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SERVICE DATE - LATE RELEASE NOVEMBER 4, 1996

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SURFACE TRANSPORTATION BOARD
DECISION
49 CFR Part 1310
STB Ex Parte No. 555
HOUSEHOLD GOODS TARIFFS

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board proposes to establish regulations governing the tariffs that motor carriers and freight forwarders are required to maintain, under 49 U.S.C. 13702, for the transportation of household goods. The Board also proposes to establish notice requirements that household goods carriers must comply with in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs.

DATES: Comments are due on December 4, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 555 to: Surface Transportation Board, office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927- 5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the interstate Commerce Commission (ICC) and transferred to the Surface Transportation Board (Board) various regulatory responsibilities, including certain responsibilities regarding the rates charged by motor carriers and freight forwarders for transportation of household goods. As pertinent here, the ICCTA retained the requirement that these carriers maintain tariffs containing their common carriage rates (and related rules and practices) for household goods transportation (except when providing such transportation for charitable purposes without charge). However, the ICCTA eliminated the requirement that household goods tariffs be filed with a regulatory body. Rather, the carriers are required to make such tariffs available to the Board for inspection, and available for inspection by shippers upon reasonable request. The Board may invalidate a tariff that violates section 13702 of the statute or a regulation of the Board carrying out that section.

Because household goods tariffs are no longer required to be filed, they are no longer governed by the tariff regulations at 49 CFR Part 1312 (see 49 CFR 1312.1(c)(i)). Accordingly, the Board is proposing a new Part 1310 and regulations to govern the household goods tariffs that motor carriers and freight forwarders are required to maintain. Our proposed regulations are designed to ensure that the required information is included in and easily determinable from the tariffs, and that they are made available as required by the ICCTA. We do not propose to prescribe the particular formats that must be employed; rather, we propose to give carriers the flexibility to devise publications that will best fulfill the needs of the carriers and their customers.

Additionally, at the request of the Household Goods Carriers' Bureau Committee (HGCBC), the proposed regulations address the notice requirements that carriers must comply with in order to enforce tariff terms incorporated by reference into their bills of lading or other documents embodying the contract of carriage.¹

¹HGCBC's petition requesting that we promulgate regulations for this purpose was filed on September 20, 1996, and was initially docketed as Ex Parte No. 554, but we will consider it in this

HGCBC notes that the ICCTA specifically allows household goods carriers to incorporate tariff provisions into their bills of lading or other documents embodying the contract of carriage, subject to a notice requirement. HGCBC expresses concern that, without uniform rules specifying what is required, the issue of what constitutes adequate notice of incorporated tariff provisions would be litigated in various state and Federal courts, with potentially differing results.

We believe that there is merit to establishing uniform notice requirements for the incorporation of tariff terms and conditions into contracts of carriage for the transportation of household goods, and we are proposing regulations for that purpose. Because most of the movements subject to the proposed regulations will involve individual consumers who typically deal with commercial carriers on a relatively infrequent basis, the proposed rules are designed to highlight important terms and conditions that are likely to be incorporated, and to require that shippers be provided with a brief summary of the principal features of such terms. In this way, the information should be disclosed in a way that will be meaningful to individual consumers.

Request for Contents

We invite comments on all aspects of the proposed regulations. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that these rules, if adopted, would not have a significant economic effect on a substantial number of small entities. Nonetheless, the Board seeks comment on whether there would be effects on small entities that should be considered. If comments provide information that there would be significant effects on small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1310

Household goods carriers Tariffs.

Decided: October 23, 1996.

By the Board, Chairman Morgant vice Chairman Simmons and Commissioner Owen.

Vernon A. Williams
Secretary

proceeding instead.

For the reasons set forth in the preamble, the Board proposes to add a new part 1310 to title 49, Chapter X, of the Code of Federal Regulations to read as follows:

PART 1310 - - TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS

Sec.

1310.1 Scope; Definitions.

1310.2 Requirement to Maintain Tariffs.

1310.3 Contents of Tariffs.

1310.4 Incorporation of Tariff provisions by Reference.

Authority: 49 U.S.C. 721(a), 13702(a)(2), 13702(c) and 13702(d).

§ 1310.1 Scope; Definitions.

(a) The provisions of this part address the tariff requirements imposed by 49 U.S.C. 13702 on motor carriers and freight forwarders for the transportation of household goods, and the notice requirements that such carriers must comply with in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs.

(b) The provisions of this part apply to all movements of household goods defined in paragraph (c)(1) this section, and to those movements of household goods defined in paragraph (c) (2) of this section that are not provided under contracts entered into pursuant to 49 U.S.C. 14101(b) or former 49 U.S.C. 10702.) or former 49 U.S.C. 10702.

(c) For the purposes of this part, the term household means personal effects and property used or to be used dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is:

(1) Arranged and paid for by the householder, including transportation Of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(2) Arranged and paid for by another party.

(d) For the purposes Of this part *service terms* means all classifications, rules and practices that affect the rates charges, or level of service for movements of household goods.

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S 1310.2 Reclirament to Maintain a Tariff.

(a) Except when providing transportation for charitable purposes without charge, carriers subject to the Board's jurisdiction under Chapter 135 of Title 49 of the United States Code may provide transportation or service for movements of household goods only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

(b) Tariffs maintained pursuant to this part must be available for inspection by the Board and must be made available for inspection by shippers upon reasonable request.

(c) A carrier that maintains a tariff pursuant to this part may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff, as provided in § 1310.4 of this part.

(d) The Board may invalidate a tariff prepared by or on behalf of a carrier under this part if that tariff violates 49 U.S.C. 13702 or the regulations contained in this part.

5 1310.3 Contents of Tariffs.

(a) Tariffs prepared under this part must include an accurate description of the services offered to the public; must provide the specific applicable rates, charges and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges and service terms applicable to any given shipment. Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes and their effective dates.

(b) All information necessary to determine applicable rates, charges and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference to all other tariffs required to determine applicable rates, charges and service terms. The carrier(s) party to the rate(s) must participate in all of the tariffs so linked and all such tariffs must be made available to shippers upon reasonable request.

1310.4 Incorporation of Tariff Provisions by Reference.

(a) Carriers that maintain tariffs pursuant to this part may incorporate the terms of such tariffs by reference (i.e., without stating their full text) into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, provided that:

(1) The bill of lading or other document must contain a conspicuous notice that the contract of carriage incorporates the terms of the carrier's tariffs; the carrier must give notice that its tariffs are available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to such tariffs; and the carrier must make the full text of incorporated terms readily available for inspection by the

STS Ex Parte No. 555

shipper, free of charge, upon request. If such terms cannot be made available immediately, they must be made available promptly by mail or other delivery service.

(2) If the incorporated terms include any of the terms set forth in subparagraphs (a)(2)(i) through (a)(2)(iii) of this section, the notice on the bill of lading or other document must indicate that such terms are included; the shipper must be provided with a brief summary of the principal features of such terms on or with the document; and the notice or summary must indicate that the shipper will be able to obtain a more complete explanation of terms upon request.

(i) Limits on the carrier's liability for loss, damage, or delay of goods, including fragile or valuable goods.

(ii) Claim restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rights of the carrier to impose monetary penalties on shippers or consignees, increase the price of the transportation, or change any terms of the contract.

(b) A carrier may not claim the benefit as against a shipper or consignee of, and a shipper or consignee shall not be bound by, any tariff term that is incorporated by reference under this section unless the carrier has complied with the requirements of paragraph (a) of this section.

(c) The disclosure requirements established by this section preempt any State requirements on the same subject, for tariff terms that are incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods.

