

STB EX PARTE NO. 642

REVISION OF DELEGATION OF AUTHORITY REGULATIONS

Decided February 14, 2003

AGENCY: Surface Transportation Board, Transportation.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) is revising its delegations of authority to authorize the Chairman to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available, and, if no Board Member is available, delegates authority to take such actions to the Director of the Board's Office of Compliance and Enforcement (OCE).

EFFECTIVE DATE: These rules are effective on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Melvin F. Clemens, Jr., (202) 565-1573. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION:

The Board is revising its delegations of authority at 49 CFR 1011.4 to authorize the Chairman to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available. The delegations of authority, which were most recently revised in *Revision of Delegation of Authority Regulations*, 6 S.T.B. 373 (2002), set out the organization of the Board and procedures in processing cases, certain litigation, and informal opinions. Among other things, they authorize the Chairman, Vice Chairman, and designated staff to perform certain functions that would otherwise be performed by the entire Board.

The Board has broad economic regulatory responsibility over the railroad industry. Railroads play a vital role in the Nation's security and economic

health. But the operations of rail carriers could be threatened or disrupted by terrorist activities or other public health or safety emergencies. Therefore, it is crucial that the Board develop procedures to ensure that the agency will be able to take necessary actions, within the scope of its authority, to address problems in the railroad industry in the event of emergencies.

Among the statutory responsibilities vested with the Board is the ability to direct preference or priority to certain traffic during time of war or threatened war (49 U.S.C. 11124) and, more generally, to direct the handling, routing, and movement of rail traffic in emergency situations (49 U.S.C. 11123). In the event of a terrorist attack or other emergency, however, it is possible that only one agency member would be available to act on a matter at any given time. To address this contingency, the Board is amending its delegations of authority by adding two new provisions. Under the new regulations, the Board is delegating to the Chairman the authority to take necessary actions if the other members are unavailable in the event of an emergency. Pursuant to the existing regulation at 49 CFR 1011.3(a)(3), that authority passes to the Vice Chairman if the Chairman is unavailable, and to the remaining Member if both the Chairman and the Vice Chairman are unavailable. The Board is also revising its delegations of authority at 49 CFR 1011.7, so that the Director of OCE would have authority to issue orders under 49 U.S.C. 11123 and 11124 if no Board Member is available.

Because these changes relate primarily to rules of agency organization, procedure, or practice, and because advance notice and opportunity for public comment on the matter would be impracticable given the circumstances prevailing today, we find good cause to dispense with such notice and comment. *See* 5 U.S.C. 553(b)(B). Moreover, we find good cause for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d), so that these changes will become effective on February 14, 2003.

Copies of the Board's decision may be purchased from Da-2-Da Legal Copy Service by calling 202-293-7776 (assistance for the hearing impaired is available through FIRS at 1-800-877-8339) or visiting Suite 405, 1925 K Street, NW, Washington, DC 20006.

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

Regulatory Flexibility Act Certification

In accordance with Board procedures adopted in *Implementation of the Regulatory Flexibility Act*, STB Administrative Matter No. 3, STB Issuance No. 52 (STB served November 8, 2002), the Board certifies that the amended

rule adopted in this case will not have a significant economic impact on a substantial number of small entities. The amended delegations of authority relate primarily to rules of agency organization, procedure, or practice, and are designed simply to ensure continuity in carrying out necessary functions in the event of an emergency.

List of Subjects in 49 CFR Part 1011

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

It is ordered:

1. The revisions to the Board's rules at 49 CFR 1011 set forth in this decision are adopted. Notice of the revised rules adopted here will be published in the *Federal Register*.
2. This decision is effective on February 14, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

APPENDIX

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1011 of title 49, chapter X, of the *Code of Federal Regulations* as follows:

PART 1011 — BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

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

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

2. Amend §1011.4 by adding a new paragraph (a)(9) to read as follows:

§ 1011.4 Delegations to individual Board Members.

(a) * * *

(9) Authority to act alone to take necessary actions in emergency situations when the Chairman is the only Board member reasonably available.

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3. Amend §1011.7 by adding a new paragraph (c)(5) to read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

* * * * *

(c) * * *

(5) Issue orders by the Director in an emergency under 49 U.S.C. 11123 and 11124 if no Board Member is reasonably available.