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SERVICE DATE - NOVEMBER 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Administrative Matter No. 3

IMPLEMENTATION OF THE REGULATORY FLEXIBILITY ACT

[STB Issuance No. 52]

AGENCY: Surface Transportation Board.

ACTION: Amendment of Internal Procedures.

SUMMARY: The Surface Transportation Board (STB) is revising its internal procedures for implementing the Regulatory Flexibility Act, which requires agencies to consider the effects of their rules on small entities.

EFFECTIVE DATE: The STB's revised internal procedures are effective on November 14, 2002.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 565-1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTAL INFORMATION:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, et seq., requires federal government agencies, including the STB, to consider the effects of their regulations on "small entities." Under the RFA, small entities are defined as small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The RFA requires that agencies: (1) publish lists of rules that have, or are likely to have in the future, a significant economic impact on small entities; (2) adopt procedures for

furthering the participation of small entities in the rulemaking process; (3) on a rulemaking-by-rulemaking basis, determine the extent to which each rulemaking will affect small entities; (4) for rules that are expected to have a significant adverse effect on small entities, describe the steps taken to minimize the adverse effect in a manner that is consistent with the stated objectives of applicable statutes; and (5) provide for review of rules for small-entity impact every 10 years.

On October 9, 1981, our predecessor agency, the Interstate Commerce Commission (ICC or Commission), adopted internal procedures to implement the RFA, in Commission Issuance No. 52, Implementation of the Regulatory Flexibility Act, and published these procedures in the Federal Register at 46 FR 50158.¹ This issuance needs to be updated to reflect the STB's assumption of statutory functions of the ICC, intervening changes in the STB's internal organization and procedures, and experience under the RFA. Accordingly, we are revising STB Issuance No. 52 as set forth in the Appendix to this notice. Because our revision governs the internal operations and procedures of the STB, it is being issued in final form, and public comments are not being sought. This issuance is

¹ Commission issuances became applicable to the STB upon its creation.

intended solely to provide for the internal processing of issues arising under the RFA, not to resolve substantive issues involving the interpretation and application of that statute.

Decided: November 7, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

APPENDIX

52. Implementation of the Regulatory Flexibility Act

A. Purpose. – This issuance sets forth how the Surface Transportation Board (Board) implements the Regulatory Flexibility Act (RFA) in its formulation of agency policies and regulations.

B. Background. – The RFA was first enacted by Congress on September 19, 1980, Pub. L. No. 96-354 (94 Stat. 1164), and later amended on March 29, 1996, Pub. L. No. 104-121 (110 Stat. 847). The RFA directs that agencies endeavor to fit their regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to those requirements. Towards that end, the RFA requires agencies, when appropriate, to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

C. Policy. – The Board and its predecessor agency, the Interstate Commerce Commission, have taken many steps to reduce the regulatory burden on small business entities. Under the RFA, the scope of the agency's analysis of economic impacts of proposed rulemakings encompasses not only small carriers, but also small communities and municipalities, shippers, receivers and others.

D. Regulatory Flexibility Officer. – The Director of the Office of Proceedings is designated Regulatory Flexibility Officer.

E. Definitions. – “Small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction,” as defined below:

1. Small Business – Generally, an independently owned and operated business that is not dominant in its field. The Board may, however, redefine “small” for various transportation modes by rule in accordance with the RFA.
2. Small Organization – Generally, a non-profit enterprise that is independently owned and operated and is not dominant in its field.
3. Small Governmental Jurisdiction – Generally, a political unit covering an area with a population under 50,000.

F. Initial Regulatory Flexibility Analysis (IRFA). –

1. An analysis of the impact of the proposed rule on small entities will be included in each notice of proposed rulemaking (NPR) that may have a significant economic impact on a substantial number of small entities. Such analysis will contain:
 - a. a description of the reasons why action by the agency is being considered;
 - b. a succinct statement of the objectives of, and legal basis for, the proposed rule;
 - c. a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
 - d. a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the

classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

e. an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

2. In addition, each initial regulatory flexibility analysis will contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of applicable statutes and would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis will discuss significant alternatives, such as:

- a. the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- b. the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- c. the use of performance, rather than design, standards; and
- d. an exemption from coverage of the rule, or any part thereof, for such small entities.

G. Final Regulatory Flexibility Analysis (FRFA). – A final analysis of the impact of the proposed rule on small entities will be prepared on all final rules to be promulgated that may have a significant economic impact on a substantial number of small entities. The final analysis will contain:

1. A succinct statement of the need for, and the objectives of, the rule;

2. A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of those issues, and a statement of any changes made in the proposed rule as a result of the comments;
3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

H. Certification. – In any rulemaking involving a proposed or final rule that will not, if promulgated, have a significant economic impact on a substantial number of small entities, a certification of that fact can be made in lieu of an IRFA and a FRFA. Such “certification of no significant economic impact” must contain a statement explaining the factual basis for the certification. Any proceeding

involving a final rule, in which a previous certification has been made, should state that, in the NPR, we certified that the rule would have no significant impact on a substantial number of small entities.

I. Responsibilities. –

1. Regulatory Flexibility Officer.

a. The Regulatory Flexibility Officer is directed to prepare for the Board the Regulatory Flexibility Agenda, which will be part of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions.

b. The Regulatory Flexibility Officer will also review the following agency actions:

(1) all NPRs — prior to assignment for preparation of a draft decision — to determine if the proposed rule may have a significant economic impact on a substantial number of small entities. The results of this review shall be clearly indicated and affixed to the NPR and forwarded to the originating STB Office; and

(2) all NPRs and final rules — after preparation of a draft decision but prior to circulation for Board vote — to reevaluate the appropriateness of any certification, IRFA or FRFA to determine the sufficiency thereof.

In all cases, the Regulatory Flexibility Officer is assigned the task of preparing or causing to be prepared, as appropriate, certifications of no significant impact; exemptions from coverage of the rule, or any part

thereof, for small entities, if appropriate, as discussed in 5 U.S.C. 603(c)(4); or waivers or delays of some or all of the IRFA requirement (see Section F, above) in response to an emergency that makes compliance impracticable, as provided in 5 U.S.C. 608.

2. Heads of Offices are to assure that all NPRs and final rules to be promulgated, including exemptions, waivers or delays, have been cleared by the Regulatory Flexibility Officer at the earliest possible stage. NPRs should be referred prior to assignment for preparation of a draft decision, and NPRs and final rules should be referred for appropriate review and clearance after preparation of the draft decision but prior to circulation for Board consideration. The circulation memorandum on each decision should indicate that the Regulatory Flexibility Officer has approved of the Regulatory Flexibility action taken, waived or delayed. In all cases in which a voluminous IRFA has been necessary, the originating Office may prepare a separate IRFA summary to be published in the Federal Register at the time of publication of the general NPR.
3. The Regulatory Flexibility Officer will assure that all certifications, IRFAs, and FRFAs are published in the Federal Register and served directly on the Chief Counsel for Advocacy, Small Business Administration, and that all waivers or delays are published in the Federal Register.