

§1137.2 Expeditious procedures for publication of separate rates for distinct services.

(a) *Purpose.* These regulations are designed to facilitate the publication of and thus encourage the use of separate rates for distinct rail services. Increased utilization of such rates will also increase the attractiveness of investing in railroads and rail service related enterprises by creating a keener competition among rail carriers and other modes of transportation. Encouraging these goals, the Board also seeks to promote experimentation and innovative ratemaking through the initiation of rail carriers and the requests of their customers. Special permission requests for publication on short notice will be granted whenever feasible, and any proceedings involving separate rates for distinct services will be expedited.

(b) *Definitions.* (1) Distinct rail services are those railroad transportation services, which are separate from line-haul transportation services necessary for the movement of freight, and for which a specific tariff item is published by the railroads either upon their own initiative or upon the request of any shipper or receiver of freight.

The following definitions refer to those factors included in §1137.2(h) in the determination of reasonableness:

(2) The term "cash-outlays" as used in 49 U.S.C. 10728 shall consist of the following:

(i) The annualized operating expenses, rents and taxes (including labor, materials and supplies, fuel and utilities, but excluding depreciation, amortization, and Federal income taxes) which change directly with the carrier's production of a distinct rail service.

(ii) The annualized cash-outlays equivalent to the carrier's capital investment, including the cost of providing such capital, which change directly with the carrier's production of a distinct rail service. These cash-outlays may be determined based on either the cost of sunk and new investment combined or the cost of new investment only.

(3) Demand is the willingness of a shipper to purchase a distinct rail service (as that term is defined in

§1137.2(b)(1)) at a specified price under the prevailing circumstances.

(c) *Title page.* In addition to requirements of §1312.12, a tariff title page must also state whether the tariff or supplement contains new or changed rates for distinct rail services as defined in §1137.2(b) and bear the following notation:

This tariff (or supplement or loose leaf amendment) contains separate rates for distinct rail services (see item(s) _____) within the meaning of §1137.2(b).

(d) *Letters of transmittal.* In connection with separate rates for distinct rail services filed with the Board, the letter of transmittal (required in §1312.4) must also bear the notation found in §1137.2(c).

(e) *Justification statements.* Justification statements in support of the publication of a separate rate or charge for a distinct rail service may be filed concurrently with the filing of the tariff. Information of the type specified in §1137.2(h), if included in the justification statement, would assist the Board in its initial evaluation of the proposal.

(f) *Protest(s) and investigation.* Protests to a tariff (or supplement) making reference on the title page to §1137.2(b) must be verified and filed in accordance with §1132.1(g). In the event of investigation or suspension, these proceedings will be accorded priority, and modified procedure (49 CFR Part 1112), to the extent feasible, will be followed.

(g) *Reply to protest.* Replies to protests of rates proposals under this section must be verified and should be filed and served promptly in accordance with §1132.1(f). Respondents are urged to submit the information specified in §1137.2(h) unless previously furnished.

(h) *Initial statement.* In order to expedite the proceedings in the event of the suspension of tariff schedules setting forth separate rates for distinct rail services or in the event that investigation without suspension of such schedules is ordered, respondent railroad or railroads shall submit in writing, under verification, support of the tariff in issue. Such data should consist of the following:

(1) *Cash-outlays.* The dollars of "cash-outlays" as that term is defined in

§1137.2(b)(2). A full explanation of the methods, procedures and data used to determine "cash-outlays" should be supplied.

(2) *Demand*. Evidence supporting existence of a "demand" for the proposed service as that term is defined in §1137.2(b)(3).

(3) *Market dominance*. If the proposal involves a new or increased charge for a distinct service, evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118 should be supplied. However, if such data has been previously submitted in the same proceeding, a notation to that effect will suffice.

(4) *Revenues*. The annualized dollars of revenue to be obtained from the rate or charge associated with providing the distinct rail service.

(5) *Outputs*. The annualized number of service outputs associated with the rate or charge per service unit. For example, if the proposed rate is stated in cents per hundredweight, per car switched, or per stop, then the number of service outputs should be expressed as x number of hundredweight, cars switched, or stops made.

(6) *Ratios*. The revenue-to-cost ratio (percentage) for the distinct rail service, based on the revenues to be obtained, and the carrier's "cash-outlays."

(7) *Effect*. A statement as to how the proposed rate on the distinct rail service will encourage competition; promote increased reinvestment by the railroad; or encourage and facilitate increased non-railroad investment in the production of rail services.

(8) *Alternative data*. The submission of the above evidence, paragraphs (h)(1) through (7) of this section, represents data which the Board believes would provide a basis for meaningful analysis of the lawfulness of such rates. However, in lieu thereof or in addition thereto, respondents may justify their proposal on the basis of other relevant evidence or cost levels. A full explanation of the methods and procedures used shall be provided.

(i) *Reporting requirements*. For the 6-month period beginning February 5, 1977, all common carriers by rail, subject to 49 U.S.C. 11145; shall submit information showing those distinct rail

service rates published in accordance with 49 U.S.C. 10728, showing actual or estimated revenues derived therefrom during the 6-month period. In addition, these reports, which shall be filed with the Board by July 30, 1977, shall state whether the rates accomplished their intended purpose, and if not whether they intend any change in the level of charge or other change.

[42 FR 9024, Feb. 14, 1977; 42 FR 36265, July 14, 1977, as amended at 42 FR 62139, Dec. 9, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 48 FR 44827, Sept. 30, 1983; 50 FR 37534, Sept. 16, 1985]

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Subpart A—Common Carriers of General Commodities

SOURCE: 47 FR 49577, Nov. 1, 1982, unless otherwise noted.