AMENDMENT NO. 4
TO
RELEASED RATES DECISION NO. MC-999

RELEASED RATES OF MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS

Decided December 18, 2001

The Surface Transportation Board grants the request of the Household Goods Carriers' Bureau Committee for an amendment to its existing released rates authority, subject to conditions that carriers print information on the bill of lading directing shippers to an up-to-date brochure explaining the cargo liability options offered by carriers.

BY THE BOARD:

The Household Goods Carriers' Bureau Committee (the Committee), which is composed of motor carriers of household goods, seeks authority to change the terms under which its member motor carriers may limit their liability for damage to, or loss of, household goods in their care. Under the proposed amendment, a carrier would provide household-goods shippers with two options concerning the level of cargo liability to be assumed by the carrier, depending upon the level of the rate that the shipper wishes to pay for the transportation of its goods. Under one option, the carrier's cargo liability would be limited to 60 cents per pound, per article, and the shipper would pay only a base rate for the shipment. Alternatively, for an additional charge, the shipper could obtain "full value protection" for the shipped goods, meaning that the carrier would be liable for the replacement value of lost or damaged goods (up to the pre-declared value of the shipment). In a prior decision, we solicited public comments. After reviewing the comments received, we now approve the proposed amendment, subject to the conditions imposed here. The changes should result in a simpler and clearer process for a household-goods shipper to select the level of the motor carrier's cargo liability, based upon the rate the shipper is willing to pay.

BACKGROUND

The Statute.

Under 49 U.S.C. 14706(a)(1), motor carriers of household goods are generally held liable for the actual loss or injury that they cause to the property they transport and, because most household goods are "used," the carrier's liability has historically extended to the depreciated value of the goods. However, under 49 U.S.C. 14706(f), household-goods carriers may limit their liability by offering "released rates" (rates under which the carrier is released from the statutory level of cargo liability).

The Existing Released Rates Scheme.

In *Released Rates of Motor Common Carriers of Household Goods,* 9 I.C.C.2d 523 (1993), our predecessor, the Interstate Commerce Commission (ICC),[1] approved a plan under which household-goods carriers now offer varying levels of cargo liability based upon the rate paid for a shipment. Under that plan, a shipper obtains the lowest (base) rate when the shipper agrees, by indicating in writing on the bill of lading, that the carrier's liability will be limited to 60 cents per pound, per article for goods lost or damaged (but in no event more than the actual depreciated value of the item).

A second option available under the plan approved in 1993 allows shippers to protect the actual (depreciated) value of lost or damaged goods (up to the declared value of the shipment), by paying the base rate plus a charge of 70 cents for each $100 (or fraction thereof) of the total value of the shipment, as declared by the shipper in advance of the shipment. (There is a minimum value of $1.25 per pound if the shipper's declared value is less than $1.25 times the number of pounds in the shipment.) The rates charged under either of these options are set by motor carriers acting collectively through the Committee.

Some carriers, acting individually outside the Committee, now also offer a third liability option. Under this full value protection (FVP) option, the carrier is liable for the replacement value of items, up to the declared value of the

[1] In the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (Dec. 29, 1995), Congress abolished the ICC and transferred some of its regulatory functions to the Surface Transportation Board (the Board) and other of the ICC's regulatory functions to the Department of Transportation. As pertinent here, the Board has regulatory oversight of collective activities by motor carriers, 49 U.S.C. 13703, and of motor carriers' permission to offer released rates, 49 U.S.C. 14706(f).

shipment. When goods are damaged rather than lost, the carrier has the option of paying either the cost of repairs (to restore the damaged goods to their prior condition) or the cost of replacement.

The New Proposal.

The Committee now proposes to retain the first option (the 60-cent limitation on liability), but to replace the current depreciated value option with a replacement-value option. Also, the minimum declared value for shipments would be raised from $1.25 to $4 times the weight of the shipment (in pounds).

In a decision published at 65 Fed. Reg. 67,472 (2000), we sought comments concerning several aspects of the proposal and asked the Committee for more information. We received comments and information from the Committee, the National Association of Consumer Agency Administrators (NACAA) and the Inland Marine Underwriters Association (IMUA).[2] We discuss below the matters on which we sought comment or further explanation.

DISCUSSION AND CONCLUSIONS

Retention of 60-Cent Limitation.

In our earlier decision we asked whether retention of the 60-cent liability limitation is appropriate in view of the Committee's recent estimation that the average value per pound of household-goods shipments is now about $4.50. NACAA argues that, if the Committee's estimate is accurate, the minimum carrier liability should be increased to $4 per pound.

The Committee argues for retention of the 60-cent limitation in order to keep the base line-haul rates — which rose less than 1% per year between 1992 and 2000 — low. Committee Comments, Habib Statement at 3. The Committee explains that the 60-cent limitation was never intended to represent the actual value of household goods, citing *Practices of Motor Common Carriers of Household Goods*, 95 M.C.C. 138 (1964), and 96 M.C.C. 196, 199 (1964). Rather, from its inception, the 60-cent limitation reflected a very low liability limit in exchange for very low rates for transporting the goods.

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[2] The Committee sought leave to file reply comments, and no one objected to the request. IMUA, however, sought leave to file a response to the Committee's reply. The Committee then moved to strike IMUA's response as an impermissible "reply to a reply" under 49 CFR 1104.13(c). We will accept the submissions.

The Committee maintains that shippers who are willing to accept this very low limitation on carrier liability in return for very low rates should have that option. It notes that about one-third of the shipping public chooses this option. In fact, the percentage of household-goods shippers that choose the 60-cent limitation has remained relatively constant, declining only slightly, from 33.1 to 31.2% between 1985 and 1996. Application at 6, Table 1.

The Committee argues that shippers select this low limitation of liability when they have an alternate source to pay for damage to their goods. The Committee cites its own 1996 study, which showed that 51% of the shippers that chose the 60-cent limitation were national account shippers (large employers paying for the relocation of their employees). Application at 21-22; Committee Comments at 8. The national account shippers make their own insurance arrangements to reimburse their employees for loss or damage to the extent that it exceeds the motor carrier's liability limit. *Id.* Further, the same study showed that of the remaining shippers — who are referred to as cash-on-delivery (C.O.D.) shippers — those who selected the 60-cent limitation had higher shipment weights on average than C.O.D. shippers who chose the $1.25 level of carrier liability. Committee Comments at 8-9; Habib Statement at 4. The Committee theorizes that the shippers of higher-weight loads selected the lower limit on carrier liability because those shippers also had other sources to reimburse them for loss or damage greater than the 60-cent limitation.

We are persuaded that we should permit the 60-cent liability limitation to be retained so that knowledgeable shippers who do not wish to pay for additional liability coverage can obtain the lowest possible base rates. We are concerned, however, that some householders may be steered to "select" the 60-cent limitation without knowing the total value of their household goods and without other coverage for any loss or damage.

Under the Committee's proposal, as under current procedures, a shipper would have to specifically request the 60-cent liability limitation, in his or her own handwriting on the bill of lading. However, according to the NACAA, there are various ways in which unscrupulous carriers deceive shippers regarding liability. The NACAA reports that some carriers falsely state that the 60-cent level will be sufficient to protect the householder's goods. Other carriers, according to the NACAA, do not explain the liability options, do not distribute the required educational materials,[3] or simply instruct the shipper to check off

[3] Under 49 CFR 375.2, now administered by the Federal Motor Carrier Safety Administration (FMCSA), household-goods carriers must provide their customers with the brochure, ***Your Rights*** (continued...)

"basic" on the bill of lading (which serves to release the carriers' liability to 60 cents per pound, per article).

NACAA suggests that, to help consumers understand their options, we should require that the bill of lading include, in clear and conspicuous type: (1) a summary of the household-goods shipper's rights, not only as to liability options but also as to such matters as delivery date options, binding and non-binding estimates of cost, space reservations, and exclusive use of a vehicle;[4] (2) a reference to the required brochure, which explains those rights in more detail (*see supra*, n.3); and (3) a box that the shipper must initial to confirm that the shipper has read this information and received a copy of the brochure.

We agree with NACAA that, to ensure an informed exercise of the shipper's options as to liability coverage, there should be a notice printed on the bill of lading, in large type in a prominent place, describing the liability options and requiring the shipper to acknowledge receipt of a brochure explaining those options in more detail.[5] The notice should explain in clear, simple terms that the 60-cent liability limitation covers far less than the average value of household goods. The notice should also explain in clear, simple terms that with FVP, the carrier will be liable for the replacement value of lost or damaged goods, up to the full shipment value declared by the shipper or, at the carrier's option, for restoring damaged goods to their prior condition. The notice should either list, or contain a reference to a readily available list, of the various brackets of value available under the FVP option. While we will not prescribe the exact language

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[3](...continued)
and Responsibilities When You Move, which explains carrier limitations of liability as well as many other matters relating to household-goods moves. In 1998, the Federal Highway Administration (FHWA) proposed to require distribution of a revised publication (also covering carrier liability, among other topics). *See Transportation of Household Goods; Consumer Protection Regulations*, 63 Fed. Reg. 27,126, 27,147-58 (1998). That proposal remains pending. In the meantime, FMCSA has taken over responsibility in this area from FHWA. *See* Title I of the Motor Carrier Safety Improvement Act of 1999, Pub. L. 106-159, 113 Stat. 1748 (Dec. 9, 1999).

[4] We cannot adopt NACAA's suggestion that we require the bill of lading to address other matters that are beyond the scope of this proceeding and, in many respects, beyond our regulatory authority. *See* 49 U.S.C. 13301(a) (unless otherwise specified, the motor carrier provisions of the Interstate Commerce Act, as revised, are to be administered by the Secretary of Transportation, who has delegated them mostly to the FMCSA).

[5] We note that the brochure currently required to be distributed (*see supra*, n. 3) will be outdated once the changes we are approving here go into effect. Nor will the revisions proposed in 1998 cover these changes. Until the general brochure is revised to reflect the changes approved here, a separate brochure will be needed to address the amended liability provisions approved here.

here, we expect the Committee to consult with NACAA to develop an appropriate notice.

NACAA suggests that the carrier be penalized if it does not obtain the shippers' initials in the check-off box indicating that the shipper has read the notice about liability and received the liability brochure. We agree that the carrier should be held responsible for ensuring that the consumer reads the notice about liability and checks off the box indicating receipt of the required liability brochure. We believe the appropriate penalty for the carrier's failure should be to disallow a release of liability. Thus, as a condition of our approval of this collective action request, we will require that the plan provide that when a shipper fails to initial the check-off box (and fails to select FVP coverage) and there is loss or damage that exceeds the 60-cent liability limitation, the carrier should be held liable for the unreleased level of liability set by the statute, *i.e.*, the actual (depreciated) value of the goods.[6]

Provision of FVP Coverage.

In light of the popularity of the FVP option now offered by certain carriers, and selected for between 52% and 62% of all household-goods shipments in the years 1989 through 1996, we find that it is reasonable for the members of the Household Goods Carriers' Bureau to offer this type of coverage on a uniform basis. Offering FVP coverage will enable these carriers to compete with the larger carriers who already offer this service, in furtherance of the national transportation policy objectives at 49 U.S.C. 13101(a)(2)(C), (D).

IMUA, an association of insurance companies that insure household goods carriers (and other motor carriers), points out that insurance companies would have to raise their premiums on household-goods carriers' cargo-liability policies to cover replacement value. IMUA Response at 2. According to IMUA, the increased cost of insurance premiums could lead some carriers to stop hauling household goods and others to reduce their policy limits. Further, IMUA argues, any reduced policy limit would affect prospects for recovery by the customer with a loss or damage claim, with litigation being the only means of redress above the carrier's policy limit.

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[6] NACAA asks for two additional forms of relief regarding household-goods shippers' damage claims. It suggests that a carrier's failure to settle claims in an appropriate time period should lead to additional penalties, and that household-goods shippers should be able to enforce their rights in state court under state consumer protection laws. These requests concern matters beyond our purview and should be addressed either to FMCSA (*see supra*, n.3) or to Congress.

IMUA's argument assumes that many household-goods carriers would not be able to sustain an increase in premiums for cargo-liability insurance, even for a short period, until they can adjust their rates to cover the additional cost. But, absent evidence indicating that a significant percentage of carriers are in such precarious shape, we see no reason to engage in such speculation. Moreover, it is the carriers (acting through the Committee) that have sought permission to replace their depreciated value option with a replacement-value option, and it is highly unlikely they would do so if they thought it would lead to substantial, expensive litigation or to business failures.

Use of Deductibles with FVP.

Under the Committee's proposal, a household-goods shipper choosing FVP coverage could select a deductible (of either $250 or $500) or could elect not to have any deductible in the carrier's liability. Carriers have not previously offered deductibles set collectively (rather than by a carrier acting individually). We asked for comments on whether a carrier might lack the incentive to exercise full care in handling FVP shipments, as the carrier's liability would be limited by the use of a deductible.

The Committee has responded that a deductible is no different in its effect from any other form of released rate because each limits carrier liability to less than what it otherwise would be. *See Interstate International, Inc., Used Household Goods*, ICC Docket No. FF-303 (ICC served Aug. 5, 1980 and Sept.18, 1980) (analogizing deductibles to released rates). Thus, the Committee maintains that offering deductibles would not cause carriers to be any less careful in handling household goods and that carriers who offer individually set FVP now take the same steps to protect shipments when a deductible applies as when there is no deductible. We agree that the experience of the companies already offering FVP gives us a good indication of the experience that the members of the Committee should have when offering FVP with a choice of deductibles.

IMUA objects to carriers offering a deductible to shippers. IMUA explains that virtually all insurance policies issued to motor carriers have a negotiated deductible (an amount that the carrier would bear in the event of loss or damage to a shipment) and argues that problems could arise from two deductibles (one for the shipper and one for the carrier) that likely would be "non-concurrent." IMUA Comments at 2. IMUA has not indicated, however, that any problem has arisen with the (individually set) deductibles that some large carriers now offer. Thus, we will allow the use of deductibles with FVP coverage.

Elimination of Depreciated Value As an Option to Select.

In our request for comments, we noted that the Committee's proposal eliminates the current shipper option of choosing to have the motor carrier liable for the actual (depreciated) value of the cargo — the level of liability prescribed by 49 U.S.C. 14706(a)(1) where the carrier has not offered, and the shipper has not selected, a different level of liability. We asked for comment on whether carriers should be allowed to exclude this option.

IMUA responded with a commercial concern that the carriers' insurers would have to issue new policies if the depreciated value option were eliminated. IMUA explained that most carriers' insurance policies coincide with the liability options currently offered, and therefore the policies insure only up to the depreciated value of household goods. We do not see this as a significant obstacle. Insurance companies should be willing to issue (for an appropriate fee) riders for replacement value coverage.[7] Any carrier that does not wish to pay for the additional fee for insurance coverage up to FVP would have to self-insure for the amount of liability incurred above depreciated value.

IMUA also contends that elimination of the depreciated value option would lead to more litigation by shippers. IMUA posits that, when a motor carrier has insurance that covers only the depreciated value of the household goods but the shipper selects FVP, shippers with a loss or damage claim would no longer be able to resolve the claim directly with the carrier's insurer and carriers would not be likely to readily tender the difference between the shipper's claim and the limits of the carrier's liability policy. IMUA Response at 1. However, this concern would not be likely to occur if insurance companies offer, and household-goods carriers pay for, riders to cover replacement value.

Finally, we note that few shippers of household goods chose the depreciated value option. According to the Committee, the number of household-goods shippers selecting that option declined to just 13.4% in 1996. Application at 6, Table 1. Moreover, in over half of those shipments (51.3%), the shipments were not actually protected to their depreciated value because the shipper failed to write in a declared value, with the result that the value of the shipment was deemed to be only $1.25 per pound (even though the average actual value of shipments today is about $4.50 per pound). Committee Comments at 17; Application at 10, Table 2. Thus, in those cases, the carrier was liable for far

[7] IMUA seeks to avoid the far more expensive cost of reissuing entire policies. IMUA Comments at 1.

less than the depreciated value of the household goods, and thus for less than the "actual value" contemplated by the statute.

In view of the lack of shipper support for the depreciated value option, and the fact that it is often ineffective in providing depreciated value coverage, we do not believe that it is necessary for carriers to continue to offer this option. Shippers will still have the option of limiting the carrier's liability to a minimal amount (60 cents per pound, per article). Householders also will have the FVP option, which in many cases would cover more than the "actual" value of household goods because it provides for replacing a lost or damaged item (which usually has been used) with a new, replacement item.[8] With only two options available — the two most popular options, rather than the three options that many carriers individually offer today — shippers may be able to better understand the differences between the options and the extent of carrier liability under the option they select.

Revenue Impact of the Proposed Changes.

According to the Committee's 1995 Claims Study, 22.9% of FVP shipments offered by carriers acting individually resulted in paid claims. Application at 14. Yet in setting the level of charges for FVP protection, the Committee assumed a somewhat higher paid claims figure (25% of FVP shipments). *Id.* Because carriers would realize increased net revenues if the projected increase in paid claims should not occur, we asked the Committee to provide the underlying data and work papers to support its figures. The Committee responded by showing that, even if the paid claims experience for FVP shipments holds to exactly 22.9%, the addition to the net revenues of its member carriers would be only 0.17%. Committee Comments at 22; Habib Statement at 6-7. In light of the negligible impact on carrier revenues, we do not believe that the planned level of FVP charges would effect a disguised general rate increase.

We also asked how the Committee arrived at the proposed charges for the 19 different dollar brackets of coverage for (*i.e.*, declared value of) shipments in its FVP proposal.[9] The Committee explained that, at the time of its application, the individual tariffs of six major household-goods carriers (who likewise offered

[8] Or, when the carrier chooses to restore a damaged item to its former condition, the FVP option covers at least the statutory level — actual value.

[9] In our request for comments, we stated that it would be helpful for the Committee to provide certain information about the charges in a specific format. We accept the Committee's explanation of why it was not possible to do so.

FVP with no deductible, and with deductibles of $250 and $500) contained the same 19 brackets. To derive its proposed charges, the Committee calculated the simple average of the charges of the six carriers for each of the 19 brackets and for each of the three deductible options. Our review of the work papers indicates that the six carriers whose figures were averaged represent 70% of the market share (by revenue) of intercity household-goods carriers. We find it reasonable for the Committee to establish its charges in this manner.[10]

Annual Adjustments.

The Committee has asked for authority to make annual adjustments to (1) the minimum per-pound value (to be used when a shipper does not write in a valuation on an FVP shipment or when the shipper's valuation is lower than the minimum per-pound value), and (2) the charges for FVP coverage (for each of the 19 brackets of shipment values and each of the three choices of a deductible within those 19 brackets). The Committee envisions making both of these adjustments, without prior Board approval, based on changes in the household furnishings and operations index (which we will refer to as the "household furnishings index" for short) within the Consumer Price Index (CPI), U.S. City Average, published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor.

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[10] In our request for comments and information, we questioned particular wording in the Committee's proposal that could lead to differing levels of carrier liability on two identical shipments. The Committee has assured us that it did not intend such an anomalous result and it has tendered an amendment to its application to eliminate this possibility. The amendment would change the language of Item 3, paragraph (f) (Application, Appendix A) to read as follows:

> (f) All shipments (other than those released to a value not exceeding 60 cents per pound per article) will be deemed released to a minimum lump sum value of $5,000 or $4.00 times the actual total weight (in pounds) of the shipment, whichever is greater. The stated valuation must be in the increments shown herein. If the shipper declares or releases the shipment to a valuation that falls between the valuation amounts shown, or if no such declaration is made by the shipper and the valuation amount calculated by the carrier based on the weight of the shipment falls between the valuation amounts shown, the highest valuation amount in the applicable category and the applicable charge associated therewith will apply. The deductible level (no deductible, $250 or $500 deductible) of valuation declared will determine the valuation charge that will apply, as shown in the table below.

We are satisfied that the proposed amendment takes care of the problem we identified.

We asked for an explanation of, and comments on, the appropriateness of using the CPI household furnishings index, particularly because audio and television equipment was removed from that index and placed in a different index beginning in 1998. We also invited comments as to whether the same index should be used for effecting both adjustments. None of the commenters has objected to an annual adjustment for either purpose or to the use of the CPI household furnishings index to make these adjustments.

Regarding the adjustment to the per-pound minimum value for FVP shipments, while the Committee acknowledges that most household-goods shipments include audio and video equipment, it maintains that the removal of such equipment from the household furnishings index should have little or no effect on the amount of the adjustment. Given the lack of objection, we find that the household furnishings index represents a sufficiently large portion of the goods carried in a typical household move that it is an as acceptable basis for making adjustments to the minimum per-pound value.

Turning to the adjustment to be made to charges for FVP coverage, in response to our query the Committee has suggested as an alternative using an index based on two portions of the Producer Price Index (PPI). More specifically, the Committee states that it could make adjustments by using the PPI's PCU 251 index (household furniture) and the PCU 23 index (apparel and other finished products made from fabrics), with PCU 251 weighted at 47.5% and PCU 23 at 52.5%.

We think that the Committee's original proposal is better. The CPI index more closely relates to the cost to purchase replacement household goods than does the PPI, which measures the prices received by the producer of goods in the first commercial transaction for many products, which may not be the price ultimately paid by the consumer.

We approve the use of the CPI household furnishings index as the basis for adjusting both the charges for FVP coverage as well as the per-pound minimum value. We also approve the Committee's proposed minimum adjustments: using multiples of 5 cents for the per-pound minimum and multiples of 10 cents for the FVP charges. We further authorize the Committee to make the adjustments annually, beginning 1 year after the effective date of the tariff implementing the authority we grant here.

CONCLUSION

Upon review of the Committee's application, amendments, and justification, and the comments of other interested parties, we find that granting the authority — as originally requested, but with the Committee's amendment to the language in Item 3, paragraph (f) set forth in footnote 10, and subject to the conditions that carriers print the required information on the bill of lading and provide shippers with an up-to-date brochure explaining the cargo liability options offered — will provide carriers and their customers with an acceptable choice as to the extent of carrier liability on shipments of household goods.

It is ordered:

1. The Committee's petition for authority to file reply comments is granted.
2. The Committee's motion to strike IMUA's response is denied.
3. The Committee's application to amend released rates order No. MC-999, with the amendment to Item 3, paragraph (f), set forth above, is hereby granted, subject to the revision of the bill of lading as described above and to the member carriers of the Committee providing shippers with an up-to-date brochure explaining the cargo liability options offered.
4. This decision is effective January 20, 2002.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.