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*Before the*

DEPARTMENT of TRANSPORTATION  
SURFACE TRANSPORTATION BOARD

Amendment No. 5 to  
Released Rates Decision No. RR 999

**RELEASED RATES**  
*of*  
**MOTOR COMMON CARRIERS**  
*of*  
**HOUSEHOLD GOODS**

PETITION FOR MODIFICATION  
OF THE EFFECTIVE DATE AND  
CERTAIN OTHER PROVISIONS OF THE DECISION

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Office of Proceedings

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**EXPEDITED ACTION REQUESTED**

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AMERICAN MOVING  
AND STORAGE ASSOCIATION

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Dated: February 14, 2011

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Comes now the American Moving and Storage Association (AMSA) on behalf of its member carriers and requests modification of the effective date and certain other provisions, as enumerated herein, of the January 19, 2011 Decision of the Board, served January 21, 2011 in this proceeding.

Household goods (hereinafter "HHG") carriers have historically been liable for the loss or damage caused to property they transport. See 49 U.S.C. 14706. Because most household goods are in fact used, the extent of carrier liability was, in the past, historically limited to the depreciated value of the household goods. The Surface Transportation Board (hereinafter "STB"

or “Board”) allows HHG carriers, pursuant to prescribed terms and procedures, to limit the liability they would otherwise incur by offering so-called “released rates”, by which the value of the shipment is established by the consumer or agreed upon by the parties. See *Released Rates of Motor Common Carriers of Household Goods*, 5 S.T.B. 1147 (2001). Amendment No. 4 so authorized HHG carriers to limit their liability for loss or damage to goods by offering consumers a choice of two alternative carrier liability options based on the rate that the consumer agrees to pay for transportation of its goods.

Section 4215 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”), Pub. L. 109 – 59, 119 Stat. 1144 (2005) directed the STB to review current federal regulations addressing the level of cargo liability protection offered by HHG carriers and, if necessary, to revise the regulations to provide for enhanced loss or damage protection. In addition, Section 4207 of SAFETEA-LU in part amended the statutory cargo loss and damage scheme by requiring a carrier’s maximum liability for household goods that are lost, damaged, or destroyed to be equal to the replacement value of such goods, subject to the declared value of the shipment.

In issuing their Decision in this matter, the Board is requiring HHG carriers to include the cost of providing full value protection in the initial cost estimate and to place a revised distinctive, detailed valuation clause on the estimate form disclosing this information along with the required consumer election. In addition, the Board is increasing the minimum amount of value that will apply for shipments transported under the full value level of protection. In its Decision, the Board is requiring an April 1, 2011 effective date, along with a March 15, 2011

date for receiving further comments on the appropriateness of the revised \$6.00 per pound/\$6,000 per shipment minimum valuation amounts, leaving only a two-week period for movers to be in compliance with the new Order.

**I. IDENTITY of COMMENTOR and BACKGROUND**

The AMSA is the largest national trade association representing the segment of the motor carrier industry that specializes in household goods transportation and commercial moving and storage. AMSA has approximately 3000 members, including national and international van lines with agency networks; independent national and regional van lines; local agents affiliated with a van line network; and local unaffiliated movers. AMSA members are domiciled and provide relocation and warehousing services throughout North America and at strategic points throughout the world.

As the representative of the nation's household goods movers, we support effective government regulations and policies which enable our members to provide quality service at compensatory prices. Along with providing advocacy for consumers utilizing professional moving and storage services, we strive to furnish information that informs the public about their rights and responsibilities when they move and the value of professional moving and storage services.

**II. SPECIFIC COMMENTS**

1. Need for Modification of the Effective date of Decision. When effective, the Board Decision will require that our interstate carrier members must initiate substantial changes in the

terms under which they limit their liability for loss or damage to the interstate shipments they transport and the manner in which they advise their customers of the available shipment options. The Board's Decision makes it clear that when the changes become effective, carriers must have in place a substantially new method for offering the full value protection level of liability to their customers. In order to accomplish this, carriers will need time to put these changes into effect because –

- A) The new valuation clause must be added to all estimates which will require redesign and printing of hundreds of thousands of estimate forms. In addition, since the Decision will affect the valuation declaration provided on the Bill of Lading form, or alternatively the Order for Service form, it will also require redesign and reprinting of hundreds of thousands these forms as well<sup>1</sup>. Even for carriers that use electronic versions of these forms, the Board's Decision will represent a significant undertaking in the form of reprogramming effort and expense.
- B) A significant educational effort must also be undertaken by carriers to inform and train their customer service and sales force representatives about the Board's Decision and their responsibilities when presenting and discussing the valuation options and limitations of carrier liability with their customers. This effort is essential and must be accomplished with a sufficient "lead time" since household goods shipments are normally booked well in advance of the consumers' desired

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<sup>1</sup> The present Order, by Amendment No. 3, decided October 5, 1995, embodied at 375.505 (e), provides that the required valuation clause may be on either the Bill of Lading or alternatively the Order for Service, and if the clause is shown on the Order for Service, the Bill of Lading must show the valuation previously executed by the shipper on the Order for Service. The terms of the new Order, Amendment No. 5, changes this requirement by requiring the valuation clause only on the Estimate form.

moving dates. It is common for moves to be booked at least 90-days in advance; so sufficient lead time must be allowed for these changes to be reflected.

- C) In addition, we are concerned that the information provided in the FMCSA's required publication, "*Your Rights and Responsibilities When You Move*" will not correspond to the terms of the Board's Decision and, as such, will cause substantial confusion among consumers who compare the information in the FMCSA brochure with the information provided by the mover in complying with the Order. Modifying the effective date of the Order will allow the essential time needed for the FMCSA to consider accompanying revisions to their Rights and Responsibilities brochure. At a minimum, the Board's Decision should permit movers to amend the information provided to correspond with the terms of the Order until such time as the FMCSA publication is revised to reflect the new Order.

**In consideration of the foregoing, this Petitioner respectfully requests that the current Decision effective date of April 1, 2011 be modified to read not later than<sup>2</sup> November 1, 2011. This would permit implementation of the required changes after the summer cycle of business when movers are the busiest. Traditionally, the summer season represents at least fifty (50%) percent of a mover's business. During this busy time, movers have little time or resources available to devote toward changes in their documentation and administrative procedures.**

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<sup>2</sup> Our member carriers operate with varying levels of sophistication; some are more technologically advanced than others. The "not later than" terminology will permit movers who elect to do so to implement the new provisions prior to the effective date if they so choose.

2. Need to Modify the Wording and Format of the Valuation Clause. AMSA agrees that certain revisions are necessary to reduce confusion on the part of household goods consumers and inject a needed measure of certainty and reassurance to those who use the services of household goods movers, as well as to the movers themselves. We agree that consumers should receive information about their valuation choices prior to moving; however, we are concerned both 1) that the wording of the new disclosures required to be placed on the estimate could appear highly technical to a consumer unfamiliar with moving and legal terms; and 2) that requiring consumers to make the valuation election so early in the move process could cause them to make uninformed decisions.

**- Wording of Required Disclosures**

We are concerned that the length and breadth of the wording provided may discourage consumers from reading the statement in its entirety before making a binding choice. Consumers tell us that they are overwhelmed by the number, length of, and complexity of the documents that they are presented by movers. The new disclosures effectively duplicate the valuation information already provided to consumers and the technical legal verbiage required will not encourage consumers to read these disclosures.

We do accept the concept that some form of valuation disclosure should be provided to consumers on the estimate form. However, we believe that a shorter disclosure, using less legal and technical wording could effectively provide notice of the consumer's valuation choices and point them to other sources (some of which movers are already required to provide) that provide a more thorough explanation. For example:

- Today, consumers are already provided the “Your Rights and Responsibilities When You Move” pamphlet prior to making a final valuation selection on their bills of lading<sup>3</sup>. This pamphlet provides several pages of general information about valuation choices. Many movers also include appendixes in these pamphlets providing additional information about valuation unique to their own programs. Movers can be fined by the FMCSA for failing to provide this pamphlet to all prospective moving customers.
  
- The FMCSA also provides an online informational brochure titled, “Understanding Valuation and Insurance Options.” The link to this brochure on the FMCSA consumer website could be listed on the estimate (rather than a lengthy paragraph using potentially confusing wording) as another source of information for consumers to be educated about valuation.

**- Timing of Valuation Election**

We don’t object to providing full and helpful information to customers about valuation at the beginning of the move process. However, we are questioning the timing of requiring consumers to make such an important decision immediately after being presented with the large volume of highly technical information soon-to-be required by the STB.

In fact, courts have held that movers must provide consumers with both reasonable notice of the limitation of liability and the opportunity to obtain information necessary to making a

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<sup>3</sup> 49 CFR. 375.213 and 49 USC 14104(b)(2).

deliberate and well-informed choice. (See *Johnson v. Bekins Van Lines Co.*, 808 F. Supp. 545 E.D. Tex 1992.) We note that consumers today, under the current scheme, make their final valuation election on the bill of lading contract after they have had time to ask questions and fully read the information provided. We also firmly believe that consumers should be permitted to change their valuation selection on the moving contract (bill of lading) right up until the time that their shipments are loaded onto a moving van.

The STB's new rules require that consumers make their valuation election up front when the estimate is given, while they're still gathering information, competitive rates and making initial moving decisions. Given the complexity of the new disclosures, consumers may feel overwhelmed at being asked to make such an important decision without more time to read and consider the information provided, to ask meaningful questions and to fully contemplate their options.

**We suggest that permitting movers to provide shorter disclosures regarding valuation choices on the estimate – with guidance as to where find more detailed information (FMCSA pamphlets and brochures already available) – is a less-threatening alternative for consumers. And we ask that the STB either provide shorter disclosures using less technical and legal jargon, or provide a list of required information so that movers will be able to write their own disclosures (as they did in prior orders), so long as the substance of the STB required information is easily discernable from within the movers' disclosures. And finally, we recommend that consumers should not be asked to make the valuation election at the time of the estimate.**

**- Format of New Disclosures**

The format of the new disclosures presents difficulties for movers and consumers for a variety of reasons:

- **Size:** movers have long labored to revise their consumer moving documents to make them shorter and easier to understand for consumers. The structured, lengthy format of the new disclosures make them incompatible with the movers' shorter, more consumer friendly documents.
- **Image:** Movers spend huge resources on, and should be permitted to control, their brand image to consumers. Consumer paperwork – especially the estimate – is a reflection of the mover's brand since the estimate is the form provided to consumers as they are making their purchase decision. The required format of the new disclosures will appear awkward in the movers' new streamlined, modern estimates.
- **Incompatibility:** Movers, like the rest of commercial industry, are moving away from paper documents and towards electronic documents. This more streamlined way of doing business is popular with consumers. The required format of the new disclosures is incompatible with electronic documents and electronic acceptance of documents (permitted by federal laws and now specifically recognized by the FMCSA – see: Regulatory Guidance Concerning Electronic Signatures and Documents, Federal Register: January 4, 2011, Volume 76, Number 2, Pages 411-414).

- **Environment:** Among several reasons that movers are moving to shorter paper documents or electronic documents is that lower paper consumption is good for the environment and often demanded by customers. This purpose is frustrated by the required format of the new disclosures as they will require movers to increase the size of their document by several pages or to abandon electronic documents due to the required format of the new disclosures.
  
- **Font Size:** 12 point font is rarely used on government, business or consumer documents. Its required use in moving documents is unfair and unnecessary. According to the FMCSA, the minimum font size following the General Services Administration (GSA) guidelines in the "Standard and Optional Forms Procedural Handbook" is a font size of 7 points for all standard Federal forms and documents. See Final Rule: Brokers of Household Goods Transportation by Motor Vehicle, Federal Register: November 28, 2010, Volume 75, Number 228, Pages 72987-72999.

**We suggest that movers be permitted to re-format the required disclosures to better meet the goals identified above, so long as the required information is presented in the consumer disclosures. It is reasonable to require that the disclosures be in a conspicuous place on the estimate form, as well as distinguished by a different color, font, or other means of drawing attention to the disclosures. And we further suggest that the 12-point font requirement be eliminated and replaced with a requirement that the disclosures be**

printed in a font size that is readily and easily readable and is at least the same size as all other information printed on the estimate.

- **Enforceability of Movers' Limitations of Liability**

It is likely that the established, reliable rules relied upon by movers regarding the enforceability of their limitations of liability will be challenged because the new rules change how consumers will make their valuation choice.

In determining the enforceability of movers' limitations of liability, courts consistently look for the consumer to knowingly make their valuation election on the bill of lading since that is the contract for the move. The standard for determining whether a consumer agreed in writing to limit the mover's liability was discussed in Chandler v. Aero Mayflower Transit Co., Inc., 374 F.2d 129 (4th Cir. 1967). There, the court stated, "**Congress no doubt used the words to indicate that a consumer should agree in the same sense that one agrees or assents to enter into a contractual obligation.**" *Id.* at 135 (emphasis supplied). *See also, New York, N.H. & Hartford R. Co. v. Nothnagle*, 346 U.S. 128 (1953). Accordingly, courts require that, to be enforceable, a mover's "limitation of liability must be brought to the attention of the consumer **before the contract is signed, and the consumer must be given a choice to contract**, with or without, the limitation of liability in the movement of his goods. Chandler, supra, at 137 (emphasis supplied).

The concern with the STB's requirement that the customer's valuation election be on the mover's estimate (besides concerns related to timing and lack of time for the consumer to

understand his or her choice, *above*) is that an estimate is not a contract. Instead, as is clearly understood in the industry, the bill of lading is the contract for the move. Accordingly, under the scheme ordered by the STB, customers will no longer be knowingly contractually agreeing to limit their mover's liability since the form that they are signing is not, nor was ever intended to be a contract. Under current law, courts will not enforce a contractual limitation of liability if no contract to limit the liability exists and the estimate is not a contract.

It appears that the STB attempts to address this problem by pointing out that the estimate is incorporated by reference into the bill of lading<sup>4</sup>; thus eventually incorporating the consumer's agreement into the moving contract. However, we believe that in a consumer moving transaction the courts may be reluctant to enforce an agreement to limit the movers' liability if the consumer was unaware at the time that he or she signed the estimate that its terms would later evolve into a legally enforceable contract. In *Chandler*, the court opined that, "[o]ne who signs a contract in the absence of fraud or deceit cannot avoid it on the grounds that he did not read it or that he took someone else's word as to what it contained. **But an agreement signed under the belief that it is an instrument of a different character is void, ...**" *Chandler, supra* at 136 (emphasis supplied). Therefore, we have significant concern that courts would not enforce a customer's valuation election on an estimate – even if later incorporated by reference into the bill of lading – since the estimate is not understood by the consumer or the industry to be a contract. This is

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<sup>4</sup> See Amendment No. 5 to Released Rates Decision No. RR 999, "Released Rates of Motor Common Carriers of Household Goods," decided January 19, 2011 ("A current FMCSA regulation provides that a carrier's written estimate becomes an integral part of the bill of lading for a shipment. 49 CFR § 375.505(b)(14). Thus, the valuation statement and dollar estimates we are requiring to be placed on the written estimate ultimately will also be part of the bill of lading.")

bolstered by the fact that a customer's signature on the estimate is merely an acknowledgement of his or her receipt of the estimate.

**Accordingly, we recommend that the disclosures on the estimate be just that – disclosures providing information about the valuation choices available to consumers; further, that the valuation declaration be made by the consumer on the bill of lading, or alternatively the Order for Service, and if the clause is shown on the Order for Service, the Bill of Lading must show the valuation previously executed by the shipper on the Order for Service, consistent with the terms of the present Order, Amendment No. 3, decided October 5, 1995.**

**- Minimum Valuation Charges**

We agree with the STB's decision to increase the minimum dollar value of the Full Value Protection option from \$4.00 to \$6.00 per pound, times the weight of the shipment. Many movers have independently already taken this step and consumers have responded positively.

However, we believe that it would be harmful to consumers if the STB established the minimum Full Value Protection level in excess of the \$6.00 level; as the cost for any such increase would make the Full Value Protection option cost-prohibitive to customers. We are concerned that increasing the minimum level of Full Value Protection – and thus the equivalent increase in associated charges – may lead some consumers (i.e., those on fixed or limited incomes, those with smaller shipments or shipments that are not highly valued) to be forced to elect the “included” minimum valuation option of \$.60 per pound, per article because the

increase in tariff valuation charges places the Full Value Protection option out of their financial reach.

Consumers who require a higher dollar value of mover liability, and who can afford to pay more, will not be harmed by leaving the minimum Full Value Protection at the \$6.00 level. Recall, the \$6.00 level is only the minimum value for Full Value Protection, meaning that consumers cannot obtain less Full Value Protection than at that dollar value. Consumers may declare a higher lump-sum amount than the amount calculated using the \$6.00 formula for the minimum amount of Full Value Protection.

Consumers also have other options – they can release their shipment at the \$.60 per pound, per article option and use insurance. In its December 2001 Order<sup>5</sup>, the STB cited evidence presented by the now disbanded Household Goods Carriers' Bureau Committee that approximately one-third of moving customers elect the minimum level of carrier liability because they have alternate sources to pay for damages to their goods:

- Approximately 51% of the customers choosing the minimum liability option were national account customers; whose national accounts made their own insurance arrangements to reimburse employees or transferees for loss or damage to the extent that it exceeded the movers' liability limits;
- The remaining "C.O.D." customers had higher shipment weights on average than other individual shipping customers who chose the higher level of carrier liability option

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<sup>5</sup> See Amendment No. 4 to Released Rates Decision No. MC-999, "Released Rates of Motor Common Carriers of Household Goods," decided December 18, 2001.

available at that time; the Committee theorized that those customers elected the minimum valuation level because they also had other sources (like homeowners' insurance policies) to reimburse them for loss or damage greater than the \$.60 per pound, per article limitation.

**With these factors in mind, we recommend that the STB maintain the minimum level of carrier liability under the Full Value Protection option at the proposed values of either a lump-sum of \$6,000, or a value calculated at \$6.00 times the weight of the shipment, whichever is greater, that are subject to slight departures, in conformity with the STB's former Decision in this regard<sup>6</sup>.**

3. Freight Forwarders of Household Goods. The STB decided that the new valuation disclosures and minimum levels of Full Value Protection will not apply to freight forwarders offering the COGSA levels of liability for their international or noncontiguous-domestic-trade shipments of household goods. Instead, the STB provided a separate disclosure for such freight forwarders of household goods to place on their bills of lading.

What remains unclear is whether the STB intended for the new valuation disclosures and minimum levels of Full Value Protection apply to freight forwarders of household goods for their domestic trade shipments.

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<sup>6</sup> Amendment No. 4 to Released Rates Decision No. MC-999, decided April 19, 2002, clarified that carriers could independently establish full value liability provisions that are slightly different from those provided in the Order.

**We ask that the STB provide clarification regarding whether the rules adopted in Amendment 5 to Released Rates Decision No. RR 999 also apply to freight forwarders of household goods for their domestic trade shipments.**

### **III. CONCLUSION**

AMSA respectfully submits its petition for modification and clarification of the provisions described herein. Further, we request expedited action on this petition. The fact that the effective date of the Board's Decision will trigger implementation of the new released valuation standards, along with a plethora of associated changes throughout each carrier's operation, requires that the effective date be known as soon as possible since all shipments after that date must conform to the new requirements. And as previously explained, this situation is necessitated by the fact that household goods shipments are normally booked well in advance of their tender date and shipment valuation decisions will now be made earlier in the moving process at the time of booking on the estimate form.

In summary AMSA is generally in support of the concepts underlying the STB Decision in Amendment No. 5 as discussed herein. However, we request that consideration be given to amending the wording, formatting and placement of the valuation disclosure for simplification, clarification and better understanding; maintaining the written election on the bill of lading to sustain enforceability; making the format optional to permit carriers to display the required information in a manner consistent with electronic applications, carrier marketing image and environmental sustainability. We support the Full Value Protection level of liability amount of \$6.00 per pound, subject to a minimum valuation of \$6,000 per shipment, as provided in the

Decision with carriers able to individually offer deductible levels of Full Value Protection liability on an optional basis. And finally, we request that the effective date of the revised Order be modified to November 1, 2011 to give carriers adequate time to incorporate the terms of the Decision throughout their operation.

For the foregoing reasons, AMSA respectfully petitions the Board for consideration of the matters presented herein. We submit that adopting these suggestions as detailed above will help to better serve and inform consumers who use the services of the nation's household goods movers; will help minimize valuation misunderstandings that may arise when movers are engaged; will help reduce the resultant complaints from consumers; and will allow movers to streamline their operations while meeting their statutorily- and administratively-prescribed obligations.

Respectfully submitted,

AMERICAN MOVING AND STORAGE ASSOCIATION



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By: PAUL C. OAKLEY  
Senior Vice President - Government Affairs

Dated: February 14, 2011

I, Paul C. Oakley, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. As executed on February 14, 2011.

AMERICAN MOVING AND STORAGE ASSOCIATION



By: PAUL C. OAKLEY  
Senior Vice President - Government Affairs

I further certify that I have on this 14<sup>th</sup> day of February 2011 served all parties of record in this proceeding with this document by United States first class mail properly addressed with postage prepaid.

AMERICAN MOVING AND STORAGE ASSOCIATION



By: PAUL C. OAKLEY  
Senior Vice President - Government Affairs