

Surface Transportation Board, DOT

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or the specific inland origin and destination points.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

- (1) Total bad-car orders;
- (2) Assigned car obligations; and
- (3) Free-running cars.

§ 1313.8 Contract summary for grain products—not involving a port.

(a) *Summary information.* The summary of a contract for the transportation of grain products that does not involve service to or from a port must contain the information specified in § 1313.7, paragraphs (a)(1), (2), (3) and (7). It must also contain the information specified in § 1313.7(a)(6) if the contract contains such terms.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data specified in § 1313.7(b).

§ 1313.9 Grounds for complaints and contract review.

(a) A complaint may be filed against a contract covered by this part:

(1) By any shipper on the ground that such shipper individually will be harmed because the contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under 49 U.S.C. 11101;

(2) By a port on the ground that such port individually will be harmed because the contract will result in unreasonable discrimination against such port; and

(3) By a shipper of agricultural commodities on the ground that such ship-

per individually will be harmed because:

(i) The rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that such shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) The contract constitutes a destructive competitive practice.

(b) *Unreasonable discrimination,* for purposes of paragraph (a)(3)(i) of this section, has the same meaning as the term has under 49 U.S.C. 10741.

§ 1313.10 Procedures for complaints and discovery.

(a) *Complaints, discovery petitions, replies, and appeals—(1) Initial filing.* Complaints must be filed by the 18th day after the contract summary is filed. Any discovery petition must accompany the complaint.

(2) *Complaint.* A complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant(s). The complainant must set out the statutory provisions under which it has standing to file a complaint, and its reasons for requesting that the Board find the challenged contract unlawful.

(3) *Discovery petition.* A discovery petition must note on the front page "Petition for Discovery of Rail Contract" and note the contract (and any applicable amendment) number. It should provide the following information:

(i) *Standing—grounds.* The ground upon which the petitioner's complaint is based under § 1313.9.

(ii) *Standing—affected party.* Pertinent information regarding the petitioner's actual or potential participation in the relevant market, including:

(A) The nature and volume of petitioner's relevant business.

(B) The relevant commodities that petitioner ships or receives.

(C) Comparisons of the petitioner's commodities, locations of shipping facilities and serving carriers, actual or

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potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(D) The petitioner's ability to ship the commodity in question at a time generally simultaneous with the challenged contract.

(E) The potential effect of the contract on the petitioner's relevant business.

(F) Any additional supporting information, including prior negotiations, if any.

(iii) *Relevance.* The relevance of the information sought to the petitioner's challenge to the contract.

(iv) *Nexus.* Where the complaint challenges a carrier's ability to perform its common carrier obligation, the nexus between the information sought and the common carrier obligation of the contracting carrier(s).

(4) *Service of pleadings.* The complainant must certify that 2 copies of the complaint, and discovery petition if filed, have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Board. The contracting carrier shall in turn serve the contracting shipper with a copy of the complaint and petition. Replies shall be served in the same manner on complainant/petitioner.

(5) *Submission of contract.* Immediately upon the filing of a complaint, the rail carrier filing the contract summary shall forward to the Board, by hand, express mail, or other overnight delivery service, the subject contract or amended contract.

(6) *Replies.* Replies to the complaint/petition are due within 5 days from the date of filing of the complaint/petition, and in no event later than noon on the 23rd day following filing of the contract summary.

(7) *Copies.* An original and 10 copies of complaints, petitions and replies must be filed with the Board in a package marked "Confidential Rail Contract Material".

(8) *Discovery appeals.* If action on a petition for discovery is taken under delegated authority, that action may be appealed to the Board, subject to the following:

(i) An appeal must be received within 2 days of the initial decision, but in no event later than the 28th day after the contract summary is filed.

(ii) The appeal must be marked "Appeal of Delegated Authority Action Regarding Rail Contract Discovery".

(iii) Telegraphic notice or its equivalent must be given to the opposing parties.

(iv) Replies to the appeal must be filed within one day after the appeal is filed.

(v) An original and 10 copies of appeals and replies must be filed with the Board.

(9) *Furnishing of information.* If discovery is granted, the carrier must furnish the required information to the petitioner by the 1st working day after the Board issues its decision.

(b) *Informal discovery.* (1) Prior to filing a petition for formal discovery under paragraph (a) of this section, a petitioner may request discovery from the carrier.

(2) The carrier must promptly grant or deny the request.

(3) Agreements between carriers and shippers for informal discovery are permitted under these rules.

(c) *Confidentiality.* If confidential contract data are filed with the Board in a pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (d) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Board or through informal discovery.

(d) *Protective order.* Petitioner and carriers, and their duly authorized agents, shall limit to the contract complaint proceeding the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or in any other pleading relating to the contract. This restriction shall be a condition to release of any contract term to a petitioner/complainant and shall operate similarly on a carrier

in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: consultants or agents who agree, in writing, to be bound by this regulation; information which is publicly available; information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding.

(e) *Contract review proceeding.* If the Board institutes a proceeding to review the contract, the complainant's case-in-chief is due 9 days after the institution of the proceeding, but no later than 39 days after the filing of the contract summary. Replies are due 16 days after the institution of the proceeding, but no later than 46 days after the filing of the contract summary.

PART 1319—EXEMPTIONS

AUTHORITY: 49 U.S.C. 721(a) and 13541.

SOURCE: 62 FR 9110, Feb. 28, 1997, unless otherwise noted.

§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from tariff filing requirements.

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the tariff filing requirements of 49 U.S.C. 13702.

PARTS 1320–1324 [RESERVED]

PART 1325—EXTENSION OF CREDIT TO CANDIDATES FOR FEDERAL OFFICE OR THEIR REPRESENTATIVES

Sec.

1325.1 Extension of unsecured credit prohibited.

1325.2 Credit agreements.

1325.3 Federal office.

AUTHORITY: Pub. L. 92-225, the Federal Election Campaign Act of 1971, enacted Feb. 7, 1972.

SOURCE: 37 FR 10446, May 23, 1972, unless otherwise noted.

§ 1325.1 Extension of unsecured credit prohibited.

Persons subject to regulation by the Surface Transportation Board shall not knowingly and willfully provide, for candidates for Federal office or their representatives, service or goods related to their campaign without obtaining either prepayment or a binding guarantee of payment through a sufficient deposit, bond, collateral, or other means of security. The extension of credit to such persons shall not exceed the amount of the security posted.

§ 1325.2 Credit agreements.

(a) All agreements to extend credit to candidates for Federal office or their representatives by persons subject to regulation by the Surface Transportation Board (1) must be in writing, (2) must contain a detailed description of the deposit, bond, collateral, or other means of security, used to secure payment of the debt, and (3) must be signed by all parties to the agreement. A copy of each such agreement must be filed with this Board's Bureau of Operations in Washington, DC, within 20 days of the date of its execution.

(b) [Reserved]

§ 1325.3 Federal office.

For the purposes of this section, *Federal office* means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Board Member to, the Congress of the United States.