

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 542

REGULATIONS GOVERNING FEES FOR SERVICES PERFORMED
IN CONNECTION WITH LICENSING AND RELATED SERVICES---1996 UPDATE

COMMENTS OF THE
UNITED STATES DEPARTMENT OF AGRICULTURE



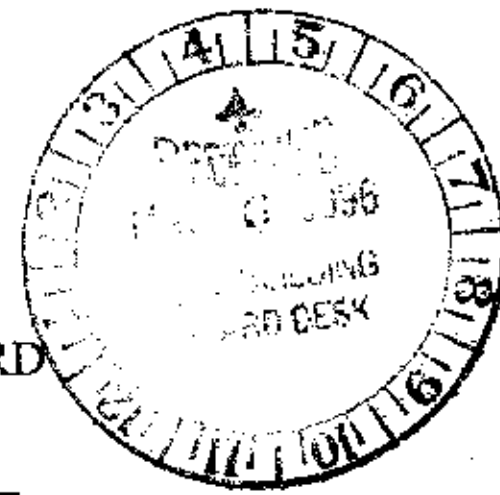
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Agricultural Marketing Service

U.S. Department of Agriculture
Washington, D.C. 20250

Date: May 6, 1996

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These comments are filed on behalf of the United States Department of Agriculture (USDA) and are in response to the Surface Transportation Board's (Board) proposal to revise and modify its fee schedule and to adopt new fees for services and activities that have not previously been included in the Board's user fee schedule.

AUTHORITY AND INTEREST

Through the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 (j)), Congress has directed and authorized the Secretary of Agriculture to participate in proceedings before the Board to "assist in improving transportation services and facilities...for agricultural products and farm supplies" and to make "complaint or petition to the Board...with respect to rates, charges, tariffs, practices and services...." In addition, through the operations of the Commodity Credit Corporation, USDA is a major participant in the markets for agricultural products.

Under the Rural Development Act of 1972, (Public Law 92-419; 86-657) as amended by the Rural Development Act of 1980 (Public Law 96-355; 94 Stat. 1171), USDA is also responsible for "coordinating a nationwide rural development program." As part of this responsibility, USDA is to prepare a rural development strategy taking into consideration the need to improve, among other things, transportation, community services, community facilities, and businesses and employment opportunities. Because the proposed fee increases and new fees will affect the agricultural shipping community, many of which are small to medium-sized businesses located in rural regions and communities, USDA has an interest in this proceeding.

In 1974, USDA told the Interstate Commerce Commission (ICC) in Ex Parte 522 Report On Interstate Commerce Commission Functions, that of particular importance to the Department were the ICC's functions relative to oversight of rate reasonableness, line abandonments, and rail mergers. USDA said that although regulatory reform measures had restricted the ability of shippers to protest the reasonableness of railroad rates, and also restricted the authority of the ICC to adjudicate rate reasonableness, retention of oversight authority for the agency was valued by agricultural shippers. Agricultural shippers, we commented, believed the ICC was an unbiased and generally *affordable* arbiter of rate disputes. With the passage of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), USDA was pleased to see that rate reasonableness, line abandonments, and rail mergers are areas still under Federal oversight by the new Board.

However, the proposed fee increases announced by the Board for many of its services and activities are anything but affordable. How can an increase of approximately 23,000

percent, from \$1,000 to \$233,200, for bringing a complaint of unreasonable rates before the Board be considered reasonable? Other standard complaints are being increased from \$1,000 to \$23,100. For a shipper requesting the Board to set terms and conditions for the sale or subsidy of a branch line proposed for abandonment, the Board is asking a new fee of \$12,700. These are prohibitive fees for all but the largest and most well-financed businesses who ship by rail. Small to medium-sized agricultural rail shipping establishments, who are often located in rural, economically depressed regions and communities, simply cannot afford to pay such exorbitant fees.

According to this rulemaking, the Board states that the proposed schedule of new and increased fees will not significantly impact economically on a substantial number of small entities. The fee waiver provisions as provided in current regulations in CFR 1002.2 (e) would apply for those entities which can prove financial hardship. What standards will the Board use to judge financial hardship of individual shippers? Fear of being denied a waiver may deter smaller shippers from preparing a rate complaint. Will large and small shippers alike be subject to the same standards? What about shippers of modest means who do not qualify for a fee waiver? USDA has been advised by several rural agricultural shipper organizations that considerable cost is involved just in preparing a complaint for Board consideration. For example, the expense of hiring cost consultants and attorneys to properly prepare a rate complaint is costly for these shippers. Those shippers who can afford these preparation expenses would then be faced with tremendous fee increases and new fees in order to seek redress before the Board, the only avenue available to them.

CONCLUSION

As we enter an era of further decreasing transportation regulation with the enactment of the ICCTA, rural agricultural businesses and communities will look to the Board, as they did the ICC, as an accessible and affordable forum to settle their rail transportation disputes. USDA believes that fees charged by the Board for its services and activities should be affordable for those who feel they have a legitimate claim. The fee increases and new fees proposed by the Board, however, may result in denial of Board services to shippers of modest means.

Respectfully Submitted,



for Lon Hatamiya
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