

STB EX PARTE NO. 538

DISCLOSURE AND NOTICE OF CHANGE
OF RATES AND OTHER SERVICE TERMS
FOR PIPELINE COMMON CARRIAGE

49 CFR Part 1305

Decided June 27, 1996

AGENCY: Surface Transportation Board

ACTION: Final Rules.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff requirements formerly applicable to pipeline carriers transporting commodities other than water, gas or oil. Instead, the ICCTA imposed certain obligations to disclose rates and service terms, as well as a requirement for advance notice of an increase in such rates or a change in service terms. The ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board adds a new part 1305 to its regulations for that purpose.

EFFECTIVE DATE: These rules are effective August 4, 1996.

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

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred to the Surface Transportation Board (the Board) the responsibility for regulating transportation by pipeline of commodities other than water, gas, or oil, effective January 1, 1996. As pertinent here, the ICCTA eliminated the requirement of former 49 U.S.C. 10761 and 10762 that pipeline carriers transporting those commodities maintain and file tariffs containing their rates, charges, and service terms. Nevertheless, new 49 U.S.C. 15701 requires both the disclosure of pipeline

1 S.T.B.

rates and service terms and advance notice of certain changes to those rates and service terms.

Accordingly, on March 14, 1996, we served an advance notice of proposed rulemaking (ANPR) in this proceeding and published at 61 Fed. Reg. 10,526 (1996), seeking public comment on appropriate regulations for that purpose. In response, we received comments from Koch Pipeline Company, L.P. (Koch); MAPCO Ammonia Pipeline Company (MAPCO); and the Fertilizer Institute (TFI). After considering the comments, we served a notice of proposed rulemaking (NPR) on May 13, 1996, and published at 61 Fed. Reg. 24,474 (1996), proposing regulations to implement the disclosure and notice requirements of new 49 U.S.C. 15701.

Comments in response to the NPR were received from CF Industries, Inc. (CF) and TFI. Both CF and TFI request the Board to enlarge from 20 days to 90 days the advance notice required for pipeline rate increases, and TFI requests certain additional changes and clarifications in the proposed regulations.

1. *The Notice Issue.* CF and TFI both maintain that a 90-day notice period for proposed rate increases or changes in service terms is needed to enable a shipper to fully assess the potential impact of a rate increase or change in service terms,¹ and to examine and secure alternative transportation where available and more desirable. We do not believe that a 90-day notice period is necessary, or that it would be consistent with the statutory design.

Prior to the ICCTA, pipeline carriers were entitled to implement rate increases, rate reductions, and other tariff changes only after 30-days' notice. In the ICCTA, Congress reduced that notice period to 20 days for rate increases and service term changes, and eliminated it altogether for rate reductions. While the ICCTA gave us the ability to modify the 20-day period specified in the statute,² the shippers here have not justified an increase that would *treble* the advance notice previously required of pipeline carriers and *more than quadruple* the reduced notice recently set by Congress.

¹ TFI states that it agrees with the Board's decision to require advance notice for all changes in service terms except for changes that are equivalent to rate reductions.

² There is no legislative history explaining how Congress expected us to exercise our authority to modify the notice period. We note, however, that the provisions authorizing the ICC to modify notice periods (*e.g.*, former 49 U.S.C. 10762(d); former 49 U.S.C. 10505) were invariably used to *reduce* rather than to increase, otherwise applicable notice periods.

Requiring 90-days' advance notice for rate increases would impose a substantial regulatory burden on carriers that is not warranted on the record in this proceeding. Other regulatory remedies, most notably reparations, are available and fully adequate to protect pipeline shippers from unreasonable rate levels or unreasonable service terms.

2. *Responses to Rate Information Requests.* On other matters, TFI asks that we codify in the regulations themselves our expectation with regard to the requirement that a pipeline carrier respond immediately to a request for information regarding existing rates. We emphasized in the NPR that carriers must handle these requests *as quickly as possible* and that we would expect that a response could and should be sent within hours, or at the latest by the next business day, in most situations. We will include this expectation in the regulations.

When a shipper requests a carrier to establish a new rate (because existing rates are not applicable or appropriate for the shipment(s) to be tendered), the carrier is required to respond "promptly," which we define in the proposed regulations as not more than 10-business days. TFI asks that we reduce this time to the next business day.

We continue to believe that 10-business days is an appropriate requirement for requests for new rates. A request for information relating to existing rates requires only that the carrier determine from among its already-established rates and provisions those that would be applicable. By contrast, a request for a new rate for shipments not contemplated by the existing rate structure could require considerable analysis by the carrier, which might well require up to 10-business days. The proposed rules provide what we believe is a reasonable amount of time for carriers to establish new rates, while providing assurance that shippers will not be subjected to extensive delays.³ We will, therefore, retain the 10-day time frame that was proposed.⁴

3. *Form of Requests for Notification of Rate Changes.* TFI seeks clarification that a *separate notice* by a shipper to a carrier is not required to advise the carrier of the shipper's interest in receiving notification of rate

³ The rules encourage more prompt responses, and we expect carriers to respond to requests for new rates as promptly as feasible.

⁴ We will remove the word "appropriate" from the regulation, as it is not used in the statute and could be confusing. The requirement that a carrier respond promptly to a request for new rates is intended to apply in connection with shipments or services not contemplated in the carrier's existing rate structure. We will also modify the regulation to allow the parties to agree to a different time frame.

increases and changes in service terms. Our regulations do not contemplate that a separate notice will be required. Rather, the requester should simply make clear that it is invoking the future notice requirements of 49 CFR 1305.4, if that is what is intended. Additionally, while we will not preclude oral requests if carriers are willing to accept them, we are modifying our regulations to allow carriers to require that requests invoking the future notice requirements of 49 CFR 1305.4 be submitted in written or electronic form, if they so desire.

4. *Other Issues.* TFI further requests, as it did in its response to the ANPR, that we state specifically in the regulations that the penalty provisions of 49 U.S.C. Sections 16101 - 16106 are applicable to carrier violations of the requirements. The penalties provided for in the statute are available as a matter of law, and we see no need to reiterate them in each of our regulations.

We are further modifying the proposed regulations to encourage the use of electronic notices and responses to the extent feasible, and to require that notices of rate increases and service term changes be provided to those persons who have, within the previous 12 months, requested such notices or made arrangements for future shipments that would be subject to the increased rates or changed service terms.

The proposed rule would have required that carriers also provide notice to all persons who had made shipments during the prior 12 months at the affected rates or utilizing the affected service terms; however, such notice to previous shippers is not required by the statute, and could impose an unwarranted burden in those situations where future shipments are not expected. The modified rule will require automatic notice to persons who have already made arrangements for future shipments that will be affected by rate increases and service term changes that are scheduled to take effect before the transportation occurs. Other shippers that wish to receive notice of rate increases or changes in service terms need only make a request each year under section 1305.2 or 1305.3. This will make such notice available to any party that needs it without imposing the added costs of providing notices to past shippers that have no interest in receiving them. We do not believe that it will be an undue burden on shippers desiring such notice to request it.

We will encourage the use of electronic notices and responses by specifying in the regulations that, unless the parties agree otherwise, electronic means should be utilized where both parties have the requisite capabilities, and written means should be utilized where electronic capabilities are not available. This approach comports with Congress'

evident desire that we accommodate wherever possible the use of electronic media in making the required information available, while ensuring that neither carrier nor shipper will be required to acquire electronic capabilities simply to provide or receive such information.

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rules should result in easier access to pipeline rate and service information, and, to that extent, our action should benefit small entities.

Environment

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

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

APPENDIX

For the reasons set forth in the preamble, the Board adopts a new part 1305 of title 49 of the Code of Federal Regulations, to read as follows:

PART 1305--DISCLOSURE AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR PIPELINE COMMON CARRIAGE

Sec.

- 1305.1 Scope; definitions.
- 1305.2 Disclosure requirement for existing rates.
- 1305.3 Response to request for establishment of a new rate.
- 1305.4 Notice requirement.

Authority: 49 U.S.C. 721(a) and 15701(e).

§ 1305.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on pipeline carriers by 49 U.S.C. 15701(b) and 15701(c). Such requirements apply to pipeline carriers only with respect to the transportation of commodities other than water, gas, or oil.

(b) Except as otherwise provided in paragraph (c), the provisions of this part apply to any transportation or service provided by a pipeline carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 15301.

(c) The provisions of this part do not apply to any transportation or service provided by a pipeline carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to 49 U.S.C. 15302.

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

§ 1305.2 Disclosure requirement for existing rates.

(a) A pipeline carrier must disclose to any person, on request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by those rate(s).

(b) The information provided by a pipeline carrier under this section must be provided immediately. (It is expected that the response will be sent within hours, or at the latest by the next business day, in most situations.) Such information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) A pipeline carrier may, at its option, require that all requests submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

1 S.T.B.

§ 1305.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper, or a person acting on behalf of a shipper or a prospective shipper, requests that the carrier establish a rate in the absence of an existing rate for particular transportation, the carrier must promptly establish and provide to the requester a rate and applicable service terms. The information may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, as soon as possible, but no later than 10 business days. The time period for response set forth in this section will not apply when the parties agree to a different time period. A pipeline carrier may, at its option, require that requests submitted under this section be in writing or electronic form, or the carrier may permit oral requests.

§ 1305.4 Notice requirement.

(a) A pipeline carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions) unless 20 days have expired after written or electronic notice has been provided to all persons who, within the previous 12 months:

- (1) Have requested, under § 1305.2 or § 1305.3, the affected rates or service terms; or
- (2) Have made arrangements with the carrier for a shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be provided either in writing or in electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic form where both parties have the requisite capabilities; otherwise, it is to be provided in writing.

(c) For purposes of this section, a mailed notice is deemed "provided" on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increase in rates or charges or the change in service terms.