

submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

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

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

2. Section 571.303 is amended by revising the definition of *CNG fuel container* in S4, revising S7.1.2, and adding S7.1.8 to read as follows:

§ 571.303 Standard No. 303; Fuel system integrity of compressed natural gas vehicles.

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S4. Definitions.

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CNG fuel container means a container designed to store CNG as motor fuel onboard a motor vehicle.

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S7.1.2 After each fuel storage container is filled as specified in S7.1.1, the fuel system other than each fuel storage container is filled with nitrogen, N₂, to normal operating pressures. All manual shutoff valves are to be in the open position.

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S7.1.8 The pressure drop measurement specified in S5.2 is to be made using a location on the high pressure side of the fuel system in accordance with the vehicle manufacturer's recommendation.

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Issued on: January 4, 1994.

Ricardo Martinez,
Administrator.

[FR Doc. 95-464 Filed 1-9-95; 8:45 am]

BILLING CODE 4910-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, and 1130

[Ex Parte No. MC-219]

Implementation of Section 4 of the Negotiated Rates Act of 1993

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of final rules.

SUMMARY: The Commission is adopting final rules to implement section 4 of the Negotiated Rates Act of 1993. These rules provide a mechanism for obtaining Commission review of motor carrier and shipper resolutions of overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates in compliance with 49 U.S.C. 10761 and 10762.

EFFECTIVE DATE: The rules are effective February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 927-5180. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking (NPR) in Ex Parte No. MC-219, *Implementation of Section 4 of the Negotiated Rates Act* (not printed), served March 4, 1994, and published at 59 FR 11240, March 10, 1994, we proposed rules which would implement section 4 of the Negotiated Rates Act of 1993 (NRA), Pub. L. No. 103-180. The NPR proposed a mechanism for obtaining Commission review of motor carrier and shipper resolutions of overcharge and undercharge claims. These claims result from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates in compliance with 49 U.S.C. 10761 and 10762.

The NPR proposed two alternate methods of settlement. Under the first method, a petition to depart from the filed rate would be filed which would become equivalent to an order of the Commission after 45 days if it was not protested or investigated; the second method would require a formal order to be issued in all instances, whether or not there was a protest or investigation. The NPR also proposed standards for the information required to be included in a petition to depart from the filed rate, and set a filing fee of \$70.

Nine comments were received. In response to these comments, we are modifying the information required to be included in a petition, and we will permit either a carrier or a shipper to file a petition. We will also adopt the first method of settlement and filing fees of \$40 and \$80, depending on the amount involved in the petition.

Consolidated Freightways Corporation of Delaware states that the proposed rules are too burdensome in requiring written Commission orders in all cases, prefiling of the petitions for relief, and a docketing fee on

insignificant amounts. Also, it is concerned that the proposed rules do not clarify that multiple tariff errors may be resolved by a single filing. The final rules will not require an order on any uncontested petition. Also, while each petition should encompass only one shipper or one consignee, it can include multiple tariff errors. However, we will require payment of a fee for all petitions.

D & J Associates, a freight transportation consulting firm, is concerned that the proposed rules apply only to publishing errors and not to billing errors and overcharge claims based on published and timely filed rates. In this regard section 4 of the NRA is very clear; it applies only to overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates. Thus, the concerns of D & J Associates need not be addressed further.

The National Industrial Transportation League (NITL) states that the proposed procedures are too complex and formalistic. First, it argues that they will prevent the parties from quickly and efficiently resolving paperwork errors. We agree, and will simplify the requirements for information to be included in each petition. Also, NITL is concerned that any private party, even though not a party to the transportation at issue, could protest petitions. We do not consider this to be a significant problem. The right of any interested party to protest a petition has been part of the rail special docket procedures for a number of years, without causing any problems.

The Transportation Brokers Conference of America generally endorses the proposed rules. However, it favors the method whereby an uncontested petition automatically becomes an order of the Commission after 45 days. We are adopting this method in the final rules.

The National Motor Freight Traffic Association, which publishes the National Motor Freight Classification on behalf of its member carriers, generally supports the proposed rules. However, it suggests that a notice should be published by the Commission when a petition concerning classification matters is investigated on the Commission's own motion or is protested. We consider this publication to be unnecessary. Petitions will concern tariff publishing errors or the failure to publish agreed-upon rates, covering primarily discounts or

commodity rates and not classification matters.

Baldor Electric Company, GAF Building Materials Corp. and W.R. Grace Company filed consolidated comments. These firms assert that shippers should be allowed to initiate tariff reconciliation procedures. We agree, and are amending the rules to this effect. The commenters also believe that the responsibility for serving the petition is unclear. We have amended the regulations to show that the party who files the petition has the responsibility to serve all the parties. These three corporations also argue that the Commission should adopt the second method of reconciliation by issuing an order, and that the procedures should encompass contract carriage. We disagree. To expedite dispute resolution and in light of our limited resources, we will permit uncontested and uninvestigated petitions to become orders of the Commission after 45 days. The contract carriage issue does not lie because contract carriage does not involve filed tariffs.

National Small Shipments Traffic Conference, Inc., considers that the requirements for the information proposed to be contained in each petition are too burdensome. It also favors permitting the petitions to become orders of the Commission after 45 days. We agree in both instances and the final rules respond to both concerns.

The Petroleum Marketing Association of America argues that we should adopt a single-page standardized form for the petitions. We do not consider this necessary. The Association also argues that there should be no fee, or at most a nominal fee for filing the petitions. We are required to assess a fee based on actual cost for services rendered to the public. The fees adopted here are based on the average cost of processing similar applications.

Roadway Services, Inc., a common carrier, is concerned, as is D & J Associates, that the rules not be applied to pure billing errors. We have disposed of this issue in connection with the comments of D & J Associates discussed previously. Also, Roadway indicates that the information required in the proposed 10-step procedures is too complex and burdensome. We agree and in the final rules have significantly reduced the amount of required information. Roadway also believes that nominal claims (\$1,000 or less) should be settled without our involvement. We disagree. We do not think that the adopted rules are burdensome, especially since we would permit

multiple claims involving one shipper or consignee to be consolidated.

We note that, because it substantially eliminated tariff filing requirements for independently determined rates, enactment of the Transportation Industry Regulatory Reform Act has substantially reduced the need for the remedy authorized by section 4 of the NRA and our proposed regulations. In the past few months we have received fewer than 15 requests for adjustments, and these requests primarily involve one motor carrier. Nevertheless, we expect that, as filed tariff provisions are reviewed, these requests will continue at the rate of one or two per month for some time. Also, because it is possible that tariff errors will be made in collectively set tariffs, we may receive requests pertaining to rate bureau tariffs.

We believe that the simplified regulations adopted here will allow efficient processing of section 4 petitions by the Commission without subjecting petitioners to undue burdens. Actual handling of the petitions will be by our Special Docket Board. The filing fees of \$40 for petitions involving \$25,000 or less and \$80 for petitions involving more than \$25,000 correspond to the fees currently in place for rail special dockets.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that adoption of these rules will not have a significant economic impact on a substantial number of small entities. The economic impact will be minimal because the rules merely provide a simple, voluntary method to resolve certain billing problems that are likely to arise in only a small proportion of the shipments transported by the motor carrier industry. Thus, the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1130

Administrative practice and procedure.

Decided: December 21, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002, 1011 and 1130 are amended as set forth below.

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, a new No. 81 is added to read as follows:

§ 1002.2 Filing fees.

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Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving \$25,000 or less	\$40
(ii) Petitions involving over \$25,000	80

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PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 10301, 10302, 10304, 10305, 10321, 10762.

4. Section 1011.6(e) is revised to read as follows:

§ 1011.6 Employee boards.

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(e) *Special Docket Board.* Disposition of special docket and tariff reconciliation proceedings under 49 CFR 1130.2(e), (f) and (g).

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PART 1130—INFORMAL COMPLAINTS

5. The authority citation for part 1130 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 10321, 10707 and 11712.

6. In § 1130.2, paragraph (f) is amended by adding the words "or tariff reconciliation petition" after the word "petition" in the parenthetical phrase in the first sentence and by adding the

words "or tariff reconciliation" after the words "Special Docket" in the second sentence, and by adding a new paragraph (g) to read as follows:

§ 1130.2 When damages sought.

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(g) *Tariff reconciliation proceedings for motor common carriers—(1) Petitions to waive collection or permit payment.*

Pursuant to 49 U.S.C. 11712, subject to Commission review and approval, motor common carriers (other than household goods carriers) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates, rules or classifications in compliance with 49 U.S.C. 10761 and 10762. Under section 11712, the Commission may approve any departure from the filed rate when the shipper and carrier agree, and the departure is needed for the reason(s) stated in section 11712. Petitions for appropriate authority may be filed by either the carrier, shipper or consignee on the Commission's tariff reconciliation docket by submitting a letter of intent to depart from the filed rate. The petitions will be deemed the equivalent of an informal complaint and answer admitting the matters stated in the petition. Petitions shall be sent to the

Special Docket Board, Interstate Commerce Commission, Washington, DC 20423. The petitions shall contain, at a minimum, the following information:

- (i) The name(s) and address(es) of the payer(s) of the freight charges;
- (ii) The name(s) of the carrier(s) involved in the traffic;
- (iii) An estimate of the amount(s) involved;
- (iv) The time period when the shipment(s) involved were delivered or tendered for delivery;
- (v) A general description of the point(s) of origin and destination of the shipment(s);
- (vi) A general description of the commodity(ies) transported;
- (vii) A statement certifying that the carrier(s) and shipper(s) participating in the shipment(s) or the payer(s) of the freight charges concur(s) with the intent to depart from the filed rate; and
- (viii) A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate.

(2) *Public notice and protest.* Tariff reconciliation petitions (letters of intent) shall be served on all parties named in the petition by the party who files the petition and will be made available by the Commission for public inspection in the Special Docket Board Public File, Interstate Commerce Commission, Washington, DC 20423. Any interested person may protest the granting of a petition by filing a letter of objection

with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of objection shall identify the tariff reconciliation proceeding, shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. The Commission may initiate an investigation of the petition on its own motion.

(3) *Uncontested petitions.* If a petition is not contested, and if the Commission does not initiate an investigation of the petition on its own motion, approval is deemed granted without further action by the Commission, effective 45 days after Commission receipt of the petition.

(4) *Contested petitions.* If a petition is contested or the Commission initiates an investigation of the petition on its own motion, 15 days will be allowed for reply. The 15-day period will commence on the date of service of the objections or, if the Commission initiates an investigation on its own motion, on the date of service of the decision initiating the investigation. After the period for reply has expired, the Commission will issue a decision approving or disapproving the petition, or requesting further submissions from the parties, and then will issue a decision based on the further submissions.

[FR Doc. 95-579 Filed 1-9-95; 8:45 am]

BILLING CODE 7035-01-P