

§1115.3

the Board and be effective at the expiration of the time for filing, unless otherwise provided.

[47 FR 49568, Nov. 1, 1982, as amended at 54 FR 19894, May 9, 1989; 61 FR 52714, Oct. 8, 1996]

§1115.3 Board actions other than initial decisions.

(a) A discretionary appeal of an entire Board action is permitted. Such an appeal should be designated a "petition for reconsideration."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

(c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date.

49 CFR Ch. X (10-1-01 Edition)

On the day the action is served parties may initiate judicial review.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

§1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of §1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.

[61 FR 52714, Oct. 8, 1996]

§1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extension of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

(b) When the terms of a Board action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

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

§1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under §1115.2 or §1115.3 of this part, before or

Surface Transportation Board, DOT

§1116.2

after a petition seeking judicial review is filed with the courts, the Board will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

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

§1115.7 Petitions for judicial review; mailing address.

Petitions for judicial review of final agency orders may be served on the Board pursuant to 28 U.S.C. 2112(a) and be addressed to "General Counsel, Office of the General Counsel, Surface Transportation Board, Washington, DC 20423."

[53 FR 20854, June 7, 1988, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Board, and is subject to the page limitations of §1115.2(d). Standards for Board review of arbitration decisions are set forth in *Chicago and North Western Transp. Co.—Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers v. STB*, No. 87-1629 (D.C. Cir. November 25, 1988). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under §1115.5.

[54 FR 19894, May 9, 1989, as amended at 61 FR 52714, Oct. 8, 1996]

§1115.9 Interlocutory appeals.

(a) Rulings of Board employees, including administrative law judges, may be appealed prior to service of the initial decision only if:

- (1) The ruling denies or terminates any person's participation;
- (2) The ruling grants a request for the inspection of documents not ordinarily available for public inspection;
- (3) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents; or
- (4) The ruling may result in substantial irreparable harm, substantial det-

rimment to the public interest, or undue prejudice to a party.

(b) In stand-alone cost complaints, any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. Replies to any interlocutory appeal shall be filed with the Board within three (3) business days after the filing of any such appeal. In all other cases, interlocutory appeals shall be filed with the Board within seven (7) calendar days of the ruling and replies to interlocutory appeals shall be filed with Board within seven (7) calendar days after the filing of any such appeal as computed under 49 CFR 1104.7.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996]

PART 1116—ORAL ARGUMENT BEFORE THE BOARD

Sec.

1116.1 Requests.

1116.2 Manner of presentation.

AUTHORITY: 49 U.S.C. 721.

SOURCE: 47 FR 49569, Nov. 1, 1982, unless otherwise noted.

§1116.1 Requests.

(a) *Addressee*. Requests for oral argument should be addressed to the Secretary, Surface Transportation Board, Washington, DC 20423.

(b) *Who may request?* Any party may submit a written request for oral argument and state the reasons for the request. No replies from other parties to the request shall be made.

(c) *When to file a request*. Requests for oral argument should be filed within 20 days after the date of service of the decision, order, or requirement being appealed, unless the Board by order prescribes a different time period.

(d) *Granting of request*. The Board will rule upon requests by decision, and the granting of requests is entirely at the discretion of the Board.

§1116.2 Manner of presentation.

Proponents of a rule or order will be heard first, and opponents will be heard second. One counsel only will usually be heard for each of the opposing interests, unless additional presentations are specifically authorized.