

STB EX PARTE NO. 637

REMOVAL AND REVISION OF REGULATIONS

Decided August 21, 2002

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) is revising its regulations concerning rail cost recovery procedures to reflect changes made by the ICC Termination Act of 1995 (ICCTA). The Board is also removing the regulations concerning expeditious procedures for publication of separate rates for distinct services, because the statutory basis for these regulations was eliminated by the ICCTA.

EFFECTIVE DATE: These rules are effective September 27, 2002.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661.
[Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Section 203 of the Staggers Rail Act of 1980, codified at former 49 U.S.C. 10707a (1995), required the Interstate Commerce Commission (ICC) to publish a rail cost adjustment factor (RCAF) on at least a quarterly basis. The RCAF is an index intended to reflect the impact of inflation. Former section 10707a established a mechanism by which rail rates could be changed quickly to reflect changes in rail costs based on the RCAF

while largely being insulated from shipper protest.¹ The ICC issued regulations, currently found at 49 CFR part 1135, implementing the statute.

Under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), former section 10707a has been removed, although under new 49 U.S.C. 10708, the Board must still publish an RCAF at least quarterly. The ICCTA eliminated, however, the provisions of former section 10707a that allowed carriers to take increases based on the RCAF with limited rights of shipper challenge. Accordingly, we are revising the regulations in part 1135 to remove references to rate increases based on the RCAF.

We are also removing section 1137.2, concerning expeditious procedures for publishing separate rates for distinct services. These rules were based on former section 15(18) of the Interstate Commerce Act, enacted in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and subsequently recodified at 49 U.S.C. 10728. Section 10728 was repealed by the ICCTA. At this time, we are not revising the regulations at 49 CFR 1137.1 involving divisions of revenues. This section was also issued in response to the enactment of the 4R Act. We will examine this regulation in a separate proceeding.

Because these changes remove and revise obsolete regulations based on statutory provisions that have been eliminated, we find good cause to dispense with notice and comment. *See* 5 U.S.C. 553(b)(B).

Copies of the decision may be purchased from Da-2-Da Legal Copy Service by calling 202-293-7776 (assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339) or visiting Suite 405, 1925 K Street, NW, Washington, DC 20006.

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

List of Subjects

49 CFR 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

¹ In general, under former section 10707a(b), tariff rates that did not exceed a current quarter's maximum RCAF rate level could not be found to be unreasonable. The statute also provided a zone of rate freedom (ZORF) that allowed carriers to take increases above the RCAF index. The ICC could not investigate or suspend ZORF increases, but shippers were allowed to file complaints challenging these increases.

49 CFR Part 1137

Administrative practice and procedure, Railroads.

By the Board, Chairman Morgan and Vice Chairman Burkes.

APPENDIX

For the reasons set forth in the preamble, part 1135 and 1137, of title 49, chapter X, of the *Code of Federal Regulations* are amended as follows:

Part 1135—RAIL COST ADJUSTMENT FACTOR

1. The authority citation for Part 1135 continues to read as follows:

AUTHORITY: 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

§1135.1 [Revised]

2. Revise §1135.1 to read as follows:

§1135.1 Quarterly adjustment.

To enable the Board to publish the rail cost adjustment factor (RCAF) as required by 49 U.S.C. 10708, the Association of American Railroads (AAR) shall calculate and file with the Board by the fifth day of December, March, June and September of each year its forecast for the next calendar quarter of the all-inclusive index of railroad costs and calculate and file the RCAF unadjusted for changes in railroad productivity as prescribed in *Railroad Cost Recovery Procedures*, 1 I.C.C.2d 207 (1984), and any subsequent amendments thereto. In addition, the AAR shall calculate the productivity-adjusted RCAF as prescribed in *Railroad Cost Recovery Procedures*, 5 I.C.C.2d 434 (1989), and any subsequent amendments thereto. The AAR shall submit workpapers detailing its calculations. The Board will review and verify the AAR submissions and make its RCAF publication by the twentieth day of December, March, June and September of each year.

3. The authority citation for Part 1137 continues to read as follows:

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

§1137.2 [Removed]

4. §1137.2 is removed.

6 S.T.B.