

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 373**

[FHWA Docket No. MC-96-43]

RIN 2125-AE00

General Jurisdiction Over Freight Forwarder Service**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This NPRM proposes changes to existing regulations regarding the issuance of bills of lading by freight forwarders and also gives notice of the FHWA's general jurisdiction over all segments of the freight forwarding industry (not just household goods freight forwarders), in accordance with the ICC Termination Act of 1995 (ICCTA), Public Law 104-88, 109 Stat. 803. Before the ICCTA became effective on January 1, 1996, the former Interstate Commerce Commission (ICC) had both general and licensing jurisdiction over household goods freight forwarders only, because the non-household goods segment of the freight forwarding industry had been substantially deregulated in 1985. The ICCTA abolished the ICC and gave the Secretary of Transportation (Secretary) general jurisdiction over all freight forwarder service, requiring freight forwarders to register with the Secretary to provide the transportation or service they seek to provide. The Secretary has delegated this authority over all freight forwarder service to the FHWA. This NPRM proposes to amend 49 CFR 373.201, which governs the issuance of bills of lading by household goods freight forwarders, by expanding its coverage to include the non-household goods segment of the freight forwarder industry.

DATES: Comments should be received no later than March 31, 1997.**ADDRESSES:** Written, signed comments should be sent to: Docket Clerk, Attn.: FHWA Docket No. MC-96-43, Federal Highway Administration, Department of Transportation, Room 4232, 400 Seventh Street, SW., Washington, D.C. 20590. Persons who require acknowledgment of the receipt of their comments must enclose a stamped, self-addressed postcard. Comments may be reviewed at the above address from 8:30 a.m. through 3:30 p.m. Monday through Friday, except Federal holidays.**FOR FURTHER INFORMATION CONTACT:** For information regarding rulemaking and

operational issues: Larry Minor, Office of Motor Carrier Research and Standards, (202) 366-4012; and for *information regarding legal issues:* Michael Falk, Office of the Chief Counsel, (202) 366-1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The FHWA has general jurisdiction over freight forwarder service as mandated by Congress in section 103 of the ICCTA, 49 U.S.C. 13531. The ICCTA abolished the Interstate Commerce Commission (ICC), eliminated unnecessary ICC regulatory functions, and transferred certain remaining functions to DOT. Prior to the ICC's termination, however, it had general and licensing jurisdiction over household goods freight forwarders only, pursuant to former 49 U.S.C. 10561 and 10923. The Surface Freight Forwarder Deregulation Act of 1986, Public Law 99-521, 100 Stat. 2993 (1986), enacted on October 22, 1986 (Deregulation Act) redefined and limited, for the most part, the regulated forwarding industry to household goods freight forwarders.

The ICCTA, at 49 U.S.C. 13531, expands the jurisdiction of former 49 U.S.C. 10561 and gives the Secretary general jurisdiction over all service that a freight forwarder undertakes or is authorized to provide. The ICCTA also expands former 49 U.S.C. 10923 to require the Secretary to register all freight forwarders for transportation or service they seek to provide under 49 U.S.C. 13903. Under the ICCTA, at 49 U.S.C. 13901-13905, Congress established a registration system, to replace the former ICC licensing system, requiring all for-hire motor property and passenger carriers, property brokers, and freight forwarders to register with the Secretary to provide such transportation or service. Accordingly, these new registration provisions of the ICCTA embrace both forwarders of non-household goods and household goods.

The purpose of this document is to propose changes to existing regulations to comport with statutory requirements, give notice of the FHWA's general jurisdiction over all freight forwarders (not just household goods freight forwarders), clarify the FHWA's jurisdiction over freight forwarder service in other areas, and provide guidance to freight forwarders about how to register with FHWA.

The only regulatory change proposed by FHWA in this document is the revision of 49 CFR 373.201, entitled Bills of Lading for Freight Forwarders,

to include within its scope the non-household goods segment of the freight forwarding industry. The proposed revision is consistent with the FHWA's new statutory jurisdiction, as well as with the bill of lading requirements imposed on all freight forwarders by 49 U.S.C. 14706(a)(2) and its predecessor provision 49 U.S.C. 11707(a). At this time, no further amendments or changes are deemed necessary to the former ICC regulations involving freight forwarders [aside from the amendments that will be made in separate FHWA rulemaking proceedings involving registration, insurance, and designation of process agent requirements] to make them consistent with the provisions of the ICCTA.

Background

Currently, there are approximately 817 active surface freight forwarders on file at the FHWA. The term "freight forwarder" means a person holding itself out to the general public to provide transportation of property for compensation and in the ordinary course of its business—(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments; (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and (C) uses for any part of the transportation a carrier subject to jurisdiction under section 103 of the ICCTA, part B of subtitle IV of title 49, U.S.C. The term, however, does not include a person using transportation of an air carrier. 49 U.S.C. 13102(8). A freight forwarder is also not a pipeline, rail, motor, or water carrier.

Freight forwarders were initially regulated by the ICC in 1942, and remained subject to virtually the same regulatory requirements until 1986. The ICC regulated surface freight forwarders in five major areas: Entry, ratemaking, insurance and liability matters, ownership and control, and Federal-State relations. Congress believed that these regulatory constraints prevented freight forwarders from responding efficiently and competitively to changing market conditions, especially when their competitors and the underlying transportation modes they use had been substantially deregulated. These concerns resulted in the enactment of the Deregulation Act.

The Surface Freight Forwarder Deregulation Act of 1986

This legislation substantially deregulated the general commodities segment of the surface freight

forwarding industry, but did not deregulate freight forwarders that dealt with household goods. In 1986, the year the Deregulation Act was passed, there were approximately 660 surface freight forwarders operating in the United States (590 non-household goods freight forwarders and 70 household goods freight forwarders).

Most of the regulatory constraints placed on general commodity freight forwarders, such as ICC entry and rate regulation, antitrust immunity for collective ratemaking activities, and the prohibition against the ownership of a rail, motor, or water carrier were removed by the Deregulation Act. The Deregulation Act also added a new subsection (g) to former 49 U.S.C. 11501 (49 U.S.C. 14501 under the ICCTA), that precluded a State from enacting or enforcing any law or regulation relating to the interstate rates, routes, or services of any general commodity freight forwarder.

The Deregulation Act retained Federal regulation over all surface freight forwarders with respect to cargo liability and claims settlement procedures. The provisions of the so-called Carmack amendment at former 49 U.S.C. 11707(a) remained unchanged following the Deregulation Act and applied to all freight forwarders to ensure that they were responsible for any loss or damage to the cargo they handle.

Pursuant to the legislative action taken in the Deregulation Act, the ICC instituted a rulemaking proceeding and made minor revisions in the Code of Federal Regulations to exclude all freight forwarders, except household goods freight forwarders, from the scope of most ICC rules. *Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986*, 3 I.C.C. 2d 162 (1986) (*Ex Parte No. MC-184*). Congress subsequently passed additional legislation to further ease entry, rate, and tariff requirements on motor carriers and household goods freight forwarders. Such legislation included the Negotiated Rates Act of 1993 (Pub. L. 103-180, 107 Stat. 2044) enacted to handle the on-going undercharge crisis, and the Trucking Industry Regulatory Reform Act of 1994 (TIRRA) (Pub. L. 103-311, Title II, 108 Stat. 1683) which eliminated tariff filing requirements for individually determined rates.

After the Deregulation Act's effective date of December 21, 1986, non-household goods freight forwarders no longer had to apply for licensing authority from the ICC. From 1987 to 1994, the ICC granted, on the average, approximately 100 permits to household

goods freight forwarders during any given fiscal year. Prior to the ICC's termination in 1995, the ICC regulated approximately 720 household goods freight forwarders.

The ICC Termination Act of 1995

As noted above, 49 U.S.C. 13531 provides the Secretary with general jurisdiction over freight forwarder service. Section 13531 is derived from the provisions of former 49 U.S.C. 10561, which extended jurisdiction to freight forwarders of household goods only. Section 13531 extends this jurisdiction to include all segments of the surface freight forwarding industry.

Under the ICCTA, former 49 U.S.C. 10923, which authorized the ICC to license household goods freight forwarders, was repealed and a new provision, 49 U.S.C. 13903, was enacted requiring that all freight forwarders, not just household goods freight forwarders, register with the Secretary. Accordingly, the registration process is a prerequisite under the ICCTA to operate as a freight forwarder. Registration will require a showing that registrants are "fit, willing, and able" to provide service, and meet insurance, safety fitness, and other requirements. If a freight forwarder desires to operate as a carrier for the entire move, the freight forwarder must also be registered as a carrier. 49 U.S.C. 13902. Rules implementing the FHWA's freight forwarder registration process, including the required insurance and security needed under the ICCTA, will be promulgated in other proceedings.

The legislative history indicates that these changes were made because Congress believed that all freight forwarders act as carriers in the assembling and delivery of shipments, and both forwarders of non-household goods and household goods should be subject to the registration requirements to ensure that they are fit to operate and are insured. However, Congress was clear that, aside from the registration requirement, it did not intend to impose additional regulatory requirements on non-household goods freight forwarders. ICC Sunset Act of 1995, S. Rep. No. 176, 104th Cong., 1st sess. 42 and 45 (1995).

Presumably this registration-only approach to the forwarding of non-household goods was taken so as not to frustrate the congressional goal of the Deregulation Act to reduce the regulatory burden on the non-household goods segment of the motor carrier industry. By requiring all freight forwarders to register, however, the FHWA will be permitted to implement the new statutorily mandated registration system consistently and

fairly among all segments of the freight forwarding industry.

Accordingly, the FHWA advises all non-household goods freight forwarders, including those that previously held ICC authority mooted by the Deregulation Act or those previously issued ICC authority restricted to forwarding household goods, that they are required to register with the FHWA in order to operate in interstate commerce.

Until the FHWA adopts regulations to replace the old licensing system that was previously administered by the ICC, the FHWA has been processing registration requests submitted by freight forwarders generally under the licensing regulations at 49 CFR Part 365 and using ICC application forms with minimal revisions to reflect the ICCTA's jurisdictional changes. The FHWA's processing approach to the ICCTA's new registration requirement is consistent with section 204 of the ICCTA, Savings Provisions, which provides that all legal documents of the ICC that were issued or granted by an official authorized to effect such document shall continue in effect beyond the transfer of any function from the ICC to DOT. See *Continuation of the Effectiveness of Interstate Commerce Commission Legal Documents*, 61 FR 14372 (April 1, 1996), where the FHWA has adopted all ICC regulations, decisions, and orders until such time as changes are warranted. Accordingly, the FHWA will continue to process registration requests in the manner noted above until the FHWA implements appropriate changes to conform with the registration system established by Congress on January 1, 1996.

Persons requesting applications and seeking information about the registration process should direct their inquiries to the Office of Motor Carriers Licensing and Insurance Staff, Federal Highway Administration, 400 Virginia Avenue SW., Suite 600, Washington, DC 20024, telephone (202) 358-7046.

Applications which include registration fees should be sent to FHWA/OMC/HIA30, P.O. Box 100147, Atlanta, GA 30384-0147. Applications sent via express mail only should be addressed to FHWA/OMC/HIA30, c/o Nations Bank Wholesale, Lockbox # 100147, 6000 Feldwood Road, 3rd Floor East, College Park, GA 30349, Attn: Linda Thomas. Ms. Thomas' telephone number is 707-774-6443.

Proposed Amendments

As noted above, pursuant to congressional action taken in the Deregulation Act of 1986, most of the prior regulatory constraints placed on general commodity freight forwarders

were removed. In response to that legislation, the former ICC instituted its *Ex Parte No. MC-184* proceeding noted above, to adopt ministerial revisions excluding all freight forwarders, except household goods freight forwarders, from the scope of most of its regulations. In that proceeding it was stated that 49 CFR Parts 1005 and 1081 [the latter now redesignated as 49 CFR Part 373, subpart B] would not be revised to exclude general commodity freight forwarders from their scope because:

They relate to some extent to the Carmack liability provisions that are retained under 49 U.S.C. 11707 for all freight forwarders. Part 1005 sets forth procedures that regulated carriers and freight forwarders must follow in investigating cargo loss and damage claims, although the actual settlement of claims by carriers under these rules is voluntary. Part [373] sets forth requirements that freight forwarders must follow in issuing bills of lading. The Carmack amendment requires all carriers and freight forwarders to issue bills of lading for property they receive, 49 U.S.C. § 11707(a)(1), and is central to its liability provisions. Accordingly, we will separately consider what changes, if any, should be made to Parts 1005 and [373] to comport with the legislation in the near future. 3 I.C.C. 2d 162 at 166 (1986).

In 1989, the ICC issued a notice of proposed rulemaking in *Ex Parte No. 55* (Sub-No. 73), *Practice and Procedure—Miscellaneous Amendments—Revisions* (not printed) served October 10, 1989, and published on October 11, 1989, in the *Federal Register* (54 FR 41643) (*Revisions*). Revisions to 24 parts of title 49, Code of Federal Regulations, including Part 373, were proposed. The ICC stated that this action was taken to streamline and update its regulations, and make the rules more understandable and easier to use. The ICC also stated that because most of the revisions involved editing to remove obsolete, unnecessary, or redundant material from regulations, the required changes would not be detailed in that proceeding.

The appendix to the notice of proposed rulemaking in *Revisions* shows that the proposed change to Part 373, subpart B involved removing non-household goods freight forwarders from its scope, thus requiring only household goods freight forwarders to issue bills of lading. Although some of the more significant changes were discussed in the proposed rulemaking, that notice lacks any discussion of why the ICC proposed amendments to Part 373, subpart B. The final rule is also silent as to why non-household goods freight forwarders were excluded from the scope of Part 373, subpart B. *Practice and Procedure—Misc.*

Amendments—Revisions, 6 I.C.C.2d 587 (1990).

Because Part 373, subpart B existed prior to the ICCTA, the FHWA is now reviewing this provision in light of 49 U.S.C. 13531, which provides the Secretary with general jurisdiction over all freight forwarder service. As noted above, Part 373 relates to the Carmack liability provisions that are retained under 49 U.S.C. 14706 of the ICCTA (former 49 U.S.C. 11707). Section 11707 stated that all motor carriers and freight forwarders subject to the Secretary's jurisdiction shall issue a receipt or bill of lading for property received for transportation. In spite of this requirement, following the ICC's 1990 decision in *Revisions*, the ICC's regulations governing the issuance of receipts and bills of lading applied to motor carriers and household goods freight forwarders, but not to non-household goods freight forwarders. We cannot speculate as to why the ICC removed non-household goods freight forwarders from 49 CFR 373.201 in apparent contradiction to that agency's recognition, in its *Ex Parte No. MC-184* proceeding, that the Deregulation Act did not alter the Carmack amendment's liability and bill of lading requirements with respect to freight forwarders.

It is clear from the statutory provision at 49 U.S.C. 14706 that freight forwarders are still required to issue receipts or bills of lading for property they transport. A receipt and bill of lading are not synonymous. A bill of lading is the more inclusive document. The bill of lading is a receipt for the property, a contract of carriage, and documentary evidence of title to the property.

As a receipt for the goods, the bill of lading recites the place and date of shipment, describes the goods, their quantity, weight, dimensions, identification marks, condition, etc., and sometimes their quality and value. As a contract, the bill names the contracting parties, specifies the rate or charge for transportation, and sets forth the agreement and stipulations with respect to the limitations of the carrier's common-law liability in the case of loss or injury to the goods and other obligations assumed by the parties or to matters agreed upon between them. That part of the bill which constitutes a receipt may be treated as distinct from the part incorporating the contractual terms. *Bills of Lading*, 52 I.C.C. 671, citing Porter, *Law of Bills of Lading*, section 14.

The bill of lading provisions were implemented in order for the parties to make a prima facie case against carriers and freight forwarders under the

Carmack Amendment. A bill of lading provides evidence that goods were delivered to the carrier or freight forwarder in good condition prior to shipment, or that cargo on arrival was in damaged condition. If goods are damaged, the freight bill or bill of lading can specify the monetary loss to cargo resulting from such damage.

In the past, the former ICC prescribed the proper form and contents of receipts and bills of lading to be issued by common carriers of property and freight forwarders in compliance with the statute to ensure that they convey necessary and essential information.

Potential Impact/Cost of Proposed Rule

The law has long required that all carriers and freight forwarders shall issue receipts or bills of lading covering freight received for transportation. A bill of lading is a document that lies at the heart of every transportation transaction. It is a receipt for the merchandise and a contract to transport and deliver the merchandise. Thus, a bill of lading is a bilateral agreement where both sides make guarantees. Shippers agree to tender certain freight, and carriers and freight forwarders agree to price and service options. Presumably most, if not all, freight forwarders have been issuing bills of lading in the normal course of doing business.

By including non-household goods freight forwarders within its scope, the revised rule will help to ensure that all parties to a transaction are aware of their shipping arrangement, as well as the condition of the cargo at the time it is tendered to a motor carrier for line-haul transportation. The rule change will benefit both freight forwarders and their customers alike because it could limit loss and damage claims. Moreover, no freight forwarder will be put at a competitive disadvantage. The proposed rule change will provide all freight forwarders and their customers with actual knowledge of their transportation transaction. It will also avoid uncertainty over which freight forwarders are required to issue receipts or bills of lading for property they accept for transportation in interstate commerce.

The FHWA anticipates that this revision will have no substantial economic impact on the non-household goods freight forwarder industry as a whole, the public, or on a substantial number of small entities. The proposed revision merely includes the non-household goods freight forwarder segment of the industry within the scope of the bill of lading provisions. The household goods freight forwarding

segment of the industry is already subject to this requirement.

To the extent that the non-household goods segment of the forwarding industry will now be required to comply with 49 CFR Part 373, the FHWA does not anticipate that the burden, total time, effort or financial resources expended will be substantial. As noted above, in 1986, there were 590 non-household goods freight forwarders and 70 household goods freight forwarders, a ratio of 8.4 to 1. Nine years later, in 1995, there were approximately 720 household goods freight forwarders. Assuming the same 8.4 to 1 ratio holds today, there would be over 6,048 non-household goods freight forwarders that would be affected by the proposed revision of 49 CFR Part 373.

The proposed amendment to 49 CFR Part 373 will require all freight forwarders to issue receipts and bills of lading for property they transport in interstate commerce, a requirement which has been in effect by statute since 1942 and by regulation until 1990. Consequently, it is likely that all freight forwarders have already been issuing such documents in the normal course of doing business. Consequently, the FHWA does not believe that the rule change proposed in this proceeding will have an annual effect on the non-household goods segment of the forwarding industry of \$100 million or more, lead to a major increase in costs or prices, or have a significant adverse effect on any sector of the economy. This minor rule change will not per se add to a freight forwarders' cost of doing business since it merely reflects what is required of forwarders by their customers. Accordingly, the FHWA does not believe that this action will create an unnecessary regulatory burden on the non-household goods segment of the freight forwarding industry. The FHWA merely intends to update its regulations to achieve consistency with pre-existing statutory requirements.

The FHWA seeks comments of all interested parties on the following questions: (1) What is the estimated total annual burden and frequency of issuing receipts and bills of lading for the non-household goods segment of the forwarding industry? (2) Will the proposed rule change in 49 CFR 373.201 create significant impacts or costs to the non-household goods segment of the forwarding industry? Why, or why not?

Other Comments

Currently, 49 CFR Part 1005 governs the processing of claims for loss, damage, injury, or delay to cargo handled by freight forwarders. As noted above, Part 1005 relates to the Carmack

liability provisions that are retained under new 49 U.S.C. 14706 for all freight forwarders. This part will eventually be redesignated and incorporated into Chapter III of Title 49 of the Code of Federal Regulations. There is no need to revise Part 1005 at this time, but the FHWA believes it is necessary to further notify all freight forwarders that the previous law pertaining to the procedures to follow in investigating loss and damage claims at Part 1005 is continued until such time as changes are warranted. As previously noted, until the FHWA amends its regulations, section 204 of the ICCTA, Saving Provisions, provides that all rules and regulations of the ICC shall continue in effect.

Other Matters

We are further notifying the public that new chapter 145 of title 49, U.S.C., (Federal-State Relations) preserves Federal authority over intrastate transportation. New section 49 U.S.C. 14501(b) [formerly 49 U.S.C. 11501(g)] incorporates existing prohibitions against intrastate regulation of freight forwarders by States, and, for the first time, treats freight forwarders and transportation brokers the same. Subsection (c) of section 14501 also includes freight forwarders, for the first time, with motor carriers of property with respect to preemption of intrastate regulation over trucking prices, routes, and services. The ICCTA, however, did not preserve the ICC's prior authority to prescribe intrastate rates for household goods freight forwarders [formerly 49 U.S.C. 11501(a)(1) and (2)], nor did it affect Hawaii's right to regulate motor carriers operating within the State of Hawaii (49 U.S.C. 14501(b)(2)).

While most Federal preemption under chapter 145 is retained, government regulation is also narrowed in several respects. For example, State and local governments are able to regulate freight forwarders of property with respect to motor vehicle safety, financial responsibility, and other State standard transportation practices if compliance is no more burdensome than compliance under Federal law. 49 U.S.C. 14501(c)(2) and (3). These exemptions, however, do not apply to the transportation of household goods. 49 U.S.C. 14501(c)(2)(B). Additionally, there is an election provision included in the ICCTA. If a freight forwarder of property is affiliated with a direct air carrier through common control, it has the right to elect being subject to the jurisdiction of a State or local government. 49 U.S.C. 14501(c)(3)(C). Thus, the ICCTA further reduces government oversight of the surface freight forwarding industry by

allowing the States to set transportation standards, or by giving the carrier alternatives to being subject to State jurisdiction.

Notwithstanding the expansion of registration jurisdiction, the ICCTA continues to promote the deregulation theme of the past years over the non-household goods segment of the motor carrier industry. Here, the FHWA has merely attempted to review its regulations applicable to freight forwarders to determine whether any changes are warranted in order to conform to the ICCTA. We are also trying to ensure that all freight forwarders are aware that they are now subject to the jurisdiction of the FHWA for registration purposes. The FHWA invites comments in this proceeding, specifically addressing jurisdictional and regulatory issues.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in FHWA Docket No. MC-96-43 at the above address. Comments received after the comment closing date will be filed in FHWA Docket No. MC-96-43 and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of the Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. This rule, if adopted, merely includes non-household goods freight forwarders within the scope of the FHWA bill of lading regulations. This action will ensure that all parties to a transportation transaction are aware of their shipping arrangement. Moreover, the rule change will benefit both freight forwarders and their customers alike because it could limit loss and damage claims, and provide them with actual knowledge of their transportation transaction. The FHWA

has evaluated the economic impact of the proposed changes on the non-household goods freight forwarding segment of the industry and has determined that the proposal is reasonable, appropriate, and not per se costly to this segment of the industry. The FHWA believes that non-household goods freight forwarders issue some type of document similar to bills of lading already. Nevertheless, comments, information, and data are solicited on the economic impact of the potential change to 49 CFR Part 373.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has preliminarily determined that this regulatory action will not have a significant economic impact on a substantial number of small entities. Small entities that rely on forwarder service will benefit by including the non-household goods forwarder segment of the industry within the scope of Part 373. This action will ensure that all forwarders issue receipts or bills of lading covering forwarder traffic for which the forwarder assumes full responsibility.

The FHWA does not expect that this action will have a significant impact on the non-household goods freight forwarding segment of the industry because they have traditionally been required by Federal law to issue receipts and bills of lading. This provision merely reestablishes the consistency between regulatory and statutory requirements which existed prior to 1990. Moreover, most non-household freight forwarders, regardless of their size, presumably comply with the statutory provisions that require them to issue receipts and bill of lading. This is because the forwarder is the transportation company upon whom responsibility is placed for issuance of a receipt or bill of lading and for any loss, damage, or injury to the property caused by it or by any motor carrier, railroad, or other transportation company to which such property may be delivered or over whose lines such property may pass. Accordingly, requiring all freight forwarders to issue a receipt or bill of lading will not significantly impact the industry because their issuance will preserve the relations between the forwarder and its customers once the regulations are promulgated.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been preliminarily determined that this proposal would not have sufficient federalism implications to warrant the preparation of a federalism assessment.

While most Federal preemption over State regulation of freight forwarders is retained under the ICCTA, it is also narrowed in several instances. The ICCTA encouraged State cooperation in the enforcement of motor carrier registration and financial responsibility as a condition of Motor Carrier Safety Assistance Program (MCSAP) funding. Any additional costs or burdens that the FHWA may impose upon the States because of this type of narrowed preemption would be generated from the requirement that the States and local governments are able to regulate freight forwarders with respect to motor vehicle safety, financial responsibility, registration requirements, and other State standard transportation practices if compliance is no more burdensome than compliance under Federal law. The FHWA does not expect that this action of expanding the FHWA's regulations to include the non-household goods freight forwarder segment will infringe upon the State's ability to discharge traditional State governmental functions. Interstate commerce, which is the subject of these regulations regarding interstate operations, has traditionally been governed by Federal laws. The FHWA does not expect that it would require the States to adopt these rules once the regulations are promulgated.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The FHWA is proposing to require all freight forwarders to issue receipts and bills of lading for the property they transport in interstate commerce. The FHWA believes that the majority of freight forwarders now issue receipts and bills of lading in the normal course of their activities. The FHWA further believes that the disclosure of this information by freight forwarders to shippers and carriers is a usual and

customary practice within the industry. The public, forwarders, and their customers alike benefit by the disclosure of this information because it can limit loss and damage claims. Moreover, the rule change will assist all freight forwarders and their customers by helping to ensure that they receive actual knowledge of their transportation transaction. The FHWA requests that the public comment on the accuracy of the paperwork burden estimate.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 373

Bills of lading, Highway safety, Highways and roads, Motor carriers.

Issued on: January 17, 1997.

Rodney E. Slater,

Federal Highway Administrator.

For the reasons set forth above, FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, as follows:

1. The authority citation for part 373 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14706; 49 CFR 1.48.

2. Section 373.201 is revised to read as follows:

§ 373.201 Receipts and bills of lading for freight forwarders.

Every freight forwarder shall issue the shipper a receipt or through bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the freight forwarder's name, the freight forwarder, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of

the date the carrier receives the shipment.

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