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SERVICE DATE - MAY 6, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 637 (Sub-No. 1)

REMOVAL OF DIVISIONS OF REVENUE REGULATIONS

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to remove its regulations concerning divisions of revenue proceedings because of changes in the statute and the infrequency of divisions of revenue complaints.

EFFECTIVE DATE: Comments are due June 5, 2003.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661. [Federal Information Relay Service for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In Removal and Revision of Regulations, STB Ex Parte No. 637, served and published in the Federal Register on August 28, 2002 (67 FR 55166), the Board, inter alia, removed regulations at 49 CFR 1137.2 concerning expeditious procedures for the publication of separate rates for distinct service. In that proceeding, the Board indicated that we were not revising our rules at 49 CFR 1137.1 concerning divisions of revenue, but would “examine this regulation in a separate proceeding.”

The regulations at 49 CFR 1137.1 concerning divisions of revenue between carriers participating in a joint rate were issued in response to the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). The 4R Act amended former section 15(6) of the Interstate Commerce Act by adding provisions that would expedite the handling of divisions of revenue cases. In response, the Interstate Commerce Commission (ICC) issued the original divisions of revenue rules in Expeditious Handling of Divisions of Revenue Cases, 353 I.C.C. 349 (1976).<sup>1</sup> Section 15(6) was

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<sup>1</sup> The regulations were originally issued at 49 CFR 1109.5. They were later redesignated at 49 CFR 1137.1 in Revision of the Rules of Practice, Ex Parte No. 55 (Sub-No. 55), 47 FR 49534

(continued...)

recodified at former 49 U.S.C. 10705, which was later modified by the Staggers Rail Act of 1980. Former section 10705 in general required that evidentiary proceedings in cases brought by complaint be completed in 9 months and a final decision be issued within 180 days after the close of the record.<sup>2</sup>

Under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), section 10705 has been modified. Although the Board retains jurisdiction over divisions of joint rates, the provision for the filing of a notice of intent and the deadlines for gathering evidence and issuing a final decision have been removed.

We are proposing to remove the rules at section 1137.1. Our records indicate that we have not had a divisions of revenue complaint in over 20 years,<sup>3</sup> and, accordingly, retaining the regulations appears to be administratively inefficient. The rules, moreover, contain the notice of intent and deadline provisions that no longer have a statutory basis. The Board has general rules for filing and handling complaints at 49 CFR 1111, which appear to be adequate for any future divisions complaints.

Because these rules have been rarely used, retention of the evidentiary guidelines in 1137.1(g) appears to be unnecessary, and we propose to remove them. However, parties may believe that these guidelines with modifications (such as removing the obsolete reference to Rail Form A) or alternative guidelines are helpful. If so, they should explain why codified guidelines are necessary, when parties, on a case-by-case basis, are free to use any evidence they consider relevant.<sup>4</sup>

We certify that the proposed rule will not have a significant impact on a substantial number of small entities, because the rules are partly obsolete and have been infrequently used. We seek comments on all matters raised by this notice.

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

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<sup>1</sup>(...continued)  
(Nov. 1, 1982).

<sup>2</sup> The ICC subsequently modified the regulations in section 1137.1 in Revised Procedures for Divisions of Revenue Cases, 367 I.C.C. 353 (1983).

<sup>3</sup> Increases in Freight Rates and Charges–1973, 365 I.C.C. 193 (1981).

<sup>4</sup> Parties could indeed, if they wish, use former guidelines following their removal.

List of Subjects

49 CFR Part 1137

Administrative practice and procedure, Railroads.

Decided: April 29, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary

APPENDIX

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, of the Code of Federal Regulations as follows:

Part 1137 [Removed]

1. Part 1137 consisting of §1137.1 is removed.