

Surface Transportation Board Proposes New Fees for Agency Services Performed in Connection with Licensing & Related Services

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision proposing to: (1) establish 22 fees for services for which no fee currently is assessed; (2) raise slightly below-cost fees currently applicable to six fee items; (3) update fees for nine existing fee items; and (4) amend, renumber and delete certain rules to conform to existing and proposed fee-collection policies and processes. A Notice of Proposed Rulemaking reflecting this decision will be published in the *Federal Register* the week of September 2, 2002. Comments are due 30 days after *Federal Register* publication.

Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (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." The Office of Management and Budget's (OMB) Circular A-25 User Fees, revised July 8, 1993 (Circular A-25), establishes federal policy regarding user fees and 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." In accordance with the statute and OMB policy, the Board currently charges fees for searching, reviewing, copying and certifying Board records (five fee items) and has an additional 109 fee items applicable to formal and informal Board proceedings and activities.

The U.S. Department of Transportation's Office of the Inspector General (DOT IG), in a report on the Board's user fees, recommended that the Board identify additional services for which no fee is assessed and establish fees for those services. In response to the DOT IG recommendation, the Board has identified 22 additional services qualifying for user-fee assessments under the IOAA and Circular A-25, and proposes fees for each. Several of the proposed new fees would cover services not provided previously, with certain of the fees set at below-cost levels. Other proposed new fees would cover the cost of services performed in the past but outside the scope of previous Board fee studies. Such fees include, for example, services provided prior to the commencement of a proceeding (such as a request for Board clarification or a request for the waiver of certain requirements before an actual filing is made), or services provided during the pendency of a proceeding, but not now included because the services do not involve disposition of substantive issues in the proceeding (for example, a request to compel discovery). In connection with two proposed new fees covering the adjudication of discovery requests, the Board proposes a "fee shifting" approach whereby a party against which the Board ultimately rules on a discovery request must pay the fee. In addition, the Board is proposing to set the fee for a railroad rate-complaint case filed by a small shipper at a below-cost level of \$150.

The DOT IG report also raised concern about fees set at below-cost levels. In response, the Board has reviewed nine below-cost fee items in its fee schedule and proposes to raise six of them by a small amount. The Board also proposes to allow use of its billing-account system to collect fees for documents filed for recording liens under 49 U.S.C. 11301, thus relieving filers and the Board of burdens associated with the processing of numerous individual fees.

The Board issued its decision today in the case entitled *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--2002 New Fees*, STB Ex Parte No. 542 (Sub-No. 4). A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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