

interstate transportation directly competes with a commuter bus operation and will have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

[47 FR 53290, Nov. 24, 1982]

PART 1166—EXTENSIONS OF OPERATIONS BY WATER COMMON CARRIER

Sec.

1166.1 Applicability.

1166.2 Issuance of a certificate without proof of public convenience and necessity.

1166.3 Conditions and procedures.

AUTHORITY: 49 U.S.C. 10321 and 10922; 5 U.S.C. 559.

SOURCE: 47 FR 49590, Nov. 1, 1982, unless otherwise noted.

§ 1166.1 Applicability.

The rules in this part provide special procedures by which water common carriers subject to the Commission's jurisdiction under subchapter III of chapter 105 of title 49 of the United States Code operating over a given waterway may extend their operations over newly completed sections of that waterway as they are opened to navigation. These rules implement 49 U.S.C. 10922(f)(3)(B).

§ 1166.2 Issuance of a certificate without proof of public convenience and necessity.

If a water carrier complies with the conditions and procedures set forth in § 1166.3 of this part, a certificate of public convenience and necessity covering extended operations over a newly opened section of a waterway will be issued without proof of public convenience and necessity.

§ 1166.3 Conditions and procedures.

To obtain a certificate under this part, a water carrier must:

(a) Hold authority to operate over a previously opened portion of the waterway involved;

(b) Institute service over the newly completed portion of the waterway within 120 days after it is opened to navigation; and

(c) File its application, on Commission form OP-1, not later than the date of the filing of tariffs establishing rates and charges for transportation of passengers or property over the portion of the waterway embraced in the application, and in no event later than the date on which the extended operations are instituted.

PART 1167—COMPENSATED INTER-CORPORATE HAULING OPERATIONS

Sec.

1167.1 Scope.

1167.2 Applicability.

1167.3 Notification.

1167.4 Change(s) in participation in inter-corporate hauling.

AUTHORITY: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

SOURCE: 45 FR 86765, Dec. 31, 1980, unless otherwise noted. Redesignated at 47 FR 49590, Nov. 1, 1982.

§ 1167.1 Scope.

Compensated transportation service by a member of a corporate family for other members of the same corporate family ("Compensated Incorporate Hauling" or "CIH") is exempt from Commission regulation except for certain notice requirements. To qualify for the exemption, the participants shall be members of the corporate family in which the parent owns, directly or indirectly, a 100-percent interest in the subsidiaries, except no corporation engaged primarily in operations as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b), for movement of freight tendered to it in its capacity as a carrier. These regulations prescribe procedures for compliance with the notice requirements of 49 U.S.C. 10524 (b) and (c).

[45 FR 86764, Dec. 31, 1980, as amended at 46 FR 62462, Dec. 24, 1981. Redesignated at 47 FR 49590, Nov. 1, 1982]

§ 1167.2 Applicability.

Motor carrier service under this exemption may be performed as soon as the notice required by these rules is filed with the Commission. Where transmission of the notice is through use of the mails, operations may begin

as soon as the materials are placed in the mail. In all cases the date of filing will be the date of receipt at the Interstate Commerce Commission Offices.

§ 1167.3 Notification.

(a) General requirements—Whenever a corporation seeks to initiate compensated intercorporate hauling it shall be necessary for the corporation to prepare a FEDERAL REGISTER notice in accordance with the following format:

NOTICE OF INTENT TO ENGAGE IN
COMPENSATED INTERCORPORATE HAULING
OPERATIONS

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

- (i) * * *
- (ii) * * *
- (iii) * * *

(b) Parties subject to requirements—All notices must be submitted by the parent of the corporate family for whose members the proposed compensated intercorporate hauling operations are to be performed.

(c) Affidavit—The notice shall include the following affidavit from an officer or other person legally qualified to act on behalf of the parent:

I affirm that _____ is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

(d) Declarations—An affidavit of 100-percent ownership under subsection (c) shall be accompanied by a declaration of the individual making the affidavit, in substantially the following form:

I, _____, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

The declaration shall be signed by the person making the affidavit. An affidavit executed in this manner does not need to be notarized.

(e) To whom notice sent—The original and one copy of a notice of intent to engage in CIH operations shall be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423. A notation shall appear on the envelope in which the notice is transmitted as follows: "CIH Notice". On receipt the Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and stating a projected publication date.

(f) Cover letter requirement—Where the office which has prepared a notice on behalf of a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(g) Miscellaneous—The filing of a CIH notice does not initiate a proceeding before the Commission nor is any right of protest created by publication of a notice in the FEDERAL REGISTER; publication is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation.

(h) Filing fees—Filing fees as provided for in 49 CFR 1002 shall accompany the original notice of intent required by this part. A separate filing fee shall also accompany each updated notice required by this part.

§ 1167.4 Change(s) in participation in intercorporate hauling.

(a) If the parent intends that an additional subsidiary participate in the compensated intercorporate hauling, it shall file an updated notice.

(b) Whenever the interest which a corporation owns in a subsidiary participating in compensated intercorporate hauling becomes less than 100 percent, operations under 49 U.S.C. 10524(b), by or for that subsidiary, shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices will be subject to publication in the FEDERAL REGISTER and shall be submitted in the format prescribed in § 1167.3(a). These will be subject to the filing fee provided in 49 CFR 1002.2(d)(46).

(d) Where there is action by a corporate family which affects the status of a member participating in CIH operations, but the scope of the operations remain unchanged, an updated notice need not be filed. Such actions include, but are not limited to: Absorption of a subsidiary into a parent resulting in extinction of its separate, corporate status. However, name changes by a parent or subsidiary require an updated notice under 49 CFR 1167.4. Appropriate changes to indicate such occurrences shall appear in any updated notices required by subsections (a) and (b) of this section.

[45 FR 86764, Dec. 31, 1980, as amended at 47 FR 12994, Mar. 26, 1982. Redesignated at 47 FR 49590, Nov. 1, 1982]

**PART 1168—RULES GOVERNING THE
ISSUANCE OF A CERTIFICATE TO
PROVIDE REGULAR-ROUTE TRANSPORTATION OF PASSENGERS ENTIRELY IN ONE STATE UNDER 49 U.S.C. 10922(c)(2)(A)**

Sec.

- 1168.1 Controlling legislation.
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AUTHORITY: 49 U.S.C. 10321 and 10922; 5 U.S.C. 553, unless otherwise noted.

SOURCE: 47 FR 53275, Nov. 24, 1982, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting Part 1168 were published at 48 FR 32181, July 14, 1983.

§ 1168.1 Controlling legislation.

(a) *Applicability of rules.* A motor common carrier of passengers establishing that it has authority on November 19, 1982, to provide interstate transportation of passengers on a route over which the carrier now proposes to provide regular-route transportation entirely in one state will be granted a certificate to provide the intrastate transportation if the Commission finds that the carrier is fit, willing, and able to provide the intrastate transportation and to comply with Commission rules and regula-

tions, unless the Commission finds, on the basis of evidence presented by a person objecting to the issuance of the certificate, that the transportation to be authorized would directly compete with a commuter bus operation and would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

NOTE: Applications for certificates under 49 U.S.C. 10922(c)(2)(B) to operate as a motor common carrier of passengers in intrastate commerce on a route over which applicant is granted interstate authority after November 19, 1982, are governed by 49 CFR Part 1160, Subparts D and E.

(b) *Time limits.* The Commission will take final action upon an application filed under 49 U.S.C. 10922(c)(2)(A) for authority to provide transportation entirely in one State not later than 90 days after the application is filed with the Commission.

§ 1168.2 Definitions.

(a) *Commuter bus service or operation* means short-haul, regularly scheduled passenger service provided by motor vehicle in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, and used primarily by passengers using reduced fare, multiple-ride, or commutation tickets during morning and evening peak periods of operation.

§ 1168.3 Filing of applications.

(a) *Form and filing.* (1) An applicant is to file a completed application Form OP-1. Applicant is to check the box entitled "90-DAY INTRASTATE APPLICATION."

(2) The form may be obtained at Commission regional and field offices, or by calling any of the following headquarters offices: Publications (202-275-7833), Public Assistance Branch (202-275-7863), or Small Business Assistance (202-275-7597).

(3) The signed original and one copy of the application and all required documents described in paragraphs (b), (c), (d), and (e) of this section shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, with the