

Before the U.S. Surface Transportation Board

***REPLY TO AMERICAN TRUCKING ASSOCIATIONS'
JUNE 20, 2023 MOTION FOR THE BOARD TO DENY
SBTC's PETITION FOR AN ADVISORY OPINION ON
REASONABLENESS OF LIMITED HOURLY INTERSTATE MOVING
RATES AND FOR RELEASED RATES ORDER AMENDMENT No. 6***

Docket No. RR 999

**Submitted by
The Small Business in Transportation Coalition, Inc.**

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The Small Business in Transportation Coalition, Inc. (SBTC), a 20,000+ member 501(c)(6) nonprofit trade organization representing small business motor carriers, independent truckers, small property (“freight”) brokers, and other transportation professionals in the industry, has received the June 20, 2023 motion by the American Trucking Associations’ (ATA) Moving & Storage Conference asking the Surface Transportation Board (the Board) to deny the SBTC’s May 30, 2023 Petition to the Board. SBTC respectfully offers this reply to the Board in objection to the ATA’s motion to deny our petition.

According to the United States Department of Transportation (USDOT), as of 2019, there are 4,297 interstate motor carriers of household goods in the United States.¹

According to the Small Business Administration, the small business threshold for NAICS Code 484210 (Used Household and Office Goods Moving) is \$30,000,000 in revenue per year.²

Pulling data from USDOT, ATA reports on its website that 95.7% of all trucking companies in the United States operate 10 or fewer trucks.³

Extrapolating, the SBTC contends that the overwhelming majority of interstate moving companies are therefore small businesses whose interests lie more appropriately with trade organizations like the SBTC, which promote and protect small players’ interests over the larger stakeholders.

¹

<https://www.federalregister.gov/documents/2022/04/26/2022-08808/implementation-of-household-goods-working-group-recommendations>

²

[https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards Effective%20Aug%202019%2C%202019.pdf](https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards%20Effective%20Aug%202019%2C%202019.pdf)

³ <https://www.trucking.org/economics-and-industry-data>

The SBTC represents over 150 small motor carriers of household goods⁴ that have chosen to appoint the SBTC as their representative to the Secretary, Board, and Congress through their voluntary election to be SBTC members.

SBTC contends that the ATA is generally viewed among most independent truckers and small motor carriers in the industry as the trade group for America's largest motor carriers. Indeed, one only has to look at the ATA's membership fee structure to conclude that it is an organization that mostly values and represents the interests of large motor carriers; that is, ATA annual membership fees range from approximately \$600 for the smallest carriers up to \$300,000 for the mega carriers⁵.

We note the ATA does not make its moving company membership numbers easy to find on its website. It also does not break down membership numbers in terms of large carrier van lines members versus small mover members and so we are unable to offer an apples-to-apples comparison in terms of who is best suited to speak for the small moving company industry.⁶ Nonetheless, the SBTC believes it possesses a significant number of small mover members to justify its authority and standing to file and pursue this petition in question on behalf of those members and the small business mover community at large. We therefore believe we are well within our rights to object to the motion to dismiss by the ATA mega carrier trade group.

⁴ SBTC uses the terms "movers," "moving companies," and "motor carriers of household goods" interchangeably herein recognizing both the official regulatory term and the common terms used by consumers and the public.

⁵ <https://www.trucking.org/membership-faqs>

⁶ The American Moving & Storage Association was absorbed into ATA in September 2020 during the COVID-19 Pandemic and it is unclear how many moving companies remained members once ATA took control through the conference. See: <https://trucking.org/sites/default/files/2020-09/Membership%20Information%20for%20Independents.pdf>

I. REASONABLENESS OF HOURLY MOVING RATES FOR INTERSTATE
MOVES ON THE BORDER OF TWO STATES

ATA in its motion implies that the Board does not have the authority to grant the SBTC's request, relying on 49 U.S. Code § 14104(b)(1)(C)(ii) and the Secretary's regulations at 49 CFR 475.401(b)(2).

First, we suggest that 49 U.S. Code § 14104 is a statute that is directed at the *Secretary* and not the Board. As stated in our petition, the Board's authority over movers and their rates stems from 49 U.S. Code § 13701, which states:

(a) Reasonableness.—

(1) Certain household goods transportation; joint rates involving water transportation.

—A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

must be reasonable.

... and 49 U.S. Code § 13711, which states:

(b) Jurisdiction of Board. —

(1) Determination. —

The Board shall have jurisdiction to make a determination of whether or not attempting to charge or the charging of a rate by a motor carrier or freight forwarder or party representing a motor carrier or freight forwarder is an unreasonable practice under subsection (a).

Furthermore, 49 U.S. Code § 13702 states:

(a) In General.—Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

And, 49 U.S. Code § 13702(c) gives the Board exclusive jurisdiction over movers' rates and complaints about reasonableness of rates:

(c) Tariff Requirements for Household Goods Carriers.—

(1) In general.—

A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) Notice of availability.—

A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) Requirements.—

A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

(4) Incorporation by reference.—

A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) Complaints.—

A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution (emphasis added).

We contend that the matter at hand does not entail a rigid matter of consumer protection under the auspices of the Secretary, but rather... rate reasonableness under the authority of the Board.

Nonetheless, we would point out how even the statute ATA relies on itself suggests it was

Congress' intent to afford carriers with "maximum possible flexibility" codified at 49 U.S.

Code § 14104(c).

Second, ATA neglects to point out that Congress has actually enacted law that grants both the Secretary and the Board flexibility to grant exemptions to persons and classes of persons.

49 U.S. Code § 13541 - Authority to exempt transportation or services states:

(a) In General.—In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

SBTC contends that with respect to short haul moves under a reasonable threshold, which the Board should set, weight-distance rates on short interstate movements of household goods are not necessary to carry out the national transportation policy, not needed to protect shippers from

abuse of market power because of its limited scope, and it is in the public interest to allow limited hourly rates for the sake of carrier and shipper convenience.

Lastly, we ask the Board to please look at motives, here, and ask why would the trade group for the mega carriers want to restrict movers' flexibility under the proposed limited circumstances and go against the grain of Congress' stated intentions for such flexibility on short haul moves?

Under most state regulations, such short haul moves would normally be considered hourly rate moves. The only problem, here, is that these short haul moves cross state lines and trigger the need to weigh the truck, which is a burden to carriers and causes unreasonable and unnecessary delays for shippers. We contend consumers would benefit from simplicity and Congress' notion of flexibility and that these shippers would not be harmed, but helped in terms of securing lower cost moves, additional pricing options and choices, and better competitive rates.

The answer can only be that mega carriers want to nefariously drive the costs of their smaller mover competitors up to impose financial harm upon them. We believe this has the effect of imposing an unfair anticompetitive advantage by big carriers who already have the advantage of economies of scale; and, it constitutes a move to use the Board as a weapon as they attempt to unreasonably restrain trade among smaller players that would normally perform these short haul movers on an hourly basis, but not for the current weight-distance burden on them.

Again, we believe this is in shippers' and the public's interest and in accordance with the National Transportation Policy (49 U.S. Code § 13101,) which calls for efficiency:

§13101. Transportation policy

(a) In General. -To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including

the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and-

(1) in overseeing those modes-

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to-

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

^s (G) provide and maintain service to small communities and small shippers and intrastate bus services;

(H) provide and maintain commuter bus operations;

(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;

(J) promote greater participation by minorities in the motor carrier system;

(K) promote intermodal transportation;

(3) in overseeing transportation by motor carrier of passengers-

(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;

(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and

(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and

(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) Administration To Carry Out Policy. -This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

Previously, STB staff issued an informal non-binding advisory opinion that stated it was reasonable for movers to publish hourly charges in their interstate tariffs as an alternative to weight-distance rates if the distance cut off in the tariffs was “reasonable,” without defining exactly what would be the maximum mileage that would constitute a threshold that falls within the STB’s conception of a zone of reasonableness.

The SBTC again asks the Board to please issue a formal advisory opinion on this matter, one that ratifies previous staff guidance and confirms for industry and the public that this practice is reasonable and that hourly rate tariff provisions are indeed lawful alternatives to weight-distance rates when moves on the border of two states are short distance hauls. SBTC proposes the Board specifically declare and advise movers that they may offer interstate moving consumers hourly rates in their tariffs whenever the distance between the point of origin in one state and the point of destination in a different state is under 100 miles, or set an alternative mileage threshold that the Board deems reasonable, just and proper.

II. RELEASED RATES ADJUSTMENT FOR INFLATION:

ATA suggests an adjustment to the current released rates order for inflation is "not necessary" because it is ATA's understanding that many movers have adjusted for inflation already on their own. In our experience, there are carriers who have actually over-adjusted and have published tariffs that extend the Board's authority to increase the rate to \$10.00 or more, which we are confident the Board would find unreasonable and contrary to its Amendment No. 5 order. We have had to steer these carriers down to the proper \$8.00 adjustment.

SBTC also contends that while the large van lines --who have the benefit of 'in-house' legal departments may have implemented the Board's authority in Amendment No. 5 to adjust based on the CPI-U, smaller carriers do not have the luxury of having access to such legal advice and they rely on moving shipping document printers or computer programmers who have not adjusted since the last released rates order was issued by the Board.

The effect of going too long without an adjustment for inflation being promulgated by the Board is therefore discriminatory toward small businesses. It is unreasonable to expect small movers will feel confident they can properly calculate and implement a change without fear of civil penalty after audit or the Board's clear invitation and inducement, even, to do so.

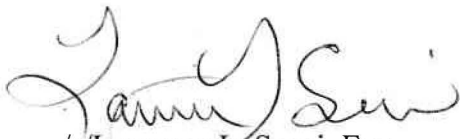
Again, it does not appear that the Board has granted movers the authority to adjust the \$6,000 per shipment amount. This may be deterring most self-adjustments because of confusion as to what authority movers actually have to self-adjust. We therefore hope that the Board will conclude that the just and proper move is to level the playing field for all carriers --big and small --and eliminate the discriminatory effect smaller players have been impacted by. We hope you will

agree that an updated released rates order once a decade is neither an unreasonable expectation on the part of industry nor an unreasonable burden on the Board.

The SBTC therefore affirms its pleas to the Board to please issue Amendment No. 6 to formally address these issues since inflation has substantially increased over the past decade by 33% to warrant a new amendment to the order.

Thank you again for your consideration.

Respectfully submitted,



/s/Laurence L. Socci, Esq.

Attorney for the Small Business in Transportation Coalition

CERTIFICATE OF SERVICE

I hereby verify and affirm that on this 29th day of June, 2023, I served by electronic mail and by U.S. First Class mail a true and correct copy of the foregoing upon:

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Respectfully submitted,

/s/ Laurence L. Socci