

SURFACE TRANSPORTATION BOARD REPORTS

STB EX PARTE NO. 580

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

Decided January 26, 1999

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) revises its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission's (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs in alternative electronic formats.

EFFECTIVE DATE: These rules are effective May 1, 1999.

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

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served on December 2, 1998, and published at 63 Fed. Reg. 66,521 (1998), the Board proposed to revise its tariff filing regulations to eliminate the option to file tariffs with the Board electronically through the FMC's ATFI system. The action was proposed because the Ocean Shipping Reform Act of 1998, Pub. L. No. 105-258, 112 Stat. 1902 (1998) (OSRA), will eliminate the requirement that ocean carriers file their tariffs with the FMC effective May 1, 1999, and, in these circumstances, the FMC will not be accepting new ATFI tariff filings on or after that date. As explained in the NPR, the use of ATFI to

file tariffs with the Board has always been predicated upon the basic system being operated and maintained by the FMC to support its own tariff filing requirements, and, with FMC's discontinuance of the system, it will no longer be available for carriers to use to file their tariffs with the Board.

Comments in response to the NPR were received from South Seas Steamship Line (South Seas) and Tropical Shipping & Construction Co. Ltd. (Tropical).¹ Both commenters note that, while OSRA eliminates FMC's tariff filing requirements, it continues to mandate that carriers publish their tariffs in private, automated systems which must comport with requirements to be established by the FMC. They suggest that the Board delay taking any action to revise its regulations until the FMC adopts final rules for the automated systems, in order to facilitate as much commonality as possible between the respective agencies' requirements. South Seas acknowledges that the "publication of tariffs" is not equivalent to the "filing of tariffs with a government agency," but it suggests that the publication requirements to be adopted by the FMC might assist the Board in connection with amending its rules.

Upon consideration of the comments, we have determined to finalize the regulations as proposed. The revisions do not establish requirements for future electronic tariff filings; rather, they merely eliminate the option to use ATFI, and there is no disagreement that ATFI will cease to be available for new filings effective May 1, 1999. As we stated in the NPR, we encourage electronic tariff filing and we will be receptive to alternative electronic tariff filing proposals from interested carriers. Further, we share the commenters' concerns that tariff filing and publishing burdens be minimized, and we will relax those burdens to the extent possible. However, termination of the ATFI system for noncontiguous domestic trade filings, which is all that our proposal contemplates, will have no effect on our ability to meet our objectives.

For several reasons, we do not believe that we should postpone any new rules we issue pending adoption of final rules by the FMC. First, there could be some differences in future FMC and Board tariff requirements. Indeed, the statutory requirement to file noncontiguous domestic trade tariffs with the Board will continue, whereas the requirement to file foreign tariffs with the FMC will be eliminated, and, in fact, FMC's new regulations will no longer even address tariff filing. Second, unlike FMC's existing regulations, which require all carriers to file tariffs through ATFI, FMC's proposed regulations will permit

¹ South Seas currently files its tariffs with the Board electronically through ATFI, and Tropical currently files printed tariffs with the Board.

carriers to design and use appropriate private tariff publishing systems they choose, so long as minimum requirements are met, and it is unclear at this point how much commonality may exist among the various individual carrier systems. Thus, while we understand commenters' point about facilitating commonality, we also believe that we should provide carriers with the flexibility to design the tariff filing systems that will best meet their needs, and the needs of their customers, by inviting special tariff authority requests for whatever proposals individual carriers wish to pursue. It may become desirable to adopt specific regulations governing electronic tariff filings at some point in the future, but adoption of formal regulations at this point could prove to be more limiting than helpful. Finally, as we indicated in our earlier notice, we are not planning to adopt rules, but rather to address electronic tariff requests on a case-by-case basis. Thus, any procedure allowed under the FMC's rules can, if appropriate, be approved for use in the noncontiguous domestic trade through a grant of special tariff authority.

Small Entities

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules eliminate the option to file tariffs electronically through the FMC's ATFI system, but many carriers already opt to file printed tariffs, and any cost differences for alternative tariff filing methodologies that carriers may propose are unlikely to be significant.

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 Clyburn.

APPENDIX

For the reasons set forth in the preamble, the Board revises part 1312 of title 49, chapter X, of the Code of Federal Regulations 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 § 1312.1(c), the definition of "ATFT" is removed.
3. Section 1312.6 is amended by revising paragraph (c) to read as follows:

§ 1312.6 Advance Notice Required.

(c) *Receipt of tariffs by the Board.* The Board will receive tariff filings between the hours of 8:30 a.m. and 5:00 p.m., Eastern Time, on workdays. 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.

4. Section 1312.17 is removed.