

43184
EB

SERVICE DATE – JULY 16, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 719

SMALL ENTITY SIZE STANDARDS UNDER THE REGULATORY FLEXIBILITY ACT

Digest:¹ In this notice, the Board proposes to define “small business” for the purpose of Regulatory Flexibility Act analyses as including only those rail carriers with revenues that would bring them within the definition of a Class III rail carrier. The Board seeks public comment on its proposed size standard.

Decided: July 11, 2013

AGENCY: Surface Transportation Board (Board or STB).

ACTION: Notice of proposed size standards for purposes of the Regulatory Flexibility Act (RFA) and request for public comment.

SUMMARY: The Board is proposing to define “small business” for the purpose of RFA analyses as including only those rail carriers with revenues that would bring them within the definition of a Class III rail carrier.

DATES: Comments are due by August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

SUPPLEMENTARY INFORMATION: The RFA requires agencies to consider the impact of their regulatory proposals on small entities. The RFA defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”² 5 U.S.C. § 601(6). Generally, a small business is a business concern that is independently owned and operated, and is not dominant in its field of operation. 5 U.S.C. § 601(3); 15 U.S.C. § 632. The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act. An agency may establish other definitions for “small business” that are appropriate to the agency’s activities after consultation with the SBA’s Office of Advocacy and opportunity for public comment. 5 U.S.C. § 601(3).

Pursuant to its statutory authority, the SBA promulgated regulations that clarify the term “small business” by industry, using number of employees or annual income as criteria. Under these regulations, line-haul railroads with 1,500 or fewer employees and short line railroads with 500 or fewer employees constitute small entities. 13 C.F.R. § 121.201 (industry subsector 482). The Board proposes to establish a size standard for purposes of RFA analysis for rail carriers subject to our jurisdiction based on annual operating revenues rather than number of employees.

The Board was created by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), on January 1, 1996, to assume some functions of the Interstate Commerce Commission (ICC), which was terminated by that same Act. The majority of the functions that the Board assumed are related to the regulation of freight railroads. The ICC had previously developed a classification system for freight railroads based on annual operating revenue, pursuant to which railroads were classified as Class I, II, or III. This classification system was used by the ICC as early as 1911, and the Board continues to use it in the administration of its duties. Currently, the Board’s regulations define Class I rail carriers as having operating revenues of \$250 million or more, Class II rail carriers as having less than \$250 million but in excess of \$20 million, and Class III rail carriers as having \$20 million or less, after applying the railroad revenue deflator formula. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website.

² The RFA defines “small organization” as meaning “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. . .,” and “small governmental jurisdiction” as meaning “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. . . .” 5 U.S.C. §§ 601(4) & (5).

This classification system is used pervasively by the Board and the railroad industry to identify rail entities by size. The Board's governing statute, its precedent, and its regulations often impose different requirements depending on the class of carrier involved. In 2003, the Federal Railroad Administration acknowledged the soundness of this system when it adopted, after consultation with the SBA's Office of Advocacy and opportunity for public comment, a definition of small entity for RFA purposes as including only those rail carriers with revenues that would bring them within the Class III definition. 68 Fed. Reg. 24,891 (2003); see also 62 Fed. Reg. 43,024 (1997). The SBA's Office of Advocacy has been consulted with respect to the Board's decision to use this system for the purpose of RFA analyses. The Board proposes to define "small business" as including only those rail carriers with revenues that would bring them within the Class III definition. The Board believes that this definition is more realistic and useful than the general definitions previously established by the SBA, and it is consistent with the practices of the Federal Railroad Administration.

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

It is ordered:

1. Comments are due by August 15, 2013.
2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.
3. Notice of this decision will be published in the Federal Register.
4. This decision is effective on its service date.

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