

STB EX PARTE NO. 557

REMOVAL OF OBSOLETE REGULATIONS
CONCERNING WATER CARRIERS

49 CFR Parts 1070 and 1071

Decided October 7, 1996

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the *Code of Federal Regulations* obsolete regulations exempting certain water carrier operations.

EFFECTIVE DATE: October 17, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660.
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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 the 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that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

Under the prior law, the ICC had general jurisdiction over water carrier transportation. Former 49 U.S.C. 10541. The areas the ICC specifically regulated included domestic water carrier licensing (former section 10922); rates and practices to ensure that they were reasonable and nondiscriminatory (former sections 10701 and 10741); tariffs (former section 10761); mergers, purchases, and acquisitions (former section 11343); and limitations on the common ownership or control by railroads of water carriers (former section 11321).

1 S.T.B.

The prior law also contained statutory exemptions to economic regulation of water transportation. These exemptions pertained to bulk transportation (former section 10542); incidental water transportation (former section 10543); and certain miscellaneous exemptions (former section 10544).

As relevant here, the ICC promulgated regulations at 49 CFR parts 1070 and 1071 relating to the miscellaneous exemptions provision of former 49 U.S.C. 10544. The regulations at 49 CFR part 1070 pertain to exempt water carrier transportation under former section 10544(a)(1) within New York and Philadelphia.¹ The regulations at 49 CFR part 1071 concern exemptions for water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier.²

Under the ICCTA, residual jurisdiction is maintained over domestic water carriage "to ensure that this transportation would not be subjected to similar regulation under other laws." S. Rep. No. 196, 104th Cong., 1st Sess. 42 (1995). The general jurisdiction statement of former section 10541(a), with the exception of an introductory clause that had permitted regulation through other laws, is now found in new section 13521. *Id.* There is no longer active regulation of domestic water carriage except for rate³ reasonableness regulation in the noncontiguous domestic trade (section 13701) and tariff filing in the noncontiguous domestic trade (section 13702) with certain exceptions.³ Thus, the ICCTA eliminated both the broader regulatory provisions of former sections 10922, 10701, 10761, 10741, 11343, and 11321 and the general exemptions from those provisions at former sections 10542-44.

¹ The section 1070 regulations were issued pursuant to section 303(g)(1) of the Interstate Commerce Act (the predecessor of former 49 U.S.C. 10544(g)(1)) in *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto*, Ex Parte No. 140, published at 6 Fed. Reg. 1756 (1941) and *Determination of the Limits of Philadelphia Harbor and Harbors Contiguous Thereto*, Ex Parte No. 145, published at 6 Fed. Reg. 3597 (1941).

² These regulations were issued pursuant to the ICC's authority in former sections 10544(a)(2), 10544(b), 10544(c), and 10544(f)(1), respectively, in *Exemption of Water Carrier Operations*, 4 I.C.C.2d. 699 (1988).

³ The exceptions are for bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. Section 13702(a)(1).

Because the statutory basis (former section 10544) for the regulations at 49 CFR parts 1070 and 1071 has been eliminated, we will remove those regulations. We emphasize, however, that the removal of these exemptions does not signify a more active regulatory role regarding water carriage. As noted, there is no longer active regulation of domestic water carrier transportation (except for rate reasonableness and tariff regulation in the noncontiguous domestic trade).

Because this action merely reflects, and is required by, the enactment of the ICCTA and will not have an adverse effect on the interests of any person, this action will be made effective on the date of publication in the *Federal Register* on October 17, 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 Parts 1070 and 1071
Water Carriers.

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

APPENDIX

Parts 1070-1071 [Removed]

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 1070 and 1071.

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