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SERVICE DATE - NOVEMBER 20, 1996

SURFACE TRANSPORTATION BOARD

DECISION

49 CFR Part 1319

STB Ex Parte No. 598

EXEMPTION OF FREIGHT FORWARDERS IN THE  
NONCONTIGUOUS DOMESTIC TRADE FROM RATE REASONABLENESS  
AND TARIFF FILING REQUIREMENTS

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board is considering whether it should exempt freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

DATES: Comments are due on December 20, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 598 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 927-5612. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain of its responsibilities, including the responsibility for regulating intermodal surface transportation in the noncontiguous domestic trade, to the Surface Transportation Board (Board). Additionally, the ICCTA transferred the responsibility for regulating port-to-port water carrier transportation in the noncontiguous domestic trade from the Federal Maritime Commission (FMC) to the Board.

Under the FMC's regulations, both vessel operating common carriers (VOCCs) and non vessel operating common carriers (NVOCCs) were required to file tariffs for their transportation services in the noncontiguous domestic trade. Under the ICCTA, VOCCs are classified as water carriers and NVOCCs are classified as freight forwarders.

The ICCTA significantly reduced economic regulation over surface transportation. Nevertheless, the provisions of 49 U.S.C. 13701 and 13702 continue to impose rate reasonableness and tariff filing requirements on certain property transportation in the noncontiguous domestic trade. While these requirements are related primarily to the services of water carriers, and joint intermodal services with water carriers, they also appear to encompass freight forwarder services.<sup>1/</sup>

Pursuant to the provisions of 49 U.S.C. 13541, the Board is to exempt a class of persons from an otherwise applicable

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<sup>1/</sup>See, for example, 49 U.S.C. 13702(b)(2)(C).

statutory provision if it 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) when an exemption is in the public interest.<sup>2/</sup> Pursuant to this statutory requirement, we are considering whether we should relieve freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

Freight forwarders assume responsibility for transportation from the place of receipt to the place of destination, and frequently provide consolidation, assembly, break-bulk, distribution and other services of value to their customers. The freight forwarder industry is highly competitive, and any person meeting basic fitness and financial responsibility requirements can become a freight forwarder and provide service to the public. Additionally, noncontiguous domestic trade transportation services are available from the underlying water carriers, which must file tariffs and charge rates that are subject to challenge on reasonableness grounds.

Given the availability of transportation services from the underlying carriers, as well as the highly competitive environment for freight forwarder services, we seek comment on whether the rate reasonableness and tariff filing requirements for freight forwarders in the noncontiguous domestic trade are necessary to carry out the transportation policy of 49 U.S.C. 13101 or protect shippers from the abuse of market power, and whether the elimination of such requirements may be in the public interest. We note in this connection that freight forwarders subject to the former ICC's jurisdiction were relieved of tariff filing requirements in 1986,<sup>3/</sup> even though motor carriers continued to be subject to such requirements until 1994.<sup>4/</sup> Although Congress, in the ICCTA, recently reenacted the tariff filing and rate reasonableness requirements for water carriers themselves, we seek comment on whether these requirements are necessary as to freight forwarders in the noncontiguous domestic trade.

### **Request for Comments**

We invite comments on all aspects of the proposed exemption. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

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<sup>2/</sup>We note that the statute, as written, directs us to exempt when "(3) [regulation] is in the public interest." We presume that Congress, in drafting the ICCTA, intended to direct us to exempt when "an exemption is in the public interest."

<sup>3/</sup>Freight forwarder tariff filing requirements were eliminated by the Surface Freight Forwarder Deregulation Act of 1986.

<sup>4/</sup>Motor carrier tariff filing requirements for individually determined rates for the transportation of property (other than household goods) were eliminated by the Trucking Industry Regulatory Reform Act of 1994, with respect to transportation other than in the noncontiguous domestic trade.

## **Small Entities**

The Board preliminarily concludes that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The Board, nevertheless, seeks comment on whether there would be effects on small entities that should be considered, so that the Board can determine whether to prepare a regulatory flexibility analysis at the final rule stage.

## **Environment**

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

## **List of Subjects in 49 CFR Part 1319**

Exemptions, Freight forwarders, Tariffs.

Decided: November 6, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons and Commissioner Owen.

Vernon A. Williams  
Secretary

For the reasons set forth in the preamble, the Board proposes to add a new part 1319 to title 49, Chapter X, of the Code of Federal Regulations to read as follows:

### **PART 1319 - EXEMPTIONS**

Sec.

1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.

**Authority:** 49 U.S.C. 721(a) and 13541.

**§ 1319.1 Exemption of freight forwarders in the noncontiguous domestic trade from rate reasonableness and tariff filing requirements.**

Freight forwarders subject to the Board's jurisdiction under 49 U.S.C. 13531 are exempted from the rate reasonableness and tariff filing requirements of 49 U.S.C. 13701 and 13702.