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SURFACE TRANSPORTATION BOARD

DECISION

49 CFR Part 1312

STB Ex Parte No. 618

REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF
TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A
WATER CARRIER IN THE NONCONTIGUOUS DOMESTIC TRADE

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Board revises its tariff filing regulations to remove obsolete provisions, to provide carriers with additional flexibility to establish appropriate formats for the filed tariffs that continue to be required, and to reflect changes introduced by the ICC Termination Act of 1995.

EFFECTIVE DATE: These rules are effective May 18, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565-1578.
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SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (Notice) served December 20, 1996 (61 FR 67291), the Board proposed to revise its tariff filing regulations to remove obsolete provisions, to provide carriers with additional flexibility to establish appropriate formats for the filed tariffs that continue to be required, and to reflect changes introduced by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA). As pertinent here, the ICCTA eliminated tariff filing requirements for most surface carrier transportation. However, it retained the tariff filing requirement for the transportation of property (with certain exceptions) by or with a water carrier in the noncontiguous domestic trade. In the noncontiguous domestic trade, the ICCTA transferred from the Federal Maritime Commission (FMC) to the Board the responsibility for regulating port-to-port water carriage, and from the Interstate Commerce Commission (ICC) to the Board the responsibility for regulating intermodal transportation.

Comments in response to the Notice were received from Caribbean Shippers Association, Inc. (CSA); Crowley American Transport, Inc. (Crowley); the Government of Guam (GovGuam); Matson Navigation Company, Inc. (Matson); the National Motor Freight Traffic Association, Inc. (NMFTA); Sea-Land Service, Inc. (Sea-Land); Totem Ocean Trailer Express, Inc. (TOTE); and Trailer Bridge, Inc. (Trailer Bridge).¹ Several changes to the proposed

¹ William J. Monheim submitted comments addressing the Federal Register notice, not the substance of the proposed regulations. Mr. Monheim complains that the full text of the

(continued...)

regulations were suggested by the commenters, and the final regulations 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.

Scope of the Tariff Filing Requirement

CSA points out that the provisions of 49 U.S.C. 13541(f), which preclude the regulation of certain previously exempt transportation, are not reflected in the proposed regulations. The tariff filing requirement does not extend to the previously exempt traffic cited by CSA, and we will modify the proposed regulations to make this clear (see section 1312.1(b)(2)). We agree with Trailer Bridge that the tariff filing requirement does not extend to contract carriage, and we will modify the proposed regulations to clarify this point. See new section 1312.2(a). We also agree with Trailer Bridge that "intermodal" transportation can include line-haul land and water transportation provided by the same carrier. We see no need, however, to define the term "intermodal," as Trailer Bridge suggests, as the term is not used in the regulations.

TOTE is correct in its understanding that these regulations apply to all tariffs that are required to be filed with the Board, including tariffs for the transportation of household goods by or with a water carrier in the noncontiguous domestic trade. These regulations do not apply, however, to tariffs for household goods transportation that is not in the noncontiguous domestic trade, as they are not required to be filed with the Board. Such non-filed tariffs are governed by the regulations at 49 CFR 1310.

NMFTA suggests that the proposed regulations be expanded to address collective ratemaking outside of the context of the noncontiguous domestic trade. The ICCTA eliminated the requirement that tariffs be filed for such collectively made rates and related provisions. Nevertheless, as NMFTA points out, under 49 U.S.C. 13703 and 13701(a), the Board has general oversight responsibilities over the collective activities of motor carriers and the requirement that collective rates, rules, and classifications be reasonable. Moreover, while collectively set rates, classifications, and rules need not be filed with the Board, they must be published, 49 U.S.C. 13703(g)(1)(A), and the use of such collectively set publications is limited by the participation requirements of 49 U.S.C. 13703(g).

We do not agree that regulations should be maintained to govern the publication and participation requirements of section 13703(g). To the contrary, the statutory requirements appear to

¹(...continued)
 proposed regulations was not reprinted in the Federal Register. Rather, the Federal Register notice advised the public of the subject and purpose of the proposal and where and how to obtain a copy of it (for a small charge). This is consistent with our current practice; it is necessitated by the substantial per-line charges we incur in placing notices in the Federal Register and our own funding limitations. We believe our shortened notices meet the publication requirements of the Administrative Procedures Act and fairly balance the costs to the agency and those interested in participating in our proceedings.

be clear on their face, and there is no reason why we should adopt regulations telling business how they must implement the law. Parties taking a different view may submit an appropriate petition explaining the need for specific implementing regulations. In the meantime, we believe that the regulations in part 1312 are appropriately limited to the noncontiguous domestic trade tariffs that must be filed with the Board.

Tariff Format Requirements and Filing Procedures

The regulations we are adopting eliminate the detailed tariff format specifications currently included in part 1312, and, instead, give carriers additional flexibility to devise tariff publications that will best meet their needs and the needs of their customers. The regulations require that tariffs contain an accurate description of the services offered to the public, provide the specific applicable rates (or the basis for calculating them) and service terms, and be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment (or group of shipments). The regulations further require that tariffs be arranged in a way that facilitates the determination of the prices and services offered, and the related service terms.

CSA contends that the regulations should specifically require indices of all commodities listed in a tariff to help shippers identify all possible rates on given commodities. GovGuam, without identifying any particular format specifications, asserts that the elimination of detailed format specifications will lessen the consistency of tariffs and make them more difficult to use. Given the relatively narrow scope of the remaining tariff filing requirements, and the availability and increasing use of the Automated Tariff Filing and Information (ATFI) electronic tariff filing system developed by the FMC to meet those requirements, we do not believe it is necessary or desirable to maintain detailed format specifications for printed tariffs.² Rather, we believe that the general requirements that we proposed and are now adopting will be adequate to ensure that tariffs be reasonably "user friendly."³ Our authority to invalidate tariffs that violate the regulations should be adequate to deal with tariffs that fail to meet these requirements, while the flexibility provided by our regulations should minimize the burdens imposed on carriers.⁴

² Indeed, continuing the existing printed tariff specifications would mandate inconsistencies between printed and electronic tariffs, which we do not believe would be helpful.

³ Crowley asserts that the prohibitions in proposed section 1312.3(c) against ambiguous terms and complex methods of presentation are themselves ambiguous and should be deleted; however, we believe the requirements are appropriate and needed to ensure that tariffs do not become unduly cumbersome and difficult to understand.

⁴ Crowley expresses concern that the deletion of special provisions in the regulations regarding class, commodity and proportional rates not be misconstrued as making such rates unlawful. The deletion of those provisions has no effect on the lawfulness of any particular types of rates.

NMFTA suggests that we modify the regulations to require additional information on each tariff publication. Some of the information NMFTA suggests is already required, and we believe some of it is unnecessary.⁵ However, we will modify the proposed regulations to require that every tariff publication contain the name of the tariff, and both an issue and an effective date, and to require that the title page of every tariff contain the complete name and address of the issuing carrier or agent; the certificate or operating authority number, if applicable; a contact person and telephone number; and the expiration date of the tariff, if applicable.

The proposed regulations allow carriers to file their tariffs in either printed form or through the FMC's ATFI electronic tariff filing system. GovGuam contends that the ATFI system represents a great step forward, and suggests that the Board require that ATFI be used for all tariffs. TOTE and Trailer Bridge, on the other hand, assert that printed tariffs are better than ATFI. Additionally, TOTE and Matson suggest that the Board further expand the filing options to allow carriers to file tariffs by electronic mail and/or FAX.

Carriers have long filed printed tariffs, and, concurrent with the transfer of responsibility for regulating port-to-port water carrier transportation in the noncontiguous domestic trade from the FMC to the Board, we granted special tariff authority⁶ to allow carriers to file their tariffs with the Board electronically through the ATFI system.⁷ We see no basis on which to restrict the currently available options at this time. By the same token, we see no basis on which to adopt new tariff filing systems at this time. We are amenable to special tariff authority requests to apply to particular situations. Any parties seeking the adoption of alternative tariff filing systems, however, must explain how the proposed systems will fulfill all of the various needs for tariff information.⁸

Proposed regulation 1312.11(b) requires carriers to include specific information in the accompanying letter of transmittal when a tariff publication contains matter filed pursuant to the "Zone of Reasonableness" (ZOR) provisions of 49 U.S.C. 13701(d)(1) and (2). CSA requests that the required information be included in the tariff, rather than the transmittal, since transmittals are not normally made available to the public. Crowley and Sea-Land, on the other hand, assert that no special notice should be required at all. We will eliminate the proposed requirement. A notification requirement of the type at issue here served a purpose prior to the ICCTA, when proposed rates,

⁵ As an example, we see no need to require the full mailing address, telephone number and name of a specific contact person on all interior pages of a tariff.

⁶ STB Special Tariff Authority No. 4, served October 1, 1996.

⁷ The conference report accompanying the ICCTA urged the Board to continue the FMC's practice of allowing carriers to file their tariffs electronically. H. R. Rep. No. 422, 104th Cong., 1st Sess. 206 (1995).

⁸ Our staff is available to consult informally with carriers in this regard.

other than those filed pursuant to the then-effective "zone of rate freedom" (ZORF), were subject to suspension on reasonableness grounds. As Crowley points out, it is not unlikely that most tariff filings will be within the ZOR limitations. But in any event, as we have no authority to suspend independently set rates in the noncontiguous domestic trade, and rates that are the product of collective action⁹ can be suspended either before or after their effective dates, there is no reason for requiring carriers to specify in the tariff filing that a rate is or is not within the ZOR. Rather, the status of any particular rate under the ZOR is a factual determination that can be made if and when the rate is challenged.

Sea-Land argues that the requirement in proposed sections 1312.6(b)(1) and (2) for one day's advance notice of independently established new or reduced tariff matter prevents carriers from accommodating shippers' needs to expedite cargo movement; is not necessitated by any statutory obligation; does not further any regulatory purpose; is inconsistent with the transportation policy set forth in 49 U.S.C. 13101; and imposes an unwarranted economic burden upon the shipping public.¹⁰ We agree that the advance notice requirement is unduly restrictive in the current regulatory environment, and we will modify the regulations to allow new and reduced tariff matter to become effective upon filing.¹¹ This change will give carriers additional flexibility to meet the needs of their customers.

NMFTA asserts that certain of the provisions in the current regulations that permit tariff filings to be made on short notice should be brought forward to the new regulations. We agree. We will modify the proposed regulations to permit tariff filings adding or restoring a carrier's participation in a tariff, correcting the list of participating carriers in a tariff (other than canceling the participation of a carrier), extending the expiration date of tariff matter, or postponing the effective date of proposed tariff matter to become effective upon filing.

Additionally, because of the Board's move to new quarters at 1925 K St., N.W., Washington, DC, it will no longer be possible for filers to deliver filings to the Board outside of normal business hours.¹² Because this will impose certain restrictions

⁹ Although rates in the noncontiguous domestic trade are not actually set collectively, some may be based on, for example, the National Motor Freight Classification, which is set collectively.

¹⁰ As Sea-Land notes, the one day's advance notice requirement, contained in the regulations of the ICC, is currently in effect.

¹¹ We note that the FMC's regulations allow reduced rates in foreign commerce to become effective upon filing, and that the FMC formerly allowed certain tariff filings in the noncontiguous domestic trade to become effective upon filing (although the FMC required one day's notice for reduced rates in the noncontiguous domestic trade, consistent with the ICC's requirement).

¹² Because the Board's prior quarters were open around-the-clock, filings could be delivered to (i.e., filed with) the Board
(continued...)

on when printed tariff filings can be made, we will include the permissible filing times in our regulations for the information of all concerned.¹³

Tariff Content Requirements

CSA suggests that we not allow carriers to publish a separate "charge" in a tariff to cover "an expense which would be included in the total fixed and variable expenses which are customarily used in determining the ocean base rate," and that we not allow "charges" that are not subject to regulation by the Board to be shown in tariffs as "for information only." We do not believe that such prohibitions are warranted. Carriers have the initiative as to how to structure their rates. There are a variety of circumstances under which charges or surcharges might be appropriate to cover costs that, in CSA's view, should be included in the line-haul rates, and we do not believe we should restrict carrier rate initiatives in the regulations. Additionally, where material is specifically identified in tariffs as "for information only," it is clear that such material does not constitute part of the tariff, even though the inclusion of such material can be helpful to tariff users.

CSA also suggests that we modify the regulations to preclude the establishment of different rates to or from points within the same commercial zone, and to require that the inland portion of joint rates apply to any motor carrier that participates in the tariff. We do not believe that we should, by tariff regulation, limit the flexibility of carriers to establish, in the first instance, whatever reasonable rates they choose to establish. Rather, the statute permits aggrieved parties to file complaints challenging particular rates in the noncontiguous domestic trade.

NMFTA suggests that certain of the criteria for assigning carrier codes be incorporated in the regulations, and that the filing fee for the code publication be reduced. The only purpose for requiring the filing of NMFTA's code publication with the Board is to ensure that we are informed of the codes assigned to carriers and tariff publishing agents, as the codes are used to identify their tariff publications. For this limited purpose, there is no need to require that the publication be filed as a tariff. Therefore, we will modify the proposed regulations to eliminate the requirement that the code publication be filed as a tariff; rather, we will merely require that current information be submitted to us. In these circumstances, no filing fee will be assessed, and we will not include code assignment criteria in the regulations.

Availability of Tariff Information

¹²(...continued)
outside of business hours.

¹³ Electronically transmitted ATFI filings can continue to be made at other times as provided in the regulations at 46 CFR 514; however, all filings requiring a physical delivery to the Board must be made during normal business hours. We note, in this connection, that the FMC has similar restrictions for ATFI tariff filings that require a physical delivery (i.e., the physical delivery of a computer tape).

CSA requests that the Board expand the regulations to require carriers to make electronic tariff information available to any person, through dial-up access by modem, without charge. Several carriers, on the other hand, request the Board to reduce the tariff posting and information availability requirements: Crowley would eliminate the tariff posting requirement altogether; Matson would eliminate the requirement that publications referred to in tariffs be posted with the tariffs; and TOTE would allow a day's delay in sending tariff changes to subscribers. The requirements included in the proposed regulations represent a continuation of current requirements, and no commenter has provided sufficient reasons for us to modify them at this time.¹⁴

The requirements and procedures for accessing electronic (ATFI) tariff information are set forth in the FMC's regulations at 46 CFR part 514. We have adopted the FMC's regulations for ATFI filings to provide consistency for all such tariffs. The FMC's requirements were applicable to port-to-port noncontiguous domestic trade tariffs prior to the transfer of jurisdiction over such tariffs to the Board, and we believe that those requirements continue to be adequate.

Similarly, we believe that the regulations for the availability of printed tariff information continue to be adequate. Carriers are required to make useable tariff information available to interested persons without charge at their offices, and they are permitted to assess reasonable charges for tariff subscriptions, etc., sent to subscribers. We believe that these requirements, which assure the availability of tariff information without charge at carrier offices, and permit carriers to assess charges for alternative services that shippers may find more convenient, strike a reasonable balance between services that carriers must provide without charge and costs that they can elect to recover from the requesting party.

Other Issues

Proposed regulation 1312.2(f) provides that the Board may invalidate tariff publications that violate the ICCTA, the Board's regulations, or any decision of the Board or a court. Sea-Land points out that 49 U.S.C. 13702(d) provides that the Board can invalidate any tariff that violates section 13702 or a regulation of the Board carrying out that section, and asserts that the proposed regulation should be similarly restricted. We will reflect these restrictions in the regulation; we will similarly revise proposed regulation 1312.2(d) to clarify that the receipt and acceptance of a tariff by the Board does not absolve a carrier of violations of any decision of the Board or a court.¹⁵

¹⁴ The requirement that tariff changes be sent to subscribers not later than the time they are sent to the Board was recently instituted in response to concerns related specifically to the noncontiguous domestic trade.

¹⁵ We will also reflect in § 1312.2(d) CSA's request that the regulations make clear that the acceptance of a tariff does not constitute substantive approval of the provisions contained therein.

Small Entities

The Board certifies that this rule 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 1312

Motor carriers, Noncontiguous domestic trade, Tariffs, Water carriers.

Decided: April 4, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

For the reasons set forth in the preamble, the Board revises part 1312 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1312 -- REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

Sec.

- 1312.1 Scope; Definitions.
- 1312.2 Requirement to publish and file a tariff.
- 1312.3 Tariff contents and standards; Essential criteria.
- 1312.4 Filing of tariffs.
- 1312.5 Amendments to tariffs.
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- 1312.8 Identification of tariff publication.
- 1312.9 Statement of tariff application and other title page requirements.
- 1312.10 Notification of tariff changes and nature of changes.
- 1312.11 Special notification for ordered matter.
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- 1312.13 Furnishing copies of tariff publications.
- 1312.14 Powers of attorney and concurrences.
- 1312.15 Change of carrier or agent.
- 1312.16 Substitution of service.
- 1312.17 Electronic filing of tariffs.

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

§ 1312.1 Scope; Definitions.

(a) *Applicability.* The provisions of this part address the requirements in 49 U.S.C. 13702 that carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 and providing transportation or service for the movement of property (except bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) by or with a water carrier in noncontiguous domestic trade shall publish and file with the Board tariffs containing the rates for such transportation.

(b) *Exceptions.* The provisions of this part do not apply to:

(1) Any transportation or service provided by a carrier pursuant to 49 U.S.C. 14101(b); or

(2) The transportation of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission (FMC) or the Interstate Commerce Commission under Federal law in effect on November 1, 1995.

(c) *Definitions.* For the purposes of this part:

Act means part B of subtitle IV of title 49 of the United States Code.

Agent means a person, association or corporation authorized to publish and file rates and provisions on behalf of one or more carriers in tariffs published in the agent's name.

Agent's tariff means a tariff filed in the name of an agent.

ATFI means the Automated Tariff Filing and Information System maintained by the FMC, a computer-based system for creating, filing, processing and retrieving tariffs.

Board means the Surface Transportation Board.

Bound tariff means a tariff consisting of two or more sheets bound at the left edge in pamphlet or book form or a single-sheet tariff.

Carrier means a motor carrier, water carrier or freight forwarder subject to the Board's jurisdiction under 49 U.S.C. Chapter 135.

Carrier's tariff means a tariff filed in the name of a carrier.

Collectively established tariff matter means a rate, charge, rule or other tariff provision established pursuant to 49 U.S.C. 13703.

Independently established tariff matter means any rate, charge, rule or other tariff provision not established pursuant to 49 U.S.C. 13703.

Item means a tariff provision of any kind bearing an item number designation.

Joint rate means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers and effected by a concurrence or power of attorney.

Joint tariff means a tariff that contains joint rates or provisions affecting joint rates.

Local rate means a rate that applies only to one carrier.

Local tariff means a tariff that contains local rates or provisions affecting local rates.

Looseleaf page means a single page published as part of a new or reissued looseleaf tariff or as an amendment to such a tariff.

Looseleaf tariff means a tariff consisting of looseleaf pages.

Noncontiguous domestic trade means transportation subject to jurisdiction under 49 U.S.C. Chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

Original tariff means a bound or looseleaf tariff as originally filed excluding amendments.

Page means that portion of a tariff or supplement printed on one side of a sheet.

Post refers to making filed tariffs available to the public.

Publication means a bound tariff, a tariff supplement, or a looseleaf tariff page.

Rate means a rate or charge.

Service terms mean all classifications, rules and practices that affect the rates or level of service.

Supplement means a single sheet, or two or more sheets bound at the left edge in pamphlet or book form, identified as a supplement and published to amend or cancel a bound or looseleaf tariff.

Tariff means an issuance (in whole or in part) bearing designations required by this part and containing rates, rules,

regulations, classifications or other provisions published and filed with the Board for compliance with 49 U.S.C. 13702.

§ 1312.2 Requirement to publish and file a tariff.

(a) *Requirement for tariff.* Except when providing transportation for charitable purposes without charge, or when providing transportation or service described in § 1312.1(b), carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 may provide transportation or service described in § 1312.1(a) only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is on file with the Board and in effect under this part.

(b) *Adherence to tariff.* 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. The carrier shall keep such tariffs available for public inspection and shall make such tariffs available to subscribers as required in this part.

(c) *Other information.* Provisions for information purposes only may be included in a tariff, provided they are clearly identified as such. Such provisions may include rates and service terms covering transportation not subject to regulation by the Board, and advertising and promotional material.

(d) *Effect of filing.* The tender of a tariff and its receipt and acceptance by the Board do not relieve a carrier of liability for violations of the Act, other laws, the Board's regulations, or any decision of the Board or a court, or have any effect on the rights of persons to file complaints for substantive violations of the Act or the Board's regulations.

(e) *Tariff relief.* Relief from the provisions of this part may be sought. Requests for such relief shall be submitted in duplicate and accompanied by the appropriate fee (see 49 CFR part 1002). Packages containing applications for relief shall be prominently marked "SPECIAL TARIFF AUTHORITY APPLICATION." The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief sought.

(f) *Invalidation of tariffs.* Tariffs that violate section 13702 of the Act, or a regulation of the Board carrying out that section, may be invalidated by the Board. When a tariff is invalidated, the party that filed it will be furnished a written explanation of the reasons for such action. Tariffs issued in lieu of invalidated tariffs shall so state.

§ 1312.3 Tariff contents and standards; Essential criteria.

(a) *Contents.* Tariffs filed with the Board must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms; and must be arranged in a way that allows for the determination of

the exact rate(s) and service terms applicable to any given shipment (or to any given group of shipments).

(b) *Use of multiple tariffs.* All information necessary to determine applicable rates 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 (by STB tariff designation) to all other tariffs required to determine applicable rates and service terms, and the carrier(s) party to the rates must participate in all of the tariffs so linked.

(c) *Clarity.* Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related service terms. Ambiguous terms and complex methods of presentation shall not be used.

(d) *Explanations.* Reference marks and abbreviations, other than commonly used abbreviations, shall be explained either in the item in which they are used or in a separate item.

§ 1312.4 Filing of tariffs.

(a) *Filing requirements.* (1) Tariffs shall be filed in English with rates explicitly stated in U.S. dollars and cents. Two copies of each tariff publication shall be filed with the Board. Packages containing tariff filings should be prominently marked "TARIFF FILING" and addressed to:

*Section of Tariffs
Surface Transportation Board
1925 K Street, N. W.
Washington, DC 20423-0001*

(2) A tariff filing must be accompanied by an authorized document of transmittal identifying each publication filed, and by the appropriate filing fee (see 49 CFR part 1002). Acknowledgment of Board receipt of a tariff filing can be obtained by enclosing a duplicate transmittal letter and a postage-paid, self-addressed return envelope. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

- (i) The assigned alpha code of the issuing carrier or agent;
- (ii) The number of pages transmitted;
- (iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;
- (iv) The transmittal number if the filer utilizes transmittal numbers; and
- (v) If the filing fee is charged to a credit card, the credit card number and expiration date, and an authorized signature.

(b) *Paper size.* Tariffs shall be printed on paper not larger than 8 ½ x 11 inches.

§ 1312.5 Amendments to tariffs.

(a) *Manner of making changes.* An amendment is a change in, addition to, or cancellation of part of a tariff. Supplements are the tariff publications used to amend bound tariffs, and new or revised pages are the tariff publications normally used to amend looseleaf tariffs, although looseleaf tariffs can also be amended by supplements. Tariffs can also be canceled by new or reissued tariffs (see § 1312.7).

(b) *Supplements.* Supplements issued to amend a tariff shall be consecutively numbered. Each new supplement shall identify any supplement(s) that it cancels, and any supplement(s) that are still in effect. A tariff amendment published in a supplement may be carried forward to later supplements if it is identified as reissued without change from the supplement in which it was originally published.

(c) *Looseleaf pages.* Looseleaf pages to an original tariff shall be designated as "Original" (e.g., Original Title Page, Original Page 1, Original Page 2, etc.). Looseleaf pages issued to amend the tariff shall bear consecutive revision numbers and shall cancel the prior version(s) of the same page (e.g., 1st Revised Page 1 Cancels Original Page 1, 2nd Revised Page 1 Cancels 1st Revised Page 1, etc.). Additional original pages may also be issued to amend a tariff, by adding new numbered pages after the last numbered page, or by adding existing numbered pages with alphabetic suffixes (e.g., a page designated as Original Page 2-A could be added between pages 2 and 3, etc.). Each looseleaf tariff shall include a Check Sheet, a Correction Number Check Sheet, or some other method of determining the looseleaf pages issued to amend such tariff.

§ 1312.6 Advance notice required.

(a) *Notice requirement.* Unless otherwise specifically authorized by the Board, tariffs must be filed with the Board on not less than the notice shown in paragraph (b) of this section. Notice means the number of days the publication is on file with the Board prior to its effective date(s). The date the publication is received by the Board counts as the first day of notice.

(b) *Length of notice.* A tariff may not become effective earlier than:

(1) Thirty days after filing for all collectively established tariff matter.

(2) Seven workdays after filing for independently established increased tariff matter.

(3) Upon filing for independently established new tariff matter, independently established reduced tariff matter, the addition or restoration of a carrier's participation in a tariff, a correction to the list of participating carriers in a tariff (other than the cancellation of a carrier's participation), an extension of the expiration date of tariff matter, or a postponement of the effective date of proposed tariff matter.

(c) *Receipt of tariffs by the Board.* The Board will receive printed tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern Time on workdays. Printed tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a

workday, will be considered as received the next workday. The Board will accept electronic tariff filings in accordance with the provisions of 46 CFR part 514, as provided in § 1312.17.

(d) *Definitions.* For the purposes of this section:

Increased means any tariff change that results in higher charges to the payer of freight charges or reduced service at the same rate;

New means an initial rate or other provision for a new service;

Reduced means any tariff change that results in lower charges to the payer of freight charges or expanded service at the same rate; and

Workdays means all days except Saturdays, Sundays and all Federal holidays observed in the District of Columbia.

§ 1312.7 STB tariff designation.

(a) *Format.* Every tariff shall show an authorized tariff designation consisting of:

(1) The characters "STB";

(2) The assigned alpha code of the carrier or agent issuing the tariff; and

(3)(i) The tariff number (selected by the carrier or agent) to distinguish that tariff from all other tariffs filed by the same issuing carrier or agent. Tariff numbers shall not exceed 5 numerical digits and may be followed by not more than 2 letter suffixes. Examples of tariff numbers are:

STB XXXX 100
STB XX 8000-A
STB XXXX 12345-AB

(ii) Suffixes may be used only to designate reissues of tariffs. As an example, a reissue of tariff 1000 could be designated 1000-A, a reissue of tariff 1000-A could be designated 1000-B, etc.

(b) *Alpha codes.* Alpha codes are assigned to carriers and tariff agents by the National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314.

(c) *Fees for assignment.* Fees may be assessed for the assignment of codes, but may not exceed the processing costs.

(d) *Code listing.* A list of the assigned alphabetical codes, and the names of the carriers and agents to which they are assigned, as well as subsequent changes to the list, shall be submitted to the Board's Section of Tariffs.

§ 1312.8 Identification of tariff publication. (a) Every tariff publication filed with the Board shall include:

(1) The STB tariff designation;

(2) The name of the issuing carrier or agent;

(3) The name of the tariff; and

(4) The issue and effective dates of the publication.

(b) If the publication contains matter effective on other than the general effective date, the notation (Except as Noted) shall be included with the general effective date.

§ 1312.9 Statement of tariff application and other title page requirements.

Every new or reissued tariff or supplement filed with the Board shall lead with a title page. The title page of each tariff or supplement shall include the expiration date of the tariff or supplement, if applicable. The title page of each tariff shall also provide the complete name and address of the issuing carrier or agent; a contact person and telephone number; the certificate or operating authority number, if applicable; and a succinct statement of territorial application, mode of serving carrier(s), type of rates, and description of tariff content.
EXAMPLES:

(a) Local water carrier rates on FREIGHT, ALL KINDS from points in Alaska to points in the United States.

(b) Joint motor/water commodity rates in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

§ 1312.10 Notification of tariff changes and nature of changes.

Every publication filed with the Board containing tariff changes shall clearly identify such changes and their nature (whether an increase or decrease in service, rates or transportation charges).

§ 1312.11 Special notification for ordered matter. Every tariff publication containing matter filed in compliance with a Board decision or court order shall indicate in the publication the relevant decision or order, and as well the number of days' notice authorized or required.

§ 1312.12 Posting requirements.

(a) *General posting requirements.* (1) Each carrier shall maintain, at its principal office, a complete set of its tariffs (proposed and effective) and those to which it is a party.

(2) Each carrier shall also maintain some or all of its tariffs at other locations, as may be useful. Carriers shall provide information regarding all locations where tariffs may be viewed.

(3) At all points where tariffs are posted, 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 post, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(4) 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 particular 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.

(5) Any publication referred to in a tariff must be posted with that tariff.

(b) *Exception to the posting requirements.* If any tariff maintained pursuant to paragraph (a)(2) of this section has not been used for a substantial length of time, the posting of that tariff, including its reissues, may be discontinued at that station until such time as a request is made to have it reposted. It shall then be reposted within 20 days.

§ 1312.13 Furnishing copies of tariff publications.

(a) *Definitions.* *Subscriber*, as used in this section, means any person (other than carrier participants in a tariff) that is voluntarily furnished, or that requests that it be furnished, one or more copies of a particular tariff with or without subsequent amendments or reissues of that tariff.

(b) *Sending new publications to subscribers.* (1) The publishing carrier or agent shall send each newly-issued tariff, supplement, or loose-leaf page as requested to each subscriber by first class mail, or other means requested in writing by the subscriber.

(2) Newly-issued tariffs, supplements, or loose-leaf pages shall be sent to each subscriber not later than the time the copies for official filing are sent to the Board.

(3) Carriers or agents may, if acceptable to a subscriber, furnish only specific portions of original tariffs and amendments affecting those portions.

(c) *Certification.* The letter of transmittal accompanying the copies filed with the Board shall contain the following certification:

I certify that compliance with 49 CFR 1312.13 has been made.

(d) *Charges.* (1) If any charge is made, the charge for copies of tariff publications sent to subscribers shall be reasonable, and identical for the same publications.

(2) No charge may be made (even for the cost of sending the publication) for any publication that is invalidated by the Board.

(e) *Notice of invalidation.* If a publication is invalidated, the subscribers shall be notified.

(f) *Alternative subscription services.* The service described in this section must be available to any subscriber requesting it; however, the requirement to offer such service does not preclude the offering of different services to subscribers requesting those services.

§ 1312.14 Powers of attorney and concurrences.

(a) *Authorization.* Rates and services of a carrier must be filed in a tariff issued in that carrier's name unless they are filed:

(1) In an agent's tariff when the carrier has executed a power of attorney authorizing that individual or entity to serve as its tariff agent; or

(2) In a tariff of another carrier through issuance of a concurrence to the latter carrier authorizing the first carrier's participation in joint rates and through routes.

(b) *Disclosure of authorization.* If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences to participate in joint rates in that agent's tariffs. Powers of attorney and concurrences are not to be filed with the Board, but shall be provided to any person on request.

§ 1312.15 Change of carrier or agent.

(a) *Change in carrier.* When a carrier's name is lawfully changed, or a fiduciary assumes possession and control of a carrier's property, all affected tariffs must be amended to reflect the change. The amendments required by this paragraph shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter. Regardless of the date the tariff is actually filed, the effective date for an amendment required by this paragraph is the date the event occurs.

(b) *Change of agent.* When a new agent is appointed to take over an agency, or when an alternate agent assumes the duties of the principal agent, each of the superseded agent's effective tariffs shall immediately be amended to reflect the change, bearing an effective date the same as the date of the transfer. In the case of a new agent, this may only occur after one or more of the participating carriers issues a power of attorney to the new agent, and revokes the previous power of attorney. At the same time, all affected tariffs will be amended to reflect the new powers of attorney, and all carriers who have not issued them must be canceled from the tariff.

§ 1312.16 Substitution of service.

If a water or motor carrier (hereafter referred to as Carrier A) desires to have the option of substituting the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so if:

(a) The shipment moves on the bill of lading that would be used if Carrier A were performing the service;

(b) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(c) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

§ 1312.17 Electronic filing of tariffs.

(a) *Use of FMC system.* Subject to the requirements of this section, the tariffs required by this part may be filed electronically through the Federal Maritime Commission's ATFI system, in lieu of being filed in printed form.

(b) *Compliance with FMC requirements.* All tariffs filed electronically must fully comply with the filing procedures, and the data record format and content requirements, established for the ATFI system (see 46 CFR part 514).

(c) *Fees.* Electronically filed tariffs will be subject to the filing and retrieval fees established by the FMC in 46 CFR 514.21(g) and (i), but such tariffs will not be subject to fee item 78 in 49 CFR 1002.2(f).

(d) *Relief from this part.* Electronically filed tariffs will not be subject to the filing procedures and format requirements for printed tariffs as set forth in §§ 1312.4, 1312.5, and 1312.7 through 1312.15; however, such tariffs must otherwise fully comply with the requirements of this part.