

Chapter TC 5

RAILROAD RATEMAKING

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TC 5.01 Definitions. For purposes of this chapter:

(1) "Going concern value" means the worth of the total assets of the business.

(2) "Intermodal competition" means the competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination.

(3) "Intramodal competition" means competition between 2 or more railroads transporting the same commodity between the same origin and destination.

(4) "Keep account" means the rate fund established for use until a determination of the rate reasonableness is made.

(5) "Limited liability rates" means lower rates for shipment which allow the railroad limited liability for loss and damage.

(6) "Market dominance" means an absence of effective competition from other carriers or modes of transportation for the transportation to which a rate applies.

(7) "Office" means the office of the commissioner of transportation.

(8) "Party" means the protestant, respondent or others permitted or directed by the office to participate in the proceeding.

(9) "Person" means individuals as well as corporations, companies, associations, firms, partnerships, co-partnerships, societies, joint stock companies or a trustee, receiver assignee, or personal representative of another individual.

(10) "Pleading" means a protest, reply to protest, a motion, a Statement of Monetary Adjustment, or any other written document relating to the proceeding.

(11) "Proceeding" means an investigation instituted by the office.

(12) "Protestant" means a person opposed to any tariff or schedule becoming effective.

(13) "Rate publication" means making public what the railroad charges for shipment.

(14) "Recyclable material" means waste products for recycling or re-use in the furtherance of recognized pollution control programs.

(15) "Respondent" means the railroad or their agent against whom the protest is filed or any other person designated by the office to participate in the proceeding.

(16) "Revenue-variable cost percentage" means the money generated by the services compared to the cost incurred performing the service.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.02 General provisions. (1) **JURISDICTION OVER RAIL RATES.** The office may not regulate general railroad rate increases, inflation-based railroad rate increases and fuel adjustment surcharges. The office shall regulate intrastate contract rates in accordance with 49 U.S.C. s. 10713. The office shall also regulate 2 special classes of rates, limited liability rates and rates on recyclable materials, in a manner consistent with federal law, specifically 49 U.S.C. ss. 10730 and 10731, respectively. Recyclable materials shall be transported at a revenue-variable cost percentage of no more than 146%. Railroads may publish rates under which the liability of the carrier is limited to a value established by a written declaration of the shipper or by written agreement between the shipper and railroad.

(2) **RATE SUSPENSIONS.** The office shall complete rate investigation and rate suspension cases within 5 months, although a 3-month extension may be applied for in each case. The office may not suspend existing railroad rates on its own motion and may not suspend a proposed railroad rate change unless a protestant shows that he is substantially likely to prevail on the merits of his case; that without suspension the proposed rate will cause him substantial injury; and that an investigation with a refund and keep account provision will afford him insufficient protection. The office shall handle refund requirements in accordance with the provisions of 49 U.S.C. s. 10707.

(3) **RAILROAD RATE REASONABLENESS.** In determining railroad rate reasonableness, the office shall consider within 90 days whether or not the traffic in question is subject to market dominance. A finding that no market dominance exists shall be conclusive evidence that the rate is reasonable. Should market dominance be found, a reasonableness determination shall be made based on the principle of railroad revenue adequacy, on evaluation of revenue to variable cost for the traffic involved, the revenue contribution of the traffic to the railroad's revenue base, and national energy transportation goals.

(4) **ZONE OF RATE FLEXIBILITY.** Railroad rates may be altered in accordance with the zone of rate flexibility provisions of 49 U.S.C. s. 10707a.

(5) **DISCRIMINATION.** The office adopts the applicable provisions of 49 U.S.C. s. 10741 on discrimination. The office may not make a finding of discrimination if differences in rates, classifications, rules and practices result from differences in service provided. The office may not investigate or take any other action with regard to claims of discrimination by rail-

roads in the provision of the rates and services which are described in the following enumerated sections of Title 49 of the United States Code:

(a) s. 10713 - Contract rates, other than as provided for in 49 U.S.C. s. 10713(d) (2) (B);

(b) s. 10705a - Surcharges or cancellations;

(c) s. 10728 - Separate rates for distinct rail services;

(d) s. 10705 - Rail rates applicable to different routes; or

(e) s. 10751 - Business entertainment expenses.

(6) INTERSTATE COMMERCE COMMISSION PROVISIONS ADOPTED. The office adopts the following sections of the Interstate Commerce Act, Title 49 of the United States Code, as amended by Staggers Rail Act of 1980:

Section 10505 - Exemption

Section 10701a - Standards for rates for rail carriers

Section 10704(a) (2)-(4) - Adequate revenues

Section 10705 - Authority: through routes, joint classifications, rates, and divisions

Section 10705a - Joint rate surcharges and cancellations

Section 10706 - Rate agreements: exemption from antitrust laws

Section 10707 - Investigation and suspension of rates

Section 10707a - Zone of rail carrier rate flexibility

Section 10709 - Determination of market dominance

Section 10712 - Inflation-based rate increases

Section 10713 - Contracts

Section 10726 - Long and short haul transportation

Section 10730 - Rates and liability based on value

Section 10731(e) - Transportation of recyclable materials

Section 10741 - Rate discrimination

Section 10751 - Business entertainment expenses

Section 10762 - General tariff requirements

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.03 Railroad tariffs. (1) NOTICE PERIOD. The notice period for filing railroad tariffs with the office which contain new or changed rates, classifications, rules, practices or other provisions shall be as follows:

(a) The tariff shall be on file with the office at least 20 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.

(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.

(c) The tariff shall be on file with the office at least 30 days prior to its effective date for joint rate surcharges and cancellations filed pursuant to the provisions of 49 U.S.C. s. 10705a.

(2) CONTENT. Each rate publication filed with the office shall contain the required information including:

(a) A tariff containing all relevant and material provisions relating to the rate and its application, and

(b) A statement of the effect which the rate shall have on the carrier's revenue.

(3) **NOTICE DEFECTS.** No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with this section. However, if a tariff is filed and becomes effective despite some defect, the rates, charges, fares, classifications or rules in that tariff are in effect and will be applied until cancelled or amended or until they are stricken from the files by the office.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.04 Investigation and suspension of proposed railroad rates. (1) **COMMENCEMENT OF PROCEEDINGS.** When a new individual or joint rate, a new individual or joint classification, or a new rule or practice related to a rate is filed with the office by a rail carrier, the office may:

- (a) On its own initiative, commence an investigation proceeding,
- (b) Upon protest of an interested party commence an investigation proceeding,
- (c) Upon protest of an interested party commence an investigation and suspension proceeding to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law, or
- (d) Accept published rates based on limited carrier liability without prior approval pursuant to 49 U.S.C. s. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 C.F.R. s. 1300.4(i) (11).

(2) **SUSPENSION PERIOD.** The office shall complete a proceeding under this section within 5 months from the effective date of the proposed rate, classification, rule or practice except that if the office reports to the interstate commerce commission that it cannot make a final decision within that time and explains the reasons for the delay, it may then take an additional three months to complete the proceeding and make a final decision.

(a) If the office does not render a final decision within the applicable time period, the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect.

(b) If a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. s. 11501(d) to that of similar traffic moving in interstate commerce, and the office investigates or suspends such tariff filing, the carrier may apply to the interstate commerce commission to review the matter if the office has not acted with finality by the 120th day after the tariff was filed. If the carrier elects not to refer the matter to the interstate commerce commission, the office may decide the issue within 5 months.

(3) **GROUND FOR SUSPENSION.** The office may not suspend a proposed rate, classification, rule or practice unless 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;

the office finds that the carrier has market dominance, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the office shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the rail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. s. 10709(d) (2). Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in s. TC 5.12. If the office determines that a rail carrier does not have market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation shall be deemed reasonable.

(14) **REASONABLE RATES.** (a) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.

(b) Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of that rail carrier, and are therefore presumed not to be below a reasonable minimum.

(c) In determining whether a rate is reasonable, the office shall consider the policy that railroads earn adequate revenues as well as evidence the following:

1. The amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;

2. The amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

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

(15) **BURDEN OF PROOF.** (a) *Jurisdiction.* The defendant railroad shall bear the burden of showing that the office lacks jurisdiction to review a rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. s. 10709(d) (2). The railroad shall meet its burden of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. s. 10709(d) (2). A complainant may rebut the railroad's evidence with a showing that the revenue-variable cost percentage is equal to or greater than the threshold percentage cited in 49 U.S.C. s. 10709(d) (2).

(b) *Reasonableness of existing rates.* 1. A party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable.

2. A party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.

(16) NONAPPLICABILITY. Complaints shall not be entertained by the office to the extent that they challenge the reasonableness of the following rate adjustments:

- (a) General rate increases;
- (b) Inflation-based rate increases; and
- (c) Fuel adjustment surcharges.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.14 Reparation statement

Claim of _____ under decision of the Office of the Commissioner of Transportation in Docket No. _____.

_____ Date of shipment
 _____ Date of delivery or tender of delivery
 _____ Date charges were paid
 _____ Car initials
 _____ Car number
 _____ Origin
 _____ Destination
 _____ Route
 _____ Commodity
 _____ Weight
 _____ Rate
 _____ Amount
 _____ Reparation on basis of Office of the Commissioner of Transportation decision
 _____ Charges paid by (1)

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Office of the Commissioner of Transportation or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanation thereof)

(Claimant)

By _____

(address)

(date)

Total amount of reparation \$_____. The undersigned hereby certifies that this statement has been checked against the records of this Company and found correct.

Date _____ Concurred (2) in: _____ Company
 _____ Company. Defendant Collecting Carrier, Defendant
 (3) _____ By _____, Auditor. By _____,
 Auditor.

(1) Here insert name of person paying charges in the first instance and state whether as consignor, consignee, or in what other capacity.

(2) For concurring certificate in case collecting carrier is not a defendant.

(3) If not a defendant, strike out the word "defendant."

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.15 Contracts. (1) **DEFINITIONS.** (a) "Contract" for purposes of this section means a written agreement including any amendment entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specific rates, charges and conditions. A contract filed under this section shall specify that the contract is made pursuant to 49 U.S.C. s. 10713 and shall be signed by duly authorized parties.

(b) "Amendment" for purposes of this section includes written contract modifications signed by the parties. An amendment is treated as a new contract and is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available.

(2) **CONTRACT IMPLEMENTATION DATE.** Transportation or service performed under a contract or amendment may begin, without specific office authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before the office approval as defined at 49 C.F.R. s. 1039.3 (f), subject to the following conditions:

(a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of 49 C.F.R. s. 1039.2, and this subsection. The contract summary or supplement shall separately reflect the date of commencement of service under this provision under "duration of the contract," as prescribed in 49 C.F.R. s. 1300.313 (a) (4), s. TC 5.16 (4).

(b) If the rail equipment standards of 49 U.S.C. s. 10713 (k) are exceeded, prior relief shall be obtained from the office and shall be specifically identified in the contract summary.

(c) If the office disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract provisions otherwise in effect under previously approved contracts and amendments will be applicable.

(3) **FILING AND APPROVAL.** (a) *Filing.* Rail carriers providing transportation subject to Subchapter 1 of Chapter 105 of Title 49, United States Code, shall file with the office an original and one copy of a contract entered into with one or more purchasers of rail service. The contract shall be accompanied by 3 copies of a summary of the nonconfidential elements of the contract in the format specified in 49 C.F.R. ss. 1300.300 -

1300.315, and s. TC 5.16 (1)-(4). A contract, amendment or supplement may be rejected for noncompliance with applicable statutes and regulations.

(b) *Review.* Within 30 days of the filing date of a contract, the office may, on its own motion or on complaint, begin a proceeding to review it. A contract may be reviewed only on the following grounds:

1. In the case of a contract other than a contract for the transportation of agricultural commodities including forest products and paper, a complaint may be filed;

a. By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations under 49 U.S.C. s. 11101; or

b. By a port only on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against that port.

2. In the case of contract for the transportation of agricultural commodities including forest products and paper, in addition to the grounds for a complaint described in this subsection, a complaint may be filed by the shipper on the grounds that the shipper individually will be harmed because:

a. The rail carrier unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

b. The proposed contract constitutes a destructive competitive practice.

3. "Unreasonable discrimination," as used in this section, means, when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered, and when applied to a port, has the same meaning as the term has under 49 U.S.C. s. 10741.

4. What constitutes "agricultural commodities," "forest products," and "paper" will be decided on a case by case basis.

(c) *Filing and service of complaints.* A complaint shall be filed with the office by the 18th day after the filing date of the contract. A reply shall be filed by the 23rd day after the filing date of the contract. An original and 1 copy of each shall be filed with the office. A copy of the complaint shall be served on each railroad participating in the contract and replies shall be served on complainant. Complaints shall be served by hand, express mail, or other overnight delivery service.

(d) *Office decision upon review of contract.* 1. Within 30 days after the date a proceeding is commenced to review a contract upon the grounds

specified in par. (b), the office shall decide whether the contract violates the provision of 49 U.S.C. s. 10713. If the office finds that the contract violates the provision of 49 U.S.C. s. 10713, it will:

a. Disapprove the contract, or

b. In the case of agricultural contracts where the office finds unreasonable discrimination by a carrier in accordance with par. (c), allow the carriers the option to provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence or cancel the contract.

2. An appeal of an office decision shall be made in accordance with 49 C.F.R s. 1100.200 (c), subject to the following exception:

a. An appeal must be made at least 2 work days prior to the contract approval date as set out in pars. (e) and (f).

(e) *Approval date of contract.* 1. If the office does not institute a proceeding to review the contract, it shall be approved on the 30th day after the filing of the contract. The contract shall be considered "expressly approved" by the office.

2. If the office institutes a proceeding to review a contract, the contract is approved:

a. On the date the office approves the contract if the date of approval is 30 or more days after the filing date of the contract;

b. On the 30th day after the filing of the contract, if the office denies the complaint against the contract prior to the 30th day after the filing date of the contract; or

c. On the 60th day after the filing date of a contract, if the office fails to disapprove the contract.

(f) *Limitation of rights of a rail carrier to enter into future contracts.* The office may limit the right of a rail carrier to enter into future contracts if the office determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C s. 11101. The office will handle these determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

(4) **COMMON CARRIER RESPONSIBILITY.** (a) The terms of a contract approved by the office determine completely the duties and service obligations of the parties to the contract with respect of the services provided under the contract. The contract does not affect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the office is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service decisions under 49 U.S.C. s. 11123.

(5) **ENFORCEMENT.** (a) The exclusive remedy for an alleged breach of a contract approved by the office shall be an action in an appropriate state

court or United States district court, unless the parties otherwise agree in the contract.

(b) The office may not require a rail carrier to violate the terms of a contract that has been approved under 49 C.F.R. s. 1039.3 (f), sub. (3) (f), except to the extent necessary to comply with 49 U.S.C. s. 11128.

(6) **LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF.** (a) A rail carrier may enter into contracts for the transportation of agricultural commodities including forest products but not including wood pulp, wood chips, pulpwood or paper that involve the use of carrier owned or leased equipment not in excess of 40% of the total number of the carrier's owned or leased equipment by major car type, except as provided in par. (b) of this subsection.

(b) In the case of a proposed contract between a class 1 carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40% of carrier owned or leased equipment used on the average during the prior 3-year period may be used for the contract without prior authorization by the office.

(c) The office may grant relief from the limitations of pars. (a) and (b) if a rail carrier or other party requests such relief, or if the office on its own initiative considers granting such relief. Relief may also be given if the office determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. s. 11101.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.16 Special tariff rules. Contracts entered into by one or more rail carriers with one or more purchasers of railroad transportation services and contract summaries shall be filed with the office in accordance with the rules prescribed in this section. All contracts and amendments shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 14 inches; all contract summaries and supplements shall be of a size not less than 8 by 10½ inches nor greater than 8½ by 11 inches; any amendment to a contract shall be the same size as the contract and any supplement to a summary shall be the same size as the summary; all shall be clear, legible, and on durable paper.

(1) **FILING AND AVAILABILITY OF CONTRACT.** (a) A railroad entering into a contract for railroad transportation services with one or more purchasers of rail service shall file with the office the original and one copy of the contract and 2 copies of the contract summary. Copies of contract summaries shall be available from the office railroad tariff bureau. Copies of contract summaries shall also be available from carriers participating in the contract.

1. Contracts and contract summaries shall not be filed in the same package with standard tariff filings.

2. The confidential contract shall not be attached to the contract summary.

3. The envelope or wrapper containing the contract and summary shall be marked "Confidential, Rail Contract".

4. A contract and summary shall be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.

(b) The contract filed under this section will not be available for inspection by persons other than the parties to the contract and authorized office personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract information. The office's action in any contract-disclosure matter, including a petition filed under this subparagraph is subject to the limitations imposed by U.S.C. s. 552 (b) and the Trade Secrets Act, 18 U.S.C. s. 1905.

1. A contract and its summary filed under 49 U.S.C s. 10713 may be labeled "Nonconfidential." Such a designation will permit the general public to inspect the entire contract.

2. The contract summary filed under these rules shall include the information specified in this section and 49 U.S.C s. 1300.313. The contract summary shall be made available for inspection by the general public. All filed contracts and amendments and contract summaries and supplements shall provide 30-day notice to the public as required by 49 U.S.C s. 10713 (e).

3. The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available for carriers participating in the contract upon reasonable request.

(2) CONTRACT AND CONTRACT SUMMARY TITLE PAGES. (a) The title page of every contract and amendment should contain the contract number in the upper right corner, the issuing carrier's name placed in the center of the page followed by the word CONTRACT in large print. All amendments to contracts shall contain the amendment number in the upper right corner. A solid one inch block border shall run down the right side of the title page. The date the contract is issued and the date it is effective should also be included on the title page.

(b) The title page of every contract summary and supplement shall contain the contract summary number, the issuing carrier's name should be followed by the words "CONTRACT SUMMARY" in large print. The date issued and the date to be effective shall also be included on the title page. The issuing individual's name and address shall be placed in the center lower portion of the page. Any supplement to contract summaries shall show the supplement number in the upper right corner.

(3) CONTRACT AND CONTRACT SUMMARY NUMBERING SYSTEM. (a) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word "ICC," the abbreviation for interstate commerce commission, and "OCT," the abbreviation for the office of the commissioner of transportation, the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C," and the sequential number with each separated by a hyphen.

(b) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect will be made in the supplement. Contract amendments and contract summary supplements shall be sequentially numbered.

(c) At the carrier's option, the carrier's tariff publishing officer may reserve blocks of numbers if tariffs are used from different departments. An index to the blocks of reserved numbers shall be filed with the office.

(4) **CONTENT OF CONTRACT SUMMARY, FORMAT.** (a) Contract summaries for agricultural commodities, forest products or paper shall contain the following information:

1. Names of the participating carriers. A list alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus their addresses for service of complaints.

2. The commodity or commodities to be transported under the contract.

3. The origin station and destination station including the specific port if applicable.

4. The duration of the contract.

5. Rail car data, by major car type, the number of dedicated cars, or, at the carrier's option, the number of car days used to fulfill the contract or contract options. The data should state the number of cars available and owned by the carrier and those available and leased by the carriers. In both the leasing and the ownership situation, the number of bad order cars should be identified.

6. In the event a complaint is filed involving common carrier obligations and carrier furnished cars, the carrier shall immediately submit to the office and the complainant additional data on cars used to fulfill the challenged contract. Data shall include by major car type used to fulfill the contract the total bad car orders, assigned car obligations and free running cars.

7. If a carrier transports agricultural commodities including forest products but not including wood pulp, wood chips, pulpwood or paper, a certified statement as to the following shall be filed:

a. If cumulative equipment total for all contracts does not exceed 40% of the capacity of the rail carrier's owned and leased cars by applicable major car type; and

b. In the case of an agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40% of the rail carrier's owned or leased cars used on the average by that shipper during the previous 3 years.

8. An identification shall be made of base rates or charges and movement type (e.g. single car, multiple car, unit train), the minimum annual volume, and summary of escalation provisions.

9. An identification of the existence of special features but not the terms or amounts of the special features including, but not limited to, transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms and discount.

(b) Contract summaries for other commodities or services not involving a port shall contain the information required in par. (a) 1, 2, 4, 5 and 8. Identification of special features, as required in par. (a) 9, shall be ap-

pllicable to the extent that service requirements are placed in the contract.

(c) Contract summaries for other commodities or services involving a port shall contain the information required in par. (a) 1, 2, 4, 5, 8 and 9. In addition, the port shall be named and the tariff mileage rounded to the nearest 50 miles shall be disclosed or, at the contracting parties option, the origin and destination shall be specified. The required information shall be disclosed for each movement involving multiple origins and destinations.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.

TC 5.17 Exemption of rail carrier transportation. (1) **ICC EXEMPTIONS.** The interstate commerce commission, pursuant to 49 U.S.C. s. 10505, may exempt certain classes of rail traffic from interstate regulation. The office shall follow all ICC exemptions.

(2) **EXEMPTIONS.** In addition to those exemptions approved by the ICC, the office may conduct exemption proceeding initiated pursuant to a petition. These proceedings are used to consider the exemption of traffic which has not been considered by the interstate commerce commission. The process for considering exemptions shall be through notice and hearing as provided for in ch. TC 1.

(3) **CONSIDERATION OF EVIDENCE.** (a) In deciding whether or not to initiate an exemption proceeding the office shall consider, among other factors, whether the interstate commerce commission has exempted the same class of traffic and whether sufficient data is or will be available to permit the office to render a reasonable decision. The office shall exempt a person, class of persons, or a transaction of service when it finds that further regulation:

1. Is not necessary to carry out state and national transportation policy; and
2. Either the transaction or service is of limited scope, or further regulation is not needed to protect shippers from the abuse of market power.

(b) The office may specify the period of time during which an exemption granted pursuant to this rule is effective. The office may revoke entirely or in part an exemption which it has previously granted if it determines that such action is necessary to carry out state and national transportation policy.

History: Cr. Register, November, 1984, No. 347, eff. 12-1-84.