

Rate as published by The Wall Street Journal in effect on the date the statement is filed accounting for all amounts received under the new rates.

(2) For complaint proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the day when the unlawful charge is paid. The interest rate in complaint proceedings shall be updated whenever The Wall Street Journal publishes a change to its reported U.S. Prime Rate. Updating will continue until the required reparation payments are made.

(b) For investigation proceedings, the reparations period shall begin on the date the investigation is started. For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid.

(c) For both investigation and complaint proceedings, the annual percentage rate shall be the same as the annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this “exponential” approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each period by the principal amount for that period plus any accumulated interest from previous periods. The “interest factor” for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate.

[78 FR 44460, July 24, 2013]

PART 1144—INTRAMODAL RAIL COMPETITION

Sec.

1144.1 Negotiation.

1144.2 Prescription.

1144.3 General.

AUTHORITY: 49 U.S.C. 1321, 10703, 10705, and 11102.

SOURCE: 67 FR 61290, Sept. 30, 2002, unless otherwise noted.

§ 1144.1 Negotiation.

(a) *Timing.* At least 5 days prior to seeking the prescription of a through route, joint rate, or reciprocal switching, the party intending to initiate such action must first seek to engage in negotiations to resolve its dispute with the prospective defendants.

(b) *Participation.* Participation or failure to participate in negotiations does not waive a party’s right to file a timely request for prescription.

(c) *Arbitration.* The parties may use arbitration as part of the negotiation process, or in lieu of litigation before the Board.

§ 1144.2 Prescription.

(a) *General.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11102(c), if the Board determines:

(1) That the prescription or establishment is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive, and otherwise satisfies the criteria of 49 U.S.C. 10705 and 11102(c), as appropriate. In making its determination, the Board shall take into account all relevant factors, including:

(i) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(ii) The efficiency of the rail routes in question, including the costs of operating via those routes.

(iii) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(iv) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

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(i) The complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

(b) *Other considerations.* (1) The Board will not consider product competition.

(2) If a railroad wishes to rely in any way on geographic competition, it will have the burden of proving the existence of effective geographic competition by clear and convincing evidence.

(3) When prescription of a through route, a through rate, or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequacy of the defendant railroad(s) will not be a basis for denying the prescription.

(4) Any proceeding under the terms of this section will be conducted and concluded by the Board on an expedited basis.

[67 FR 61290, Sept. 30, 2002, as amended at 81 FR 8855, Feb. 23, 2016]

§ 1144.3 General.

(a) These rules will govern the Board's adjudication of individual cases pending on or after the effective date of these rules (October 31, 1985).

(b) Discovery under these rules is governed by the Board's general rules of discovery at 49 CFR part 1114.

(c) Any Board determinations or findings under this part with respect to compliance or non-compliance with the standards of § 1144.2 shall not be given any res judicata or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

PART 1145—RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

Sec.

- 1145.1 Definitions.
- 1145.2 Performance standards.
- 1145.3 Affirmative defenses.

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1145.4 Negotiations.

1145.5 Procedures.

1145.6 Prescription.

1145.7 Termination.

1145.8 Data.

AUTHORITY: 49 U.S.C. 1321 and 11102.

SOURCE: 89 FR 38706, May 7, 2024, unless otherwise noted.

§ 1145.1 Definitions.

The following definitions apply to this part:

Affiliated companies has the same meaning as “affiliated companies” in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

Cut-off time means the deadline for requesting service during a service window, as determined in accordance with the rail carrier's established protocol.

Delivery means when a shipment is actually placed at a designated destination or is constructively placed at a local yard that is convenient to the designated destination. In the case of an interline movement, a shipment will be deemed to be delivered to the receiving carrier or its agent or affiliate when the shipment is moved past a designated automatic equipment identification reader at the point of interchange or is placed on a designated interchange track, depending on the specific interchange that is involved. For purposes hereof, constructive placement of a shipment at a local yard constitutes delivery only when:

(1) The recipient has the option, by prior agreement between the rail carrier and the customer, to have the rail carrier hold the shipment pending the recipient's request for delivery to the designated destination and the recipient has not yet requested delivery; or

(2) The recipient is unable to accept delivery at the designated destination.

Designated destination means the final destination as specified in the bill of lading or, in the case of an interline movement, the interchange where the shipment is transferred to the receiving carrier, its agent, or affiliated company.

Incumbent rail carrier means a Class I rail carrier that currently provides line-haul service to the petitioner to or from the point of origin or final destination that would be covered by the