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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1141

[Docket No. EP 715]

Rate Regulation Reforms

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) changes some of its existing regulations and procedures concerning rate complaint proceedings. The Board previously created two simplified procedures to reduce the time, complexity, and expense of rate cases. The Board now modifies its rules to remove the limitation on relief for one simplified approach, and to raise the relief available under the other simplified approach. The Board also makes technical changes to the full and simplified rate procedures; changes the interest rate that railroads must pay on reparations if they are found to have charged unreasonable rates; and announces future proceedings on options for addressing cross-over traffic and on proposals to address the concerns of small agricultural shippers. The purpose of these actions is to ensure that the Board's simplified and expedited processes for resolving rate disputes are more accessible.

DATES: These rules are effective on August 17, 2013.

ADDRESSES: Information or questions regarding these final rules should reference Docket No. EP 715 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Lucille Marvin, The Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board modifies some of its existing regulations and procedures regarding rate complaint proceedings and announces two future proceedings. The Board's actions are discussed in five parts. Part I addresses refinements to the Simplified-SAC test, removing the limit on relief and requiring a more precise calculation of RPI. Part II addresses an increase to the limit on relief for a case brought under the Three-Benchmark test to $4 million. Part III discusses the decision not to curtail the use of cross-over traffic in the Full-SAC test at this time, instead announcing a future proceeding to address this issue in more detail, and modifies the revenue allocation methodology for cross-over traffic. Part IV sets out the change in the interest rate carriers must pay shippers when the rate charged has been found unlawfully high (from the current T-bill rate to the U.S. Prime Rate, as published in the *Wall Street Journal*). Part V describes the concern that, even with changes to the limitations on relief for simplified rate cases, shippers of agricultural commodities may still not have a viable means of challenging rail rates, and announces the Board's intent to institute a separate proceeding to explore this concern more closely.

Additional information is contained in the Board's decision served on July 18, 2013. To obtain a copy of this decision, visit the Board's website at http://www.stb.dot.gov. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601-604. The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the rule. White Eagle Coop. Ass'n v. Conner, 553 F.3d 467, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. United Dist. Cos. v. FERC, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Under § 605(b), an agency is not required to perform an initial or final regulatory flexibility analysis if it certifies that the proposed or final rules will not have a "significant impact on a substantial number of small entities."

The rule changes adopted here will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act.[1] The changes impose no additional reporting or recordkeeping requirements on

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[1] The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business. See 13 CFR 121.201. The SBA has established a size standard for rail transportation, stating that a line-haul railroad is considered small if its number of employees is 1,500 or less, and that a short line railroad (continued . . .)

small railroads. Nor do these changes circumscribe or mandate any conduct by small railroads that is not already required by statute: the establishment of reasonable transportation rates. Small railroads have always been subject to rate reasonableness complaints and their associated litigation costs. And they have been subject to simplified rate procedures since 1996. Finally, as the Board has previously concluded, the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act.[2] In the 32 years since the passage of the Staggers Act—when Congress limited the Board's rate reasonableness jurisdiction to where a carrier has market dominance over the transportation at issue—virtually all rate challenges have involved Class I carriers. Therefore, the Board certifies under 5 U.S.C. 605(b) that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

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

List of Subjects in 49 CFR Part 1141

Administrative practice and procedure.

Decided: July 18, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

(. . . continued)
is considered small if its number of employees is 500 or less. Id. (industry subsector 482).

[2] See Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1), slip op. at 33-34 (STB served Sept. 5, 2007), aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir.), vacated in part on reh'g, 584 F.3d 1076 (D.C. Cir. 2009).

Jeffrey Herzig

Clearance Clerk

For the reasons set forth in the preamble, the Surface Transportation Board revises part 1141 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

Authority: 49 U.S.C. 721.

§ 1141.1 Procedures to calculate interest rates.

(a) For purposes of complying with a Board decision in an investigation or complaint proceeding, interest rates to be computed shall be the most recent U.S. Prime Rate as published by The Wall Street Journal. The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the date the statement is filed accounting for all amounts received under the new rates.

(2) For complaint proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the day when the unlawful charge is paid. The interest rate in complaint proceedings shall be updated whenever The Wall Street Journal publishes a change to its reported U.S. Prime Rate. Updating will continue until the required reparation payments are made.

(b) For investigation proceedings, the reparations period shall begin on the date the investigation is started. For complaint proceedings, the reparations period shall begin on the date the unlawful charge is paid.

(c) For both investigation and complaint proceedings, the annual percentage rate shall be the same as the annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this "exponential" approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each period by the principal amount for that period plus any accumulated interest from previous periods. The "interest factor" for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate.

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