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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA-2012-0101]

RIN 2126-AB51

Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Released Rates of Motor Carriers of Household Goods

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA harmonizes its regulations with a recent Surface Transportation Board (STB) order that requires certain information about household goods motor carrier liability to appear on the estimates and bills of lading that carriers must provide to individual shippers.

DATES: This final rule is effective May 15, 2012.

ADDRESSES: Documents mentioned in this rule are available for inspection or copying in the docket, Docket No. FMCSA-2012-0101 available at www.regulations.gov, and at the Docket Management Facility, U.S. Department of Transportation, Ground floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

The Secretary of Transportation's (Secretary) general jurisdiction to establish regulations over transportation of property by motor carrier is found at 49 U.S.C. 13501. Household goods motor carriers are a subset of all property motor carriers and are required by 49 U.S.C. 13902 to register with FMCSA as household goods motor carriers.

The ICC Termination Act of 1995 (Public Law 104-88, 109 Stat. 803, Dec. 29, 1995) abolished the Interstate Commerce Commission (ICC), which previously had jurisdiction over the commercial activities of household goods motor carriers. Its functions relating to household goods carriers were split between the STB and the Secretary. The STB was given jurisdiction over most tariff issues, while the Secretary was given jurisdiction over consumer protection matters.

The Secretary has delegated these authorities to the FMCSA Administrator (49 CFR 1.73(a)). This rulemaking applies only to household goods motor carriers that provide for-hire transportation in interstate or foreign commerce.

FMCSA implements this final rule without notice and comment pursuant to 5 U.S.C. 553(b)(B). While the Administrative Procedure Act (APA) normally requires issuance of a notice of proposed rulemaking and an opportunity for public comment, the APA provides an exception when an agency "for good cause finds ... that notice and public procedure ... are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). This final rule updates 49 CFR part 375 to reflect recent changes the STB made to its requirements after engaging in notice and comment rulemaking. See Released Rates of Motor Common Carriers of Household Goods, Surface Transportation

Board, Docket No. RR 999 (Amendment No. 5), Order, Jan. 10, 2012 (Released Rates Order). These changes fall within the STB's jurisdiction and FMCSA does not have authority to exercise discretion in implementing them. Therefore, FMCSA finds that the opportunity for notice and public comment is unnecessary and contrary to the public interest under the APA.

II. Background

STB is charged with the oversight of household goods motor carriers' tariffs. Tariffs include the rates and terms under which household goods carriers may provide transportation services. In accordance with 49 U.S.C. 14706(f)(3), the Board authorizes household goods carriers to set "released rates," which are lower rates for transportation services when the shipper agrees to release the carrier from full liability for potential loss and damage to the shipper's cargo. There are currently two generally applicable liability options for interstate household goods moves. The first reimburses the shipper for the replacement value of his or her goods, referred to as the full value option. The second reimburses the shipper at a lower rate, currently 60 cents per pound, and is referred to as the released rate option. The Board's rules provide that any rate a carrier charges for transportation services, whether under the full liability option or the released rate option, must be published in the carrier's tariff.

In a decision served January 21, 2011, the STB implemented a congressional directive to enhance consumer protection in cases of loss or damage that occur during interstate moves. See Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU), § 4215, Pub. L. 109-59, 119 Stat. 1144, 1760 (2005). That decision required household goods motor carriers to provide certain information

concerning the two available cargo liability options to shippers on written estimates for household goods transportation. On January 12, 2012, STB served another decision clarifying and modifying certain aspects of the January 2011 decision. STB modified the order to require household goods movers to place the following liability election notice on the estimates they provide to prospective shippers:

WARNING: If a moving company loses or damages your goods, there are 2 different standards for the company's liability based on the types of rates you pay. **BY FEDERAL LAW, THIS FORM MUST CONTAIN A FILLED-IN ESTIMATE OF THE COST OF A MOVE FOR WHICH THE MOVING COMPANY IS LIABLE FOR THE FULL (REPLACEMENT) VALUE OF YOUR GOODS** in the event of loss of, or damage to, the goods. This form may also contain an estimate of the cost of a move in which the moving company is liable for **FAR LESS** than the replacement value of your goods, typically at a lower cost to you. You will select the liability level later, on the bill of lading (contract) for your move. Before selecting a liability level, please read "Your Rights and Responsibilities When You Move," provided by the moving company, and seek further information at the government website www.protectyourmove.gov.

Released Rates Order, Appendix 1.

That decision also directed household goods motor carriers to provide the STB's required valuation statement on the shipper's bill of lading. The valuation statement includes specific language that requires the consumer either to choose the replacement value option and declare a total value for the shipment, or choose the released rate option. This statement is much lengthier than the notice carriers must include in the estimate and contains specific information about the cost to the shipper. Released Rates Order, Appendix 2. These requirements go into effect May 15, 2012. See Released Rates of Motor Common Carriers of Household Goods, Surface Transportation Board, Docket No. RR 999 (Amendment No. 5), Order, Mar. 8, 2012 (extending compliance date) (77 FR 15187).

FMCSA is charged with overseeing consumer protection matters related to the transportation of household goods. In this capacity, FMCSA administers regulations requiring household goods motor carriers to provide estimates and certain shipping documents to individual shippers and establishes the terms and conditions under which those documents must be provided.

STB's January 2012 order affects FMCSA's regulations because it mandates that specific language regarding carriers' rates and liability be placed on the estimates and bills of lading that FMCSA requires carriers to provide to prospective shippers. As a result, FMCSA amends its regulations governing those documents to reflect the STB's new requirements.

V. Discussion of the Rule

FMCSA amends 49 CFR 375.401 and 375.505 to eliminate inconsistencies resulting from the STB's recent publication of its Released Rates Order. These changes incorporate the STB's new requirements into FMCSA's regulations governing estimates and bills of lading.

FMCSA amends § 375.401 by adding a new paragraph (g) which states that household goods motor carriers must include STB's liability election notice on all written estimates. This notice is a brief statement advising prospective shippers that they will have to select one of two options that govern the extent of the carrier's liability for damage to their cargo. New paragraph (g) directs household goods motor carriers to use the language set forth in the STB Released Rates Order. FMCSA redesignates old paragraphs (g) and (h) as new paragraphs (h) and (i) respectively.

FMCSA also amends § 375.505 to make it clear that the STB's valuation statement, a lengthier statement which requires shippers to select one of the two levels of liability, must appear on the shipper's bill of lading. Previously, § 375.505(e) permitted carriers to provide the valuation statement on either the bill of lading or the order for service. FMCSA removes paragraph (e) and revises subparagraph (b)(12) to make conforming changes to remove any ambiguity about where the valuation statement must appear.

VI. Regulatory Analyses

A. Regulatory Planning and Review

FMCSA has determined that this action does not meet the criteria for a "significant regulatory action," either as specified in Executive Order 12866 as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The estimated economic costs of the rule do not exceed the \$100 million annual threshold and the Agency does not expect the rule to have substantial congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action.

C. Federalism (Executive Order 13132)

A rule has federalism implications if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and has determined that it does not have federalism implications.

D. Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

F. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

G. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

H. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this rule will not result in a new or revised Privacy Act System of Records for FMCSA.

I. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The

changes in this rule are mandated by the STB, exercising its authority over household goods motor carriers' tariffs. Any change to the paperwork burden associated with these requirements is required to be accounted for by the STB in connection with its Released Rates Order. As this rule merely incorporates the STB's requirements, FMCSA does not conduct, sponsor or require any additional information collection through this rule.

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Agency has determined under its environmental procedures Order 5610.1, published in the Federal Register March 1, 2004 (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, Paragraph 6(b) of the Order (69 FR 9702). This categorical exclusion (CE) relates to regulations that are editorial in nature making technical corrections and minor amendments, which applies to this rule as FMCSA is simply aligning its regulations with the STB's regulations. Environmental impacts, if any, would have been analyzed during the rulemaking by STB. In addition, the Agency believes this rule presents no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has determined that it is not a “significant energy action” under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

VII. THE FINAL RULE

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

1. The authority citation for part 375 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

2. In § 375.401, redesignate paragraphs (g) and (h) as paragraphs (h) and (i), and add new paragraph (g) to read as follows:

§ 375.401 Must I estimate charges?

* * * * *

(g) You must include as a part of your estimate the liability election notice provided in the Surface Transportation Board's released rates order. Contact the STB for a copy of the Released Rates of Motor Carrier Shipments of Household Goods.

3. In § 375.505, revise paragraph (b)(12) and remove paragraph (e) to read as follows:

§ 375.505 Must I write up a bill of lading?

* * * * *

(b)(12) The valuation statement provided in the Surface Transportation Board's released rates order requires individual shippers either to choose Full Value Protection for your liability or waive the Full Value Protection in favor of the STB's released rates. The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment. Contact the STB for a copy of the Released Rates of Motor Carrier Shipments of Household Goods. If the individual shipper waives your Full Value Protection in writing on the STB's valuation statement, you must include the charges, if any, for optional valuation coverage (other than Full Value Protection).

Issued on: April 17, 2012

Anne S. Ferro
Administrator

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