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1021.6 Method of claim payment.

AUTHORITY: 31 U.S.C. 3701, 3711, 3717, 3718.

SOURCE: 32 FR 20015, Dec. 20, 1967, unless otherwise noted.

§ 1021.1 Standards.

The regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.) and published in 4 CFR parts 101 through 105 are hereby adopted by the Surface Transportation Board for the administrative collection of enforcement claims.

§ 1021.2 Enforcement claims and debtors.

(a) Enforcement claims are all separate civil penalty or forfeiture claims not exceeding \$20,000 which may arise under the provisions of the Interstate Commerce Act or legislation supplementary thereto.

(b) Debtor is any person or corporation subject to civil penalties or forfeitures for violation of the provisions of the Interstate Commerce Act or legislation supplementary thereto.

§ 1021.3 Enforcement collection designee.

The Director, Office of Compliance and Enforcement, Surface Transportation Board, is the Board's designee to take all necessary action administratively to settle by collection, compromise, suspension or termination, enforcement claims within the contemplation of the Federal Claims Collection Act of 1966.

[45 FR 31374, May 13, 1980, as amended at 64 FR 53267, Oct. 1, 1999]

§ 1021.4 Notice of claim and demand.

Initiation of administrative collection of enforcement claims will be commenced by the enforcement collection designee mailing a letter of notice of claim and demand to the debtor. Such letter will state the statutory basis for the claim, a brief resume of the factual basis for the claim, the amount of the claim, and indicate the availability of the designee or his personal agent for discussion of the claim should the debtor so desire.

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§ 1021.5 Agreement and release.

Upon the debtor's agreement to settle a claim, an Agreement and Release Form will be provided to the debtor in duplicate. This form, after reciting the statutory basis for the claim, will contain a statement to be signed in duplicate by the debtor evidencing his agreement to settlement of the claim for the amount stated in the agreement. Both copies of the signed agreement shall be returned to the collection designee. Upon final collection of the claim, one copy of the agreement and release shall be returned to the debtor with the release thereon signed by the enforcement collection designee.

§ 1021.6 Method of claim payment.

(a) Debtors: Debtors shall be required to settle claims by:

(1) Payment by bank cashier check or other instrument acceptable to designee.

(2) Installment payments by check after the execution of a promissory note containing an agreement for judgment.

(b) All checks or other instruments will be made out to "Surface Transportation Board," and after receipt will be forwarded to U.S. Treasury.

Parts 1030-1039—Carriers Subject to Part I, Interstate Commerce Act

PART 1033—CAR SERVICE

Sec.

1033.1 Car hire rates.

1033.2 Car service orders.

AUTHORITY: 49 U.S.C. 721, 11121, 11122.

§ 1033.1 Car hire rates.

(a) Definitions applicable to this section:

(1) *Car*. A freight car bearing railroad reporting marks, other than an excluded boxcar as defined in § 1039.14(c)(2) of this chapter whenever it is owned or leased by any class III carrier and bears a class III carrier's reporting marks.

(2) *Car hire*. Compensation to be paid by a user to an owner for use of a car. Such compensation may include, but

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need not be limited to, hourly and mileage rates.

(3) *Fixed rate car.* Any car placed in service or rebuilt prior to January 1, 1993 or for which there was a written and binding contract to purchase, build, or rebuild prior to July 1, 1992, regardless of whether such car bore railroad reporting marks prior to January 1, 1993, provided, however, that until December 31, 1993, all cars shall be deemed to be fixed rate cars.

(4) *Market rate car.* Any car that is not a fixed rate car.

(5) *Owner.* A rail carrier entitled to receive car hire on cars bearing its reporting marks.

(6) *Prescribed rates.* The hourly and mileage rates in effect on December 31, 1990, as published in Association of American Railroads Circular No. OT-10 found in the information section of tariff STB RER 6411-U known as the Official Railway Equipment Register. This information can be obtained at the Association of American Railroads or the Board. Prescribed rates will be enhanced to reflect OT-37 surcharges and Rule 88 rebuilds for work undertaken and completed during 1991 and 1992, and for rebuilding work for which there was a written and binding contract prior to July 1, 1992.

(7) *User.* A rail carrier in possession of a car of which it is not the owner.

(b) *Fixed rate cars.* Car hire for fixed rate cars shall be determined as follows:

(1) Except as provided in paragraph (b)(3) of this section, for a 10-year period beginning January 1, 1993, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990. Prescribed car hire rates shall not be increased for any additions and betterments performed on such cars after December 31, 1990. Any OT-37 surcharge to prescribed rates for work performed prior to January 1, 1993 shall expire upon the earlier of:

(i) The car becoming a market rate car; or

(ii) The expiration date provided in Association of American Railroads Circular No. OT-37.

(2) Upon termination of the 10-year period specified in paragraph (b)(1) of this section, all fixed rate cars shall be

deemed to be market rate cars and shall be governed by paragraph (c) of this section.

(3) (i) During each calendar year beginning January 1, 1994, a rail carrier may voluntarily elect to designate up to 10% of the cars in its fleet as of January 1, 1993 to be treated as market rate cars for the purposes of this section. The 10% limitation shall apply each calendar year and shall be non-cumulative. Cars designated to be treated as market rate cars shall be governed by paragraph (c) of this section. Such election shall be effective only in accordance with the following provisions:

(A) An election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners if:

(1) The rail carrier making the election has legal title to the car; or

(2) The rail carrier making the election does not have legal title to the car but obtains written consent for such election from the party holding legal title; or

(3) The transaction pursuant to which the party holding legal title to the car has furnished the car to the rail carrier making the election was entered into after January 1, 1991.

(B) An election shall be irrevocable and binding only for the term of the transaction pursuant to which the car was furnished to the rail carrier making the election as to that rail carrier and all users and subsequent owners if:

(1) That rail carrier does not have legal title to the car and does not obtain written consent or such election from the party holding legal title;

(2) The transaction was entered into prior to January 1, 1991; and

(3) The transaction does not provide that the compensation to be paid to the party furnishing the car is to be based in whole or in part directly on the car hire earnings of the car; provided, however, that if the rail carrier making the election subsequently obtains legal title to the car, such election shall then be irrevocable and binding as to the rail carrier and all users and subsequent owners.

(C) The party holding legal title to the car may revoke an election subject

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to the provisions of paragraph (b)(3)(i)(B) of this section only:

(1) At the time the transaction pursuant to which the car was furnished to the rail carrier making the election is first extended or renewed after January 1, 1991; or

(2) If such transaction is not extended or renewed, at the time such transaction terminates.

If such election is so revoked, a rail carrier may make a new election only with the written consent of the party holding legal title to the car, and such election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners.

(ii) Nothing in paragraph (b)(3)(i) of this section shall be construed to limit the rights of parties to any transaction to provide for the consent of any party to an election made pursuant to paragraph (b)(3)(i) of this section.

(c) *Market rate cars.* (1) Market rate cars shall not be subject to prescribed rates or to the provisions of 49 CFR 1039.14(c)(1) (i) and (ii) and (c)(4).

(2) (i) The Board shall not prescribe car hire for market rate cars.

(ii) The Code of Car Hire Rules referenced in the Association of American Railroads Car Service and Car Hire Agreement provides that owners and users party to that agreement shall resolve car hire disputes thereunder. The Board may review allegations of abuse of the car hire dispute resolution process established under those rules.

(iii) Car hire disputes involving an owner or user not a party to that agreement may be resolved by the Board.

(d) *Car hire agreements.* Rail carriers are authorized to negotiate and enter into agreements governing car hire.

(e) *Effective date.* This part shall take effect on January 1, 1994.

[58 FR 60144, Nov. 15, 1993]

§ 1033.2 Car service orders.

Emergency and temporary service orders are issued under this part but are not carried in the Code of Federal Regulations.

[58 FR 60145, Nov. 15, 1993]

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PART 1034—ROUTING OF TRAFFIC

AUTHORITY: 49 U.S.C. 721, 11123.

§ 1034.1 Temporary authority.

(a) *Authority.* Any railroad subject to regulation under 49 U.S.C. 10501 may reasonably divert or reroute traffic to other carriers, if it is unable due to circumstances beyond its control promptly to transport traffic over a portion of its lines. Traffic necessarily diverted under this authority shall be rerouted to preserve as much as possible the participation and revenues of other carriers provided in the original routing. This authority may be exercised for no more than 30 days following the day on which the rerouting begins. If a carrier needs more than 30 days before its disability or the disability of a receiving carrier is cured, it may automatically extend its rerouting for additional 30-day periods. To extend the period, it must submit a written or telegraphic notice to the Association of American Railroads and the Board's Office of Compliance and Enforcement explaining why the rerouting is necessary, when it began, when the disability occurred, why an extension is necessary, the specific lines disabled, the rerouting to be continued, which shippers are affected, and any other important facts.

(b) *Concurrence by carriers.* A railroad rerouting traffic must receive the concurrence of other railroads to which the traffic will be diverted or rerouted, before the rerouting or diversion begins. A rerouting carrier must also confirm the inability of a disabled receiving carrier to handle the traffic before rerouting that traffic. If the receiving carrier is no longer disabled, it must accept the traffic according to the routing originally designated.

(c) *Notice by rerouting carrier.* A rerouting carrier must notify the Board's Office of Compliance and Enforcement, the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to car service and car hire agreements, and the American Short Line Railroad Association before the rerouting or diversion begins. The originating carrier must notify each shipper at the time each shipment is