

STB EX PARTE NO. 545

REMOVAL OF OBSOLETE REGULATIONS
CONCERNING OWNER-OPERATORS

49 CFR Parts 1164 and 1311

Decided April 24, 1996

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is removing from the *Code of Federal Regulations* obsolete regulations concerning owner-operators.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-7513. [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 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

1 S.T.B.

Generally, prior to enactment of the Motor Carrier Act of 1980 (MCA-80), motor common and contract carriers needed licenses from the ICC (certificates for common carriers, permits for contract carriers) in order to operate. These licenses were based on public convenience and necessity and fitness standards. Motor common and contract carriers could only charge rates that were filed with the ICC in tariffs or schedules.

The regulations involved here relaxed these regulatory requirements for owner-operators transporting food. The part 1164 regulations were based on former 49 U.S.C. 10922(b)(4)(E), 10923(b)(5)(A), and 11145(c). The part 1311 regulations were based on former 49 U.S.C. 10762(a)(1) and 10762(g), as well as former sections 10922(b)(4)(E) and 10923(b)(5)(A). Under the Trucking Industry Regulatory Reform Act (TIRRA), Title II of the Hazardous Materials Transportation Act Amendments of 1994, Pub. L. No. 103-311 (August 26, 1994), and the ICCTA, these statutory provisions were repealed, and we are accordingly removing the obsolete part 1164 and part 1311 regulations.

PART 1164 LICENSING

Sections 5(a)(3) and 10(a)(2) of the MCA-80 provided exceptions for owner-operators to the licensing provisions then generally applicable for obtaining certificates and permits. These sections of the MCA-80 were codified, as here relevant, at former 49 U.S.C. 10922(b)(4)(E) and 49 U.S.C. 10923(b)(5)(A). Owner-operators were allowed to obtain operating authority from the ICC to transport food and certain other commodities¹

¹ These commodities were food and other edible products included for human consumption (excluding alcoholic beverages and drugs), agricultural limestone, and fertilizers and other soil conditioners. For brevity, these commodities will be referred to as food products.

through a fitness-only application procedure.² The ICC issued regulations implementing the new statute in *Owner-Operator Food Transportation*, 132 M.C.C. 521 (1981) (*Owner-Operator*).³

TIRRA again amended former sections 10922 and 10923. Sections 207 and 208 of TIRRA eliminated the provisions of 49 U.S.C. 10922(b)(4)(E) and 49 U.S.C. 10923(b)(5)(A) and also modified other parts of sections 10922 and 10923 to apply the fitness-only standard to all non-household goods motor property common and contract carrier applicants. See, *Revised MC-Licensing Appl. Forms and Regs.*, 10 I.C.C.2d 386, 387 (1994).⁴ Thus, since the passage of TIRRA, owner-operators have been able to obtain authority to transport food products under that standard regardless of the annual tonnage and ownership of the vehicle.⁵

² The statute limited this provision to transportation by the owner of the vehicle, except in emergency situations, and to situations in which the annual tonnage of food products transported did not exceed the annual tonnage of exempt commodities transported. Former 49 U.S.C. 11145(c) required the ICC to "streamline" the annual method of reporting tonnage.

³ These regulations were originally found in 49 CFR part 1138, but they were redesignated at 49 CFR part 1164 on November 1, 1982 (published at 47 Fed. Reg. 49,534 (1982)). They defined the term "emergency situations" and promulgated an annual reporting requirement to certify compliance with the statute's annual tonnage limitation.

⁴ Effective January 1, 1995, the ICC was to issue authorities to carriers upon finding that the applicant was in compliance with (1) ICC regulations and safety requirements; (2) DOT safety fitness requirements; and (3) minimum financial responsibility requirements established by the ICC pursuant to 49 U.S.C. 10927.

⁵ Truck licensing was again changed under the ICCTA. Permanent licensing for motor carriers of property was eliminated. 49 U.S.C. 13902. Now, motor carriers are registered for a term determined by the Secretary of Transportation based on fitness standards (safety and insurance) similar to those in TIRRA. A two-year transition period is established to allow motor common and contract carriers to be issued certificates and permits under the TIRRA framework. 49 U.S.C. 13902(d). Although ICCTA eliminates the distinction between motor common and contract carriage, each carrier can be separately registered during the transition period.

Because former sections 10922(b)(E)(5), 10923(b)(5)(A), and 11145(c) have been eliminated, we will remove the obsolete regulations at 49 CFR part 1164.

PART 1311 RATE FILINGS

Section 5(a) of the MCA-80 modified for owner-operators the requirement to file tariffs and schedules: former 49 U.S.C. 10762 was amended by the addition of a new subsection (g) mandating the streamlining of rate filing requirements of motor carriers holding authority issued under former section 10922(b)(4)(E) and 10923(b)(5)(a). Also, former section 10762(a)(1) was amended to require the filing of only minimum rates for owner-operator transportation of food products. In *Owner-Operator, supra*, the ICC adopted regulations at 49 CFR part 1311 that permitted owner-operators of food products to file, in lieu of tariffs or schedules, a letter statement containing the transportation services performed and the minimum rates.⁶

Section 206 of TIRRA further amended former section 10762(a)(1) by removing the tariff filing requirement for individually (as distinguished from collectively) set rates of motor common carriers of property (other than household goods and carriers involved with water carriers in the noncontiguous domestic trade). Motor contract carriers were no longer required to file actual or minimum rates.⁷

⁶ The ICC later eliminated by exemption the requirement that motor contract carriers file a schedule of rates. *Exemption--Mtr. Contr. Car.--Tariff Filing Requirements*, 133 M.C.C. 150 (1983), *aff'd sub nom. Central & Southern Motor Freight Ass'n v. United States*, 757 F.2d 301 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1019 (1985).

⁷ Although sections 207 and 208 of TIRRA eliminated former sections 10922(b)(4)(E) and 10923(b)(5)(A), TIRRA did not remove former section 10762(g), the provision for streamlined rate filing for owner-operator transportation of food products.

The ICCTA further modified the rate filing requirements. Former section 10762(g) was removed. Now, under 49 U.S.C. 13702, motor carriers only need to file a tariff with the Board for transportation in noncontiguous domestic trade (with certain exceptions).

Because the statutory bases for the part 1311 regulations have been repealed, we are eliminating these obsolete rules.

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 1164

Foods, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1311

Foods, Freight, Motor carriers.

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 by removing parts 1164 and 1311.

1 S.T.B.