

SERVICE DATE - MARCH 28, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42055

HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE—PETITION  
FOR DECLARATORY ORDER

Decided: March 26, 2001

On August 25, 2000, the Household Goods Carriers' Bureau Committee of the American Moving and Storage Association (petitioner) filed a petition seeking a declaratory order to resolve the regulatory status of certain companies that offer to transport household goods on what petitioner describes as a "you pack, we haul" basis—that is, providing the transportation without performing the functions of packing and unpacking the shipments, or loading and unloading the vehicles used to provide the transportation. Petitioner represents that these companies are operating under the belief that they are not subject to various regulatory requirements applicable to the transportation of household goods.<sup>1</sup> For the reasons discussed below, the petition will be denied and a declaratory order proceeding will not be instituted.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty where the Board has subject-matter jurisdiction.<sup>2</sup>

Jurisdiction over motor carrier transportation and operations, under Part B of Subtitle IV of Title 49 of the United States Code, vests, pursuant to 49 U.S.C. 13301(a), in the Secretary of Transportation (Secretary), unless otherwise specified.<sup>3</sup> As petitioner notes, the Board has jurisdiction over household goods transportation with respect to rate reasonableness and tariff requirements, under 49 U.S.C. 13702(a), (c), and (d); and carrier limitations on liability (released rates), under 49 U.S.C. 14706(f). None of these provisions, however, gives the Board power to determine whether a given carrier is one engaged in transporting household goods, which is the threshold issue that must be addressed.

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<sup>1</sup> As noted below, the Board shares jurisdiction over the transportation of household goods with the Federal Motor Carrier Safety Administration (FMCSA). Petitioner advises that it has filed a similar petition seeking a declaratory order from FMCSA to address related questions within that agency's jurisdiction.

<sup>2</sup> The responsibility of whether to institute requested declaratory order proceedings has been delegated by the Board to the Director of the Office of Proceedings. See 49 CFR 1011.8(c)(6).

<sup>3</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Board and others to the Secretary, effective January 1, 1996.

Rather, such a determination (classifying a carrier as transporting household goods) is fundamentally a licensing function, jurisdiction for which vests squarely in the Secretary.<sup>4</sup> Indeed, before enactment of ICCTA, the ICC treated such questions as licensing matters, by specifying household goods transportation in the certificates it issued. There is no foundation in ICCTA to conclude that the statute contemplated a change in the nature of this function. Nor does the Board's general enforcement authority under 49 U.S.C. 14701(a) empower it to invoke its substantive authority under the specified provisions against a carrier whose status must be determined by the Secretary in the first instance.

Accordingly, the declaratory relief requested will not be granted and a proceeding will not be instituted.

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

It is ordered:

1. The petition for a declaratory order is denied.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>4</sup> The Secretary, acting through FMCSA, has pertinent jurisdiction over licensing, under 49 U.S.C. 13901-13904.