

STB EX PARTE NO. 572

REMOVAL OF MISCELLANEOUS OBSOLETE REGULATIONS

Decided September 19, 1997

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) is removing seven obsolete parts of the *Code of Federal Regulations*.

EFFECTIVE DATE: These rules are effective September 29, 1997.

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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. Section 204(a) of the *ICCTA* directs the Board to rescind all regulations established by the ICC that are based on provisions of law repealed and not substantively reenacted by the *ICCTA*. Pursuant to that directive, the Board has removed many such regulations. We have identified six additional parts of title 49, chapter X of the *Code of Federal Regulations* that should be removed because their statutory bases have been eliminated: parts 1022, 1030, 1091, 1143, 1156, and 1170. A seventh part, 49 CFR 1131, is being deleted because of revisions the Board is making in response to the *ICCTA*. Because it is clear that these regulations are obsolete, and in order to have these changes in place for the next issue of title 49, we are making the rule removals effective on September 29, 1997.

PART 1022.

In response to an amendment to former section 205(f) of the Interstate Commerce Act, the ICC issued the regulations now found at 49 CFR part 1022 concerning cooperative agreements with states. 31 Fed. Reg. 16,402 (1966). The statute authorized the ICC to make cooperative agreements with the States to enforce economic and safety laws and regulations of the States and the United States concerning highway transportation.¹ Section 205(f) was recodified,² as here relevant, at former 49 U.S.C. 11502.³ This section has been removed by the *ICCTA*. Accordingly, we are removing the obsolete regulations at 49 CFR part 1022.

PART 1030.

The regulations now found at 49 CFR part 1030 were originally published at 17 Fed. Reg. 7548 (1952). This rule, concerning the filing of contracts with other carriers, was based on former section 6(5) of the Interstate Commerce Act, later recodified at former 49 U.S.C. 10764. That section has been eliminated by the *ICCTA*, and, accordingly, we are removing the part 1030 regulations based on that statute.

PART 1091.

Part 1091 concerns tariff requirements for Alaskan motor-ocean-motor "substituted service," where water carriage is substituted for motor carriage for a portion of the transportation even though the motor carrier holds itself out to perform the entire movement. Under the *ICCTA*, tariffs no longer have to be filed with the Board for these movements. Now, the only motor carrier tariffs that must be filed with us are those concerning joint rates with water carriers in

¹ The regulations were later modified, removing references to safety. 55 Fed. Reg. 11,196 (1990).

² In 1978, the Interstate Commerce Act was recodified without substantive change pursuant to Pub. L. No. 95-473, October 17, 1978.

³ Part of former section 205(f) concerning joint boards was recodified at former 49 U.S.C. 10344. This section was also removed by the *ICCTA*.

the noncontiguous domestic trade. 49 U.S.C. 13701(a)(1)(B).⁴ It is unnecessary to file a "tariff where the entire service is held out by the motor carrier (notwithstanding that some of the service may be performed by a water carrier under substitute service rules * * *)." *Id.*⁵ Because substituted service is not a joint rate arrangement, the tariff requirements in part 1091 are obsolete and are being removed.

PART 1131.

The rules at 49 CFR part 1131 concern the procedures for rate complaints and (section 1131.4) petitions by railroads to review state intrastate rate decisions or applications to prescribe intrastate rates. We will remove these rules. Insofar as rate complaints are concerned, the ICC revised its regulations in 1982 to provide for two sets of formal complaint rules, one for rate complaints and another for all other complaints. See, *Revision and Redesignation of the Rules of Practice*, Ex Parte No. 55 (Sub-No. 55) (ICC served November 1, 1982) (47 Fed. Reg. 49,572 (1982)). In *Expedited Procedures for Processing Rail Rate*, 1 S.T.B. 754 (1996), and published at 61 Fed. Reg. 52,710 (1996), the Board adopted final rules at 49 CFR 1111 to expedite the handling of challenges to the reasonableness of railroad rates, including the adoption of a procedural schedule applicable in stand-alone rate cases.⁶ Part 1111 also contains procedures for non-rate complaint cases. It is therefore unnecessary, and confusing, to have a second set of rate complaint rules.

⁴ In *Exem. of Freight Forwarders From Tariff Filing Requir.*, 2 S.T.B. at 53, we interpreted the language in 49 U.S.C. 13701(a)(1)(B) ("movement by or with a water carrier") as denoting, as here relevant, "joint rates in which a water carrier is a participant."

⁵ See also, *Sea-Land Freight Serv., Inc. et al. -- Alaskan Trade Substituted Serv. -- Petition for Declaratory Order*, Docket No. MC-C-10924, 1987 MCC Lexis 529, at *10 (ICC served March 13, 1987): "[S]ubstituted service is not a through route/joint rate arrangement * * *."

⁶ In an Advance Notice of Proposed Rulemaking, *Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings*, Ex Parte No. 527 (Sub-No. 1) (served and published in the *Federal Register* on February 12, 1997 (62 Fed. Reg. 6508)), the Board solicited comments to establish a general procedural schedule for cases processed under the simplified rate evaluation procedures adopted in *Rate Guidelines--Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2). When final rules are issued in that proceeding, the Board will have in place rules applicable to all rate complaints.

With respect to intrastate rate decisions, the intrastate rail rate rules in section 1131.4 are based on former 49 U.S.C. 11501. The parts of section 11501 pertaining to rail matters were eliminated by the *ICCTA*.⁷ Because the statutory basis for the section 1131.4 rules was removed, we are deleting these obsolete regulations.

PART 1143.

Part 1143 provides that if an interstate motor carrier of passengers has requested permission from a state authority to raise an intrastate rate, and that request has been denied in whole or in part or the state has not taken final action on the request within a 120 days, the carrier can petition the ICC for review. This provision was based on former 49 U.S.C. 11501(e). Section 211(b)(2) of Pub. L. No. 103-311, 108 Stat. 1673 (1994) removed the procedures of former section 11501(e) for petitioning the ICC. Moreover, the *ICCTA* broadened the preemption of state regulation of intrastate motor carrier of passenger rates. Prior to the *ICCTA*, states were preempted from regulating reductions in intrastate motor carrier passenger rates over interstate routes. Now, states are preempted from regulating all intrastate motor passenger rates over interstate routes. *See*, 49 U.S.C. 14501(a). Accordingly, we are removing the part 1143 regulations.

PART 1156.

Part 1156 concerns submission of cost data for reimbursement for directed service. Under former section 1(16)(b) of the Interstate Commerce Act (recodified at former 49 U.S.C. 11125), the directed carrier was to be reimbursed by the Federal Government in the amount that costs for routing, handling, and moving traffic over the other carrier's lines exceeded the direct revenues from that traffic. The regulations were originally issued in *Regional Rail Reorg. Act - Submission of Cost Data*, 348 I.C.C. 251 (1975). The directed service statute under the *ICCTA* is now found at 49 U.S.C. 11123, and the

⁷ Under 49 U.S.C. 10501(a)(2)(A), the Board has jurisdiction over transportation between a place in one state and a place in the same state "as part of the interstate rail network." Accordingly, only if the intrastate movement is not part of the interstate rail system can a state exercise jurisdiction. In such limited areas, the Board does not have jurisdiction.

reimbursement provision has been eliminated. Now, section 11123(b)(3) states that "compensation for the directed operations shall derive only from revenues generated by the directed operations."⁸ Accordingly, the regulations in part 1156 for providing cost data to justify reimbursement for directed service are obsolete and are being eliminated.

PART 1170.

We are removing part 1170. These regulations concern reemployment rights for employees of motor passenger carriers who lose their jobs because of discontinuances or reductions of regular-route bus service. The rules were issued in response to section 27 of the Bus Regulatory Reform Act of 1982 and published as a note to former 49 U.S.C. 10935. See, *Employee Protection - Motor Passenger Carriers*, 133 M.C.C. 140 (1983). By its terms, the provisions of section 27 expired 12 years after its November 1982 effective date. See Section 27(i). The *ICCTA*, moreover, repealed former section 10935.

Small Entities

The Board certifies that this rule 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 1022

Intergovernmental relations.

⁸ The conference report accompanying the *ICCTA* notes that the statute "restricts directed rail transportation to situations where no Federal funding is involved, and compensation to the carrier providing the directed service comes entirely from the revenues generated by the service." H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 185 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 870.

49 CFR Part 1030
Railroads.

49 CFR Part 1091
Alaska, Intermodal transportation, Motor carriers.

49 CFR Part 1131
Administrative practice and procedure, Investigations, Railroads.

49 CFR Part 1143
Administrative practice and procedure, Intergovernmental relations.

49 CFR Part 1156
Railroads, Uniform System of Accounts.

49 CFR Part 1170
Administrative practice and procedure, Buses, Employment.

By the Board, Chairman Morgan and Vice Chairman 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 1022, 1030, 1091, 1131, 1143, 1156 and 1170.

Part 1022 [removed]
Part 1030 [removed]
Part 1091 [removed]
Part 1131 [removed]
Part 1143 [removed]
Part 1156 [removed]
Part 1170 [removed]