

## Surface Transportation Board, DOT

## §1115.2

party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

### PART 1115—APPELLATE PROCEDURES

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AUTHORITY: 5 U.S.C. 559; 49 U.S.C. 721.

SOURCE: 47 FR 49568, Nov. 1, 1982, unless otherwise noted.

#### §1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Board action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature. Abandonments and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR part 1152)

(b) Requests for appellate relief may relate either to initial decisions or to Board actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(c) Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the

Board pursuant to §1011.7 will be acted upon by the entire Board. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

[47 FR 49568, Nov. 1, 1982, as amended at 61 FR 52714, Oct. 8, 1996]

#### §1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Board Member, or employee board.

(a) An appeal of right is permitted.

(b) Appeals must be based on one or more of the following grounds:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion, or finding is contrary to law, Board precedent, or policy;

(3) That an important question of law, policy, or discretion is involved which is without governing precedent;

(4) That prejudicial procedural error has occurred.

(c) Appeals must detail the assailed findings with supporting citations to the record and authorities.

(d) Appeals and replies shall not exceed 30 pages in length, including argument, and appendices or other attachments, but excluding a table of cases and an index of subject matter.

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Board may authorize. Replies must be filed within 20 days of the date the appeal is filed.

(f) The timely filing of an appeal to an initial decision will stay the effect of the action pending determination of the appeal.

(g) If an appeal of an initial decision is not timely filed or the Board does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of