

This decision will be printed in the bound volumes of the STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 571

REVISION OF AUTHORITY CITATIONS

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board revises its regulations by updating its authority citations.

EFFECTIVE DATE: These rules are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is revising certain authority citations in the Code of Federal Regulations (CFR) to reflect statutory changes made by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) and previous statutes.¹ The ICCTA abolished the Interstate Commerce Commission (ICC), established the Board to assume many of the functions of the ICC, and made substantial revisions to 49 U.S.C. Subtitle IV. The revisions to subtitle IV included both substantive changes and a wholesale renumbering of individual sections within subtitle IV. See H.R. Rep. No. 104-422, 104th Cong., 1st Sess. 241-47 (1995) (table showing disposition of individual statutory provisions). Under section 204(a) of the ICCTA, the regulations that had been promulgated and administered by the ICC, located at 49 CFR chapter X, were transferred to the Board (except for parts relating to functions transferred to the Secretary of Transportation under the ICCTA, which were transferred to the Secretary of Transportation and have since been moved to other chapters).² In an ongoing effort to update the regulations in chapter X, the Board has removed many parts that had been rendered obsolete by changes in the governing statute; revised other parts to conform to substantive changes in the governing statute; and made wholesale changes to the nomenclature of yet other parts to reflect the elimination of the ICC and the substitution of the Board. The Board is now updating the authority citations, as required by 1 CFR 21.41, for most parts within chapter X - those which are not obsolete and have not been addressed in other proceedings - to reflect renumbering of the underlying provisions in the governing statute.

Under 1 CFR 21.40, the authority citation must include the general or specific authority delegated by statute. We are deleting references to the Administrative Procedure Act (APA), because the APA does not provide an independent basis of authority.³

¹ An authority citation denotes what statutory provision(s) authorize the agency to adopt or change the regulation(s) involved.

² See 61 FR 54706 (October 21, 1996).

³ Cf. Cousins v. Secretary of Transp., 880 F.2d 603, 605 (1st Cir. 1989). We do not believe, however, that it is necessary at this time to delete APA references in authority citations that are otherwise up-to-date.

Some authority citations include only a general or a specific authority, but not both. See 49 CFR 1037 and 49 CFR 1302. We believe these to be legally sufficient; as noted, under 1 CFR 21.40, a general or specific authority is required. Because we are merely updating the authority citations to remove obsolete statutory references, we will generally not add authorities.⁴

We are not updating the authorities of certain regulations (parts 1022, 1030, 1091, 1131, 1143, 1156, and 1170), because these rules appear to be obsolete will be addressed in a separate proceeding. Also, we are not amending the authority citation for part 1004. The Federal Highway Administration has incorporated all of part 1004, except section 1004.26, into 49 CFR part 356 (62 FR 32040, June 12, 1997), without removing provisions from chapter X. We question whether the portions of part 1004 that are not obsolete are still necessary, and we will seek comment in a separate proceeding as to whether this rule should be maintained. Finally, part 1144 appears to be partially obsolete. We will update the authorities for the operative portions of that rule, and later undertake a substantive revision of that part.

Small Entities

The Board certifies that these changes will not have a significant economic effect on a substantial number of small entities.

Environment

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

List of Subjects

49 CFR Part 1003

Administrative practice and procedure.

49 CFR Part 1005

Claims, Investigations, Motor carriers, Railroad.

49 CFR Part 1007

Administrative practice and procedure, Privacy.

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1013

Common carriers, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

49 CFR Part 1016

Claims, Equal access to justice, Lawyers.

⁴ In some cases, however, we have added statutory authorities. In part 1246 (Number of railroad employees), we are including a citation to 49 U.S.C. 11145 that pertains to rail carrier reports. In part 1253 (rate-making organization; records and reports), we are also adding a reference to 49 U.S.C. 11144, rail carrier records. We are also changing the headings in parts 1037 and 1331, and have modified part 1220 to remove obsolete references.

49 CFR Part 1018

Claims, Debts.

49 CFR Part 1019

Government employees.

49 CFR Part 1021

Claims.

49 CFR Part 1033

Railroads.

49 CFR Part 1034.

Railroads.

49 CFR Part 1035

Bills of Lading, Railroads, Water carriers.

49 CFR Part 1037

Claims, Grains, Railroads.

49 CFR Part 1090

Intermodal transportation, Motor carriers, Railroads.

49 CFR Part 1100

Administrative practice and procedure.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1102

Administrative practice and procedure.

49 CFR Part 1103

Administrative practice and procedure, Lawyers.

49 CFR Part 1109

Administrative practice and procedure.

49 CFR Part 1110

Administrative practice and procedure.

49 CFR Part 1116

Administrative practice and procedure.

49 CFR Part 1117

Administrative practice and procedure.

49 CFR Part 1119

Administrative practice and procedure.

49 CFR Part 1120

Freight, Motor carriers.

49 CFR Part 1133

Claims, Freight.

49 CFR Part 1137

Administrative practice and procedure, Railroads.

49 CFR Part 1139

Administrative practice and procedure, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1141

Administrative practice and procedure.

49 CFR Part 1144

Railroads.

49 CFR Part 1151

Administrative practice and procedure, Railroads.

49 CFR Part 1177

Administrative practice and procedure, Archives and records, Railroads.

49 CFR Part 1184

Administrative practice and procedure, Motor carriers.

49 CFR Part 1200

Common carriers, Uniform System of Accounts.

49 CFR Part 1220

Railroads, Reporting and recordkeeping requirements.

49 CFR 1242

Railroads, Taxes.

49 CFR 1243

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements, Wages.

49 CFR Part 1246

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

49 CFR Part 1253

Motor carriers, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1302

Exports, Freight, Imports, Railroads.

49 CFR Part 1331

Motor carriers, Moving of household goods, Railroads.

Decided: September 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1003 — FORMS

1. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1005 — PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

2. The authority citation for part 1003 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706, 15906.

PART 1007 — RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS

3. The authority citation for part 1007 is revised to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 721.

PART 1012 — MEETINGS OF THE BOARD.

4. The authority citation for part 1012 is revised to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 701,721.

PART 1013 — GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

5. The authority citation for part 1013 is revised to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

PART 1016 — SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO BOARD ADJUDICATORY PROCEEDINGS

6. The authority citation for part 1016 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

PART 1018 — DEBT COLLECTION

7. The authority citation for part 1018 is revised to read as follows:

Authority: 31 U.S.C. 3701, 31 U.S.C. 3711 et seq., 49 U.S.C. 721, 4 CFR parts 101-105.

PART 1019 — REGULATIONS GOVERNING CONDUCT OF SURFACE TRANSPORTATION BOARD EMPLOYEES

8. The authority citation for part 1019 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1021 — ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

9. The authority citation for part 1021 is revised to read as follows:

Authority: 31 U.S.C. 3701, 3711, 3717, 3718.

PART 1033 — CAR SERVICE

10. The authority citation for part 1033 is revised to read as follows:

Authority: 49 U.S.C. 721, 11121, 11122.

PART 1034 — ROUTING OF TRAFFIC

11. Remove the authority at the end of section 1034.1 and add the following authority citation for part 1034 after the Editorial Note:

Authority: 49 U.S.C. 721, 11123.

PART 1035 — BILLS OF LADING

12. The authority citation for part 1035 is revised to read as follows:

Authority: 49 U.S.C. 721, 11706, 14706.

PART 1037 — BULK GRAIN AND GRAIN PRODUCTS - LOSS AND DAMAGE CLAIMS

13. The authority citation for part 1037 is revised to read as follows:

Authority: 49 U.S.C. 721.

14. The heading for part 1037 is revised to read as set forth above.

PART 1090 — PRACTICES OF CARRIERS INVOLVED IN THE INTERMODAL MOVEMENT OF CONTAINERIZED FREIGHT

15. The authority citation for part 1090 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1100 — GENERAL PROVISIONS

16. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1101 — DEFINITIONS AND CONSTRUCTION.

17. The authority citation for part 1101 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1102 — COMMUNICATIONS

18. The authority citation for part 1102 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1103 — PRACTITIONERS

19. The authority citation for part 1103 is revised to read as follows:

Authority: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

PART 1109 — USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

20. The authority citation for part 1109 is revised to read as follows:

Authority: 5 U.S.C. 571 et seq.

PART 1110 — PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

21. The authority citation for part 1100 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1116 — ORAL ARGUMENT BEFORE THE BOARD

22. The authority citation for part 1116 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1117 — PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

23. The authority citation for part 1117 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1119 — COMPLIANCE WITH BOARD DECISIONS

24. The authority citation for part 1119 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1120 — USE OF 1977-1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

25. The authority citation for part 1120 is revised to read as follows:

Authority: 49 U.S.C. 721, 13701, 13703.

PART 1133 — RECOVERY OF DAMAGES

26. The authority citation for part 1133 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1137 — PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

27. The authority citation for part 1137 is revised to read as follows:

Authority: 49 U.S.C. 721, 10705.

PART 1139 — PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

28. The authority citation for part 1139 is revised to read as follows:

Authority: 49 U.S.C. 721, 13703.

PART 1141 — PROCEDURES TO CALCULATE INTEREST RATES

29. The authority citation for part 1141 is revised to read as follows:

Authority: 49 U.S.C. 721.

PART 1144— INTRAMODAL RAIL COMPETITION

30. The authority citation for part 1144 is revised to read as follows:

Authority: 49 U.S.C. 721, 10703, 10705, and 11102.

PART 1151 — FEEDER LINE DEVELOPMENT PROGRAM

31. The authority citation for part 1151 is revised to read as follows:

Authority: 49 U.S.C. 10907.

PART 1177 — RECORDATION OF DOCUMENTS

32. The authority citation for part 1177 is revised to read as follows:

Authority: 49 U.S.C. 721, 11301.

PART 1184 — MOTOR CARRIER POOLING OPERATIONS

33. The authority citation for part 1184 is revised to read as follows:

Authority: 49 U.S.C. 721, 14302.

PART 1200 — GENERAL ACCOUNTING REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

34. The authority citation for part 1200 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142, 11143, 11144, 11145.

PART 1220 — PRESERVATION OF RECORDS

35. The authority citation for part 1220 is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

36. In section 1220.0, remove “Motor carriers and brokers,” “Water carriers,” and “Household goods freight forwarders.”

PART 1242 — SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS

37. The citation for part 1242 is revised to read as follows:

Authority: 49 U.S.C. 721, 11142.

PART 1243 — QUARTERLY OPERATING REPORTS - RAILROADS

38. The authority citation for part 1243 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1244 — WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY - RAILROADS

39. The authority citation for part 1244 is revised to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

PART 1245 — CLASSIFICATION OF EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION

40. The authority citation for part 1245 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1246 — NUMBER OF RAILROAD EMPLOYEES

41. The authority citation for part 1246 is revised to read as follows:

Authority: 49 U.S.C. 721, 11145.

PART 1248 — FREIGHT COMMODITY STATISTICS

42. The authority citation for part 1248, subpart A is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

43. The authority citation for part 1248, subpart B is revised to read as follows:

Authority: 49 U.S.C. 721, 11144, 11145.

PART 1253 — RATE-MAKING ORGANIZATION; RECORDS AND REPORTS

44. The authority citation for part 1253 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703, 11144, and 11145.

PART 1302 — EXPORT AND IMPORT SHIPMENTS; RAILROADS

45. The authority citation for part 1302 is revised to read as follows:

Authority: 49 U.S.C. 884.

PART 1331 — APPLICATIONS UNDER 49 U.S.C. 10706 AND 13703

46. The authority citation for part 1331 is revised to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703.

47. The heading for part 1331 is revised to read as set forth above.