

Instead, we will issue a notice proposing to remove 49 CFR 1039.14(b)(5) from the regulations and redesignate paragraphs (6) and (7) to allow the public the opportunity to address whether there is any good reason to maintain the exception for recyclables. Comments (an original and 10 copies) are due on April 25, 1996.

The Board certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. This proposed rule will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities. Although we are proposing that recyclables no longer be excepted from the boxcar exemption, it appears that the impact, if any, on small entities would not be significant, nor would it likely affect a significant number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: March 12, 1996.

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

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), the Board proposes to amend title 49, chapter X, part 1039 of the Code of Federal Regulations as set forth below:

PART 1039—EXEMPTIONS

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

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.14 [Amended]

2. Section 1039.14 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6).

[FR Doc. 96-7239 Filed 3-25-96; 8:45 am]

BILLING CODE 4915-00-P

49 CFR Part 1313

[STB Ex Parte No. 541]

Railroad Contracts

AGENCY: Surface Transportation Board.
ACTION: Advance Notice Of Proposed Rulemaking.

SUMMARY: Because the ICC Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and revised the law respecting transportation contracts entered into by rail carriers to provide specified rail services under specified rates and conditions, the contract regulations formerly issued by the ICC are no longer in complete harmony with the applicable law. The Surface Transportation Board (Board) is issuing this advance notice of proposed rulemaking to solicit suggestions from the transportation community for appropriate regulations. Following the receipt of comments, the Board will issue a notice of proposed rulemaking.
DATES: Comments are due on April 25, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 541 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the ICC and transferred the responsibility for regulating rail transportation to the Board. See ICCTA Section 101 (abolition of the ICC). See also new 49 U.S.C. 701(a) (establishment of the Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996. See ICCTA Section 2 (effective date).

The new law (i.e., the law in effect on and after January 1, 1996) differs in several important respects from the former law (i.e., the law in effect prior to January 1, 1996). This notice concerns the differences between new 49 U.S.C. 10709 and former 49 U.S.C. 10713 as respects contracts entered into by rail carriers to provide specified rail services under specified rates and conditions.

New § 10709(a) provides that rail carriers may enter into contracts to provide specified rail services under specified rates and conditions. This is a reenactment of former § 10713(a).

New § 10709(b) relieves a party to such a contract from any duties other

than those specified by the contract. This is a reenactment of former § 10713(h).

New § 10709(c) relieves transportation provided under such contract from the regulatory provisions of new 49 U.S.C. 10101-11908, and makes the exclusive remedy for any alleged breach of such a contract an action in an appropriate state court or United States district court, unless the parties agree otherwise. This is a reenactment of former § 10713(i). New § 10709(c)(2) adds a clarification that this provision does not, in and of itself, confer original jurisdiction on the United States district courts.

New § 10709(d)(1) requires that a summary of each contract for the transportation of fertilizer and agricultural products, including grain as defined in 7 U.S.C. 75¹ and products thereof, be filed with the Board, containing such nonconfidential information as the Board prescribes. This represents a substantial narrowing from the prior filing requirement. Under former § 10713(b)(1), the filing requirement applied to all rail transportation contracts (not just contracts to transport agricultural products), and carriers were required to file the complete contract with the ICC (in addition to the summary of nonconfidential information).

New § 10709(d)(1) directs the Board to establish rules for such contracts for agricultural products, to ensure that the essential terms of such contracts are available to the general public. But, unlike former § 10713(b)(2)(A), the new statute does not list the minimum essential terms; it leaves that matter for Board implementation. Similarly, unlike former § 10713(b)(2)(B), the new statute does not address whether a new filing is required for amendments, supplements, or changes to such contracts; that too is a matter left to the Board.

New § 10709(d)(2) provides that documents, papers, and records relating to a rail transportation contract are not subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552 (FOIA). This is a new provision, with no analogue in former § 10713.

New § 10709(e) reenacts the "grandfathering" provision of former § 10713(j) for rail transportation contracts that predate the Staggers Rail Act of 1980.

New § 10709(f) specifies that a rail carrier that enters into a transportation contract remains subject to the common carrier obligation, as set forth in new

¹ 7 U.S.C. 75 is the codification of section 3 of the United States Grain Standards Act.

§ 11101, with respect to rail transportation not provided under such a contract. This is a new provision that clarifies prior law.

New § 10709(g) reenacts the complaint provisions of former § 10713(d), but limits their applicability. Under new § 10709(g), complaints may only be filed against contracts for the transportation of agricultural products. As to such contracts, four grounds of complaint are available. They are: (1) a complaint by any shipper alleging that it will be harmed because the contract will unduly impair the ability of the contracting carrier to meet its common carrier obligations to the complainant under new § 11101 (new § 10709(g)(2)(A)(i)); (2) a complaint by a port alleging that it will be harmed because the contract will result in unreasonable discrimination against it (new § 10709(g)(2)(A)(ii)); (3) a complaint by an agricultural shipper seeking matching terms (new § 10709(g)(2)(B)(i)); and (4) a complaint by an agricultural shipper alleging that the contract constitutes a destructive competitive practice (new § 10709(g)(2)(B)(ii)).

Such complaints must be filed within 30 days after the contract summary is filed (new § 10709(g)(1)), and the Board has 30 days to resolve complaints (new § 10709(g)(3)). It should be noted that, in contrast to former § 10713(b)(2)(A), new § 10709(g) does not address discovery by agricultural shippers seeking remedies. This is a matter left to the Board's discretion.

New § 10709(h) retains the fleetwide equipment limitation of former § 10713(k), which prohibits a carrier from committing more than 40 percent of its equipment capacity (by car type) in contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwood or paper), without special permission from the Board. However, that limitation is set to expire on September 30, 1998. (A further limitation in former § 10713(k), on the amount of equipment that could be committed by contract to an individual shipper, was not reenacted.)

It is important to note that a rail carrier may enter into transportation contracts only to the extent that such contracts do not impair that carrier's ability to meet its common carrier obligations. New § 11101(a) provides that a rail carrier does not violate its common carrier obligations merely because it fulfills reasonable contractual commitments before responding to reasonable requests for common carrier service. New § 11101(a) further provides, however, that contractual

commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

New § 10709 does not retain the railroad contract rate advisory service of former § 10713(m).

Request for Comments

The ICC's regulations implementing former § 10713, set forth at 49 CFR Part 1313, are not appropriate for implementing new § 10709. Therefore, we invite all interested persons to submit suggestions for regulations that would be appropriate to implement new § 10709. We encourage the various sectors of the transportation community to discuss these matters and present a proposal for the Board's consideration.

Comments (an original and 10 copies) must be in writing, and are due on April 25, 1996.

We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether any regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 10709 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether any suggested regulations would have any such effects.

Authority: 49 U.S.C. 721(a) and 10709.
Decided: March 12, 1996.

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

Vernon A. Williams,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 960314075-6077-03; I.D. 031196F]

RIN 0648-A116

Northern Anchovy Fishery; Removal of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Initial decision to withdraw plan approval, proposed rule to remove regulations, and request for comments.

SUMMARY: NMFS announces its initial determination to withdraw Secretarial approval of the Northern Anchovy Fishery Management Plan (FMP), and proposes to remove the regulations implementing the FMP. The anchovy fishery would continue to be regulated by the State of California. This action is being proposed because conditions have changed significantly since approval of the FMP. Harvests of northern anchovy have greatly declined since 1982 and this is unlikely to change in the foreseeable future. The intent of this rulemaking is to remove regulations that duplicate state management and are no longer necessary. This rulemaking is in accordance with the President's Regulatory Reinvention Initiative.

DATES: Comments on the proposed rule must be received on or before May 9, 1996.

ADDRESSES: Send comments on the proposed withdrawal and removal, and on the Environmental Assessment/Regulatory Impact Review (EA/RIR) to Ms. Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. A copy of the EA/RIR may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney McInnis or Mr. James Morgan at (310) 980-4030.

SUPPLEMENTARY INFORMATION: The FMP to manage the central subpopulation of northern anchovy was implemented on September 13, 1978 (43 FR 40868). The