

Surface Transportation Board, DOT

§ 1111.1

and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Board will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the FEDERAL REGISTER, and it will apply to all persons.

§ 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the FEDERAL REGISTER.

§ 1110.9 Petition for waiver.

Any person may petition the Board for a permanent or temporary waiver of any rule. Petitions should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, and should identify the rule involved and the arguments in favor of granting the waiver.

[48 FR 44827, Sept. 30, 1983]

§ 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Board's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the FEDERAL REGISTER and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.

1111.1 Content of formal complaints; joinder.

1111.2 Amended and supplemental complaints.

1111.3 Service.

1111.4 Answers and cross complaints.

1111.5 Motions to dismiss or to make more definite.

1111.6 Satisfaction of complaint.

1111.7 Investigations on the Board's own motion.

1111.8 Procedural schedule in stand-alone cost cases.

1111.9 Procedural schedule to determine whether to use simplified procedures.

1111.10 Meeting to discuss procedural matters.

AUTHORITY: 49 U.S.C. 721, 10704, and 11701.

SOURCE: 61 FR 52711, Oct. 8, 1996, unless otherwise noted.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate should be examined using constrained market pricing or using the simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and

§ 1111.2

nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O-D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a stand-alone cost presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

(10) The assumptions, calculations and any documentation necessary to support the responses to the above listed factors.

(11) For matters for which voluntary, binding arbitration is available pursuant to 49 CFR part 1108, the complaint shall state that arbitration was considered, but rejected, as a means of resolving the dispute.

(b) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(c) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

(d) *Request for access to waybill data.* Parties needing access to the Waybill Sample to prepare their case should

49 CFR Ch. X (10–1–04 Edition)

follow the procedures set forth at 49 CFR 1244.8.

[61 FR 52711, Oct. 8, 1996, as amended at 63 FR 2639, Jan. 16, 1998; 67 FR 36822, May 28, 2002]

§ 1111.2 Amended and supplemental complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5 of this part, as if the amended or supplemental complaint was an original complaint.

§ 1111.3 Service.

A complainant is responsible for serving formal complaints, amended or supplemental complaints, and cross complaints on the defendant(s). Service shall be made by sending a copy of such complaint to the chief legal officer of each defendant by either confirmed facsimile and first-class mail or express overnight courier. The cover page of each such facsimile and the front of each such first-class mail or overnight express courier envelope shall include the following legend: "Service of STB Complaint". Service of the complaint shall be deemed completed on the date on which the complaint is served by confirmed facsimile or, if service is made by express overnight courier, on the date such complaint is actually received by the defendant. When the complaint involves more than one defendant, service of the complaint shall be deemed completed on the date on which all defendants have been served. An original and ten copies of the complaint should be filed with the Board together with an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service. If complainant cannot serve the