL PROCEEDINGS BEFORE EMPLOYEE BOARDS

Sec.

1118.1 Scope.

1118.2 Proceedings to be informal.

1118.3 Appeals.

Authority: 49 CFR 721.

§ 1118.1 Scope.

The rules in this part govern proceedings before employee boards.

§ 1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

§ 1118.3 Appeals.

(a) *Standing to appeal.* Appeals of the decisions of the employee boards subject to this part and replies to appeals may be filed by any person.

(b) *Number of copies.* The original and 10 copies of each pleading or paper permitted or required to be filed under this section should be furnished for the use of the Board.

(c) *Time for filing.* Appeals in proceedings governed by this part must be filed within 20 days after September 29, 1997.

(d) *Where filed.* Appeals and replies to appeals of decisions issued by employee boards must be filed with the Secretary, Surface Transportation Board, 1925 K St., N. W., Washington, DC 20423-0001.

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(e) *Decisions on appeal.* An appeal from an employee board's initial decision in a matter subject to this part will be reviewed by the employee board, which may elect to modify its decision in light of new facts or arguments presented on appeal. If the employee board elects not to modify its prior decision, the appeal will be forwarded to the entire Board for determination. If a modified decision is issued by the employee board, a further appeal lies under this part.

PART 1130 — INFORMAL COMPLAINTS

7. The authority citation for part 1130 is revised to read as follows.

Authority: 49 U.S.C. 721, 13301(f), 14709.

8. In section 1130.2, paragraph (e) is removed and reserved, and paragraphs (a), (c), the first two sentences of (f), (g)(1), and (g)(2) are revised to read as follows:

§ 1130.2 When damages sought.

(a) *Actual filing required.* Notification to the Board that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute.

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(c) *Statement of prior claim.* A complaint filed under paragraph (b) of this section containing a claim which has been the subject of a previous informal or formal complaint must specifically refer to the previous complaint.

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(f) *Notification to the parties; six months' rule.* If an informal complaint seeking damages (other than a contested tariff reconciliation petition) cannot be disposed of informally or is denied or withdrawn by complainant, the parties affected will be so notified in writing by the Board. Contested tariff reconciliation petitions either will be granted or denied by the entry of a decision.  
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(g) \*\*\*

(1) *Petitions to waive collection or permit payment.* Subject to Board review and approval, motor common carriers (other than household goods carriers) and shippers may resolve, by mutual consent, overcharge and undercharge claims under the provisions of 49 U.S.C. 14709. Petitions for appropriate authority may be filed by either the carrier, shipper or consignee on the Board's tariff reconciliation docket by submitting a letter of intent to depart from the filed rate. The petitions will be deemed the equivalent of an informal complaint and answer admitting the matters stated in the petition. Petitions shall be sent to the Office of Compliance and Enforcement, Surface Transportation Board, Washington, DC 20423. The petitions shall contain, at a minimum, the following information:



- (i) The name(s) and address(es) of the payer(s) of the freight charges;
- (ii) The name(s) of the carrier(s) involved in the traffic;
- (iii) An estimate of the amount(s) involved;
- (iv) The time period when the shipment(s) involved were delivered or tendered for delivery;
- (v) A general description of the point(s) of origin and destination of the shipment(s);
- (vi) A general description of the commodity(ies) transported;
- (vii) A statement certifying that the carrier(s) and shipper(s) participating in the shipment(s) or the payer(s) of the freight charges concur(s) with the intent to depart from the filed rate; and
- (viii) A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate.

(2) *Public notice and protest.* Tariff reconciliation petitions (letters of intent) shall be served on all parties named in the petition by the party that files the petition and will be made available by the Board for public inspection in the Office of Compliance and Enforcement Public File, Surface Transportation Board, Washington, DC 20423. Any interested person may protest the granting of a petition by filing a letter of objection with the Office of Compliance and Enforcement within 30 days of Board receipt of the petition. Letters of objection shall identify the tariff reconciliation proceeding, shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. The Board may initiate an investigation of the petition on its own motion.

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9. Part 1132 is revised to read as follows:

PART 1132 — PROTESTS REQUESTING SUSPENSION AND INVESTIGATION OF COLLECTIVE RATEMAKING ACTIONS

Sec.

1132.1 Protests against collective ratemaking actions.

1132.2 Procedures in certain suspension matters.

Authority: 49 U.S.C. 721, 13301(f), and 13703.

§ 1132.1 Protests against collective ratemaking actions.

(a) *Content.* The protested collective ratemaking action sought to be suspended, whether or not contained in a tariff filed with the Board, should be identified by making reference to: the name of the publishing carrier or collective ratemaking organization; the identification of the tariff, if applicable, or the identification of the collective ratemaking action publication if it is not contained in a tariff filed with the Board; the specific items or particular provisions protested; and the effective date of the tariff or other collective ratemaking action publication. Reference should also be made to the tariff or collective ratemaking action, and the specific provisions proposed to be superseded. The protest should state the grounds in support thereof, and indicate in what respect the protested collective ratemaking action is considered to be unlawful. Such protests will be considered as addressed to the discretion of the Board. Should a protestant desire to proceed further

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against a collective ratemaking action which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, collective ratemaking actions will not be considered unless made in writing and filed with the Board at Washington, DC. If the protestant desires action by the Board before the effective date of the collective action, protests and requests for suspension shall reach the Board at least 12 days (except as provided in paragraph (c) of this section) before such effective date. If the protested collective ratemaking action is already in effect, or if the protestant does not desire action before its effective date, protests and requests for suspension can be filed at any time.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus take collective actions subject to the special procedures adopted in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR part 1139, protests must reach the Board at least 22 days before the effective dates of those actions if protestants desire action by the Board before such effective dates. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Board.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR part 1139, an original and 10 copies of every protest or reply filed under this section should be furnished for the use of the Board. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and 10 copies of each protest, or of each reply filed under this section, must be filed with the Board, and one copy simultaneously must be served upon the publishing carrier or collective ratemaking organization, and upon other persons known by protestant to be interested. These pleadings should be directed to the attention of the Secretary, Surface Transportation Board.

(e) *Reply to protest.* A reply to a protest filed at least 12 days before the effective date of proposed collective action provisions must reach the Board not later than the fourth working-day prior to the scheduled effective date of the protested provisions unless otherwise provided. Replies to protests against motor carrier rate bureau proposals subject to Ex Parte No. MC-82 procedures, to be assured of consideration, must reach the Board no later than 14 days before the scheduled effective date of the protested provisions.

#### § 1132.2 Procedures in certain suspension matters.

(a) A petition for reconsideration may be filed by any interested person within 20 days after the date of service of a Board decision which results in an order for:

- (1) Investigation and suspension of collective ratemaking actions, or
- (2) Investigation (without suspension) of collective ratemaking actions.

(b) Any interested person may file and serve a reply to any petition for reconsideration permitted under paragraph (a) within 20 days after the filing of such petition with the Board, but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.