

## DEPARTMENT OF TRANSPORTATION

Research and Special Programs  
Administration

## 49 CFR Parts 107, 171, and 173

[Docket No. HM-138A; Notice No. 81-6A]

Enforcement Procedures and Related  
Miscellaneous Proposals; Extension of  
Comment Period

**AGENCY:** Materials Transportation Bureau (MTB), Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Extension of comment period.

**SUMMARY:** Due to administrative delays in providing distribution of copies of Notice 81-6 Enforcement Procedures and Related Miscellaneous Proposals, Extension of Comment Period (46 FR 47091, Sept. 24, 1981) to persons on the MTB mailing list, it is necessary to extend the comment period in order to assure the fullest public participation practicable.

**DATE:** Comments must be received by December 1, 1981.

**ADDRESS:** Address comments to the Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and notice number and be submitted in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th Street, S.W., Washington, D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** George W. Tenley, Jr. Office of the Chief Counsel, Research and Special Programs Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 755-4973.

(49 U.S.C. 1804, 1808, and 1809; 49 CFR 1.53, App. A. to Part 1)

**Note.**—Because this action concerns a currently outstanding Notice of Proposed Rulemaking relating to (a) agency practices and procedures or (b) clarifications of existing regulations and policies, the Materials Transportation Bureau has determined that this action—(1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact would be so minimal; (4) would not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act; and (5) does not require an environmental impact statement under the National Environmental Policy.

Issued in Washington, D.C. on October 9, 1981.

Joseph T. Horning,  
*Acting Associate Director for Hazardous  
Materials Regulation.*

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INTERSTATE COMMERCE  
COMMISSION

## 49 CFR Part 1109

(Ex Parte No. 322 (Sub-1))

Revised Procedures for Divisions of  
Revenue Cases

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing to modify its regulations governing the processing of division of revenue proceedings. Modifications are necessary to implement revised deadlines for these cases established in the Staggers Rail Act of 1980. Other proposed changes amend the existing procedural rules and evidentiary standards for the purpose of simplifying them and eliminating unnecessary restrictions in the development of evidence.

**DATE:** Comments are due on or before December 3, 1981.

**ADDRESS:** An original and 15 copies of comments should be sent to: Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Jane Mackall (202) 275-7656.

**SUPPLEMENTARY INFORMATION:**

## Introduction

The Staggers Rail Act of 1980 made a number of important adjustments to the time limits for final action in these cases. The evidentiary record, if the case is brought on complaint, must now be complete in nine months, rather than one year. If we institute the case, the record must now close within 18 months, rather than two years. A final decision must be issued within 180 days of close of the record,<sup>1</sup> rather than the prior 270 day deadline. While there are exceptions to these rules, discussed later in this notice, the amendments to section 10705 generally reflect Congress' intent that these disputes be resolved more quickly. Certain of the proposed changes to the existing rules are

<sup>1</sup>100 days if the case involves a railroad in reorganization or allegations that divisions do not cover variable cost. See section 10705(f)(1)(A)(i).

intended to prompt more expeditious processing of these cases.

We have also taken this opportunity to review the substance of the existing rules. Our prior decision, *Expeditious Handling of Divisions of Revenue Cases*, 353 ICC 349 (1976), noted that the proceeding would be open ended and that refinements and modifications to the rules would be considered as experience was gained.<sup>2</sup> We are concerned that certain of them may improperly and unnecessarily circumscribe the methods parties use to develop their cases, and that other rules may impose unwarranted notification burdens.

## Proposed Rules

**PART 1109—REQUIREMENTS AND  
PROCEDURES RELATING TO  
RAILROAD REVITALIZATION AND  
REGULATORY REFORM ACT OF 1976**

49 CFR 1109.5 would be revised to read as follows:

**§ 1109.5 Divisions of revenues cases.**

(a) *Notice of intent to file complaint.*  
(1) An original and fifteen copies must be filed for Commission use. In addition, sufficient copies for Commission service on each party (each receiver or trustee if a bankrupt line) must be submitted.

(2) The notice of intent must state generally: the involved traffic and applicable joint rates; the territorial scope; the participating railroads; and the present and proposed divisions.

(3) The notice must include a statement indicating when filing of the formal complaint is expected. The formal complaint may not be filed more than one year after the filing of the notice of intent unless the Commission approves an extension of time. Lack of diligence in filing the formal complaint may result in dismissal of the action.

(b) *Notice of intent to file cross complaint.* These notices are due 30 days from service of the original notice and are subject to the requirements in paragraph (a) of this section. If timely filed, the original and cross complaints will be consolidated for disposition.

(c) *Formal complaint (and cross complaint).* The formal complaint (or cross complaint) must contain the case-in-chief. All supporting papers must be made available to opposing parties. Complaints will be served by the Commission, and are subject to the same copy requirements as paragraph (a) of this section.

<sup>2</sup>The legislative history of Section 218 of the Staggers Act directs us to study alternatives to the present divisions system. We are not undertaking that study in this proceeding.