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SERVICE DATE - MAY 17, 1999

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 4)]

Modification of the Carload Waybill Sample and Public Use File Regulations

AGENCY: Surface Transportation Board

ACTION: Advance Notice of Proposed Rulemaking

SUMMARY: The Surface Transportation Board (Board) solicits comments on modifications to the existing regulations at 49 CFR Part 1244 to require identification of contract movements in the annual Carload Waybill Sample (Waybill Sample), to establish procedures to ensure the confidentiality of contract revenue information in the Waybill Sample, and to limit the period during which the Waybill Sample will remain confidential.

DATES: Comments are due on July 1, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 385 (Sub-No. 4) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, D.C. 20423-0001.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565-1533 or James A. Nash, (202) 525-1542. [Assistance for the hearing impaired is available through TDD services (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Railroads that annually terminate 4,500 or more carloads (or 5 percent of the carloads in any state) are required to report data, including revenues, on individual movements contained in a sampling of their traffic. This Waybill Sample is used for a variety of purposes by the Board, parties appearing before the agency and the public in general. Because of the widespread use of confidential transportation contracts in the railroad industry,¹ the Waybill Sample reporting requirements must be tailored to ensure that the Board receives accurate data on contract movements for all carriers and, at the same time, that confidential information regarding those contracts is protected from public disclosure. In addition, the National Archives and Records

¹ The Association of American Railroads recently advised the General Accounting Office that 70% of rail traffic moves under contract.

Administration (Archives) recently indicated that it is interested in maintaining historic Waybill Sample records for future studies. To do so, the confidentiality of these records must expire at some time to allow for future public release.

Proposed Procedures

To enhance the usefulness of the Waybill Sample, both for ourselves and for other parties, and to facilitate the ability of the Archives to maintain historical records, we are considering several changes to our rules and procedures. First, all railroads would be required to identify (flag) those shipments in the Waybill Sample that are governed by transportation contracts. Second, railroads would be required to report the actual revenues for each such contract shipment, although an average revenue value would be substituted for the actual revenues to maintain the confidentiality of the contract rate information. These two changes would fulfill our need for more complete contract data, protect sensitive commercial contract rate information, and allow others to conduct accurate, broad-based economic studies. Third, the confidentiality of such Waybill Sample records would be limited to 20 years.

1. Identification of Contract Shipments

The majority of railroads already identify contract movements in the Waybill Sample and simply “mask” the contract revenue information using varying procedures to conceal the actual revenues earned on contract traffic. However, because some carriers do not flag contract movements, we are unable to develop complete information on contract traffic. The Board needs more accurate data to carry out statutorily mandated functions, to provide reports to Congress, and to perform internal studies of the rail industry. Thus, we need to revise our regulations to ensure that all carriers flag contract movements.

There will be no impact on those carriers already flagging contract movements from the new proposed requirement, and these procedures may help safeguard commercially sensitive contract rate information for those carriers that do not now flag contract shipments and whose actual contract revenues may appear in the Waybill Sample. While we may be unaware that a particular movement is a contract shipment, competitors of the shipper or railroad might know that it is a contract movement. In such circumstances, disclosure of the actual unflagged contract rate may be at risk when Waybill Sample data is released to parties for use in individual proceedings before the Board. Thus, while some carriers may have to begin flagging contract shipments, the confidentiality of the contract rate should be better protected under our proposal to mask contract revenue information in a uniform manner.

2. Use of Average Revenue Figures

The masking procedures currently used by some carriers make it impossible for outside parties to conduct accurate revenue based studies from the Waybill Sample data regardless of the level of aggregation. To provide a more useful method of masking all revenue information in the Waybill Sample, we suggest aggregating actual contract and non-contract revenue data, after which we would calculate an average revenue per ton-mile by Standard Transportation Commodity Code (STCC) class within broad geographic areas, such as the nine census regions. We would then use this average value to develop a revenue figure for each waybill by multiplying the average revenue per ton-mile by each movement's shipment tons and miles. The reported actual revenue in each Waybill Sample record would then be replaced by the average revenue number. Sensitive commercial contract information would be protected because we would not identify contract shipment and because actual revenue data would not be released. Nevertheless, the public could conduct accurate, broad-based economic studies because the average revenues would be accurate when aggregated to the appropriate level.

Parties are asked to comment on our suggested masking methodology or to suggest other procedures that could be applied by us or the railroads to meet the same objectives. Comments should address the appropriate level of geographic aggregation and the appropriate level of STCC aggregation (two digit, four digit, etc.) to be used.

3. Waybill Confidentiality Time Limit

Finally, we believe that it should be possible to limit confidential treatment of contract revenue information contained in the Waybill Sample to a 20-year period. The Archives is interested in maintaining the Waybill Sample records for future studies, much as the U.S. Census is maintained. However, in order for historic Waybill Sample records to be useful, a time period must be specified after which confidential data can be made public. It could be as little as ten years, or as much as one hundred years. (Census data is now made public after seventy years.) Because most rail contracts do not exceed a 20-year term, a 20-year confidentiality period may be adequate to protect commercially sensitive shipper and railroad data.

Scope of this Proceeding

While we encourage all parties to comment on the areas we have discussed above, we are not soliciting comments in this proceeding on any other aspects of the collection, design, or release of the Waybill Sample or its associated Public Use Waybill file. Moreover, because no analysis of the Waybill Sample should be needed to comment on this Advance Notice of Proposed Rulemaking, we do not plan to release Waybill Sample data in connection with this proceeding.

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

Pursuant to 5 U.S.C. 605(b), we conclude preliminarily that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: May 10, 1999

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary