

## Surface Transportation Board, DOT

## § 1312.1

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

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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.

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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