

SURFACE TRANSPORTATION BOARD (STB)**Statement of Regulatory and Deregulatory Priorities**

The Surface Transportation Board (STB or Board) has as its goal the exercise of regulatory oversight only when necessary to respond to imperfections in the marketplace. Where regulatory oversight is necessary, the STB seeks to ensure that such oversight is exercised efficiently and effectively, integrating market forces, where possible, into the overall regulatory model. In this regard, the STB works to resolve matters brought before it fairly and expeditiously. Through use of its regulatory exemption authority, encouragement of private-sector solutions to disputes, where possible, streamlining of its decisional process, and consistent application of legal and equitable principles, the STB seeks to facilitate commerce by providing an effective forum for dispute resolution and the approval of appropriate business transactions.

The STB continues to develop, through rulemakings and case disposition, new and better ways to analyze unique and complex problems, to reach fully justified decisions more quickly, and to reduce the costs associated with regulatory oversight. In this regard, the STB continues to streamline applicable regulations and the process for handling matters within its jurisdiction.

Descriptions of the Most Important Significant Regulatory Actions**Rate Guidelines—Noncoal Proceedings, Ex Parte No. 347 (Sub-No. 2)**

The STB is proposing to adopt maximum rate reasonableness guidelines for captive noncoal commodities.

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Procedures, STB Ex Parte No. 527

The STB is proposing to establish procedures to expedite the handling of challenges to the reasonableness of railroad rates and the handling of railroad exemption and revocation proceedings. As part of this proceeding, the Board is also proposing to eliminate certain provisions of its Rules of Practice that are no longer needed.

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 USC 10903, STB Ex Parte No. 537

The STB is proposing to revise regulations for processing applications and exemption requests by rail carriers seeking to abandon or discontinue rail service, and to make related revisions of procedures for implementation of environmental laws.

Combined Regulatory Plan/Unified Agenda Descriptions

Attached are separate regulatory descriptions of the STB's most important significant regulatory actions proposed for FY 1997 as identified above. The descriptions are in the format of the United Agenda submissions and additional elements as called for in the Regulatory Plan.

STB**FINAL RULE STAGE****171. RATE GUIDELINES—NONCOAL PROCEEDINGS, EX PARTE NO. 347 (SUB-NO. 2)****Priority:**

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

49 USC 701; 49 USC 721; 49 USC 10501; 49 USC 10701; 49 USC 10704; 49 USC 11701; 5 USC 553

CFR Citation:

None

Legal Deadline:

Final, Statutory, January 1, 1997.

Abstract:

The Board proposes to establish a simplified and expedited method for resolving challenges to the reasonableness of rail rates in those cases (regardless of the commodity involved) in which a full stand-alone cost presentation is too costly, given the value of the case.

Statement of Need:

There is a need for procedures to assess rail rate reasonableness in small cases

(i.e., those cases that involve smaller volume, non-recurring traffic, and that can involve smaller shippers). There are standards in place for evaluating the reasonableness of rail rates for large volume, recurring rail traffic; however, these procedures are elaborate and time consuming, and cannot be economically applied to smaller cases. This proceeding is thus necessary to ensure that all captive shippers that cannot resolve rate matters through negotiation with carriers have reasonable access to the Board to adjudicate rate disputes.

Summary of the Legal Basis:

The STB is required by statute to protect individual captive shippers from unreasonably high rate levels, upon complaint. 49 U.S.C. 10701, 10704. In cases involving large volumes of traffic, there is a well-established method for determining the reasonableness of rail rates—the stand-alone cost test. Because a stand-alone cost presentation is very complex and expensive to make, it does not offer relief for the captive shipper whose traffic is not sufficient for a stand-alone cost presentation to be cost-effective. Therefore, the Board's predecessor—the Interstate Commerce Commission (ICC)—instituted this proceeding to establish a simplified methodology for such small rail rate cases. In the ICC Termination Act of 1996, Congress directed the Board to complete this proceeding by January 1, 1997. 49 U.S.C. 10701(d) (3).

Alternatives:

The ICC originally proposed to use either a "formula replacement costs" (FRC) test or a "revenue-to-variable cost comparison" (R/VC) test. The ICC later concluded that neither of these tests provided a satisfactory rate standard. The ICC also rejected the use of a computerized model offered by the Association of American Railroads (AAR) that was characterized as a "simplified stand-alone cost" (AAR-SSAC) program. Instead, the ICC proposed to judge rate reasonableness in small cases using three revenue-to-variable cost benchmarks in combination. The three benchmarks are the R/VC test, a "revenue shortfall allocation method" (RSAM) and an "average revenue-to-variable cost percentage above 180%" (R/VC is greater than 180) test. Each of these tests is described in the ICC decision in this proceeding that was served December 1, 1995.

Anticipated Costs and Benefits:

Costs -- The up-front costs in terms of Board staff time and resources as well as the time and resources of the parties to evaluate alternative approaches are the most significant costs of this action. Not undertaking this effort, however, would leave smaller captive shippers without recourse, and thus vulnerable to paying rates in excess of those that might otherwise be determined to be reasonable. These increased transportation costs are likely to be ultimately passed on to consumers. Alternatively, where increased costs cannot be borne by consumers, the profitability of some shippers' businesses may be significantly compromised.

Benefits -- The primary benefit of this proceeding is that, once it is resolved, all captive shippers will be able to bring rail rate challenges to the STB at a reasonable cost when compared to expected benefits. An additional benefit of providing captive shippers of small traffic with an effective avenue of regulatory relief at a reasonable cost is that it may lead to more efficient private contracting between these shippers and carriers.

Risks:

The risks to be addressed by this action are unreasonably high rates charged to captive shippers for rail transportation where the amount of traffic involved is not sufficient to justify a rate challenge using a stand-alone cost presentation. The amount potentially at issue could be substantial for individual shippers, but is not substantial in relation to the overall rate base of the rail industry.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Statement	05/22/86	51 FR 18811
First Proposal Issued	04/08/87	52 FR 11295
Second Proposal Issued	11/16/92	57 FR 54252
NPRM	12/01/95	60 FR 62256
Latest Proposal Issued	12/01/95	60 FR 62256
NPRM Comment Period End	03/19/96	
Comments Under Review	03/19/96	
Final Action	01/00/97	

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

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RIN: 2140-AA01

STB

172. ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 USC 10903, STB EX PARTE NO. 537

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

5 USC 553; 5 USC 559; 11 USC 704; 16 USC 470f; 16 USC 1247(d); 16 USC 1248; 16 USC 1451; 16 USC 701; 49 USC 721; 49 USC 10502; 49 USC 10903; 49 USC 10904; 49 USC 10905; 49 USC 11161

CFR Citation:

49 CFR 1105; 49 CFR 1152

Legal Deadline:

None

Abstract:

The Board is proposing to revise regulations for processing applications and exemption requests by rail carriers seeking to abandon or discontinue rail service, and to make related revisions to procedures for implementation of environmental law.

Statement of Need:

The action proposed (adoption of new rules to govern the process for the STB's management of its railroad abandonment regulatory responsibilities) is needed to streamline and update the procedures so that they are consistent with the letter and spirit of the ICC Termination Act of 1995. A simpler, more expedited, and more user-friendly process for railroads and their constituents would promote the efficient handling of proposed abandonments, whether they are subject to the application process or

qualify for exemption from regulatory approval, either as a member of a class of transactions or on an individual basis. A process is needed that produces all relevant and necessary information without burdening any party with production of unneeded data.

Summary of the Legal Basis:

The action is not directly required by statute, but the action is needed to establish procedures that are consistent with the new statute that became effective on January 1, 1996.

Alternatives:

Action is necessary to establish procedures that are consistent with the new statute. The approach proposed in the notice of proposed rulemaking was to seek public comment, not only on changes that are directly necessary because of specific new provisions of the law (establishment of new statutory deadlines and removal of others, as examples), but also on changes that constitute a broader reform of the procedures, with the primary goal of streamlining the process. The principal alternative considered was a narrower action that would have addressed only those areas where specific changes in the law required specific conforming changes in the procedures. That would have produced a proposal that was closer to the status quo.

Anticipated Costs and Benefits:

Costs -- The action anticipates that fewer resources would be required on a regular and routine basis for participants in rail abandonment proceedings. The focus is on relieving railroads of filing burdens associated with routine and ongoing requirements designed to effect broad notice of anticipated rail carrier actions relating to abandonment or discontinuance of rail service. The aim is that fewer materials would be produced on a routine basis but that those materials that are necessary would be available as early in the process as possible.

Benefits -- The principal benefit would be that all participants in rail abandonment proceedings, whether they are for or against cessation of service, would be less burdened by participating in abandonment proceedings before the STB and would have greater flexibility to decide what useful data ought to be presented. The result should be a more focused record with fewer extraneous materials. Participants would bear some increased burdens upfront as compared to the current procedure due to the fact that

filings would need to be made earlier in a proceeding, both to provide early notice to other participants and to produce a complete record as early as possible for the sake of expedited decisionmaking.

Risks:

The action would reduce the risk of protracted record development and decisionmaking by establishing processes and deadlines for early record production, without extraneous materials. The risks associated with the action relate to the possibility that ambitious scheduling of due dates for filing requirements could disadvantage an entity that is not equipped for expedition, and to the possibility that some useful information will not be

elicited early enough (in some cases), or at all (in other cases). Experience, however, has shown that the action would reduce more risks than it produces. The objective is a process that is (a) sufficiently streamlined to facilitate consideration of most abandonment proposals and (b) flexible enough to adapt to the minority of proceedings where more or different information is needed.

Timetable:

Action	Date	FR Cite
NPRM	03/19/96	61 FR 11174
NPRM Comment Period End	05/06/96	
Comments Under Review	05/07/96	
Final Action	12/00/96	

Small Entities Affected:

None

Government Levels Affected:

None

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RIN: 2140-AA17
BILLING CODE 4915-00-F