

§ 1121.4

(ii) The Board will rule on a Motion for Access within 30 days after the motion is filed.

(iii) Parties must produce the relevant documents within 5 days of receipt of a Board approved, signed confidentiality agreement.

[61 FR 52714, Oct. 8, 1996, as amended at 73 FR 31034, May 30, 2008; 78 FR 54590, Sept. 5, 2013]

§ 1121.4 Procedures.

(a) Exemption proceedings are informal, and public comments are generally not sought during consideration of exemption petition proposals, except as provided in §1121.4(c). However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption.

(b) If the Board determines that the criteria in 49 U.S.C. 10502 are met for the proposed exemption, it will issue the exemption and publish a notice of exemption in the FEDERAL REGISTER.

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the FEDERAL REGISTER requesting public comments.

(2) If a petition for a new class exemption is filed, the Board will publish a notice in the FEDERAL REGISTER requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.

(d) Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.

(e) Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions for reconsideration or pe-

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titions to reopen under 49 CFR part 1115 or 49 CFR 1152.25(e) must be filed within 20 days of the service date.

(f) Petitions to revoke an exemption or the notice of exemption may be filed at any time. The person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met.

(g) In abandonment exemptions, petitions to revoke in part to impose public use conditions under 49 CFR 1152.28, or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time prior to the consummation of the abandonment, except that public use conditions may not prohibit disposal of the properties for any more than the statutory limit of 180 days after the effective date of the decision granting the exemption.

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996; 62 FR 47583, Sept. 10, 1997; 64 FR 46595, Aug. 26, 1999]

PART 1122—BOARD-INITIATED INVESTIGATIONS

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APPENDIX A TO PART 1122—INFORMAL PROCEDURE RELATING TO RECOMMENDATIONS

Surface Transportation Board

§ 1122.5

AND SUMMARY OF FINDINGS FROM THE
BOARD-INITIATED INVESTIGATION

AUTHORITY: 49 U.S.C. 1321, 11144, 11701.

SOURCE: 81 FR 90239, Dec. 14, 2016, unless
otherwise noted.

§ 1122.1 Definitions.

(a) *Board-Initiated Investigation* means an investigation instituted by the Board pursuant to an Order of Investigation and conducted in accordance with Section 12 of the Surface Transportation Board Reauthorization Act of 2015, now incorporated and codified at 49 U.S.C. 11701.

(b) *Formal Board Proceeding* means a public proceeding instituted by the Board pursuant to an Order to Show Cause after a Board-Initiated Investigation has been conducted.

(c) *Investigating officer(s)* means the individual(s) designated by the Board in an Order of Investigation to conduct a Board-Initiated Investigation.

(d) *Preliminary Fact-Finding* means an informal fact-gathering inquiry conducted by Board staff prior to the opening of a Board-Initiated Investigation.

§ 1122.2 Scope and applicability of this part.

This part applies only to matters subject to Section 12 of the Surface Transportation Board Reauthorization Act of 2015, 49 U.S.C. 11701.

§ 1122.3 Preliminary Fact-Finding.

The Board staff may, in its discretion, conduct nonpublic Preliminary Fact-Finding, subject to the provisions of § 1122.6, to determine if a matter presents an alleged violation that could be of national or regional significance and subject to the Board's jurisdiction under 49 U.S.C. Subtitle IV, Part A, and warrants a Board-Initiated Investigation. Board staff shall inform the subject of Preliminary Fact-Finding that Preliminary Fact-Finding has commenced. Where it appears from Preliminary Fact-Finding that a Board-Initiated Investigation is warranted, staff shall so recommend to the Board. Where it appears from the Preliminary Fact-Finding that a Board-Initiated Investigation is not warranted, staff shall conclude its Preliminary Fact-Finding and notify any par-

ties involved that the process has been terminated.

§ 1122.4 Board-Initiated Investigations.

The Board may, in its discretion, commence a nonpublic Board-Initiated Investigation of any matter of national or regional significance that is subject to the jurisdiction of the Board under 49 U.S.C. Subtitle IV, Part A, subject to the provisions of § 1122.6, by issuing an Order of Investigation. Orders of Investigation shall state the basis for the Board-Initiated Investigation and identify all Board staff who are authorized to conduct the investigation as Investigating Officer(s). The Board may add or remove Investigating Officer(s) during the course of a Board-Initiated Investigation. To the extent practicable, an Investigating Officer shall not participate in any decisionmaking functions in any Formal Board Proceeding(s) opened as a result of any Board-Initiated Investigation(s) that he or she conducted.

§ 1122.5 Procedural rules.

(a) After notifying the party subject to Preliminary Fact-Finding that Preliminary Fact-Finding has commenced, the Board staff shall, within a reasonable period of time, either:

(1) Conclude Preliminary Fact-Finding and notify any parties involved that the process has been terminated; or

(2) Recommend to the Board that a Board-Initiated Investigation is warranted.

(b) Not later than 30 days after commencing a Board-Initiated Investigation, the Investigating Officer(s) shall provide the parties under investigation a copy of the Order of Investigation. If the Board adds or removes Investigating Officer(s) during the course of the Board-Initiated Investigation, it shall provide written notification to the parties under investigation.

(c) Not later than 275 days after issuance of the Order of Investigation, the Investigating Officer(s) shall submit to the Board and the parties under investigation:

(1) Any recommendations made as a result of the Board-Initiated Investigation; and

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(2) A summary of the findings that support such recommendations.

(d) Not later than 90 days after receiving the recommendations and summary of findings, the Board shall decide whether to dismiss the Board-Initiated Investigation if no further action is warranted or initiate a Formal Board Proceeding to determine whether any provision of 49 U.S.C. Subtitle IV, Part A, has been violated in accordance with section 12 of the Surface Transportation Board Reauthorization Act of 2015. The Board shall dismiss any Board-Initiated Investigation that is not concluded with administrative finality within one year after the date on which it was commenced.

(e) A Formal Board Proceeding commences upon issuance of a public Order to Show Cause. The Order to Show Cause shall state the basis for, and the issues to be considered during, the Formal Board Proceeding and set forth a procedural schedule.

§ 1122.6 Confidentiality.

(a) All information and documents obtained under §1122.3 or §1122.4, whether or not obtained pursuant to a Board request or subpoena, and all activities conducted by the Board under this part prior to the opening of a Formal Board Proceeding, shall be treated as nonpublic by the Board and its staff except to the extent that:

(1) The Board, in accordance with 49 CFR 1001.4(c), (d), and (e), directs or authorizes the public disclosure of activities conducted under this part prior to the opening of a Formal Board Proceeding. If any of the activities being publicly disclosed implicate records claimed to be confidential commercial information, the Board shall notify the submitter prior to disclosure in accordance with 49 CFR 1001.4(b) and provide an opportunity to object to disclosure in accordance with 49 CFR 1001.4(d);

(2) The information or documents are made a matter of public record during the course of an administrative proceeding; or

(3) Disclosure is required by the Freedom of Information Act, 5 U.S.C. 552 or other relevant provision of law.

(b) Procedures by which persons submitting information to the Board pursuant to this part of title 49, chapter X,

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subchapter B, of the Code of Federal Regulations may specifically seek confidential treatment of information for purposes of the Freedom of Information Act disclosure are set forth in §1122.7. A request for confidential treatment of information for purposes of Freedom of Information Act disclosure shall not, however, prevent disclosure for law enforcement purposes or when disclosure is otherwise found appropriate in the public interest and permitted by law.

§ 1122.7 Request for confidential treatment.

Any person that produces documents to the Board pursuant to §1122.3 or §1122.4 may claim that some or all of the information contained in a particular document or documents is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure. In such case, the person making such a claim shall, at the time the person produces the document to the Board, indicate on the document that a request for confidential treatment is being made for some or all of the information in the document. In such case, the person making such a claim also shall file a brief statement specifying the specific statutory justification for non-disclosure of the information in the document for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, and the information is responsive to a subsequent FOIA request to the Board, 49 CFR 1001.4 shall apply.

§ 1122.8 Limitation on participation.

No party who is not the subject of a Board-Initiated Investigation may intervene or participate as a matter of right in any such Board-Initiated Investigation under this part.

§ 1122.9 Power of persons conducting Board-Initiated Investigations.

The Investigating Officer(s), in connection with any Board-Initiated Investigation, may interview or depose

witnesses, inspect property and facilities, and request and require the production of any information, documents, books, papers, correspondence, memoranda, agreements, or other records, in any form or media, that are likely to be directly relevant to the issues of the Board-Initiated Investigation. The Investigating Officer(s), in connection with a Board-Initiated Investigation, also may issue subpoenas, in accordance with 49 U.S.C. 1321, to compel the attendance of witnesses, the production of any of the records and other documentary evidence listed above, and access to property and facilities.

§ 1122.10 Transcripts.

Transcripts, if any, of investigative testimony shall be recorded solely by the official reporter or other person or by means authorized by the Board or by the Investigating Officer(s). A witness who has given testimony pursuant to this part shall be entitled, upon written request, to procure a transcript of the witness' own testimony or, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

§ 1122.11 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or testimony in a Board-Initiated Investigation shall, upon request, be shown the Order of Investigation. Copies of Orders of Investigation shall not be furnished, for their retention, to such persons requesting the same except with the express approval of the Chairman.

(b) Any person compelled to appear, or who appears in person at a Board-Initiated Investigation by request or permission of the Investigating Officer may be accompanied, represented, and advised by counsel, as provided by the Board's regulations.

(c) The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any aspect of a Board-Initiated Investigation and to have this attorney advise his client before, during and after the conclusion of such examination.

§ 1122.12 Certifications and false statements.

(a) When producing documents under § 1122.4, the producing party shall submit a statement certifying that such person has made a reasonable search for the responsive documents and is producing all the documents called for by the Investigating Officer(s), subject to any search protocols agreed to by the Investigating Officer(s) and producing parties. If any responsive document(s) are not produced for any reason, the producing party shall state the reason therefor.

(b) If any responsive documents are withheld because of a claim of the attorney-client privilege, work product privilege, or other applicable privilege, the producing party shall submit a list of such documents which shall, for each document, identify the attorney involved, the client involved, the date of the document, the person(s) shown on the document to have prepared and/or sent the document, and the person(s) shown on the document to have received copies of the document.

§ 1122.13 Right to submit statements.

Any party subject to a Board-Initiated Investigation may, at any time during the course of a Board-Initiated Investigation, submit to the Board written statements of facts or circumstances, with any relevant supporting evidence, concerning the subject of that investigation.

APPENDIX A TO PART 1122—INFORMAL PROCEDURE RELATING TO RECOMMENDATIONS AND SUMMARY OF FINDINGS FROM THE BOARD-INITIATED INVESTIGATION

(a) After conducting sufficient investigation and prior to submitting recommendations and a summary of findings to the Board, the Investigating Officer, in his or her discretion, may inform the parties under investigation (orally or in writing) of the proposed recommendations and summary of findings that may be submitted to the Board. If the Investigating Officer so chooses, he or she shall also advise the parties under investigation that they may submit a written statement, as explained below, to the Investigating Officer prior to the consideration by the Board of the recommendations and summary of findings. This optional process is in addition to, and does not limit in any way,

the rights of parties under investigation otherwise provided for in this part.

(b) Unless otherwise provided for by the Investigating Officer, parties under investigation may submit a written statement, as described above, within 14 days after of being informed by the Investigating Officer of the proposed recommendation(s) and summary of findings. Such statements shall be no more than 20 pages, not including any supporting data, evidence, and verified statements that may be attached to the written statement, double spaced on 8½ by 11 inch paper, setting forth the views of the parties under investigation of factual or legal matters or other arguments relevant to the commencement of a Formal Board Proceeding. Any statement of fact included in the submission must be sworn to by a person with personal knowledge of such fact.

(c) Such written statements, if the parties under investigation choose to submit, shall be submitted to the Investigating Officer. The Investigating Officer shall provide any written statement(s) from the parties under investigation to the Board at the same time that he or she submits his or her recommendations and summary of findings to the Board.

PARTS 1123–1129 [RESERVED]

Parts 1130–1149—Rate Procedures

PART 1130—INFORMAL COMPLAINTS

Sec.

1130.1 When no damages sought.

1130.2 When damages sought.

AUTHORITY: 49 U.S.C. 1321, 13301(f), 14709.

§ 1130.1 When no damages sought.

(a) *Form and content.* Informal complaint may be by letter or other writing filed with the Board and will be serially numbered as filed. The complaint must contain the essential elements of a formal complaint as specified at 49 CFR 1111.2 and may embrace supporting papers.

(b) *Correspondence handling.* When an informal complaint appears susceptible of informal adjustment, the Board will send a copy or statement of the complaint to each subject of the complaint in an attempt to have it satisfied by correspondence, thereby avoiding the filing of a formal complaint.

(c) *Discontinuance of informal proceeding.* The filing of an informal com-

plaint does not preclude complainant from filing a formal complaint. If a formal complaint is filed, the informal proceeding will be discontinued.

[47 FR 49570, Nov. 1, 1982, as amended at 48 FR 44827, Sept. 30, 1983; 69 FR 12806, Mar. 18, 2004; 82 FR 57382, Dec. 5, 2017; 84 FR 12944, Apr. 3, 2019]

§ 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.

(b) *Content.* An informal complaint seeking damages must be filed within the statutory period, and should identify with reasonable definiteness the involved shipments or transportation services. The complaint should include:

(1) A statement that complainant seeks to recover damages;

(2) The names of each individual seeking damages;

(3) The names and addresses of defendants against which claim is made;

(4) The commodities, the rate applied, the date on which the charges were paid, the names of the parties paying the charges, and, if different, the names of the parties bearing the charges;

(5) The period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

(6) The specific origin and destination points or, where they are numerous, the territorial or rate group of the origin and destination points and, if known, the routes of movement; and

(7) The nature and amount of the injury sustained by each claimant.

(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.

(d) *Copies.* The original of an informal complaint seeking damages must be accompanied by a sufficient number of copies to enable the Board to send one to each defendant named.

(e) [Reserved]

(f) *Notification to the parties; six months' rule.* If an informal complaint