

STB EX PARTE NO. 532

REMOVAL OF OBSOLETE REGULATIONS FOR
REASONABLY EXPECTED COSTS AND JOINT RATES
SUBJECT TO SURCHARGE OR CANCELLATION

49 CFR Parts 1039, 1138, 1140

Decided February 15, 1996

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing obsolete reasonably expected costs and joint rate surcharge and cancellation regulations from the *Code of Federal Regulations*.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), abolished the Interstate Commerce Commission (the Commission) and established within the Department of Transportation the Surface Transportation Board. Section 204 of the Act provides that "[t]he Board shall promptly

rescind all regulations established by the [Commission] that are based on provisions of law repealed and not substantively reenacted by this Act." 49 U.S.C. 10705a, the statutory basis for the part 1138 regulations on requesting variable cost and revenue determinations from carriers canceling a joint rate¹ and the part 1140 regulations for reasonably expected costs,² has been repealed. This section allowed carriers to apply a surcharge increasing or reducing a joint rate [§ 10705a(a)]³, to apply a surcharge on their light density lines [§ 10705a(b)], or to cancel a joint rate [§ 10705a(c)], without the concurrence of other participating carriers.⁴ We are therefore removing the now obsolete parts 1138 and 1140 regulations, as well as another obsolete regulation pertaining to § 10705a found at 49 CFR 1039.18. These changes are not necessarily the final revisions in the regulations resulting from the elimination of 49 U.S.C. 10705a.⁵ Parties may submit suggested additional changes to the *Code of Federal Regulations* in light of the elimination of § 10705a.

¹ Regulations were promulgated in *Proc. For Rail Variable Cost And Revenue Determination*, 3 I.C.C.2d 703 (1987).

² Regulations were originally promulgated in *Reasonably Expected Costs*, 365 I.C.C. 819 (1981), in the proceeding docketed as Ex Parte No. 402. Subsequent revisions to the reasonably expected cost regulations were made in the Ex Parte No. 402 decisions at 1 I.C.C.2d 252 (1984), 1 I.C.C.2d 293 (1984), and 5 I.C.C.2d 819 (1988).

³ Carriers could also apply negative surcharges under 49 U.S.C. 10705a(a). In *Negative Surcharges Tariff-Exemption*, Docket No. 39777 (ICC served August 16, 1985), we granted an exemption to allow carriers to file rate allowances ("negative surcharges") without obtaining concurrences from other carriers participating in the joint rate. The exemption was codified at 49 CFR 1039.18. The authority to apply the negative surcharge expired on September 30, 1984. We are also removing section 1039.18 in this notice.

⁴ There was also another provision concerning joint rate cancellations -- former section 10705(e) of title 49. We will consider this section in another proceeding.

⁵ At this time, we are not removing related matters found in regulations concerning user fees (§ 1002) and tariffs (§ 1312) because we plan to separately address those parts shortly.

1 S.T.B.

Because this action merely reflects, and is required by, the enactment of the Act and will not have an adverse effect on the interests of any person, this action will be deemed to be effective as of January 1, 1996.

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 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

49 CFR Part 1138

Administrative practice and procedure, Freight, Railroads.

49 CFR Part 1140

Abandonments and discontinuances, Environmental protection, National resources, National trail system, Public use conditions, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

APPENDIX

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039 -- EXEMPTIONS

1. The authority citation for part 1039 is revised to read as follows:

Authority: 5 U.S.C. 55349; and U.S.C. 721 and 10502

§ 1039.18 [amended]

2. Section 1039.18 is removed.

PART 1138 [amended]

3. Part 1138 is removed.

PART 1140 [amended]

4. Part 1140 is removed.

1 S.T.B.