

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 542 (Sub-No. 18)
REGULATIONS GOVERNING FEES FOR SERVICES

COMMENTS OF THE
U.S. DEPARTMENT OF AGRICULTURE

Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: April 19, 2011

AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

USDA COMMENTS

The Department of Agriculture (USDA) commends the Board for seeking to amend the regulations governing user fees for services performed. USDA agrees with the Board's proposal to reduce fees from \$20,600 to \$350 for sub-item 56(iv) [all other formal complaints except competitive access] with regard to rail business practices. USDA agrees the present fee of \$20,600 could have a chilling effect on shippers seeking to bring a complaint to the Board. USDA also supports the Board's proposal to formally set the fees for sub-items 56(i) [full Stand-Alone Cost (SAC) rate complaints] and 56(ii) [Simplified-SAC rate complaints] at \$350, and keeping the fees for sub-item 56(iii) [Three Benchmark rate complaints] at \$150.

For over two decades, agricultural shippers, trade associations, and State officials in rural America have complained to USDA, the Board, and Congress about rail rates and services, citing negative impacts on income, electricity prices, business expansion, domestic customers, and export markets.

In recent years, railroads increasingly have engaged in a wide range of business practices that shifts costs to shippers and often include fees, penalties, and access charges that appear excessive to the shipper. These fees and penalties are assessed in some instances even when a shipper has no control over the event triggering such fees and penalties. Examples of such business practices include:

- Fuel surcharges that over-recover the cost of fuel
- Switching charges that prevent access to connecting railroads serving other markets
- Railroads shifting liability and indemnification to rail customers
- Limiting delivery of railcars to a maximum of 48 railcars for 52- and 54-car shippers after encouraging the construction of 52- and 54-car facilities
- Refusal to quote rates or provide services
- Differential service provided to shippers based upon the size of the shipper
- Insufficient supply of intermodal containers and lack of service to intermodal terminals in rural areas
- Changes in interchange rules that force significant increased costs to be borne by the car owner, even though the benefits of these improvements are received in most cases by the railroads
- Per diem and distance rates paid for the use of private railcars that fail to give private railcar owners a fair return on investment
- Overweight charges for railcars that become covered with snow and ice while in transit.

USDA believes the current fee may discourage agricultural shippers, who typically ship smaller quantities from more disperse areas than shippers from other industries, from appealing unreasonable business practices under sub-item 56(iv). Consequently, the current fee level may discourage some shippers from bringing a complaint to the Board, which USDA agrees is contrary to good public policy. Also, as a matter of practicality, USDA understands that in some cases shippers have filed petitions for declaratory orders (\$1,000 to \$1,400) rather than enter a formal complaint

before the Board which costs \$20,600. They have done so even though they would forgo the payment of damages that are available through an unreasonable practices case.

CONCLUSION

USDA supports the Board's recommendation to reduce the fees for appealing unreasonable business practices under sub-item 56(iv) from \$20,600 to \$350. Likewise, USDA supports the Board's recommendation for setting the fee for sub-items 56(i) and 56(ii) at \$350 and keeping the fee for sub-item 56(iii) at \$150.

Respectfully submitted,

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Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture

CERTIFICATE OF SERVICE

I, Bruce Blanton, certify that on this 18th day of April, 2011, I caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties of record in STB Ex Parte No. 542 (Sub. No. 18).

A handwritten signature in black ink, appearing to read "Bruce Blanton", written over a horizontal line.

Bruce Blanton
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