

SUBCHAPTER D—CARRIER RATES AND SERVICE TERMS

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

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AUTHORITY: 49 U.S.C. 721(a) and 11101(f).

SOURCE: 61 FR 35140, July 5, 1996, unless otherwise noted.

§ 1300.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on rail carriers by 49 U.S.C. 11101(b), 11101(c), 11101(d) and 11101(f).

(b) Except as otherwise provided in this section, the provisions of this part apply to any common carriage transportation or service provided by a rail carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501.

(c) The provisions of this part do not apply to any transportation or service provided by a rail carrier under a contract authorized under 49 U.S.C. 10709 or former 49 U.S.C. 10713 (repealed effective January 1, 1996).

(d) The provisions of this part do not apply to any transportation or service provided by a rail carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505 (repealed effective January 1, 1996).

(e) For the purposes of this part, “service terms” means all classifications, rules, and practices that affect the rates, charges, or level of service for rail transportation.

§ 1300.2 Disclosure requirement for existing rates.

(a) A rail carrier must disclose to any person, upon formal 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 the rate(s). For purposes of § 1300.4(a)(1) of this part, a formal request under this part is one that clearly notifies the railroad that the requester seeks not only immediate information but also notification of any future increases in the rate(s) involved or changes in pertinent service terms.

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

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

§ 1300.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper or 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 written or electronic form, as agreed to by the parties. If the parties cannot agree, such information is to be provided in electronic (non-passive) form where both parties have the requisite capabilities; otherwise, it is to be provided in writing. The response

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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 reasonably possible, but no later than 10 business days from the receipt of the additional information. (However, the parties may agree to a different time period, in which case these time periods would not apply.) A rail carrier may, at its option, require that requests submitted under this section be in written or electronic form, although the carrier may permit oral requests.

§ 1300.4 Notice requirement.

(a) A rail 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 formally requested under §1300.2 or §1300.3 of this part the affected rates or service terms; or

(2) Have made arrangements with the carrier for a future shipment that would be subject to the increased rates or changed service terms.

(b) The notice required by this section may be in written or electronic form, as agreed to by the parties. If the parties cannot agree, the information is to be provided in electronic (non-passive) 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 increases in rates or charges or the changes in service terms.

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§ 1300.5 Additional publication requirement for agricultural products and fertilizer.

(a) With respect to transportation of agricultural products (including grain, as defined in 7 U.S.C. 75, and all products thereof) and fertilizer, a rail carrier shall publish, make available, and retain for public inspection its currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms. This requirement is in addition to the requirements imposed by §§1300.2, 1300.3, and 1300.4 of this part.

(b) The information published under this section must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments). Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes, the nature of those changes and their effective dates.

(c) A rail carrier must make the information available at offices where it normally keeps rate information. Access to the information at such offices must be provided to any person, without charge, during normal business hours.

(d) A rail carrier must also make the required publications available to all persons (hereinafter referred to as subscribers) who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction. Such publications may be made available either in printed or in electronic form as agreed to by the parties. Any scheduled changes must be published in a manner that provides timely notice to subscribers. A rail carrier may impose reasonable charges for such publications. Publications may be limited to the specific information requested by the subscriber, and charges for such limited publications should be set accordingly.

PART 1301 [RESERVED]

PART 1302—EXPORT AND IMPORT SHIPMENTS; RAILROADS

CHARGES FOR RAIL TRANSPORTATION WHEN WATER TRANSPORTATION PERFORMED IN VESSELS NOT DOCUMENTED UNDER LAWS OF THE UNITED STATES

Sec.

1302.41 Suspension of statute.

1302.42 Further suspension of statute.

1302.43 Applicable rates on shipments in transit when statute becomes effective.

AUTHORITY: 49 U.S.C. 884.

SOURCE: 32 FR 20541, Dec. 20, 1967, unless otherwise noted.

CROSS REFERENCES: For United States Customs Service, Department of the Treasury; see Customs Duties, 19 CFR Chapter I. For Foreign-Trade Zones Board; see Commerce, 15 CFR Chapter IV. For regulations of International Trade Administration concerning foreign trade statistics; see Commerce, 15 CFR Chapter III.

CHARGES FOR RAIL TRANSPORTATION WHEN WATER TRANSPORTATION PERFORMED IN VESSELS NOT DOCUMENTED UNDER LAWS OF THE UNITED STATES

§ 1302.41 Suspension of statute.

The provisions of section 28 of the Merchant Marine Act, 1920, are hereby further suspended from and including the first day of January, 1921, until further order of this Board.

§ 1302.42 Further suspension of statute.

(a) Order of March 11, 1924, as modified, which terminated order of June 14, 1920, as modified, suspending provisions of section 28 of the Merchant Marine Act, 1920, until further order of the Board, is hereby vacated and set aside.

(b) The provisions of said order of June 14, 1920, as modified by the supplemental orders of July 27, 1920, December 11, 1920, and February 7, 1921, specified in paragraph (a) of this section, shall continue in force until further order of the Board.

§ 1302.43 Applicable rates on shipments in transit when statute becomes effective.

The following conditions are hereby prescribed as supplemental to the or-

ders aforesaid suspending the provisions of section 28 of the Merchant Marine Act, that is to say, that notwithstanding the provisions of the aforesaid section 28 may become effective during the time when export or import shipments are in transit to or from the ports of export or import the following conditions shall be observed.

(a) With respect to all export shipments delivered to and receipted for by common carriers subject to the provisions of section 6 of the Interstate Commerce Act (section 6, 24 Stat. 380, as amended; 49 U.S.C. 6(13)) the rates to the ports in force and applicable upon said shipments via the lines of said carriers upon the date of delivery to and receipt by such carriers shall be applied to said shipments; and,

(b) With respect to all import shipments delivered to and receipted for by common carriers subject to the provisions of section 6 of the Interstate Commerce Act (49 U.S.C. 6 (13)) the rates from the ports in force and applicable to said shipments over the lines of said carriers upon the date of delivery to and receipt by such carriers shall be applied to said shipments.

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).

SOURCE: 61 FR 35141, July 5, 1996, unless otherwise noted.

§ 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.

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(b) Except as otherwise provided in paragraph (c) of this section, 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.

§ 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.

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

PART 1310—TARIFF REQUIREMENTS FOR HOUSEHOLD GOODS CARRIERS

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1310.1 Scope; definitions.

1310.2 Requirement to maintain tariffs.

1310.3 Contents of tariffs.

1310.4 Incorporation of tariff provisions by reference.

1310.5 Availability of tariffs at carrier offices.

1310.6 Furnishing copies of tariff publications.

AUTHORITY: 49 U.S.C. 721(a), 13702(a), 13702(c) and 13702(d).

SOURCE: 62 FR 5171, Feb. 4, 1997, unless otherwise noted.

§ 1310.1 Scope; definitions.

(a) The provisions of this part address the tariff requirements imposed by 49 U.S.C. 13702 on motor carriers and freight forwarders for the transportation of household goods, and the notice requirements with which such carriers must comply in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs.

(b) The provisions of this part apply to all movements of household goods defined in paragraph (c)(1) of this section, and to those movements of household goods defined in paragraph (c)(2) of this section that are not provided under contracts entered into pursuant to 49 U.S.C. 14101(b) or former 49 U.S.C. 10702 (repealed January 1, 1996).

(c) For the purposes of this part, the term *household goods* means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is:

(1) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling; or

(2) Arranged and paid for by another party.

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

§ 1310.2 Requirement to maintain tariffs.

(a) Except when providing transportation for charitable purposes without charge, carriers subject to the Board's jurisdiction under Chapter 135 of Title 49 of the United States Code may provide transportation or service for movements of household goods only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, by giving a person a privilege, by allowing the use of a facility that affects the value of that transportation or service, or through another device. Tariffs shall be published in the English language and rates shall be stated in money of the United States.

(b) Tariffs maintained pursuant to this part must be available for inspection by the Board, and must be provided to the Board promptly and free of charge, upon request, by mail or other delivery service.

(c) A carrier that maintains a tariff pursuant to this part may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff, as provided in § 1310.4 of this part.

(d) The Board may invalidate a tariff prepared by or on behalf of a carrier under this part if that tariff violates 49 U.S.C. 13702 or the regulations contained in this part.

§ 1310.3 Contents of tariffs.

(a) Tariffs prepared under this part must include an accurate description of the services offered to the public; must provide the specific applicable rates, charges and service terms; and must be

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arranged in a way that allows for the determination of the exact rate, charges and service terms applicable to any given shipment. Increases, reductions and other changes must be symbolized or highlighted in some way to facilitate ready identification of the changes and their effective dates.

(b) All information necessary to determine applicable rates, charges and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference to all other tariffs required to determine applicable rates, charges and service terms. The carrier(s) party to the rate(s) must participate in all of the tariffs so linked and all such tariffs must be made available to shippers upon reasonable request.

§ 1310.4 Incorporation of tariff provisions by reference.

(a) Carriers that maintain tariffs pursuant to this part may incorporate the terms of such tariffs by reference (i.e., without stating their full text) into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, provided that:

(1) The bill of lading or other document must contain a conspicuous notice that the contract of carriage incorporates the terms of the carrier's tariffs; the carrier must give notice that its tariffs are available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to such tariffs; and the carrier must make the full text of incorporated terms readily available for inspection by the shipper, free of charge, upon request. If such terms cannot be made available immediately, they must be made available promptly and free of charge by mail or other delivery service.

(2) If the incorporated terms include any of the terms set forth in paragraphs (a)(2)(i) through (a)(2)(iii) of this section, the notice on the bill of lading or other document must indicate that such terms are included; the shipper must be provided with a brief summary of the principal features of such terms on or with the document;

and the shipper must be able to obtain a more complete explanation of such terms upon request.

(i) Limits on the carrier's liability for loss, damage, or delay of goods, including fragile or valuable goods.

(ii) Claim restrictions, including time periods within which shippers or consignees must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(iii) Rights of the carrier to impose monetary penalties on shippers or consignees, increase the price of the transportation, or change any terms of the contract.

(b) A carrier may not claim the benefit as against a shipper or consignee of, and a shipper or consignee shall not be bound by, any tariff term that is incorporated by reference under this section unless the carrier has complied with the requirements of paragraph (a) of this section.

(c) The disclosure requirements established by this section preempt any State requirements on the same subject, for tariff terms that are incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods.

§ 1310.5 Availability of tariffs at carrier offices.

(a) Each carrier shall maintain, at its principal office, a complete set of its effective tariffs and those to which it is a party.

(b) Each carrier shall also maintain some or all of its tariffs at its other business offices, upon request. Carriers shall provide information regarding all locations where tariffs may be viewed.

(c) At all points where tariffs are maintained, they shall be made available for inspection by any person during the carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also display, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(d) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff. The notice

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shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make its tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(e) Any publication referred to in a tariff must be maintained with that tariff.

(f) If any tariff maintained pursuant to paragraph (b) of this section has not been used for a substantial length of time, the availability of that tariff, including its reissues, may be discontinued at that office until such time as it is again requested. It shall then be made available within 20 days.

§ 1310.6 Furnishing copies of tariff publications.

(a) Copies of tariffs, specific tariff provisions or tariff subscriptions shall be provided upon request to any interested person.

(b) Except for providing to shippers the full text of tariff terms incorporated by reference into the bill of lading or other document embodying the contract of carriage for the transportation of household goods, as described in § 1310.4(a)(1), carriers may assess charges for furnishing copies of tariff publications to interested persons. If a charge is made, the charge must be reasonable, and identical for the same publications and delivery service.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NON-CONTIGUOUS DOMESTIC TRADE

Sec.

1312.1 Scope; definitions.

1312.2 Requirement to publish and file a tariff.

1312.3 Tariff contents and standards; Essential criteria.

1312.4 Filing of tariffs.

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1312.6 Advance notice required.

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1312.11 Special notification for ordered matter.

1312.12 Posting requirements.

1312.13 Furnishing copies of tariff publications.

1312.14 Powers of attorney and concurrences.

1312.15 Change of carrier or agent.

1312.16 Substitution of service.

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

SOURCE: 62 FR 19058, Apr. 18, 1997, unless otherwise noted.

§ 1312.1 Scope; definitions.

(a) *Applicability.* The provisions of this part address the requirements in 49 U.S.C. 13702 that carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 and providing transportation or service for the movement of property (except bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste) by or with a water carrier in noncontiguous domestic trade shall publish and file with the Board tariffs containing the rates for such transportation.

(b) *Exceptions.* The provisions of this part do not apply to:

(1) Any transportation or service provided by a carrier pursuant to 49 U.S.C. 14101(b); or

(2) The transportation of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission (FMC) or the Interstate Commerce Commission under Federal law in effect on November 1, 1995.

(c) *Definitions.* For the purposes of this part:

Act means part B of subtitle IV of title 49 of the United States Code.

Agent means a person, association or corporation authorized to publish and file rates and provisions on behalf of one or more carriers in tariffs published in the agent's name.

Agent's tariff means a tariff filed in the name of an agent.

Board means the Surface Transportation Board.

Bound tariff means a tariff consisting of two or more sheets bound at the left edge in pamphlet or book form or a single-sheet tariff.

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Carrier means a motor carrier, water carrier or freight forwarder subject to the Board's jurisdiction under 49 U.S.C. Chapter 135.

Carrier's tariff means a tariff filed in the name of a carrier.

Collectively established tariff matter means a rate, charge, rule or other tariff provision established pursuant to 49 U.S.C. 13703.

Independently established tariff matter means any rate, charge, rule or other tariff provision not established pursuant to 49 U.S.C. 13703.

Item means a tariff provision of any kind bearing an item number designation.

Joint rate means a rate that applies over the lines or routes of two or more carriers made by an agreement between the carriers and effected by a concurrence or power of attorney.

Joint tariff means a tariff that contains joint rates or provisions affecting joint rates.

Local rate means a rate that applies only to one carrier.

Local tariff means a tariff that contains local rates or provisions affecting local rates.

Looseleaf page means a single page published as part of a new or reissued looseleaf tariff or as an amendment to such a tariff.

Looseleaf tariff means a tariff consisting of looseleaf pages.

Noncontiguous domestic trade means transportation subject to jurisdiction under 49 U.S.C. Chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

Original tariff means a bound or looseleaf tariff as originally filed excluding amendments.

Page means that portion of a tariff or supplement printed on one side of a sheet.

Post refers to making filed tariffs available to the public.

Publication means a bound tariff, a tariff supplement, or a looseleaf tariff page.

Rate means a rate or charge.

Service terms mean all classifications, rules and practices that affect the rates or level of service.

Supplement means a single sheet, or two or more sheets bound at the left

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edge in pamphlet or book form, identified as a supplement and published to amend or cancel a bound or looseleaf tariff.

Tariff means an issuance (in whole or in part) bearing designations required by this part and containing rates, rules, regulations, classifications or other provisions published and filed with the Board for compliance with 49 U.S.C. 13702.

[62 FR 19058, Apr. 18, 1997, as amended at 64 FR 5195, Feb. 3, 1999]

§ 1312.2 Requirement to publish and file a tariff.

(a) *Requirement for tariff.* Except when providing transportation for charitable purposes without charge, or when providing transportation or service described in § 1312.1(b), carriers subject to the Board's jurisdiction under 49 U.S.C. Chapter 135 may provide transportation or service described in § 1312.1(a) only if the rates, and related rules and practices, for such transportation or service are contained in a published tariff that is on file with the Board and in effect under this part.

(b) *Adherence to tariff.* The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. The carrier shall keep such tariffs available for public inspection and shall make such tariffs available to subscribers as required in this part.

(c) *Other information.* Provisions for information purposes only may be included in a tariff, provided they are clearly identified as such. Such provisions may include rates and service terms covering transportation not subject to regulation by the Board, and advertising and promotional material.

(d) *Effect of filing.* The tender of a tariff and its receipt and acceptance by the Board do not relieve a carrier of liability for violations of the Act, other laws, the Board's regulations, or any decision of the Board or a court, or have any effect on the rights of persons

to file complaints for substantive violations of the Act or the Board's regulations.

(e) *Tariff relief.* Relief from the provisions of this part may be sought. Requests for such relief shall be submitted in duplicate and accompanied by the appropriate fee (see 49 CFR part 1002). Packages containing applications for relief shall be prominently marked "SPECIAL TARIFF AUTHORITY APPLICATION." The application shall cite all pertinent tariff matter and shall provide complete information regarding applicant's justification, purpose and manner of relief sought.

(f) *Invalidation of tariffs.* Tariffs that violate section 13702 of the Act, or a regulation of the Board carrying out that section, may be invalidated by the Board. When a tariff is invalidated, the party that filed it will be furnished a written explanation of the reasons for such action. Tariffs issued in lieu of invalidated tariffs shall so state.

§ 1312.3 Tariff contents and standards; Essential criteria.

(a) *Contents.* Tariffs filed with the Board must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates) and service terms; and must be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment (or to any given group of shipments).

(b) *Use of multiple tariffs.* All information necessary to determine applicable rates and service terms for a given shipment need not be contained in a single tariff, but if multiple tariffs are used to convey that information, the tariff containing the rates must make specific reference (by STB tariff designation) to all other tariffs required to determine applicable rates and service terms, and the carrier(s) party to the rates must participate in all of the tariffs so linked.

(c) *Clarity.* Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related service terms. Ambiguous terms and complex methods of presentation shall not be used.

(d) *Explanations.* Reference marks and abbreviations, other than commonly used abbreviations, shall be explained either in the item in which they are used or in a separate item.

§ 1312.4 Filing of tariffs.

(a) *Filing requirements.* (1) Tariffs shall be filed in English with rates explicitly stated in U.S. dollars and cents. Two copies of each tariff publication shall be filed with the Board. Packages containing tariff filings should be prominently marked "TARIFF FILING" and addressed to: Section of Tariffs, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

(2) A tariff filing must be accompanied by an authorized document of transmittal identifying each publication filed, and by the appropriate filing fee (see 49 CFR part 1002). Acknowledgment of Board receipt of a tariff filing can be obtained by enclosing a duplicate transmittal letter and a postage-paid, self-addressed return envelope. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

- (i) The assigned alpha code of the issuing carrier or agent;
- (ii) The number of pages transmitted;
- (iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;
- (iv) The transmittal number if the filer utilizes transmittal numbers; and
- (v) If the filing fee is charged to a credit card, the credit card number and expiration date, and an authorized signature.

(b) *Paper size.* Tariffs shall be printed on paper not larger than 8½×11 inches.

§ 1312.5 Amendments to tariffs.

(a) *Manner of making changes.* An amendment is a change in, addition to, or cancellation of part of a tariff. Supplements are the tariff publications used to amend bound tariffs, and new or revised pages are the tariff publications normally used to amend looseleaf tariffs, although looseleaf tariffs can also be amended by supplements. Tariffs can also be canceled by new or reissued tariffs (see § 1312.7).

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(b) *Supplements.* Supplements issued to amend a tariff shall be consecutively numbered. Each new supplement shall identify any supplement(s) that it cancels, and any supplement(s) that are still in effect. A tariff amendment published in a supplement may be carried forward to later supplements if it is identified as reissued without change from the supplement in which it was originally published.

(c) *Looseleaf pages.* Looseleaf pages to an original tariff shall be designated as "Original" (e.g., Original Title Page, Original Page 1, Original Page 2, etc.). Looseleaf pages issued to amend the tariff shall bear consecutive revision numbers and shall cancel the prior version(s) of the same page (e.g., 1st Revised Page 1 Cancels Original Page 1, 2nd Revised Page 1 Cancels 1st Revised Page 1, etc.). Additional original pages may also be issued to amend a tariff, by adding new numbered pages after the last numbered page, or by adding existing numbered pages with alphabetic suffixes (e.g., a page designated as Original Page 2-A could be added between pages 2 and 3, etc.). Each looseleaf tariff shall include a Check Sheet, a Correction Number Check Sheet, or some other method of determining the looseleaf pages issued to amend such tariff.

§ 1312.6 Advance notice required.

(a) *Notice requirement.* Unless otherwise specifically authorized by the Board, tariffs must be filed with the Board on not less than the notice shown in paragraph (b) of this section. Notice means the number of days the publication is on file with the Board prior to its effective date(s). The date the publication is received by the Board counts as the first day of notice.

(b) *Length of notice.* A tariff may not become effective earlier than:

(1) Thirty days after filing for all collectively established tariff matter.

(2) Seven workdays after filing for independently established increased tariff matter.

(3) Upon filing for independently established new tariff matter, independently established reduced tariff matter, the addition or restoration of a carrier's participation in a tariff, a correction to the list of participating carriers

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in a tariff (other than the cancellation of a carrier's participation), an extension of the expiration date of tariff matter, or a postponement of the effective date of proposed tariff matter.

(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.

(d) *Definitions.* For the purposes of this section:

Increased means any tariff change that results in higher charges to the payer of freight charges or reduced service at the same rate;

New means an initial rate or other provision for a new service;

Reduced means any tariff change that results in lower charges to the payer of freight charges or expanded service at the same rate; and

Workdays means all days except Saturdays, Sundays and all Federal holidays observed in the District of Columbia.

[62 FR 19058, Apr. 18, 1997, as amended at 64 FR 5195, Feb. 3, 1999]

§ 1312.7 STB tariff designation.

(a) *Format.* Every tariff shall show an authorized tariff designation consisting of:

(1) The characters "STB";

(2) The assigned alpha code of the carrier or agent issuing the tariff; and

(3)(i) The tariff number (selected by the carrier or agent) to distinguish that tariff from all other tariffs filed by the same issuing carrier or agent. Tariff numbers shall not exceed 5 numerical digits and may be followed by not more than 2 letter suffixes. Examples of tariff numbers are:

STB XXXX 100
STB XX 8000-A
STB XXXX 12345-AB

(ii) Suffixes may be used only to designate reissues of tariffs. As an example, a reissue of tariff 1000 could be designated 1000-A, a reissue of tariff 1000-A could be designated 1000-B, etc.

(b) *Alpha codes.* Alpha codes are assigned to carriers and tariff agents by

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the National Motor Freight Traffic Association, Inc., 2200 Mill Road, Alexandria, VA 22314.

(c) *Fees for assignment.* Fees may be assessed for the assignment of codes, but may not exceed the processing costs.

(d) *Code listing.* A list of the assigned alphabetical codes, and the names of the carriers and agents to which they are assigned, as well as subsequent changes to the list, shall be submitted to the Board's Section of Tariffs.

§ 1312.8 Identification of tariff publication.

(a) Every tariff publication filed with the Board shall include:

- (1) The STB tariff designation;
- (2) The name of the issuing carrier or agent;
- (3) The name of the tariff; and
- (4) The issue and effective dates of the publication.

(b) If the publication contains matter effective on other than the general effective date, the notation (Except as Noted) shall be included with the general effective date.

§ 1312.9 Statement of tariff application and other title page requirements.

Every new or reissued tariff or supplement filed with the Board shall lead with a title page. The title page of each tariff or supplement shall include the expiration date of the tariff or supplement, if applicable. The title page of each tariff shall also provide the complete name and address of the issuing carrier or agent; a contact person and telephone number; the certificate or operating authority number, if applicable; and a succinct statement of territorial application, mode of serving carrier(s), type of rates, and description of tariff content. EXAMPLES:

(a) Local water carrier rates on FREIGHT, ALL KINDS from points in Alaska to points in the United States.

(b) Joint motor/water commodity rates in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

§ 1312.10 Notification of tariff changes and nature of changes.

Every publication filed with the Board containing tariff changes shall clearly identify such changes and their nature (whether an increase or decrease in service, rates or transportation charges).

§ 1312.11 Special notification for ordered matter.

Every tariff publication containing matter filed in compliance with a Board decision or court order shall indicate in the publication the relevant decision or order, and as well the number of days' notice authorized or required.

§ 1312.12 Posting requirements.

(a) *General posting requirements.* (1) Each carrier shall maintain, at its principal office, a complete set of its tariffs (proposed and effective) and those to which it is a party.

(2) Each carrier shall also maintain some or all of its tariffs at other locations, as may be useful. Carriers shall provide information regarding all locations where tariffs may be viewed.

(3) At all points where tariffs are posted, they shall be made available for inspection by any person during the carrier's normal business hours. The tariffs shall be accessible and readable. The carrier shall also post, in a conspicuous place in those locations, a notice, in large print, which contains a statement that the tariffs are available for public inspection.

(4) At all other carrier business offices, the carrier shall display a notice advising the public of the location of the nearest available tariff. The notice shall be in large print and posted in a conspicuous place. In addition, the carrier shall, upon request, make particular tariffs available at that location as soon as possible but not later than within 20 days, or provide the sought information orally if satisfactory to the requestor.

(5) Any publication referred to in a tariff must be posted with that tariff.

(b) *Exception to the posting requirements.* If any tariff maintained pursuant to paragraph (a)(2) of this section has not been used for a substantial

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length of time, the posting of that tariff, including its reissues, may be discontinued at that station until such time as a request is made to have it reposted. It shall then be reposted within 20 days.

§ 1312.13 Furnishing copies of tariff publications.

(a) *Definitions.* *Subscriber*, as used in this section, means any person (other than carrier participants in a tariff) that is voluntarily furnished, or that requests that it be furnished, one or more copies of a particular tariff with or without subsequent amendments or reissues of that tariff.

(b) *Sending new publications to subscribers.* (1) The publishing carrier or agent shall send each newly-issued tariff, supplement, or loose-leaf page as requested to each subscriber by first class mail, or other means requested in writing by the subscriber.

(2) Newly-issued tariffs, supplements, or loose-leaf pages shall be sent to each subscriber not later than the time the copies for official filing are sent to the Board.

(3) Carriers or agents may, if acceptable to a subscriber, furnish only specific portions of original tariffs and amendments affecting those portions.

(c) *Certification.* The letter of transmittal accompanying the copies filed with the Board shall contain the following certification:

I certify that compliance with 49 CFR 1312.13 has been made.

(d) *Charges.* (1) If any charge is made, the charge for copies of tariff publications sent to subscribers shall be reasonable, and identical for the same publications.

(2) No charge may be made (even for the cost of sending the publication) for any publication that is invalidated by the Board.

(e) *Notice of invalidation.* If a publication is invalidated, the subscribers shall be notified.

(f) *Alternative subscription services.* The service described in this section must be available to any subscriber requesting it; however, the requirement to offer such service does not preclude the offering of different services to subscribers requesting those services.

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§ 1312.14 Powers of attorney and concurrences.

(a) *Authorization.* Rates and services of a carrier must be filed in a tariff issued in that carrier's name unless they are filed:

(1) In an agent's tariff when the carrier has executed a power of attorney authorizing that individual or entity to serve as its tariff agent; or

(2) In a tariff of another carrier through issuance of a concurrence to the latter carrier authorizing the first carrier's participation in joint rates and through routes.

(b) *Disclosure of authorization.* If two or more carriers execute powers of attorney to the same agent, it is not necessary for those carriers to exchange concurrences to participate in joint rates in that agent's tariffs. Powers of attorney and concurrences are not to be filed with the Board, but shall be provided to any person on request.

§ 1312.15 Change of carrier or agent.

(a) *Change in carrier.* When a carrier's name is lawfully changed, or a fiduciary assumes possession and control of a carrier's property, all affected tariffs must be amended to reflect the change. The amendments required by this paragraph shall be filed promptly and, if possible, prior to their effective date, but in no case later than 60 days thereafter. Regardless of the date the tariff is actually filed, the effective date for an amendment required by this paragraph is the date the event occurs.

(b) *Change of agent.* When a new agent is appointed to take over an agency, or when an alternate agent assumes the duties of the principal agent, each of the superseded agent's effective tariffs shall immediately be amended to reflect the change, bearing an effective date the same as the date of the transfer. In the case of a new agent, this may only occur after one or more of the participating carriers issues a power of attorney to the new agent, and revokes the previous power of attorney. At the same time, all affected tariffs will be amended to reflect the new powers of attorney, and all carriers who have not issued them must be canceled from the tariff.

§ 1312.16 Substitution of service.

If a water or motor carrier (hereafter referred to as Carrier A) desires to have the option of substituting the services of a carrier of a different transportation mode (hereafter referred to as Carrier B) for part of its movement of a shipment, it may do so if:

(a) The shipment moves on the bill of lading that would be used if Carrier A were performing the service;

(b) Carrier A assumes the responsibility for the lading while it is in the possession of Carrier B; and

(c) Movement of the lading has been made prior to, or will be made subsequent to, the service performed by Carrier B.

PART 1313—RAILROAD CONTRACTS FOR THE TRANSPORTATION OF AGRICULTURAL PRODUCTS

Sec.

1313.1 Scope; definition of terms.

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1313.10 Procedures for complaints and discovery.

AUTHORITY: 49 U.S.C. 721(a) and 10709.

SOURCE: 61 FR 68669, Dec. 30, 1996, unless otherwise noted.

§ 1313.1 Scope; definition of terms.

(a) This part addresses the provisions of 49 U.S.C. 10709 that require rail carriers to file with the Board a summary of each contract for the transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof) and that allow complaints to be filed with the Board regarding such contracts.

(b) The provisions of this part do not apply to any transportation that is exempted from the Board's contract regu-

lation pursuant to an exemption issued under 49 U.S.C. 10502 or former 49 U.S.C. 10505 (repealed effective January 1, 1996).

(c) For purposes of this part, the term contract means an agreement, including any amendment thereto, entered into by one or more rail carriers and one or more purchasers of rail services to provide specified transportation of agricultural products (including grain, as defined in 7 U.S.C. 75 and products thereof) under specified rates and conditions. The term amendment includes contract modifications agreed to by the parties.

(d) An amended contract is treated as a new contract under this part. Remedies are revived and review is again available, upon complaint.

§ 1313.2 Contract summary filing requirement.

(a) Rail carriers subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 10501 must promptly file with the Board a summary of each contract entered into for the transportation of agricultural products.

(b) Contract summaries not in compliance with this part may be rejected by the Board. If a contract summary is rejected, it will be considered as not filed, and the carrier must promptly file a corrected contract summary to replace the rejected summary.

§ 1313.3 Board review; contract disapproval.

(a) Board review. (1) No later than 30 days after a contract summary is filed, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in § 1313.9.

(2) If the Board begins a proceeding, it shall determine, within 30 days after the proceeding is commenced, whether the contract is in violation of 49 U.S.C. 10709.

(b) Contract disapproval. If the Board finds that the contract is in violation of 49 U.S.C. 10709, it will:

(1) Disapprove the contract; or

(2) Where the Board finds unreasonable discrimination, in accordance with 49 U.S.C. 10709(g)(2)(B)(i), order the contracting carrier(s) to provide to the complainant(s) rates and service

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substantially similar to those contained in the contract at issue, with such differences in terms and conditions as are justified by the evidence.

(c) *Applicable rates/charges if a contract is disapproved.* If the Board disapproves a contract (or contract amendment), the appropriate non-contract rates/charges (or the contract provisions otherwise in effect) will be applicable.

§ 1313.4 Filing procedures and formats for contract summaries.

(a) *Filing of Summaries.* (1) Two copies of each contract summary, containing the applicable information specified in §§ 1313.6, 1313.7, or 1313.8, as appropriate, must be filed with the Board as soon as possible, but no longer than 7 days after the date of the contract (or contract amendment).

(2) The outside envelope or wrapper containing one or more contract summaries must be prominently marked “Rail Contract Summary” and addressed to: Tariffs Branch, Surface Transportation Board, Washington, DC 20423.

(3) A transmittal letter identifying the submitted publication(s), and the name and telephone number of a contact person, must accompany each filing of one or more contract summaries. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the filing carrier;

(ii) The number of summaries transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged;

(iv) The transmittal number if the filer utilizes transmittal numbers; and

(v) If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

(b) *Contract summary title page.* The title page of each contract summary must contain only the following information:

(1) In the upper right corner, the contract summary number (see paragraph (c) of this section), followed by the

amendment number if an amended contract summary.

(2) In the center of the page, the filing carrier’s name, followed by the words “CONTRACT SUMMARY” or “AMENDED CONTRACT SUMMARY”, as applicable, in large print.

(3) Date of contract and its effective date.

(4) In the center lower portion, the individual submitting the filing, and the name of the individual(s) for service of complaints (if not the same individual). If not otherwise noted, a complainant may rely on service to the individual submitting the filing.

(c) *Contract summary numbering system.* (1) The contract summary identification number must include the word “STB,” the standard carrier alphabetic code for the filing railroad (limited to four letters), the letter “C,” and a sequential number, with each separated by a hyphen. The following is an example: the 357th contract summary filed by the Conrail would have the following identification number: “STB-CR-C-357.”

(2) At its option, the carrier may issue contract summaries with non-consecutive numbers if it assigns blocks of numbers for specific uses. An index to the blocks of reserved numbers shall be filed with the Board.

(d) *Format requirements for contract summary information.* (1) The contract summary must enumerate and have each item required in §§ 1313.6, 1313.7 or 1313.8 of this part, as applicable, completed. When the item does not pertain to the contract, the term “Not Applicable” (“NA”) shall be used.

(2) Changes in prior contract summaries must be underscored and must be followed by the words “addition,” “deletion,” “extension,” “cancellation,” or other appropriate descriptive phrase in parentheses. If the change to the contract is only in confidential matter, a statement to that effect must be made in the amended contract summary and must indicate the particular feature to which the change applies (i.e., rate, special feature, etc.). If “not applicable” is permitted in the original summary under §§ 1313.6 through 1313.8 of this part, the amended summary may use “not applicable”

with a notation that a change pertained only to confidential data.

(3) Amended contract summaries may not substitute phrases such as “not applicable” or “no change” where disclosure was required in the original contact summary (such as in the commodity description); amended contract summaries must set forth all required non-confidential terms in the contract, whether amended or not.

§ 1313.5 Contract and contract summary availability.

(a)(1) A contract summary filed under these rules shall be made available for public inspection in the Tariffs Branch of the Surface Transportation Board.

(2) A contract summary filed under these rules also shall be made available to the carrier(s) participating in the contract, upon reasonable request.

(b) Where not already required by § 1313.10(a)(5) of this part, the contract for which a summary is filed under these rules shall be provided immediately to the Board, upon request, for its use in carrying out its functions under the statute.

§ 1313.6 Contract summary for agricultural commodities.

(a) *Summary information.* The summary of a contract for the transportation of agricultural commodities must contain the following information:

(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract, and their addresses for service of complaints.

(2) *Specific commodity.* The specific commodity or commodities to be transported under the contract. Vague commodity descriptions such as “grain” are not permitted, even if that is the commodity description in the contract.

(3) *Shipper identity.* The specific identity of the shipper party to the contract, as well as any other party or parties on whose behalf that shipper is acting (to the extent known).

(4) *Specific origins, destinations, transit points, and other shipper facilities.* (i) Each specific origin and destination point to and from which the contract

applies. Vague descriptions such as “various points in Kansas” are not acceptable. Broad geographic descriptions such as “all stations in Kansas” are permitted only to the extent such terms are actually used in the contract and such origins and destinations are subject to specific identification by reference to available publications.

(ii) Each port involved.

(iii) Each transit point identified in the contract.

(iv) Each shipper facility affecting performance under the contract (if not included in the origin/destination points or transit points), to the extent identified in the contract or known to the contracting parties.

(5) *Contract duration.* (i) The date on which the contract has or will become applicable to the transportation services covered by the contract.

(ii) The termination date of the contract, and any terms for automatic extension or renewal of the contract.

(iii) Any provisions for optional extension.

(6) *Rail car data.* (i) Either the information in paragraph (a)(6)(A) of this section or the certified statement in paragraph (a)(6)(B) of this section as follows:

(A) The number of dedicated cars (or, at the carrier’s option, car days), by major car type, to be used to fulfill the contract or contract options, including those that are:

(1) Available and owned by the carrier(s) listed in paragraph (a)(1) of this section;

(2) Available and leased by those carrier(s), with average number of bad-order cars identified; and

(3) (Optional) On order (for ownership or lease), along with delivery dates.

(B) A certified statement that:

(1) The shipper will furnish the rail cars used for the transportation provided under the contract, and that those rail cars will not be leased from the carrier; or

(2) The contract is restricted to services which do not entail car supply.

(ii) For contract summaries filed on or before September 30, 1998, a certified statement that the cumulative equipment total for all contracts for the transportation of agricultural commodities (including forest products,

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but not including wood pulp, wood chips, pulpwood or paper) does not exceed 40 percent of the capacity of carrier-owned and -leased cars by applicable car type.

(7) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) A summary of any escalation provisions in the contract.

(8) *Volume.* All volume, car and/or train size requirements, as set forth in the contract, including:

(i) Movement type (single-car, multiple-car, unit-train).

(ii) Minimum and actual volume requirements under the contract, by applicable period(s) (annual, quarterly, etc.).

(iii) Volume breakpoints affecting the contract.

(9) *Special features.* The existence (but not the terms or amount) of any special features, such as transit-time commitments, credit terms, discounts, switching, special demurrage, guaranteed or minimum percentages, etc.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

- (1) Total bad-car orders;
- (2) Assigned car obligations; and
- (3) Free-running cars.

§ 1313.7 Contract summary for grain products—involving a port.

(a) *Summary information.* The summary of a contract for the transportation of grain products that involves service to or from a port must contain the following information:

(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract, and their addresses for service of complaints.

(2) *Specific commodity.* The specific commodities to be transported under the contract. Broad commodity de-

scriptions such as “grain products” are permitted only to the extent that is the commodity description in the contract.

(3) *Contract duration.* (i) The date on which the contract has or will become applicable to the transportation services covered by the contract.

(ii) The termination date of the contract, and any terms for automatic extension or renewal of the contract.

(4) *Rates and charges.* (i) The specific base rates and/or charges that would apply without the contract.

(ii) The existence (but not the terms or amount) of any escalation provisions.

(5) *Volumes.* The existence (but not the terms or amount) of any provisions regarding movement type (e.g. single-car, multiple-car, unit-train) or minimum volume requirements.

(6) *Special features.* The existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

(7) *Rail car data.* Either the information in paragraph (a)(7)(i) of this section or the certified statement in paragraph (a)(7)(ii) of this section as follows:

(i) The number of dedicated cars (or, at the carrier's option, car days), by major car type, to be used to fulfill the contract or contract options, including those that are:

(A) Available and owned by the carrier(s) listed in paragraph (a)(1) of this section;

(B) Available and leased by those carrier(s), with average number of bad-order cars identified; and

(C) (Optional) On order (for ownership or lease), along with delivery dates.

(ii) A certified statement that:

(A) The shipper will furnish the rail cars used for the transportation provided under the contract, and that those rail cars will not be leased from the carrier; or

(B) The contract is restricted to services which do not entail car supply.

(8) *Ports.* (i) The port(s) involved.

(ii) Either the mileages (rounded to the nearest 50 miles) between the port and each inland origin or destination,

or the specific inland origin and destination points.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data on the cars used to fulfill the challenged contract. This additional data shall include (by major car type used to fulfill the contract):

- (1) Total bad-car orders;
- (2) Assigned car obligations; and
- (3) Free-running cars.

§ 1313.8 Contract summary for grain products—not involving a port.

(a) *Summary information.* The summary of a contract for the transportation of grain products that does not involve service to or from a port must contain the information specified in § 1313.7, paragraphs (a)(1), (2), (3) and (7). It must also contain the information specified in § 1313.7(a)(6) if the contract contains such terms.

(b) *Supplemental information.* In the event a complaint is filed that is directed at a carrier's ability to fulfill its common carrier obligation with carrier-furnished cars, the carrier(s) shall immediately supplement the information contained in the contract summary by submitting to the Board, and supplying to the complainant, additional data specified in § 1313.7(b).

§ 1313.9 Grounds for complaints and contract review.

(a) A complaint may be filed against a contract covered by this part:

(1) By any shipper on the ground that such shipper individually will be harmed because the contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under 49 U.S.C. 11101;

(2) By a port on the ground that such port individually will be harmed because the contract will result in unreasonable discrimination against such port; and

(3) By a shipper of agricultural commodities on the ground that such ship-

per individually will be harmed because:

(i) The rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that such shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) The contract constitutes a destructive competitive practice.

(b) *Unreasonable discrimination*, for purposes of paragraph (a)(3)(i) of this section, has the same meaning as the term has under 49 U.S.C. 10741.

§ 1313.10 Procedures for complaints and discovery.

(a) *Complaints, discovery petitions, replies, and appeals*—(1) *Initial filing.* Complaints must be filed by the 18th day after the contract summary is filed. Any discovery petition must accompany the complaint.

(2) *Complaint.* A complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant(s). The complainant must set out the statutory provisions under which it has standing to file a complaint, and its reasons for requesting that the Board find the challenged contract unlawful.

(3) *Discovery petition.* A discovery petition must note on the front page "Petition for Discovery of Rail Contract" and note the contract (and any applicable amendment) number. It should provide the following information:

(i) *Standing—grounds.* The ground upon which the petitioner's complaint is based under § 1313.9.

(ii) *Standing—affected party.* Pertinent information regarding the petitioner's actual or potential participation in the relevant market, including:

(A) The nature and volume of petitioner's relevant business.

(B) The relevant commodities that petitioner ships or receives.

(C) Comparisons of the petitioner's commodities, locations of shipping facilities and serving carriers, actual or

potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(D) The petitioner's ability to ship the commodity in question at a time generally simultaneous with the challenged contract.

(E) The potential effect of the contract on the petitioner's relevant business.

(F) Any additional supporting information, including prior negotiations, if any.

(iii) *Relevance*. The relevance of the information sought to the petitioner's challenge to the contract.

(iv) *Nexus*. Where the complaint challenges a carrier's ability to perform its common carrier obligation, the nexus between the information sought and the common carrier obligation of the contracting carrier(s).

(4) *Service of pleadings*. The complainant must certify that 2 copies of the complaint, and discovery petition if filed, have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Board. The contracting carrier shall in turn serve the contracting shipper with a copy of the complaint and petition. Replies shall be served in the same manner on complainant/petitioner.

(5) *Submission of contract*. Immediately upon the filing of a complaint, the rail carrier filing the contract summary shall forward to the Board, by hand, express mail, or other overnight delivery service, the subject contract or amended contract.

(6) *Replies*. Replies to the complaint/petition are due within 5 days from the date of filing of the complaint/petition, and in no event later than noon on the 23rd day following filing of the contract summary.

(7) *Copies*. An original and 10 copies of complaints, petitions and replies must be filed with the Board in a package marked "Confidential Rail Contract Material".

(8) *Discovery appeals*. If action on a petition for discovery is taken under delegated authority, that action may be appealed to the Board, subject to the following:

(i) An appeal must be received within 2 days of the initial decision, but in no event later than the 28th day after the contract summary is filed.

(ii) The appeal must be marked "Appeal of Delegated Authority Action Regarding Rail Contract Discovery".

(iii) Telegraphic notice or its equivalent must be given to the opposing parties.

(iv) Replies to the appeal must be filed within one day after the appeal is filed.

(v) An original and 10 copies of appeals and replies must be filed with the Board.

(9) *Furnishing of information*. If discovery is granted, the carrier must furnish the required information to the petitioner by the 1st working day after the Board issues its decision.

(b) *Informal discovery*. (1) Prior to filing a petition for formal discovery under paragraph (a) of this section, a petitioner may request discovery from the carrier.

(2) The carrier must promptly grant or deny the request.

(3) Agreements between carriers and shippers for informal discovery are permitted under these rules.

(c) *Confidentiality*. If confidential contract data are filed with the Board in a pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (d) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Board or through informal discovery.

(d) *Protective order*. Petitioner and carriers, and their duly authorized agents, shall limit to the contract complaint proceeding the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or in any other pleading relating to the contract. This restriction shall be a condition to release of any contract term to a petitioner/complainant and shall operate similarly on a carrier

in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: consultants or agents who agree, in writing, to be bound by this regulation; information which is publicly available; information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding.

(e) *Contract review proceeding.* If the Board institutes a proceeding to review the contract, the complainant's case-in-chief is due 9 days after the institution of the proceeding, but no later than 39 days after the filing of the contract summary. Replies are due 16 days after the institution of the proceeding, but no later than 46 days after the filing of the contract summary.

PART 1319—EXEMPTIONS

AUTHORITY: 49 U.S.C. 721(a) and 13541.

SOURCE: 62 FR 9110, Feb. 28, 1997, unless otherwise noted.

§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from tariff filing requirements.

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the tariff filing requirements of 49 U.S.C. 13702.

PARTS 1320–1324 [RESERVED]

PART 1325—EXTENSION OF CREDIT TO CANDIDATES FOR FEDERAL OFFICE OR THEIR REPRESENTATIVES

Sec.

1325.1 Extension of unsecured credit prohibited.

1325.2 Credit agreements.

1325.3 Federal office.

AUTHORITY: Pub. L. 92-225, the Federal Election Campaign Act of 1971, enacted Feb. 7, 1972.

SOURCE: 37 FR 10446, May 23, 1972, unless otherwise noted.

§ 1325.1 Extension of unsecured credit prohibited.

Persons subject to regulation by the Surface Transportation Board shall not knowingly and willfully provide, for candidates for Federal office or their representatives, service or goods related to their campaign without obtaining either prepayment or a binding guarantee of payment through a sufficient deposit, bond, collateral, or other means of security. The extension of credit to such persons shall not exceed the amount of the security posted.

§ 1325.2 Credit agreements.

(a) All agreements to extend credit to candidates for Federal office or their representatives by persons subject to regulation by the Surface Transportation Board (1) must be in writing, (2) must contain a detailed description of the deposit, bond, collateral, or other means of security, used to secure payment of the debt, and (3) must be signed by all parties to the agreement. A copy of each such agreement must be filed with this Board's Bureau of Operations in Washington, DC, within 20 days of the date of its execution.

(b) [Reserved]

§ 1325.3 Federal office.

For the purposes of this section, *Federal office* means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Board Member to, the Congress of the United States.

**PART 1331—APPLICATIONS UNDER
49 U.S.C. 10706 AND 13703**

Sec.

- 1331.1 Form and content of application.
1331.2 Required exhibits.
1331.3 Procedure.
1331.4 New parties to an agreement.
1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

AUTHORITY: 49 U.S.C. 721, 10706 and 13703.

SOURCE: 55 FR 11206, Mar. 27, 1990, unless otherwise noted.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization:

(1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1;

(2) As Exhibit 3, an organization chart; and

(3) As Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Board shall include a certificate naming the bodies upon whom the application has been served.

(b) The Board will publish in the FEDERAL REGISTER a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR part 1104.

(d) The Board's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Board, such approval will extend to such carrier upon the filing with the Board by the carrier or its authorized

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agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at §1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49. U.S.C. 10706(d)).

§ 1331.5 Additional standards for retaining antitrust immunity by passenger bus industry rate bureaus.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Board. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Board standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Board approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A *general increase* is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A *broad change in tariff structure* modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An *innovative fare* will be determined on a case-by-case basis; the Board will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are:

(i) A fare for unlimited passenger travel; and

(ii) An experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A *promotional fare* generally has three characteristics:

(i) Limited duration;

(ii) Attractive price or level of service quality; and

(iii) Some added feature in addition to those normally offered.

PART 1332—FILING CONTRACTS FOR SURFACE MAIL TRANSPORTATION

Sec.

1332.1 Applicability.

1332.2 Availability of contracts.

1332.3 Manner of submitting contracts.

AUTHORITY: Sec. 5005(b)(3), 84 Stat. 767, 39 U.S.C. 5005.

§ 1332.1 Applicability.

The provisions of this part shall apply to copies of all contracts or agreements entered into by the U.S. Postal Service with any common carrier by rail or motor vehicle (including passenger-carrying vehicle), or freight forwarder, express company, or other person, for the surface transportation of mail as authorized by Chapters 50 and 52 of Title 39, United States Code, as revised and reenacted by the Postal Reorganization Act, 84 Stat. 719, 39 U.S.C. 5001 and 5201.

[36 FR 6426, Apr. 3, 1971]

§ 1332.2 Availability of contracts.

Upon request from any member of the public to inspect a contract(s) or agreement(s) described in §1332.1, at any time between the effective date of such contract(s) or agreement(s) and 15 days prior thereto, the Board will obtain the requested contract(s) or agreement(s) from the U.S. Postal Service and make it (them) available for inspection.

[57 FR 23539, June 4, 1992]

§ 1332.3 Manner of submitting contracts.

The U.S. Postal Service will submit to the Board, upon request, a copy of the requested contract(s) or agreement(s). Such contract(s) or agreement(s) will be submitted by facsimile transmission or messenger service where feasible, and, where such services are not feasible, by the fastest available mail service.

[57 FR 23539, June 4, 1992]

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**CHAPTER XI—RESEARCH AND INNOVATIVE TECHNOLOGY
ADMINISTRATION, DEPARTMENT OF TRANSPORTATION
[RESERVED]**