

# ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 49: Transportation

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## **PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES**

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SOURCE: 82 FR 57379, Dec. 5, 2017, unless otherwise noted.

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### **§1111.1 Pre-filing procedures in stand-alone cost cases.**

(a) *General.* At least 70 days prior to the proposed filing of a complaint challenging the reasonableness of a rail rate based on stand-alone cost, complainant shall file a notice with the Board. The notice shall:

- (1) Identify the rate to be challenged;
- (2) Identify the origin/destination pair(s) to be challenged;
- (3) Identify the affected commodities; and
- (4) Include a motion for protective order as set forth at 49 CFR 1104.14(c).

(b) *Liaison.* Within 10 days of the filing of the pre-filing notice, the Board shall appoint a liaison to the parties.

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## §1111.2 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. 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) The carrier or region identifier.
- (2) The type of shipment (local, received-terminated, etc.).
- (3) The one-way distance of the shipment.
- (4) The type of car (by URCS code).
- (5) The number of cars.
- (6) The car ownership (private or railroad).
- (7) The commodity type (STCC code).
- (8) The weight of the shipment (in tons per car).
- (9) The type of movement (individual, multi-car, or unit train).
- (10) A narrative addressing whether there is any feasible transportation alternative for the challenged movements.
- (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) *Disclosure with simplified standards complaint.* The complainant must provide to the defendant all documents relied upon in formulating its assessment of a feasible transportation alternative and all documents relied upon to determine the inputs to the URCS Phase III program.

(c) *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.

(d) *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.

(e) *Request for access to waybill data.* Parties needing access to the Waybill Sample to prepare their case should follow the procedures set forth at 49 CFR 1244.9.

(f) *Discovery in stand-alone cost cases.* Upon filing its complaint, the complainant shall certify that it has served its initial discovery requests on the defendant.

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### **§1111.3 Amended and supplemental complaints.**

(a) *Generally.* 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 §§1111.5 and 1111.6, as if the amended or supplemental complaint was an original complaint.

(b) *Stand-alone cost.* If a complainant tenders an amended or supplemental complaint in a stand-alone cost case, the complainant shall certify that it has served on the defendant those initial discovery requests affected by the amended or supplemental complaint, if any.

(c) *Simplified standards.* A complaint filed under the simplified standards may be amended once before the filing of opening evidence to opt for a different rate reasonableness methodology, among Three-Benchmark, Simplified-SAC, or Full-SAC. If so amended, the procedural schedule begins again under the new methodology as set forth at §§1111.9 and 1111.10. However, only one mediation period per complaint shall be required.

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### **§1111.4 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. 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.

[82 FR 57379, Dec. 5, 2017, as amended at 84 FR 12944, Apr. 3, 2019]

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### **§1111.5 Answers and cross complaints.**

(a) *Generally.* An answer shall be filed within the time provided in paragraph (c) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition. In response to a complaint filed under the simplified standards, the answer must include the defendant's preliminary estimate of the variable cost of each challenged movement calculated using the unadjusted figures produced by the URCS Phase III program.

(b) *Disclosure with simplified standards answer.* The defendant must provide to the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III program.

(c) *Time for filing; copies; service.* An answer must be filed with the Board within 20 days after the service of the complaint or within such additional time as the Board may provide. The defendant must serve copies of the answer upon the complainant and any other defendants.

(d) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint shall be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

(e) *Failure to answer complaint.* Averments in a complaint are admitted when not denied in an answer to the complaint.

(f) *Discovery in stand-alone cost cases.* Upon filing its answer, the defendant shall certify that it has served its initial discovery requests on the complainant. If the complainant tenders an amended or supplemental complaint to which the defendant must reply, upon filing the answer to the amended or supplemental complaint, the defendant shall certify that it has served on the complainant those initial discovery requests affected by the amended or supplemental complaint, if any.

[82 FR 57379, Dec. 5, 2017, as amended at 84 FR 12944, Apr. 3, 2019]

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### **§1111.6 Motions to dismiss or to make more definite.**

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

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### **§1111.7 Satisfaction of complaint.**

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

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### **§1111.8 Investigations on the Board's own motion.**

(a) *Service of decision.* A decision instituting an investigation on the Board's own motion will be served by the Board upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

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### **§1111.9 Procedural schedule in stand-alone cost cases.**

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedule will apply in stand-alone cost cases after the pre-complaint period initiated by the pre-filing notice:

- (1) Day 0—Complaint filed, discovery period begins.
- (2) Day 7 or before—Conference of the parties convened pursuant to §1111.11(b).
- (3) Day 20—Defendant's answer to complaint due.

(4) Day 150—Discovery completed.

(5) Day 210—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone cost issues.

(6) Day 270—Defendant files reply evidence to complainant's opening evidence.

(7) Day 305—Complainant files rebuttal evidence to defendant's reply evidence.

(8) Day 335—Complainant and defendant file final briefs.

(9) Day 485 or before—The Board issues its decision.

(b) *Staggered filings; final briefs.* (1) The parties may submit non-public (*e.g.*, confidential, highly confidential) versions of filings on the dates identified in the procedural schedule, and submit public versions of those filings within three business days thereafter.

(2) Final briefs are limited to 30 pages, inclusive of exhibits.

(c) *Conferences with parties.* (1) The Board will convene a technical conference of the parties with Board staff prior to the filing of any evidence in a stand-alone cost rate case, for the purpose of reaching agreement on the operating characteristics that are used in the variable cost calculations for the movements at issue. The parties should jointly propose a schedule for this technical conference.

(2) In addition, the Board may convene a conference of the parties with Board staff, after discovery requests are served but before any motions to compel may be filed, to discuss discovery matters in stand-alone cost rate cases. The parties should jointly propose a schedule for this discovery conference.

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### **§1111.10 Procedural schedule in cases using simplified standards.**

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedules will apply in cases using the simplified standards:

(1)(i) In cases relying upon the Simplified-SAC methodology:

(A) Day 0—Complaint filed (including complainant's disclosure).

(B) Day 10—Mediation begins.

(C) Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

(D) Day 30—Mediation ends; discovery begins.

(E) Day 140—Defendant's second disclosure.

(F) Day 150—Discovery closes.

(G) Day 220—Opening evidence.

(H) Day 280—Reply evidence.

(I) Day 310—Rebuttal evidence.

(J) Day 320—Technical conference (market dominance and merits).

(K) Day 330—Final briefs.

(ii) In addition, the Board will appoint a liaison within 10 business days of the filing of the complaint.

(2)(i) In cases relying upon the Three-Benchmark methodology:

(A) Day 0—Complaint filed (including complainant's disclosure).

(B) Day 10—Mediation begins. (STB production of unmasked Waybill Sample.)

(C) Day 20—Defendant's answer to complaint (including defendant's initial disclosure).

(D) Day 30—Mediation ends; discovery begins.

(E) Day 60—Discovery closes.

(F) Day 90—Complainant's opening (initial tender of comparison group and opening evidence on market dominance). Defendant's opening (initial tender of comparison group).

(G) Day 95—Technical conference on comparison group.

(H) Day 120—Parties' final tenders on comparison group. Defendant's reply on market dominance.

(I) Day 150—Parties' replies to final tenders. Complainant's rebuttal on market dominance.

(ii) In addition, the Board will appoint a liaison within 10 business days of the filing of the complaint.

(b) *Staggered filings; final briefs.* (1) The parties may submit non-public (e.g., confidential, highly confidential) versions of filings on the dates identified in the procedural schedule, and submit public versions of those filings within three business days thereafter.

(2) In cases relying upon the Simplified-SAC methodology, final briefs are limited to 30 pages, inclusive of exhibits.

(c) *Defendant's second disclosure.* In cases using the Simplified-SAC methodology, the defendant must make the following disclosures to the complainant by Day 170 of the

procedural schedule.

(1) Identification of all traffic that moved over the routes replicated by the SARR in the Test Year.

(2) Information about those movements, in electronic format, aggregated by origin-destination pair and shipper, showing the origin, destination, volume, and total revenues from each movement.

(3) Total operating and equipment cost calculations for each of those movements, provided in electronic format.

(4) Revenue allocation for the on-SARR portion of each cross-over movement in the traffic group provided in electronic format.

(5) Total trackage rights payments paid or received during the Test Year associated with the route replicated by the SARR.

(6) All workpapers and documentation necessary to support the calculations.

(d) *Conferences with parties.* The Board may convene a conference of the parties with Board staff to facilitate voluntary resolution of discovery disputes and to address technical issues that may arise.

(e) *Complaint filed with a petition to revoke a class exemption.* If a complaint is filed simultaneously with a petition to revoke a class exemption, the Board will take no action on the complaint and the procedural schedule will be held in abeyance automatically until the petition to revoke is adjudicated.

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### **§1111.11 Meeting to discuss procedural matters.**

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

(b) *Stand-alone cost or simplified standards complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone or through email, discovery and procedural matters within 7 days after the complaint is filed in stand-alone cost cases, and 7 days after the mediation period ends in simplified standards cases. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.



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