

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 571

[Docket No. 95-65; Notice 2]

RIN 2127-AF72

Federal Motor Vehicle Safety
Standards; Air Brake Systems, Devices
That Remove Moisture and
Contaminants

AGENCY: National Highway Traffic
Safety Administration (NHTSA),
Department of Transportation.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This document proposes to amend Standard No. 121, *Air brake systems*, to require that each air brake-equipped truck, truck tractor, and bus be equipped with a means of automatically removing moisture and contaminants from the air system. The purpose of this proposal is to improve the safety of air-braked vehicles by improving the reliability and durability of antilock braking system (ABS) modulator valves and pneumatic control valves. This document also proposes to delete the requirement for a supply reservoir since its function (i.e., the elimination of moisture and contaminants) would be accomplished by the addition of such automatic means. Accordingly, the deletion would not adversely affect the safety of those vehicles.

DATES: Comments must be received on or before January 3, 1997.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Mr. Richard Carter, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590, (202) 366-5274. FAX (202) 366-4329.

For legal issues: Mr. Marvin L. Shaw, NCC-20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2992.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Regulations

- B. Petition for Rulemaking
- C. Notice Requesting Comments About Devices that Remove Contaminants
- D. Comments on the Notice
- II. Agency Proposal
 - A. General Discussion
 - B. Cost Considerations
- III. Rulemaking Analyses and Notices
 - A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. National Environmental Policy Act
 - D. Executive Order 12612 (Federalism)
 - E. Civil Justice Reform

I. Background

A. Current Regulations

Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, requires air-braked vehicles to be equipped with certain equipment, including one or more air service reservoir systems from which air is delivered to the brake chambers. (See S5.1.2) In addition, manufacturers are required to either (1) equip air-braked vehicles with an additional supply reservoir¹ between the service reservoir(s) and the compressor, or (2) equip each service reservoir with an automatic condensate drain valve.² Both options remove moisture. The supply reservoir collects moisture and solid particulate matter before it can enter the service reservoir or reservoirs. An automatic condensate drain valve automatically removes moisture and certain solid contaminants that become trapped in the bottom of a reservoir. Regardless of which option is chosen, all air reservoirs must be fitted with a condensate drain valve that can be manually operated. Accordingly, an automatic condensate drain valve must also be manually operable. (see S5.1.2.4 for trucks and buses and S5.2.1.3 for trailers).

The Federal Motor Carrier Safety Regulations (FMCSRs) require drivers of commercial vehicles to inspect specified features on their vehicles, including service brake system, prior to driving to ensure those features are “* * * in good working order.” (49 CFR 392.7) However, the FMCSRs do not require that air reservoirs be drained on any fixed periodic basis.

B. Petition for Rulemaking

On July 28, 1994, Domenic F. Coletta, M.D. submitted a petition for rulemaking requesting that Standard No. 121 be amended to require a condensate drain valve that automatically purges

the moisture and contaminants from each reservoir tank on air-brake equipped vehicles. Dr. Coletta claimed that automatic drain valves would better ensure safety than manual valves since drivers frequently fail to remember to manually purge moisture and contaminants from reservoirs. The petitioner supplied a video showing New Jersey State police purging significant amounts of liquid and contaminants from the air reservoirs of heavy vehicles during roadside safety inspections.

C. Notice Requesting Comments About
Devices That Remove Contaminants

On July 24, 1995, NHTSA issued a notice requesting information about devices that remove moisture and other contaminants from air brake systems (60 FR 37864). The agency explained that keeping air brake systems clean and dry prevents degraded brake performance and valve freezing, which can lead to brake failure. The agency was especially concerned about potential problems with antilock brake systems (ABS) malfunctioning, since their modulator valves have smaller orifices and therefore are more sensitive to contaminants. NHTSA explained that certain equipment such as automatic and manual drain valves and air dryer systems can keep air brake systems, particularly the air reservoirs, dry and free from contaminants. Drain valves purge the reservoirs of liquid condensate and contaminants suspended in that liquid. Manual drain valves must be opened by a truck driver or maintenance person to drain the reservoir. While ideally this should be done each morning before the vehicle is started, some drivers do not do so. Automatic drain valves periodically drain the reservoir without the need for human intervention.

There are a variety of devices that reduce the amount of moisture and other contaminants in an air brake system by cleaning and drying the air. Among the most common are desiccant style air dryers and “after-cooler” air dryers. In a typical desiccant style system, the incoming air is routed into the bottom end of an air dryer, where a large portion of the oil and water mist fall to its bottom. This partially cleaned air then goes through an oil separator. Next the air, which is still moist with both oil and water vapor, is passed through a “drying bed” of desiccant material that absorbs the remaining moisture. These dryers are equipped with an automatic drain valve that periodically purges moisture and contaminants from the air system. In contrast, in a typical “after-cooler”

¹ The colloquial term for a supply reservoir is “wet” tank.

² The colloquial term for an automatic condensate drain valve is “spitter valve.”

system, which uses an air cleaner only, not all the moisture is removed, since the air is not passed through a drying bed of desiccant material.

NHTSA stated that according to AlliedSignal, over 80 percent of new air braked heavy trucks are being built with air dryers and that more than 90 percent of the dryers are the desiccant type. Moreover, that company predicted that in five years almost all air braked vehicles will be equipped with an air cleaning and drying system.

NHTSA posed several questions about whether it should nevertheless initiate rulemaking to require devices to remove moisture and other contaminants from air brake systems. These included questions whether contaminants in air brake systems cause a significant safety problem, whether devices such as automatic drain valves and air dryers are effective in removing moisture and contaminants from air brake systems, and whether requiring such devices would be cost effective.

D. Comments on the Notice

NHTSA received 34 comments from vehicle and equipment manufacturers, a safety advocacy group (Advocates for Highway and Auto Safety) (Advocates), the Truck Manufacturers Association (TMA), the Heavy Duty Brake Maintenance Council (HDBMC), the Truck Trailer Manufacturers Association (TTMA), the National Truck Equipment Association (NTEA), the National School Transportation Association (NSTA), the American Trucking Associations (ATA), individual truck operators and fleets, Senator Frank R. Lautenberg, the petitioner, and numerous private citizens.

The manufacturers and associations generally stated that a Federal requirement was not necessary, claiming that the present use of air dryers, and the trend towards their increased use, was sufficient to maintain a safe level of performance. ATA, AlliedSignal, NTEA, NSTA, Navistar, TTMA, and TMA stated that they had no records of any accidents or crashes caused by contaminated air. TMA stated that while contaminants in air brake systems can cause reliability problems in specific components, they believe contamination does not result in a significant safety problem. TMA, Penske Truck Leasing, and ATA stated that a desiccant style air dryer with an integral automatic drain valve more effectively removes moisture and other contaminants from an air brake system than an automatic drain valve by itself. TMA requested that instead of a supply reservoir, the agency should allow

either an automatic drain valve on each service reservoir or a desiccant style air dryer. ATA also stated that desiccant air dryers were more effective in keeping air in the brake system clean than automatic drain valves. That organization stated that "automatic drain valves have not been found to be an effective device for removing contaminants."

The petitioner (Dr. Coletta), manufacturers of automatic drain valves, Advocates, and a number of private citizens commented that significant safety problems result from moisture and contaminants in a vehicle's air system. The petitioner stated that it is very important to keep the air reservoir system dry and free of contaminants to prevent the contamination and deterioration of the brake system, which can result in serious safety problems. To support this claim, Dr. Coletta referenced a National Transportation Safety Board (NTSB) study of 18 heavy vehicle crashes³ in which NTSB investigated the extent to which brake system performance caused or increased the severity of heavy vehicle crashes. Inadequate brake system maintenance and poor brake adjustment were either the primary or a contributory causal factor in most of the crashes investigated. While not specifically mentioned as a primary or direct contributory factor to these crashes, the NTSB report noted that in 4 of the 18 cases (22 percent), significant amounts of moisture and sludge were found in the air reservoirs, thereby contributing to the overall poor functioning of the vehicles' brake system.

Dr. Coletta and others stated that the agency should require that each service reservoir be equipped with an automatic drain valve instead of a manual drain valve, because truck drivers typically do not manually drain the reservoirs. They further claimed that air dryers are not an effective way to solve the problem of contaminants and moisture in air systems, since air dryers do not remove all moisture from the system and are difficult to maintain. These commenters also stated that truck drivers will not perform the routine maintenance necessary for desiccant systems.

II. Agency Proposal

A. General Considerations

Based on the available information, NHTSA has decided to propose amending Standard No. 121 to require that each air brake-equipped truck, truck tractor, and bus be equipped with

an automatic means of removing moisture and contaminants from the air brake system. The term "contaminants" includes, but is not limited to, carbon and other particulates, dirt, oil, soot, and sludge. The agency believes that removing moisture and contaminants would increase the reliability and durability of both ABS and pneumatic control valves of air brake systems, thereby increasing the safety of these vehicles. This is so because contaminants cause valves to stick, thereby preventing sufficient air pressure from being delivered to the brake. The proper functioning of ABS valves is especially important since heavy vehicles will be required to be equipped with ABS, beginning in March 1997. In addition, the proposed requirements would ensure that air supply lines are clear and that maximum air reservoir capacity is available to drivers when braking.

NHTSA is proposing to require air braked vehicles to be equipped with a means of automatically removing moisture and contaminants from the air brake system for the following reasons. First, according to NHTSA's extensive fleet study⁴ of ABS-equipped heavy vehicles, ABS-equipped truck tractors that were also equipped with desiccant-style air dryers performed better than truck tractors without these air dryers. In particular, vehicles with desiccant-style air dryers did not experience leaks in their relay valves. Second, the previously mentioned NTSB study of heavy vehicle crashes found that in 4 of 18 cases (22 percent), significant amounts of moisture and contaminants were found in the vehicles' air reservoirs. The agency emphasizes that while the study is not a statistically representative sampling of all heavy vehicle crashes, it suggests that air system contamination may be a problem. Third, AlliedSignal recently conducted a voluntary recall⁵ to address freezing relay valves because the valves failed due to exposure to solvents and chemicals such as antifreeze and glycol. Apparently, some drivers and mechanics attempted to unfreeze the valves by pouring antifreeze into the trailer's air supply and control lines.

To achieve this rule's objective, i.e., keeping air brake systems dry and free of contaminants, NHTSA considered a number of regulatory approaches and decided to propose a broad-based

⁴ Klusmeyer, L.F., Gray, A.W., Bishop, J.S., and Van Schoiack, M. *An In-Service Evaluation of the Performance, Reliability, Maintainability, and Durability of Antilock Braking Systems (ABSs) for Semitrailers*. USDOT Report No. HS 808 059, October 1993.

⁵ Ref. Voluntary Recall No.94-E-027.

³ Heavy Vehicle Air Brake Performance (NTSB/SS-92/01; 1992)

equipment requirement rather than specifying a specific device, detailed design specifications, or general performance requirements. This is the same approach the agency used in establishing S5.1.8 which requires that "wear of the service brakes on newly manufactured heavy vehicles to be compensated for by means of a system of automatic adjustment." (57 FR 47793, October 20, 1992). Moreover, the agency believes today's proposal is consistent with the agency's desire to avoid issuing regulations that are unnecessarily design specific. NHTSA is wary of specifying a particular device, an action that might preclude the development of new technologies, particularly in light of a recent paper⁶ by the Society of Automotive Engineers (SAE) that discussed a number of devices and methods that can remove moisture and other contaminants from compressed air systems. These methods include filtration, desiccant absorption, coalescing, centrifugal force, or a combination of these processes. The SAE paper stated that the most effective device would employ a combination of these processes, particularly filtration, coalescing, and desiccant. These devices would be permitted by this proposal.

Another device that would be permitted under this proposal is the automatic condensate drain valve, the solution suggested in Dr. Coletta's petition. These devices eliminate moisture (i.e., liquid condensate) and solid contaminants suspended in that liquid that collect at the bottom of the supply reservoir.

NHTSA has decided at this time not to develop a test procedure and performance requirements to evaluate the dryness and cleanness of an air brake system for several reasons. First, the practicality of developing such a test procedure is unclear at this time. To ensure that all (or substantially all) contaminants had been removed, it might be necessary for the test procedure to assess the performance of the entire air system, including all piping and valves. Such a test could be expensive, since the piping and valves are very extensive. Moreover, it might be necessary to develop different test set-ups to evaluate the wide range of air systems. Second, to the agency's knowledge, criteria for evaluating the amount of contamination removal do not currently exist. Developing such a test procedure and criteria would have been too time-consuming.

For these reasons, NHTSA has decided to propose an equipment requirement at this time. Nevertheless, the agency would prefer ultimately to establish performance requirements for this equipment. Federal law generally requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies when such technical standards are available; see section 12(d) of Pub. L. 104-113. The subject of moisture and solid contaminant removal from air brake systems appears to present an opportunity for NHTSA to adopt consensus performance requirements developed by an organization such as the Society of Automotive Engineers (SAE). SAE would be performing a service to the public by developing such consensus performance requirements, as well as permitting a significant savings in resources for the government. NHTSA is aware of and has been monitoring the efforts of the SAE to develop a Recommended Practice for assessing the amount of airborne moisture and solid particulate matter contaminant levels present at the output side of the service reservoirs. If the SAE can reach consensus on some performance requirements, NHTSA anticipates relying on those consensus requirements in its further consideration of this issue.

NHTSA requests comments on its decision to propose requiring that air-braked vehicles be equipped with a means of automatically removing moisture and other contaminants rather than proposing a test procedure and performance requirements. The agency also invites comments about the proposed terminology used to describe the equipment that the amendment would require, especially whether various devices would comply with the proposal.

NHTSA has decided to propose deleting the requirement for a supply reservoir since the service reservoirs in an air system would be equipped with an automatic means of removing moisture and contaminants from the air system. The agency believes that removing supply reservoirs would not compromise air brake system performance, provided that a means of automatically removing moisture and contaminants is added. Nevertheless, the agency invites commenters to submit data and test results comparing the durability and reliability of air brake systems on vehicles that are equipped as follows: those vehicles equipped with a supply reservoir but are not equipped with a means for automatically removing moisture and contaminants

versus those vehicles that are not equipped with a supply reservoir but are equipped with a means for automatically removing moisture and contaminants. Also, the agency requests comments about the likelihood that a purchaser would decide not to equip its vehicles with supply reservoirs, if the proposed amendment were adopted.

NHTSA has decided to retain the requirement of S5.1.2.4 that each reservoir be fitted with a manual draining capacity. The agency believes this capability is needed as a supplemental means of verifying that the primary means of automatically removing moisture and contaminants is functioning properly. Periodic manual purging checks to ascertain that liquids are not collecting in service reservoirs should accomplish this function. Automatic condensate drain valves (or an air dryer with an automatic drain valve) that can be manually actuated, would comply with this requirement.

B. Cost Considerations

In its notice requesting comments, NHTSA estimated that devices that would comply with requirements to keep the air system clean and dry could range from \$75-\$400 per vehicle. The commenters generally concurred with these estimates. The agency estimates that the annual production of air braked vehicles is approximately 209,000 (148,000 truck tractors and approximately 61,000 single unit trucks and buses), based on its earlier analysis in the Final Regulatory Evaluation for the ABS final rule (60 FR 13216, March 10, 1995). NHTSA estimates that 90 percent of all currently manufactured truck tractors are already equipped with a means of automatically removing moisture and contaminants and that 75 percent of all single unit trucks and buses are so equipped. This proposal would affect the remaining 30,000 vehicles (14,800 truck tractors + 15,200 single unit vehicles). They would need to be equipped with these devices at a total annual cost of between \$2.25 million to \$12 million.

NHTSA notes that some of these costs might be offset by savings if manufacturers choose to eliminate the supply reservoirs from the estimated 209,000 air brake equipped truck tractors, trucks and buses that are manufactured each year. The amount of these offsetting savings could vary appreciably, depending on a number of factors. First, removing one of the three air reservoirs could necessitate increasing the size of the remaining two service reservoirs to meet the reservoir sizing requirements of S.5.2.1.1. Nevertheless, two larger reservoirs

⁶Fitzsimmons, D. *Synergy in Air Dryers, Multiple-State Processes and Application Requirements*, SAE Paper No. 952675, November, 1995.

would cost less than three reservoirs and their associated piping and fittings. The agency estimates that there would be a savings of between \$10–\$75 per vehicle. Second, the extent to which manufacturers and heavy vehicle users decide to no longer equip their vehicles with a supply reservoir is uncertain.

Accordingly, for the purposes of this analysis, the agency has conservatively assumed that between 0–50 percent of newly manufactured air-braked power units would no longer be equipped with supply reservoirs. Based on this assumption, the agency estimates that no longer equipping vehicles with supply reservoirs would offset the proposal's costs by between \$0–\$7.8 million per year, with a conservative estimate being \$1 million. The agency invites comments on these cost estimates. After reviewing this information, NHTSA will factor in these cost savings in assessing the rulemaking's overall cost.

Based on applying this \$1 million cost savings to the costs associated with requiring air-braked vehicles to be equipped with a means of automatically removing moisture and contaminants, NHTSA estimates that a total cost of \$1.25 million to \$11 million would be incurred to comply with the proposed requirements. In addition, by ensuring dry and clean air, today's rulemaking would contribute to more fully achieving the anticipated benefits expected from equipping heavy vehicles with ABS.

NHTSA decided not to propose requiring a means of automatically removing moisture and contaminants separately on both towing and towed units in a combination-unit vehicle. The agency reasoned that since the air used on trailers is supplied by the towing unit, having the means to automatically remove moisture and contaminants on the towing unit would be sufficient to ensure dry and clean air on towed units as well. The agency further reasoned that sufficient safety enhancement, relative to the costs incurred, would be achieved by specifying such a requirement only for the towing unit. The agency estimates that it would cost an additional \$13.9 million to \$74 million per year to equip the 186,100 heavy truck trailers that are manufactured each year. The agency solicits additional data and comments on its decision not to propose requiring that trailers be equipped with a means of automatically removing moisture and contaminants.

Rulemaking Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency's Final Economic Assessment of the final rules amending Standard No. 105 and Standard No. 121 to require medium and heavy vehicles to be equipped with ABS, concluded that the benefits associated with those requirements exceeded the costs that would result. The additional costs associated with adding a means of automatically removing moisture and contaminants to those vehicles that would otherwise not be equipped with them, would increase the costs of the ABS rule by 0.2 percent to 1.7 percent. This small increase does not alter the agency's original determination. Based on the discussion above and this consideration, NHTSA believes that the impacts are so minimal as not to warrant preparation of an additional full regulatory evaluation.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this proposal under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

NHTSA concluded that the March 1995 final rule amending Standard No. 121 did not have a significant impact on a substantial number of small entities. The agency concluded then that a small number of intermediate and final stage manufacturers that are small businesses might be affected by the rule, but that the impact would not be substantial. That conclusion is equally valid for this proposal, since today's proposal addresses the same types of manufacturers as addressed in the March 1995 action, and since the costs of this rulemaking are much less.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. No

changes in existing production or disposal processes would result.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency believes that this rulemaking action would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws would be affected.

E. Civil Justice Reform

This rulemaking would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket

at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and tires.

PART 571—[AMENDED]

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50

§ 571.121 Standard No. 121; Air Brake Systems

2. § 571.121 would be amended by revising S5.1.2 and by adding a new section S5.1.9, which would read as follows:

§ 571.121 Standard No. 121; Air Brake Systems

* * * * *

S5.1.2 *Reservoirs*. One or more service reservoir systems, from which air is delivered to the brake chambers.

* * * * *

S5.1.9 *Contamination Removal*. Each truck, truck tractor and bus shall be equipped with a means of automatically removing moisture and contaminants from the air system.

Issued on: October 29, 1996.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96-28228 Filed 11-1-96; 8:45 am]

BILLING CODE 4910-59-P

Surface Transportation Board

49 CFR Part 1310

[STB Ex Parte No. 555]

Household Goods Tariffs

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board proposes to establish regulations governing the tariffs that motor carriers and freight forwarders are required to maintain, under 49 U.S.C. 13702, for the transportation of household goods. The Board also proposes to establish notice requirements that household goods carriers must comply with in order to be entitled to enforce the provisions of their tariffs against individuals whose shipments are subject to such tariffs.

DATES: Comments are due on December 4, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 555 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred to the Surface Transportation Board (Board) various regulatory responsibilities, including certain responsibilities regarding the rates charged by motor carriers and freight forwarders for transportation of household goods. As pertinent here, the ICCTA retained the requirement that these carriers maintain tariffs containing their common carriage rates (and related rules and practices) for household goods transportation (except when providing such transportation for charitable purposes without charge). However, the ICCTA eliminated the requirement that household goods tariffs be filed with a regulatory body. Rather, the carriers are required to make such tariffs available to the Board for inspection, and available for inspection by shippers upon reasonable request. The Board may invalidate a tariff that violates section 13702 of the statute or a regulation of the Board carrying out that section.

Because household goods tariffs are no longer required to be filed, they are no longer governed by the tariff regulations at 49 CFR Part 1312 (see 49

CFR 1312.1(c)(i)). Accordingly, the Board is proposing a new Part 1310 and regulations to govern the household goods tariffs that motor carriers and freight forwarders are required to maintain. Our proposed regulations are designed to ensure that the required information is included in and easily determinable from the tariffs, and that they are made available as required by the ICCTA. We do not propose to prescribe the particular formats that must be employed; rather, we propose to give carriers the flexibility to devise publications that will best fulfill the needs of the carriers and their customers.

Additionally, at the request of the Household Goods Carriers' Bureau Committee (HGCBC), the proposed regulations address the notice requirements that carriers must comply with in order to enforce tariff terms incorporated by reference into their bills of lading or other documents embodying the contract of carriage.¹ HGCBC notes that the ICCTA specifically allows household goods carriers to incorporate tariff provisions into their bills of lading or other documents embodying the contract of carriage, subject to a notice requirement. HGCBC expresses concern that, without uniform rules specifying what is required, the issue of what constitutes adequate notice of incorporated tariff provisions would be litigated in various state and Federal courts, with potentially differing results.

We believe that there is merit to establishing uniform notice requirements for the incorporation of tariff terms and conditions into contracts of carriage for the transportation of household goods, and we are proposing regulations for that purpose. Because most of the movements subject to the proposed regulations will involve individual consumers who typically deal with commercial carriers on a relatively infrequent basis, the proposed rules are designed to highlight important terms and conditions that are likely to be incorporated, and to require that shippers be provided with a brief summary of the principal features of such terms. In this way, the information should be disclosed in a way that will be meaningful to individual consumers.

Request for Comments

We invite comments on all aspects of the proposed regulations. We encourage any commenter that has the necessary

¹ HGCBC's petition requesting that we promulgate regulations for this purpose was filed on September 20, 1996, and was initially docketed as Ex Parte No. 554, but we will consider it in this proceeding instead.