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SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 555

HOUSEHOLD GOODS TARIFFS

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) adopts regulations governing the tariffs that motor carriers and freight forwarders are required to maintain for the transportation of household goods; and establishing the notice requirements with which household goods carriers must comply in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs. These regulations reflect changes effected by the ICC Termination Act of 1995.

EFFECTIVE DATE: These rules are effective March 6, 1997.

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SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served November 4, 1996 (61 FR 56656), the Board proposed regulations to govern the tariffs that motor carriers and freight forwarders are required to maintain, under 49 U.S.C. 13702, for the transportation of household goods, and to establish the notice requirements with which household goods carriers must comply in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs. Comments in response to the NPR were received from the Household Goods Carriers' Bureau Committee (HGCBC), the Household Goods Forwarders Tariff Bureau (HHGFTB),¹ and the Transportation Consumer Protection Council, Inc. (TCPC).

Several changes to the proposed regulations were suggested by the commenters, and the final regulations that we are adopting reflect our consideration of those suggestions. We will address the specific concerns raised and suggestions made in the comments, and our actions with respect to them.

1. Definition of service terms.

Proposed section 1310.1(d) defines "service terms" to be included in tariffs to mean all classifications, rules and practices that affect the rates, charges, or level of service for movements of household goods. In this regard, HGCBC states that the tariffs it maintains also include "regulations" promulgated over the years by the Interstate Commerce Commission (ICC) and

¹ HHGFTB fully supported the comments submitted by HGCBC, so references herein to HGCBC should be read to include HHGFTB.

incorporated in those tariffs, and that Section 1 of the various tariffs it publishes is uniformly denominated as "Rules and Regulations Governing the Tariff." HGCBC requests that, for the sake of clarity and completeness, we include the term "regulations" in the definition of service terms. We will modify the provision as HGCBC suggests.

2. Availability of tariffs for inspection by the Board and shippers.

Proposed section 1310.2(b) requires that tariffs be available for inspection by the Board and that they be made available for inspection by shippers upon reasonable request. HGCBC requests that the provision be expanded to specify the manner and means for allowing shipper inspection of tariffs. The regulations suggested by HGCBC would require each carrier to maintain at its principal office a complete set of its effective tariffs for inspection by shippers free of charge during normal business hours.² Additionally, carriers would be required to make copies of their tariffs, specific tariff provisions or tariff subscriptions available upon request of a shipper or other interested person at a reasonable charge.

We will expand the regulations to specify the manner and means for making tariffs available for inspection by shippers and other interested persons;³ however, we will adopt requirements similar to those formerly applicable to household goods carriers' filed tariffs, rather than the requirements suggested by HGCBC. In particular, HGCBC would require carriers to make tariffs available for inspection at only one location (their principal office), whereas the former regulations also required that tariffs be posted at other carrier business offices where such availability was specifically requested.

The availability of tariffs for inspection at a carrier's principal office would likely be of no practical value to the bulk of the carrier's customers, particularly in the case of a larger carrier providing services over a broad geographic area. Although the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) eliminated the requirement that household goods carriers file their tariffs with the Federal government, we do not believe that Congress intended to otherwise reduce the availability of tariffs to individual household goods shippers or other interested persons. Our final rules will maintain the level of availability previously provided. The new regulations, however, will allow carriers desiring to do so to continue to assess reasonable charges for tariff subscriptions and copies of tariff provisions.⁴

² Under the HGCBC suggestion, carriers could also maintain tariffs at such other locations as they deemed appropriate and, at carrier offices where tariffs were not available for inspection, carriers would be required to provide shippers with information on the locations where their tariffs could be inspected or obtained.

³ See sections 1310.5 and 1310.6.

⁴ Carriers will not, however, be allowed to assess any charges for making available to the shipper the full text of tariff terms incorporated into the bill of lading. We will also
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3. Contents of tariffs.

Proposed section 1310.3 sets forth general requirements for the contents of tariffs and gives carriers the flexibility to design tariff publications that will best serve their needs and the needs of their customers. HGCBC suggests that we specify in significantly more detail the subject matter that must be included in tariffs, how tariffs must be amended, how carriers could authorize agents to publish tariffs on their behalf, etc. We believe such matters are better left to the carriers.⁵

The proposed regulations specify that tariffs must include an accurate description of the services offered to the public; must provide the specific applicable rates, charges and service terms (which include all classifications, rules, regulations and practices that affect the rates, charges, or level of service for movements of household goods); 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. The actual subject matter required to be included a tariff will, of course, depend upon the services offered by the carrier, and the rules and regulations that the carrier elects to establish. We believe that the general guidance provided in our proposed regulations is clear and adequate. An attempt to cover all potentially relevant tariff details would require us to address many subjects that could be irrelevant to the services provided by a particular carrier, and would inevitably overlook others that could be highly relevant to such services.⁶

4. Incorporation of tariff terms by reference into the bill of lading or other document embodying the contract of carriage.

Proposed section 1310.4 sets forth the notice requirements with which household goods carriers must comply in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs. TCPC and HGCBC both request changes to the notice requirements.

TCPC suggests that the Board prescribe the size, location, color and wording of the required notices; that the regulations should require that the shipper be given a reasonable opportunity to read and understand the bill of lading, or other document, and to obtain copies of the carrier's tariffs prior to the actual movement of the goods; and that, should the shipper fail to select a liability option, he or she should be deemed to have selected full liability coverage.⁷

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make clear in the regulations that carriers must provide their tariffs to the Board free of charge, upon request.

⁵ We will clarify in the regulations that tariffs must be published in the English language, as HGCBC requests.

⁶ We note that certain of the specific subjects cited by HGCBC are addressed in the Code of Federal Regulations, and need not be included in tariffs to be binding on carriers.

⁷ By full liability coverage, TCPC presumably means the liability described in 49 U.S.C. 14706(a) ("actual loss or injury
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We do not believe that the changes suggested by TCPC are warranted. With respect to liability coverages, unlike general freight carriers, household goods carriers cannot establish released rate liability provisions without specific authorization from the Board under 49 U.S.C. 14706(f). The outstanding released rate authorizations require the inclusion of prescribed language on the bill of lading or order for service with respect to liability options, and we believe that the prescribed language continues to be adequate. Additionally, the shipper would receive full liability coverage unless the Board permitted otherwise and the different liability coverage was reflected on the bill of lading. Thus, TCPC's suggested change is unnecessary.

Regarding notice, where tariff provisions are to be incorporated by reference, the proposed regulations require that the bill of lading or other document contain a conspicuous notice that it incorporates the terms of the carrier's tariffs, and the carrier must give notice in its bill of lading or by other actual notice that its tariffs are available for inspection. Additional notices, summaries of principal features and more complete explanations of incorporated terms are required to be provided by carriers if certain specified tariff terms are incorporated, and carriers are required to immediately make available for inspection or promptly provide copies of the full text of incorporated tariff terms to shippers free of charge. Unless these requirements are complied with, the carriers may not claim the benefit of tariff terms incorporated by reference. Thus, we believe that the requirements included in the proposed regulations will be adequate to protect shippers, and we see no need to prescribe the specific form or content of the required notices. Further, the incorporated tariff terms will likely vary from carrier to carrier, and the wording suggested by TCPC may not be appropriate in all cases.

TCPC also suggests that we require notices on the bill of lading regarding the availability of arbitration and binding estimates in connection with household goods moves. The ICCTA itself requires each carrier to provide specific information about arbitration to persons for whom household goods are to be transported by the carrier, before such goods are tendered to the carrier for transportation. Also, there are specific requirements already established in the Code of Federal Regulations with respect to binding and non-binding estimates (see 49 CFR part 375), although binding estimates are not offered (or required to be offered) by all household goods carriers. While we believe the existing requirements provide the notice to shippers that TCPC seeks, it is important to note that both the household goods arbitration provisions of the ICCTA and the regulations relating to binding and non-binding estimates by household goods carriers are administered by the Federal Highway Administration, not the Board. In these circumstances, we do not consider it appropriate for us to include these matters in our regulations.

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to the property"), and not the "Full Value Protection" offered by many household goods carriers (which provides for the repair, replacement or replacement value of articles, without deduction for depreciation).

HGCBC suggests that section 1310.4(a)(1) be revised to require that the full text of tariff terms be made available only on "reasonable" request. As originally proposed, section 1310.4(a)(1) requires carriers immediately to make available to shippers for inspection, upon request, the full text of tariff terms incorporated by reference into the bill of lading or other document embodying the contract of carriage. If such terms cannot be made available immediately for inspection, they must be made available promptly by mail or other delivery service.⁸ We do not foresee any circumstances in which the full text of incorporated terms should not be made available to shippers, upon request, and we believe that the regulations, as proposed, better reflect this intent.

HGCBC also comments on proposed section 1310.4(a)(2), which states that, if the incorporated terms include certain specified subject matter, 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, and the shipper must be able to obtain a more complete explanation of such terms upon request. HGCBC states that certain tariff provisions are repeated in the bill of lading, and that a separate notice of incorporation should not be required where the substance of a tariff provision is itself contained in the bill of lading. We disagree. To the extent that the full text of terms is included in the bill of lading, there is no need to incorporate corresponding tariff terms by reference; and, if such terms are not incorporated by reference, the notice requirement would not apply. However, where the carriage is affected by the incorporation of tariff terms relating to the specified subjects, we believe that shippers should be provided with the notice required by the proposed regulations.

Proposed section 1310.4(a)(2)(i) includes terms relating to limits on the carrier's liability for loss, damage or delay of goods, "including fragile or valuable goods," as one of the incorporated terms for which the more comprehensive requirements apply. HGCBC states that the terms "fragile" or "valuable" could aptly fit any item transported as part of a household, and that confusion and/or interpretation problems could result from specific reference to fragile and valuable goods. We note, however, that the household goods tariffs filed by HGCBC traditionally contained notification requirements for goods valued at over \$100.00 per pound and packaging requirements for fragile goods. To the extent that the carrier's liability may be affected by incorporated provisions relating specifically to valuable or fragile goods, we believe that the shipper should be made aware of such provisions. We will, therefore, adopt the provision as proposed.

Proposed section 1310.4(a)(2)(ii) includes terms relating to 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," as one of the incorporated terms for which the more comprehensive requirements apply. HGCBC states that the inclusion of household goods carriers' agents in the regulation unnecessarily invites

⁸ We will clarify in the final regulations that, whichever way the incorporated terms are made available to shippers, they must be made available without charge.

litigation against carriers solely by virtue of the agency relationship, and that the ICCTA itself puts limits on that liability. Section 13907(a) of the ICCTA, however, specifically makes each household goods carrier "responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier." Further, each carrier is responsible for using due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services and to fulfill the obligations imposed upon them by the ICCTA and the carrier. The tariffs that carriers are required to publish, and the proposed regulations themselves, are applicable only in connection with the household goods transportation for which the ICCTA specifically makes carriers responsible for the acts or omissions of their agents. Thus, we believe the inclusion of agents in the regulation is warranted (and that their exclusion could be misleading). We will, therefore, adopt the provision as proposed.

Small Entities

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities.

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, Moving of household goods, Tariffs.

Decided: January 22, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

For the reasons set forth in the preamble, the Board adds 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.

1310.5 Availability of tariffs at carrier offices.

1310.6 Furnishing copies of tariff publications.

Authority: 49 U.S.C. 721(a), 13702(a), 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 with which such carriers must comply 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) of 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 (repealed January 1, 1996).

(c) For the purposes of this part, the term *household goods* means personal effects and property used or to be used in a 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, regulations and practices that affect the rates, charges, or level of service for movements of household goods.

§ 1310.2 Requirement to maintain tariffs.

(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, by giving a person a privilege, by allowing the use of a facility that affects the value of that transportation or service, or through another device. Tariffs shall be published in the English language and rates 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 provided to the Board promptly and free of charge, upon request, by mail or other delivery service.

(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.

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

(2) If the incorporated terms include any of the terms set forth in paragraphs (a)(2)(i) through (a)(2)(iii) of this paragraph, 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 shipper must be able to obtain a more complete explanation of such 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.

§ 1310.5 Availability of tariffs at carrier offices.

(a) Each carrier shall maintain, at its principal office, a complete set of its effective tariffs and those to which it is a party.

(b) Each carrier shall also maintain some or all of its tariffs at its other business offices, upon request. Carriers shall provide information regarding all locations where tariffs may be viewed.

(c) At all points where tariffs are maintained, they shall be made available for inspection by any person during the carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also display, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(d) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff. The notice shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make its tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(e) Any publication referred to in a tariff must be maintained with that tariff.

(f) If any tariff maintained pursuant to paragraph (b) of this section has not been used for a substantial length of time, the availability of that tariff, including its reissues, may be discontinued at that office until such time as it is again requested. It shall then be made available within 20 days.

§ 1310.6 Furnishing copies of tariff publications.

(a) Copies of tariffs, specific tariff provisions or tariff subscriptions shall be provided upon request to any interested person.

(b) Except for providing to shippers the full text of tariff terms incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, as described in § 1310.4(a)(1) of this part, carriers may assess charges for furnishing copies of tariff publications to interested persons. If a charge is made, the charge must be reasonable, and identical for the same publications and delivery service.