

such limits should be standard or determined on a case-by-case basis at an initial discovery conference, (3) what the appropriate limitations would be, and for which types of data, and (4) an appropriate cut-off point in the procedural schedule for making additional discovery requests.

#### Costs

Finally, a suggestion has been made that the parties share the costs of production of data in response to discovery requests, rather than the responding party alone shouldering what can be substantial costs. We seek comment on (1) our authority to require such cost-sharing, (2) the circumstances, if any, under which parties should be required to share those costs, (3) how the costs of production would be quantified, and (4) how, if at all, the costs should be divided between the parties.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, visit the Board's Web site at <http://www.stb.dot.gov>; or call the Board's Information Officer at (202) 565-1674. To purchase a copy of the decision, write to, call, email, or pick up in person from D&D Legal Copy Service, Room 405, 1925 K Street, NW., Washington, DC 20006, (202) 293-7776, [da2dalegal@earthlink.net](mailto:da2dalegal@earthlink.net). [Federal Information Relay Service (FIRS) (Hearing Impaired): (800) 877-8339.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We conclude that our action will not have a significant effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because small entities are not litigants in the rail rate cases that are the subject of this proceeding.

#### List of Subjects in 49 CFR Parts 1109, 1111 and 1114

Practice and procedure, Railroads.

Decided: April 3, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

**Vernon A. Williams,**  
Secretary.

■ The Surface Transportation Board amends 49 CFR parts 1109, 1111 and 1114 as follows:

#### PART 1109—USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

■ 1. The authority citation for part 1109 continues to read as follows:

**Authority:** 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Add new § 1109.4, to read as follows:

#### § 1109.4 Mandatory mediation in rate cases to be considered under the stand-alone cost methodology.

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad upon filing a formal complaint under 49 CFR Part 1111.

(b) Within 10 business days after the shipper files its formal complaint, the Board will assign a mediator to the case. Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. At least one principal of each party, who has the authority to bind that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any adjudication before the Board if mediation does not fully resolve the dispute. If the parties reach a settlement, the mediator may assist in preparing a settlement agreement.

(d) The entire mediation process shall be private and confidential. No party may use any concessions made or information disclosed to either the mediator or the opposing party before the Board or in any other forum without the consent of the other party.

(e) The mediation shall be completed within 60 days of the appointment of the mediator. The mediation may be terminated prior to the end of the 60-day period only with the certification of the mediator to the Board. Requests to extend mediation, or to re-engage it later, will be entertained on a case-by-case basis, but only if filed by all interested parties.

(f) Absent a specific order from the Board, the onset of mediation will not affect the procedural schedule in stand-alone cost rate cases, set forth at 49 CFR 1111.8(a).

#### PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 1. The authority citation for part 1111 continues to read as follows:

**Authority:** 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Redesignate the current text in § 1111.8 as § 1111.8(a), add a new paragraph heading to redesignated paragraph (a), and add new paragraph (b) to read as follows:

#### § 1111.8 Procedural schedule in stand-alone cost cases.

(a) *Procedural schedule.* \* \* \*

(b) *Conferences with parties.* (1) The Board will convene a technical conference of the parties with Board staff prior to the filing of any evidence in a stand-alone cost rate case, for the purpose of reaching agreement on the operating characteristics that are used in the variable cost calculations for the movements at issue. The parties should jointly propose a schedule for this technical conference.

(2) In addition, the Board may convene a conference of the parties with Board staff, after discovery requests are served but before any motions to compel may be filed, to discuss discovery matters in stand-alone cost rate cases. The parties should jointly propose a schedule for this discovery conference.

#### PART 1114—EVIDENCE; DISCOVERY

■ 1. The authority citation for part 1114 continues to read as follows:

**Authority:** 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

■ 2. Revise § 1114.31(a) to read as follows:

#### § 1114.31 Failure to respond to discovery.

(a)(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by section 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to subparagraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no