

STATE OF WISCONSIN)
) SS
OFFICE OF THE COMMISSIONER OF RAILROADS)

I, Byron C. Ostby, Commissioner of the
Office of the Commissioner of Railroads

and custodian of the official records, certify that the annexed rules, relating to intrastate railroad
rate regulation, were duly approved and adopted by this
office on March 20, 1996.

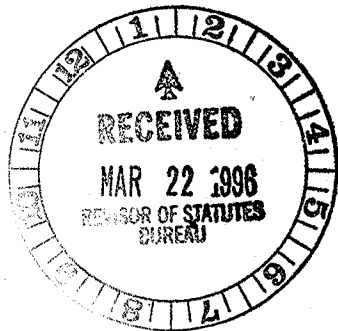
I further certify that this copy has been compared by me with the
original on file in this office and that it is a
true copy of the original, and of the whole of the original.

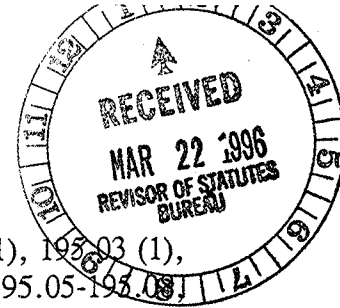
IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the official seal of the office
of the commissioner of railroads at 610 North
Whitney Way, Room 110, Madison, Wisconsin
this 20th day of March, 1996.

SEAL

Byron C. Ostby

Byron C. Ostby
Commissioner of Railroads





NOTICE IS HEREBY GIVEN that pursuant to sections 189.02 (1), 193.03 (1), 227.11 (2) (a), and 227.24 Stats., interpreting sections 195.04-195.043 and 195.05-195.08 Stats., the Office of the Commissioner of Railroads (OCR) adopts administrative rules which create, amend and repeal rules relating to the regulation of intrastate railroad rates and practices. The OCR adopted an emergency rule covering this subject in substantially the same form pursuant to s. 227.24 Stats., by publication in the official state newspaper with an effective date of July 14, 1995.

ORDER
of the
Office of the Commissioner of Railroads

The Wisconsin Office of the Commissioner of Railroads proposes to repeal OCT 5.04 (5) (d); to renumber OCT 5.04 (6) and OCT 5.04 (7); to renumber and amend OCT 5.04 (4) (intro.) and (a) and (b); to amend OCT 5.03 (1) (b) and OCT 5.04 (3) and (5) and 5.07 (2) (b) and 5.10 (2); and to create OCT 5.02 (7) and OCT 5.03 (1) (d) and OCT 5.04 (6).

Need for the Proposed Rule

The OCR proposes these rule changes in order to retain its certification by the Interstate Commerce Commission as a regulator of intrastate rail rates. The office must be recertified by the ICC every 5 years. The office's current certification expires on September 23, 1995. On September 23, 1995, the ICC recertified the OCR pursuant to 49 U.S.C. 11501 (b) based on the emergency order. To maintain recertification, the office must update its rules to conform to changes in federal law. The proposed rule changes bring the office's rule into conformity with federal law. Several new notes provide the citation to ICC cases and tell how to contact the ICC.

Analysis and Prepared by the Office of the Commissioner of Railroads:

Section OCT 5.02 (7) is created to allow railroads to earn adequate revenue and to comply with ICC requirements regarding adequate revenue, 49 USC 10701a and 49 USC 10704a (2), (3) and (4).

Section OCT 5.03 (1) (b) is amended to allow independently filed new and reduced rates to become effective on one day's notice and to comply with ICC requirements. Short Notice Effectiveness for Independently Filed Rail Carrier Rates, 3 I.C.C. 2d 323 (1987). The proposed rules also amend that section to allow implementation of other tariffs upon a showing of good cause as required by 49 CFR 1312.2.

The proposed rule amends section OCT 5.04 (3) in compliance with ICC requirements under 49 USC 10707 (c) (1) and 49 CFR 1132.1 (g) to prohibit the office from suspending rates, classifications, rules or practices on its own initiative. Section OCT 5.04 (4) (intro.), (a) and (b) are renumbered and amended to conform findings by the office that a rail carrier possesses market dominance with ICC evidentiary requirements and

49 USC 10709 (d) (4). Section OCT 5.04 (5) is amended, sections OCT 5.04 (6) and OCT 5.04 (7) are renumbered, section OCT 5.04 (6) is created and OCT 5.04 (5) (d) is repealed to comply with ICC requirements regarding the reasonableness of rates, 49 USC 10707a (h) and the ICC orders cited in amended rule. Sections OCT 5.04 (3) and (4) and (5) are also amended to comply with the format and style guidelines set forth in the Administrative Rules Procedures Manual (1994) in accord with the Legislative Council Staff's (LCS) recommendations on the proposed rule.

Sections OCT 5.07 (2) and 5.10 (2) are amended to remove the agency's address from the body of the rule. An accompanying note includes the current address. The note can be updated without following the formal rule-making process. The office also notes that it intends to begin revising all of its rules within the next six months to conform the title of the rules with the name of the agency and to accomplish substantive and procedural changes.

Pursuant to due notice, the OCR held a hearing on the proposed rules and the emergency order on October 6, 1995. No one appeared at the hearing. The OCR did not receive any written comments on the rules. Consequently, the OCR did not revise the proposed rules after the hearing.

On November 8, 1995, the OCR submitted the proposed order to the respective clerks of the Senate and Assembly. Neither committee objected to the proposed rules.

Text of Rule

SECTION 1. OCT 5.02 (7) is created to read:

OCT 5.02 (7) REVENUE ADEQUACY. All standards and procedures shall be interpreted to be consistent with the goal of revenue adequacy. Revenue adequacy shall be determined according to the standards set forth in 49 USC 10704 (a) (2).

Note: For a discussion of adequate revenues see, *Ex Parte No. 388A, State Intrastate Rail Rate Authority - P.L. 96-488, decided February 8, 1989, especially Appendix B. The Interstate Commerce Commission can be contacted at: Interstate Commerce Commission, 12th & Constitution Avenue, Washington D.C. 20423 or (202) 927-7600.*

SECTION 2. OCT 5.03 (1) (b) is amended to read:

OCT 5.03 (1) (b) The tariff shall be on file with the office at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions except that independently filed new or reduced rates may become effective on one day's notice. Other tariff changes may become effective on less than 10 days' notice upon a showing of good cause as contemplated by 49 CFR 1312.2.

Note: For a discussion of the timing of rail rate changes see, Ex Parte No. 388A, State Intrastate Rail Rate Authority - P.L. 96-488, decided February 8, 1989, especially Appendix B. The Interstate Commerce Commission can be contacted at: Interstate Commerce Commission, 12th & Constitution Avenue, Washington D.C. 20423 or (202) 927-7600.

SECTION 3. OCT 5.03 (1) (d) is created to read:

OCT 5.03 (1) (d) A railroad or its publishing agent may present a petition to the office seeking to depart from the provisions of pars. (a), (b) or (c). The office may grant a petition under this paragraph if it finds good cause for doing so.

SECTION 4. OCT 5.04 (3) is amended to read:

OCT 5.04 (3) GROUND FOR SUSPENSION. The office may not suspend rates, classifications, rules, or practices on its own initiative. The office may not suspend a proposed rate, classification, rule or practice unless the protest conforms to 49 CFR 1132.1 (g) and it appears from the specific facts shown by the verified statement of a protestant that:

- (a) The protestant is substantially likely to prevail on the merits; .
- (b) Without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the protestant; ~~and~~ .
- (c) Because of the peculiar economic circumstances an investigation with a refund and keep account will not protect the protestant.

SECTION 5. OCT 5.04 (4) is amended to read:

OCT 5.04 (4) MARKET DOMINANCE. (a) When a new individual or joint rate is alleged to be unreasonably high, the office within 90 days after the commencement of a proceeding under this section, shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies. The office shall determine market dominance according to the provisions of 49 USC 10709 (d) and the evidentiary guidelines of the interstate commerce commission.

(a) (b) If the office finds that:

1. The railroad proposing the rate has market dominance over the transportation to which the rate applies, the office shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.

2. The railroad proposing the rate does not have market dominance over the transportation to which the rate applies, the office shall ~~not make a determination on the issue of reasonableness~~ dismiss the complaint.

(b) (c) A rail carrier may meet its burden of proof that the rate falls below the revenue-variable cost threshold by establishing its variable costs in accordance with 49 U.S.C. s. 10705a (m) (1). However, a finding by the office that the proposed rate has a revenue-variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. s. 10709 (d) (2) does not establish a presumption that:

1. The railroad has or does not have market dominance over such transportation; ~~or~~ .

2. The proposed rate exceeds or does not exceed a reasonable maximum level.

Note: For a discussion of market dominance see, *Ex Parte No. 388A, State Intrastate Rail Rate Authority - P.L. 96-488, decided February 8, 1989, especially Appendix B.* For a discussion of market dominance and evidentiary guidelines see, 5 ICC 2d 687. The Interstate Commerce Commission can be contacted at: Interstate Commerce Commission, 12th & Constitution Avenue, Washington D.C. 20423 or (202) 927-7600.

SECTION 6. OCT 5.04 (5) is amended to read:

OCT 5.04 (5) REASONABLENESS. Except for nonferrous recyclables, the office shall evaluate the reasonableness of a rate only after market dominance has been established. ~~In~~ The office shall evaluate the reasonableness of rates following the decisional standards applied by the interstate commerce commission as set forth in *Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d 520 (1985); and Ex Parte No. 347 (Sub No. 2) Rate Guidelines - Non Coal Proceedings (April 8, 1987)* and as amended by future interstate commerce commission decisions. Except for nonferrous recyclables in determining whether a rate is reasonable, the office shall consider among other factors, evidence of the following:

(a) The amount of traffic which is transported at revenues which do not contribute to the going concern value and efforts made to minimize such traffic; ~~and~~ .

(b) The amount of traffic which contributes only marginally to fixed costs and the extent to which the rates on such traffic can be changed to maximize the revenues from such traffic; ~~and~~ .

(c) The carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

Note: The Interstate Commerce Commission can be contacted at: Interstate Commerce Commission, 12th & Constitution Avenue, Washington D.C. 20423 or (202) 927-7600.

SECTION 7. OCT 5.04 (5) (d) is repealed.

SECTION 8. OCT 5.04 (6) and (7) are renumbered OCT 5.04 (7) and OCT 5.04 (8).

SECTION 9. OCT 5.04 (6) is created to read:

OCT 5.04 (6) REASONABLENESS- NON-FERROUS RECYCLABLES. The office shall evaluate the reasonableness of rates for nonferrous recyclables in accordance with Ex Parte No. 394 (Sub - No. 5) Cost Ratio for recyclables - 1988, served September 15, 1988 and other future adjustments to these criteria which are adopted by the interstate commerce commission.

SECTION 10. OCT 5.07 (2) (b) is amended to read:

OCT 5.07 (2) (b) Pleadings shall be addressed to:

~~Office of the Commissioner of Transportation
Railroad Tariff Bureau
Hill Farms State Transportation Building
4802 Sheboygan Avenue
P.O. Box 7957
Madison, WI 53707-7957~~

filed with the office by deposit in the mail or in person.

Note: The office's address is :
Office of the Commissioner of Railroads
610 N. Whitney Way, Suite 110
P.O. Box 8968
Madison, WI 53708-8968

SECTION 11. OCT 5.10 (2) is amended to read:

OCT 5.10 (2) COMMUNICATIONS. All communications shall be in writing and shall be addressed to:

~~Office of the Commissioner of Transportation
Railroad Tariff Bureau
Hill Farms State Transportation Building
4802 Sheboygan Avenue
P.O. Box 7957
Madison, WI 53707-7957~~

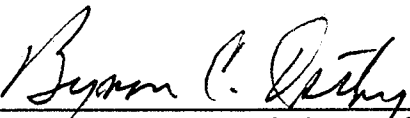
filed with the office by deposit in the mail or in person.

Note: The office's address is :
Office of the Commissioner of Railroads
610 N. Whitney Way, Suite 110
P.O. Box 8968
Madison, WI 53708-8968

This rule shall take effect on the first day of the month commencing after the date of publication as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, March 20, 1996.

By the Office of the Commissioner of Railroads.



Byron C. Ostby, Commissioner of Railroads

Fiscal Estimate:

There is no fiscal effect from the adoption of these rules. A copy of the proposed rules and the full fiscal estimate may be obtained without cost from the contact person at the Office of the Commissioner of Railroads upon request.

Initial Regulatory Flexibility Analysis:

These rule changes will not affect small business.

Contact Person

For additional information, or if there are questions concerning these proposed rules, contact:

Douglas S. Wood, Legal Counsel
Telephone (608) 266-9536
Office of the Commissioner of Railroads
610 North Whitney Way, Room 110
PO Box 8968
Madison, Wisconsin 53708-8968

finalrul.rat



Office of the Commissioner of Railroads

610 N. Whitney Way
P. O. Box 8968
Madison, WI 53708-8968

Byron C. Ostby, Commissioner

Tel: (608) 266-7607
Fax: (608) 261-8220

March 21, 1996

Revisor of Statutes Bureau
Gary L. Poulson, Deputy Revisor
131 West Wilson Street, Room 800
Madison, Wisconsin 53703-3233

Re: Final administrative rules

Dear Mr. Poulson:

Please find enclosed a certified and a uncertified copy of a final rule adopted by the Office of the Commissioner of Railroads (Office). We provided the rule to the respective legislative clerks on November 6, 1995. In the Senate, the Committee on Transportation, Agriculture, Local and Rural Affairs reviewed the rule. The legislative committees did not object to the rules. Clearinghouse Rule 95-118.

Thank you for your attention to this matter. Please contact Douglas S. Wood, Legal Counsel, at 266-9536 with any questions or comments.

Sincerely,

Byron C. Ostby
Commissioner of Railroads

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