

110TH CONGRESS
1ST SESSION

S. 953

To amend title 49, United States Code, to ensure competition in the rail industry, enable rail customers to obtain reliable rail service, and provide those customers with a reasonable process for challenging rate and service disputes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2007

Mr. ROCKEFELLER (for himself, Mr. CRAIG, Mr. DORGAN, Mr. VITTER, Ms. KLOBUCHAR, Mr. TESTER, Ms. LANDRIEU, Mr. CRAPO, Mr. BAUCUS, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, to ensure competition in the rail industry, enable rail customers to obtain reliable rail service, and provide those customers with a reasonable process for challenging rate and service disputes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Railroad Competition and Service Improvement Act of
6 2007”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. References to title 49, United States Code.

TITLE I—ENSURING COMPETITION IN THE RAIL INDUSTRY

- Sec. 101. Clarification of rail transportation policy and directives for implementation.
 Sec. 102. Requirement for railroads to provide rates for transportation.
 Sec. 103. Elimination of barriers to competition between class I, class II, and class III rail carriers.
 Sec. 104. Reciprocal switching.
 Sec. 105. Areas of inadequate rail competition.

TITLE II—IMPROVING SERVICE TO RAIL CUSTOMERS

- Sec. 201. Rail service.
 Sec. 202. Railroad obligation to serve.
 Sec. 203. Damages due to the failure of timely delivery.
 Sec. 204. Rail customer advocate.

TITLE III—PROVIDING ACCESS TO A REASONABLE RATE
 PROCESS

- Sec. 301. Rights of rail customers.
 Sec. 302. Improvement of rate reasonableness standard.
 Sec. 303. Filing fees on petitions for captive rate relief.
 Sec. 304. Arbitration of certain rail rate, service, and other disputes.

TITLE IV—AUTHORITY TO INVESTIGATE

- Sec. 401. Authority of board to investigate and suspend certain railroad actions.

3 **SEC. 2. REFERENCES TO TITLE 49, UNITED STATES CODE.**

4 Except as otherwise expressly provided, whenever in
 5 this Act an amendment or repeal is expressed in terms
 6 of an amendment to, or a repeal of, a section or other
 7 provision, the reference shall be considered to be made to
 8 a section or other provision of title 49, United States
 9 Code.

1 **TITLE I—ENSURING COMPETI-**
2 **TION IN THE RAIL INDUSTRY**

3 **SEC. 101. CLARIFICATION OF RAIL TRANSPORTATION POL-**
4 **ICY AND DIRECTIVES FOR IMPLEMENTATION.**

5 Section 10101 is amended—

6 (1) by inserting “(a) IN GENERAL.—” before
7 “In”; and

8 (2) by adding at the end the following:

9 “(b) IMPLEMENTATION DIRECTIVES.—In imple-
10 menting subtitle IV, the Board shall—

11 “(1) ensure, to the maximum extent possible,
12 effective competition among rail carriers at origins
13 and destinations;

14 “(2) ensure reasonable rates for rail customers
15 in the absence of competition; and

16 “(3) ensure consistent, efficient, and reliable
17 rail transportation service for rail customers, includ-
18 ing the timely provision of rail cars requested by rail
19 customers.”.

20 **SEC. 102. REQUIREMENT FOR RAILROADS TO PROVIDE**
21 **RATES FOR TRANSPORTATION.**

22 Section 11101(a) is amended—

23 (1) by inserting “(1)” after “(A)”;

24 (2) by striking “A rail carrier shall not” and in-
25 serting the following:

1 “(3) A rail carrier may not”; and

2 (3) by inserting after paragraph (1) the fol-
3 lowing:

4 “(2) Upon the request of a shipper, a rail carrier
5 shall establish a rate for transportation and provide serv-
6 ice requested by the shipper between any 2 points on the
7 system of that carrier at which traffic originates, termi-
8 nates, or may reasonably be interchanged. A carrier shall
9 establish a rate and provide service upon such request
10 without regard to—

11 “(A) the location of the movement on the rail
12 system, including terminal areas;

13 “(B) whether the rate established is for part of
14 a movement between a point of origin and a destina-
15 tion;

16 “(C) whether the shipper has made arrange-
17 ments for transportation for any other part of that
18 movement; or

19 “(D) whether the shipper has a contract with
20 any rail carrier for part or all of its transportation
21 needs over the route of movement.”.

1 **SEC. 103. ELIMINATION OF BARRIERS TO COMPETITION BE-**
2 **TWEEN CLASS I, CLASS II, AND CLASS III RAIL**
3 **CARRIERS.**

4 (a) IN GENERAL.—Section 10901 is amended by
5 adding at the end the following:

6 “(e)(1) The Board may not issue a certificate author-
7 izing an activity described in subsection (a), section
8 10902, or section 11323, or exempt a person, a class of
9 persons, a transaction, or a service from the applicability
10 of this section with respect to such an activity under sec-
11 tion 10502, if the activity involves a transfer of interest
12 in a line of railroad, from a Class I rail carrier to a Class
13 II or Class III rail carrier, and the activity would directly
14 or indirectly—

15 “(A) restrict or limit the ability of the Class II
16 or Class III rail carrier to interchange traffic with
17 other rail carriers;

18 “(B) restrict or limit competition of rail car-
19 riers in the region affected by the activity in a man-
20 ner that would violate antitrust laws of the United
21 States (notwithstanding any exemption from the ap-
22 plicability of antitrust laws that is provided under
23 section 10706 or any other provision of law); or

24 “(C) require higher per car interchange rates
25 for Class II or Class III rail carriers to interchange
26 traffic with other rail carriers.

1 “(2) Any party to an activity described in paragraph
2 (1) that has been carried out, or any rail shipper affected
3 by such an activity, may request that the Board review
4 the activity to determine whether the activity has resulted
5 in a restriction described in that paragraph. If the Board
6 determines, upon review of the activity, that the activity
7 resulted in such a restriction, the Board shall declare the
8 restriction to be unlawful and terminate the restriction un-
9 less the Board determines that the termination of the re-
10 striction would materially impair the ability of an affected
11 rail carrier to provide service to the public or would other-
12 wise be inconsistent with the public interest.

13 “(3) In this subsection, the term ‘antitrust laws’ has
14 the meaning given that term in subsection (a) of the first
15 section of the Clayton Act (15 U.S.C. 12(a)), except that
16 such term also means section 5 of the Federal Trade Com-
17 mission Act (15 U.S.C. 45) to the extent that section 5
18 applies to unfair methods of competition.”.

19 (b) APPLICABILITY.—Paragraph (2) of section
20 10901(e), as added by subsection (a), shall apply with re-
21 spect to any activity referred to in that paragraph for
22 which the Surface Transportation Board issued a certifi-
23 cate authorizing the activity under section 10502 before,
24 on, or after the date of enactment of this Act.

1 **SEC. 104. RECIPROCAL SWITCHING.**

2 Section 11102(c) is amended—

3 (1) in paragraph (1)—

4 (A) by striking “may require” and insert-
5 ing “shall require”;

6 (B) by striking “where it finds” and in-
7 serting “if the Board determines”;

8 (C) by striking “where such” and inserting
9 “if such”; and

10 (D) by striking the second sentence and in-
11 serting the following: “The rail carriers enter-
12 ing into such an agreement shall establish the
13 conditions and compensation applicable to such
14 agreement. If the rail carriers cannot agree
15 upon such conditions and compensation within
16 a reasonable period of time, the Board shall es-
17 tablish such conditions and compensation.”; and

18 (2) by adding at the end the following:

19 “(3) In making any finding under paragraph (1), the
20 Board may not require evidence of anticompetitive conduct
21 by a rail carrier from which access is sought.”.

22 **SEC. 105. AREAS OF INADEQUATE RAIL COMPETITION.**

23 (a) DESIGNATION AND REMEDIES.—

24 (1) IN GENERAL.—Chapter 105 is amended by
25 adding at the end the following:

1 **“§ 10503. Areas of inadequate rail competition**

2 “(a) IN GENERAL.—The Board shall designate any
3 State or substantial part of a State as an area of inad-
4 equate rail competition after finding that—

5 “(1) the State or substantial part of the State
6 encompasses rail shipping origins and destinations
7 that are served exclusively by 1 Class I railroad; and

8 “(2) persons that ship by rail or receive rail
9 shipments in the State or substantial part of the
10 State—

11 “(A) pay rates for the rail shipments that
12 exceed the rates necessary to yield recovery by
13 the rail carrier of 180 percent of revenue-vari-
14 able costs, as determined under standards ap-
15 plied in the administration of section 10707(d);
16 or

17 “(B) have experienced competitive dis-
18 advantage in the marketplace or other economic
19 adversity because of high cost or poor quality of
20 rail service in the State, or in a substantial part
21 of the State.

22 “(b) SPECIFIC COMMODITIES.—An area of inad-
23 equate rail competition may be composed of the facilities
24 of a group of shippers or receivers of 1 or more specific
25 commodities within a geographic area.

1 “(c) AUTHORIZED PETITIONERS.—A Governor of a
2 State is authorized to petition the Board for a designation
3 of the State, or of a substantial part of the State, as an
4 area of inadequate rail competition.

5 “(d) ACTIONS.—Not later than 60 days after desig-
6 nating a State, or substantial part of a State, as an area
7 of inadequate rail competition, the Board shall resolve the
8 conditions described in subsection (a) that justify the des-
9 ignation. In taking such action, the Board may not require
10 rates lower than those necessary to yield recovery of 180
11 percent of revenue-variable costs. In addition to providing
12 other remedies authorized by law, the Board may order
13 any of the following actions:

14 “(1) Provision of reciprocal switching as pro-
15 vided for in section 11102(c) and terminal trackage
16 rights beyond the limits specified in section
17 11102(a).

18 “(2) Haulage transportation of railroad cars by
19 a rail carrier to or from facilities that such carrier
20 physically serves on behalf of another rail carrier,
21 for a fee prescribed by the Board.

22 “(3) Regarding rates on any rail segments
23 within or connected to the area of inadequate rail
24 competition on which rail service is susceptible to

1 delay or interruption due to traffic congestion, expedited final offer arbitration under section 11708(e).

3 “(4) Expedited review of whether a rate violates
4 the prohibition against discriminatory rates contained in section 10741, without regard to subsection (b)(2) of such section.

7 “(e) PROCEDURES.—In the case of a petition for an
8 order for reciprocal switching or terminal trackage rights
9 under subsection (d)(1), the Board may not require that
10 there be evidence of anticompetitive conduct by a rail carrier as a prerequisite for ordering such action.”.

12 (2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 105 is amended by
13 adding at the end the following new item:

“10503. Areas of inadequate rail competition.”.

15 (b) STUDY ON AREAS OF INADEQUATE RAIL COMPETITION.—Not later than 1 year after the date of the
16 enactment of this Act, the Rail Customer Advocate of the
17 Department of Transportation shall—

19 (1) review the effectiveness of the procedures
20 under section 10503 for challenging and remedying
21 conditions adversely affecting rail shippers of agricultural and forestry commodities and products, including commodities and products shipped by rail in
22 annual volumes of 1,500 rail cars or less, and the
23 applicability of such procedures for ameliorating rail
24
25

1 rate and service problems, in areas of inadequate
2 rail competition; and

3 (2) report the results of the study to Congress,
4 including any recommendations that the Rail Customer Advocate may have for improving the procedures.
5
6

7 **TITLE II—IMPROVING SERVICE** 8 **TO RAIL CUSTOMERS**

9 **SEC. 201. RAIL SERVICE.**

10 (a) PUBLIC NOTICE.—

11 (1) IN GENERAL.—Not later than 7 days after
12 receipt by the Surface Transportation Board, or any
13 member or staff of the Board, of a complaint from
14 a customer about rail service, the Board shall post
15 a description of the complaint on the Board’s Internet
16 website, including—

17 (A) information identifying the railroad or
18 railroads providing the service that is the subject
19 of the complaint;

20 (B) the general geographic area of the customer’s
21 movement;

22 (C) the date upon which the service problem
23 occurred; and

1 (D) the date notice of the complaint was
2 made to the Board or any member or staff of
3 the Board.

4 (2) The Internet posting shall identify the rail
5 customer only upon the written consent of the rail
6 customer. Not later than 5 days after the date the
7 complaint is resolved, the Board shall update the in-
8 formation posted on the Board's Internet website to
9 indicate that the complaint has been resolved, the
10 means of its resolution, and the date of its resolu-
11 tion.

12 (b) ANNUAL REPORT TO CONGRESS.—

13 (1) IN GENERAL.—Not later than March 15,
14 2008, and annually thereafter, the Surface Trans-
15 portation Board shall submit to Congress a report
16 regarding the service complaints received by the
17 Board, or any member or staff of the Board, in the
18 previous calendar year for each Class I railroad.

19 (2) CONTENTS.—Each report submitted under
20 paragraph (1) shall include a description of each
21 service complaint, including—

22 (A) information identifying the railroad in
23 question;

24 (B) the geographic area of the customer's
25 movements;

1 (C) the date on which the service problem
2 occurred;

3 (D) the date notice of the service com-
4 plaint was made to the Board, or any member
5 or staff of the Board; and

6 (E) the date of, and a detailed description
7 of, the resolution of the complaint.

8 (3) PUBLICATION.—A copy of the report sub-
9 mitted under paragraph (1) shall be posted on the
10 Board’s Internet website.

11 (c) TIME LIMITS ON PETITIONS FOR INJUNCTIVE
12 RELIEF.—Section 721(b) is amended—

13 (1) by redesignating paragraphs (1) through
14 (4) as subparagraphs (A) through (D);

15 (2) by inserting “(1)” before “The Board
16 may”; and

17 (3) by adding at the end the following:

18 “(2)(A) If, not later than 20 days after the publica-
19 tion of a new or revised rail rate, rule, or practice, a com-
20 plaint is filed, and injunctive or similar relief is sought,
21 based on an allegation of unlawfulness (other than an alle-
22 gation that a rate level is not reasonable within the mean-
23 ing of section 10701(d)), the Board, not later than 90
24 days after receiving such a complaint, shall determine,

1 based on applicable law, whether or not to grant the relief
2 sought.

3 “(B) If the party requesting relief establishes that the
4 rule or practice involved in the complaint is unlawful per
5 se, there shall be a strong presumption of irreparable
6 harm regardless of the availability of monetary relief.

7 “(C) The Board may not deny injunctive or similar
8 relief based in whole or in part on the absence of irrep-
9 arable harm due to the availability of adequate monetary
10 relief unless monetary damages have been awarded to the
11 complaining party.”.

12 **SEC. 202. RAILROAD OBLIGATION TO SERVE.**

13 Section 11101(a) is amended by inserting “The
14 transportation provided shall be reliable and efficient.”
15 after “on reasonable request.”.

16 **SEC. 203. DAMAGES DUE TO THE FAILURE OF TIMELY DE-**
17 **LIVERY.**

18 Section 11704(b) is amended by inserting “, includ-
19 ing damages due to the failure of timely delivery” after
20 “violation of this part”.

21 **SEC. 204. RAIL CUSTOMER ADVOCATE.**

22 (a) AMENDMENT.—Subchapter II of chapter 7 is
23 amended—

24 (1) by redesignating section 727 as section 728;

25 and

1 (2) by inserting after section 726 the following:

2 **“§ 727. Office of Rail Customer Advocacy**

3 “(a) IN GENERAL.—There is established, within the
4 Department of Transportation, the Office of Rail Customer
5 Advocacy.

6 “(b) RAIL CUSTOMER ADVOCATE.—The Office of
7 Rail Customer Advocacy shall be headed by the Rail Customer
8 Advocate, who shall be appointed in the competitive
9 service by the Secretary of Transportation, in consultation
10 with the Secretary of Agriculture.

11 “(c) DUTIES AND POWERS OF RAIL CUSTOMER ADVOCATE.—The Rail Customer Advocate shall—

12 “(1) accept rail customer complaints;

13 “(2) participate as a party in proceedings of the
14 Board on petitions for action by the Board regarding
15 the regulation of rail transportation, and may
16 initiate such an action;

17 “(3) collect, compile, and maintain information
18 regarding the cost and efficiency of rail transportation; and
19

20 “(4) carry out other duties and powers prescribed by the Board.
21

22 “(d) ACCESS TO INFORMATION.—The Rail Customer
23 Advocate shall have access to information, including data-
24

1 bases, of the Board to carry out the duties and powers
2 under subsection (c).”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 7 is amended by striking the
5 item relating to section 727 and inserting the following:

“727. Office of Rail Customer Advocacy.
“728. Definitions.”.

6 **TITLE III—PROVIDING ACCESS**
7 **TO A REASONABLE RATE**
8 **PROCESS**

9 **SEC. 301. RIGHTS OF RAIL CUSTOMERS.**

10 (a) IN GENERAL.—Chapter 107 is amended by in-
11 serting before section 10701 the following:

12 **“§ 10700. Rights of rail customers**

13 “Rail customers that are subject to railroad market
14 dominance shall have a right of access to a process main-
15 tained by the Board for determining if the rate in question
16 is reasonable. The Board shall ensure that the process is
17 accessible by all affected rail customers and is cost effec-
18 tive.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for chapter 107 is amended by inserting before the item
21 relating to section 10701 the following:

“10700. Rights of rail customers.”.

1 **SEC. 302. IMPROVEMENT OF RATE REASONABLENESS**
2 **STANDARD.**

3 (a) IN GENERAL.—Section 10701(d) is amended by
4 adding at the end the following:

5 “(4)(A) Not later than 1 year after the date of the
6 enactment of this paragraph, the Board shall adopt a
7 method for determining the reasonableness of rail rates
8 based on the railroad’s actual costs, including a portion
9 of fixed costs and an adequate return on debt and equity.

10 The method adopted—

11 “(i) shall permit a final determination not later
12 than 9 months after a complaint is filed;

13 “(ii) shall ensure that necessary cost and oper-
14 ational information is available to the complainant;

15 “(iii) shall not require excessive litigation costs;
16 and

17 “(iv) shall require, upon a showing by the ship-
18 per of market dominance (as defined in section
19 10707), that the rail carrier prove that the chal-
20 lenged rate is reasonable.

21 “(B) The Board may not use any method for deter-
22 mining the reasonableness of rail rates based on the costs
23 of a hypothetical competitor, except that, in any rate rea-
24 sonableness proceeding filed before the method required
25 under subparagraph (A) is adopted, the complaint, upon
26 the election of the complainant, shall be decided based on

1 applicable rate standards in effect on the date of the filing,
 2 including small shipper rate guidelines.

3 “(C) The Board shall adopt a method under this
 4 paragraph that applies the ‘phasing constraint’ in its ex-
 5 isting rail rate method so that it can be practically admin-
 6 istered without substantial litigation-related costs in any
 7 proceeding involving a challenge to a rail rate in which
 8 the Board determines that the phasing constraint applies.

9 “(5) Upon receiving notification of a challenge made
 10 by a shipper to the reasonableness of any rate established
 11 by a rail carrier, the Board shall determine the reasonable-
 12 ness of the rate without regard to—

13 “(A) whether the rate is for part of a movement
 14 between a point of origin and a destination;

15 “(B) whether the shipper has made arrange-
 16 ments for transportation for any other part of that
 17 movement; or

18 “(C) any other contract the shipper has with a
 19 rail carrier for any part of the rail traffic involved.”.

20 (b) DEFINITION OF MARKET DOMINANCE.—Section
 21 10707(a) is amended to read as follows:

22 “(a) In this section, ‘market dominance’ exists if a
 23 complainant shipper demonstrates that the challenged rate
 24 results in a revenue-variable cost percentage for the trans-

1 portation to which the rate applies that is not less than
2 180 percent.”.

3 **SEC. 303. FILING FEES ON PETITIONS FOR CAPTIVE RATE**
4 **RELIEF.**

5 Section 721 is amended by adding at the end the fol-
6 lowing:

7 “(f) LIMITATION ON FEES.—The Board may not
8 charge a fee for the filing of a complaint, protest, or other
9 request for relief in an amount greater than fees charged
10 by district courts of the United States for a comparable
11 filing.”.

12 **SEC. 304. ARBITRATION OF CERTAIN RAIL RATE, SERVICE,**
13 **AND OTHER DISPUTES.**

14 (a) IN GENERAL.—Chapter 117 is amended by add-
15 ing at the end the following:

16 **“§ 11708. Arbitration of certain rail rate, service, and**
17 **other disputes**

18 “(a) ELECTION OF ARBITRATION.—A dispute de-
19 scribed in subsection (b) shall be submitted for resolution
20 by arbitration upon the election of any party to the dis-
21 pute.

22 “(b) COVERED DISPUTES.—(1) Except as provided
23 in paragraph (2), subsection (a) shall apply to any dispute
24 between a party and a rail carrier that—

1 “(A) arises under section 10701(c), 10701(d),
2 10702, 10704(a)(1), 10707, 10741, 10745, 10746,
3 11101(a), 11102, 11121, 11122, or 11706;

4 “(B) involves the transportation of any agricul-
5 tural product, including timber, paper, and fertilizer;
6 and

7 “(C) involves—

8 “(i) the payment of money;

9 “(ii) a rate or charge imposed by the rail
10 carrier; or

11 “(iii) transportation or other service by the
12 rail carrier.

13 “(2) Subsection (a) shall not apply to a dispute if
14 the resolution of the dispute would necessarily involve the
15 promulgation of regulations generally applicable to all rail
16 carriers.

17 “(c) ARBITRATION PROCEDURES.—Not later than 1
18 year after the effective date of this section, the Board shall
19 promulgate regulations governing voluntary arbitration
20 that are consistent with the provisions of this section.
21 Such modifications shall include the following:

22 “(1) Arbitration shall be mandatory if either
23 party elects arbitration in lieu of filing a formal or
24 informal complaint before the Board. Challenges to
25 the reasonableness of rail rates or charges may not

1 be subjected to arbitration at the sole election of a
2 rail carrier imposing such rates or charges.

3 “(2) Arbitration shall be before an administra-
4 tive law judge of the Board, or arranged for by the
5 Board, unless the parties to the arbitration each se-
6 lect an arbitrator and the 2 selected arbitrators
7 agree on a third arbitrator from a list of neutral ar-
8 bitrators maintained by the Board.

9 “(3) Disputes concerning rates and charges
10 shall not be considered or decided using any method
11 based on stand-alone cost, the costs of a hypothetical
12 competitor, or in reliance on precedent adopting or
13 applying such methods.

14 “(4) Standards for rate reasonableness devel-
15 oped under section 10701(d)(3) shall apply in arbi-
16 tration under this section. The arbitrator or arbitra-
17 tors shall adopt the final offer of 1 of the parties,
18 without amendment or compromise, if such position
19 is consistent with this section.

20 “(5) A rate may not be prescribed in an arbi-
21 tration if such rate would result in a revenue-vari-
22 able cost percentage below 180 percent or if market
23 dominance is not found. A rate prescription may not
24 remain in effect for longer than 5 years after the

1 date on which the arbitrator's decision becomes
2 final.

3 “(6) If a party to arbitration under this section
4 seeks damages from a rail carrier that do not exceed
5 \$500,000 per year based on a claim of excessive
6 rates or charges, the arbitrator shall consider evi-
7 dence of rates or charges on comparable shipments.

8 “(7) Decisions issued in arbitration under this
9 section shall not be subject to appeal to the Board
10 unless all parties to the arbitration agree to such ap-
11 peal. Appeals to a court, or to the Board if both par-
12 ties agree to Board review, shall be based on a clear
13 error standard, and consistency with the require-
14 ments of this section.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
16 at the beginning of chapter 117 is amended by adding at
17 the end the following:

“Sec. 11708. Arbitration of certain rail rate, service, and other disputes.”.

18 **TITLE IV—AUTHORITY TO**
19 **INVESTIGATE**

20 **SEC. 401. AUTHORITY OF BOARD TO INVESTIGATE AND SUS-**
21 **PEND CERTAIN RAILROAD ACTIONS.**

22 Section 11701(a) is amended to read as follows:

23 “(a)(1) The Board may begin an investigation under
24 this part on its own initiative. If the Board finds that a

1 rail carrier is violating this part, the Board shall take ap-
2 propriate action to compel compliance with this part.

3 “(2) If the Board receives a complaint alleging that
4 a rail carrier may be violating this part, the Board shall
5 initiate an investigation.

6 “(3) If the alleged violation under paragraph (2) ap-
7 plies to more than 1 person, the Board has substantial
8 reason to believe that the allegations in the complaint are
9 likely to have merit, and, if the allegations prove to have
10 merit, it will be difficult to make complete restitution for
11 the damage, the Board—

12 “(A) shall suspend the rail carrier activity in
13 question; and

14 “(B) may not revoke such suspension unless the
15 rail carrier justifies the practice to the satisfaction
16 of the Board.”.

○