

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

49 CFR Part 1312

Decided May 22, 1997

AGENCY: Surface Transportation Board
ACTION: Final rule; petition for reconsideration.
SUMMARY: The Board makes technical amendments to the final rule published on April 18, 1997, to ensure that the intended application of the rule is not misunderstood with respect to electronic filing, and in all other respects denies the petition for reconsideration.

EFFECTIVE DATE: These rules are effective June 3, 1997.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565-1578. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: The Caribbean Shippers Association, Inc. (CSA), filed a petition on April 22, 1997, requesting the Board to reopen and reconsider its final rules in *Publication, Posting and Filing of Tariffs — Water Carrier*, 2 S.T.B. 188 (1997), and published at 62 Fed. Reg. 19,058 (1997). CSA contends that the Board committed legal error by impermissibly permitting carriers that utilize the Automated Tariff Filing and Information System (ATFI), an electronic tariff filing system developed by the Federal

Maritime Commission (FMC), to avoid the mandatory requirements of the posting provisions of 49 U.S.C. 13702(b)(1).¹

The provisions of 49 U.S.C. 13702(b)(1) require that carriers publish, file with the Board and keep available for public inspection tariffs containing the rates established for transportation or service in the noncontiguous domestic trade, and that the Board prescribe the form and manner of publishing, filing and keeping such tariffs available for public inspection. In our final rules, we provided that carriers could, at their election, meet the tariff requirements of section 13702(b)(1) by using FMC's ATFI system, and by following all of the posting and filing rules contained in the FMC's regulations at 46 CFR part 514.² Our regulations provided that noncontiguous domestic trade tariffs properly filed through the ATFI system would be deemed to be filed with us.³

In seeking reconsideration, CSA asserts that the posting requirements in 46 CFR part 514 are not applicable to electronic tariffs filed with the Board, but that, if they are, they do not comport with the requirements of section 13702(b)(1). CSA's position is incorrect.

At the outset, it is clear from our final rules that the posting requirements in 46 CFR part 514 apply to ATFI tariffs filed with the Board. Indeed, CSA cites in its petition a portion of the discussion in our decision that makes such intent abundantly clear. Nevertheless, to remove any doubt, we will modify paragraphs (b) and (d) of § 1312.17 to specifically include the word "posting." These amendments, which further clarify what we believe were already clear regulations, will become effective upon publication.

CSA also seems to assert that the FMC's posting requirements, which we have adopted verbatim in the revised regulations, do not satisfy the law, and it asks that we modify them to "make it very clear that U.S. governmental ATFI

¹ Prior to October 1, 1996, the requirements for electronically filed tariffs in the noncontiguous domestic trade were administered by the FMC. On October 1, 1996, in conjunction with the *ICCTA's* transfer of jurisdiction over port-to-port water carrier transportation in the noncontiguous domestic trade from FMC to the Board, the FMC requirements were adopted for tariffs filed electronically with the Board. See, *Electronic Filing of Noncontiguous Domestic Trade Tariffs*, 1 S.T.B. 635 (1996).

² The conference report accompanying the *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 103 (1995) (*ICCTA*), urged the Board to continue the FMC's practice of allowing carriers to file their noncontiguous domestic trade tariffs electronically. H. R. Rep. No. 422, 104th Cong., 1st Sess. 206 (1995).

³ The Board and the FMC entered into an interagency agreement to provide for the use of the ATFI system for tariffs covering services subject to the Board's jurisdiction.

charges may not be assessed by the carriers for the posting compliance required by section 13702(b)(1).” CSA’s point is far from clear, but we will address its statement as well as we can.

At the outset, we note that the posting requirements of 49 U.S.C. 13702, which are implemented in 46 CFR 514.8, require each carrier in the noncontiguous domestic trade to “make available to the public at each facility at which it receives freight * * * for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.” 46 CFR 514.8(k)(1)(i)(B). In addition to these provisions requiring carriers to provide free access to rate information at their places of business, the general provisions of 46 CFR 514.8(k)(1)(i)(A) require that every carrier using the ATFI system “promptly make available to the public in paper or electronic form and at a reasonable charge (such as for a regular subscription under § 514.15(b)(30)) all tariff material required by this part to be filed.” All of these posting requirements apply to carriers, not to the U.S. Government.

CSA seems to equate the provisions of 46 CFR 514.8(k)(1)(i)(A), which permit carriers to charge fees for requests for tariffs other than those made by persons who appear at the carrier’s places of business, with “U.S. Governmental ATFI charges.” The governmental ATFI charges, however, are very different from permissible carrier tariff dissemination charges. The ATFI fee imposed pursuant to 46 CFR 514.21(g) for remote electronic retrieval is a charge assessed by the United States Government to recover the costs of alternative tariff access that is provided by the United States Government;⁴ it is not a charge assessed by carriers to comply with the posting requirement. The remote access for which the Government assesses a charge is not provided pursuant to the posting requirement. Rather, it is simply an alternative form of access made available by the United States Government to persons who might prefer to obtain tariff information from the Government rather than from the carrier pursuant to the posting requirement.

CSA appears to suggest, as it did in its response to the notice of proposed rulemaking (NPR) served December 20, 1996, and published at 61 Fed. Reg. 67,291 (1996), that no shipper should ever have to pay for any rate information

⁴ As in the case of printed tariff information available at the Board’s office, any person may obtain free access to noncontiguous domestic trade ATFI tariffs at the Board’s office. However, as is the case with copies of printed tariffs, ATFI tariffs that a person requests from a remote location will be provided, but at a fee that contributes to the Government’s cost of providing the service.

on an ATFI shipment, because the carrier should be required to make electronic tariff information available to any person, through dial-up access by modem, without charge. As we noted in our prior decision, the existing FMC regulations, including the regulations permitting carriers to charge shippers for off-premise tariff information, have been in effect for many years. CSA has presented absolutely no support for its proposal to change these regulations, and we will not adopt it. The existing regulations provide means by which shippers can obtain free tariff information. To require carriers to adapt their existing systems so that any shipper can obtain free tariff information by modem would clearly entail additional costs. As the existing regulations plainly provide all that is required under the statute,⁵ and as CSA has not even attempted to show why the carriers, rather than CSA's members, should bear the cost of rate dissemination beyond that required by the statute, CSA's petition for reconsideration will be denied.

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

49 CFR Part 1312

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

By the Board, Chairman Morgan and Vice Chairman Owen.

⁵ We have reviewed the posting requirements set forth at 46 CFR 514.8(k)(1)(i)(A) and (B), and we conclude that they fully comport with the requirements at 49 U.S.C. 13702(b)(1).

APPENDIX

For the reasons set forth in the preamble, title 49, chapter X, part 1312 of the Code of Federal Regulations is amended 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

1. The authority citation for part 1312 continues to read as follows:

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

2. In § 1312.17, paragraphs (b) and (d) are revised to read as follows:

§ 1312.17 Electronic filing of tariffs.

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

(d) *Relief from this part.* Electronically filed tariffs will not be subject to the filing and posting procedures, and the 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.

2 S.T.B.