

Surface Transportation Board Directs Changes in Motor Carrier Classification Procedures, Acts to Ensure "Truth in Rates"

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued decisions requiring, as conditions of continued approval, that the motor carrier classification bureau change its operating procedures, and that carriers that participate in the motor carrier ratesetting bureaus provide a "truth in rates" notice whenever they reference bureau-set rates.

Background. Under the law, interstate motor carriers may enter into agreements under which competitors may discuss certain matters related to rate setting, and activities under agreements that are approved by the Board are protected from the application of the antitrust laws. One bureau agreement pertains to the "classification" process, whereby commodities are grouped according to their transportation characteristics, while other agreements pertain to the "class" rates that are set for the various classifications. Although many motor carrier bureaus have operated with government approval for several years, shippers have complained that the classification procedures do not provide for enough shipper participation, and that the collectively set class rates are far above market levels.

In December 1998, the Board announced that, absent a clear expression from Congress to the contrary, it would impose more rigorous conditions upon continued approval of the agreements under which classifications and bureau-wide rates are set. (See Surface Transportation Board "News" release No. 98-82, issued on December 18, 1998.) And in February 2000, after determining that it could go ahead with those initiatives, the Board sought public comment on how to fashion appropriate conditions. (See Surface Transportation Board "News" release No. 00-8, issued on February 11, 2000.) In today's decisions, after completing its review of voluminous comments filed over the past few years, the Board set out the specific changes that must be made both in classification procedures and in how collectively set class rates are used.

Classification. The Board imposed numerous specific conditions regarding the exchange of information and the provision of advance notice designed to open up the classification process to more shipper participation. The most significant change that it directed is the requirement of a right to arbitration as part of the classification process. The Board found that shippers currently do not participate fully in the classification process because they do not believe that they can get a fair hearing, and as a result, classification decisions may be made by the classification bureau on a less-than-complete record. The agency concluded that injecting resort to a neutral arbitrator into the classification process and enhancing the provision of information would instill shipper confidence in the process, encouraging shippers to participate more actively, and thereby enhance the record on which classification actions are made. To provide some certainty as to the duration of the arbitral process, the Board authorized the classification bureau, in its revised agreement, to impose a maximum time limit--which should correspond to the outside time it takes the full classification bureau to complete an appeal of a panel decision under the current procedures-- for completion of individual arbitrations.

Truth in Rates. With respect to the ratesetting bureaus, the Board imposed a full disclosure requirement. Before motor carriers were deregulated in 1980, the class rates set by the rate bureaus tended to be the rates that were actually charged to most shippers. As the industry became more competitive, however, the bureau-set rates came to be known as "benchmark" rates --in effect, "list prices"--that are in some cases charged to less sophisticated shippers, but that in most cases serve merely as the basis for discounts that are common throughout the motor carrier industry. Concerned about the use of such artificially high benchmark rates, the Board initially attempted to require that these benchmark rates be reduced, but it found no feasible way of determining what the appropriate rate reductions should be. Additionally, as both trucking and shipper interests pointed out, broad rate reductions could unduly disrupt existing business relationships. Finally, the Board found no basis for specifying a minimum discount that every shipper must be given, because such a requirement "would give shippers of some traffic a windfall far beyond what they could expect in competitive market dealings between knowledgeable shippers and carriers."

The Board concluded that its goal of ensuring that the collective ratesetting process does not skew market pricing or mislead shippers as to the rates prevailing in the market is met by requiring that, whenever a member motor carrier offers a rate that is based on or references a bureau-set class rate, the carrier must give a "truth-in-rates" notice to the potential shipper. The notice must prominently disclose the range of discounts that the motor carriers in the rate bureau have provided to shippers. In this way, the Board found, all shippers will be informed that the benchmark (or list) rates that motor carriers set collectively through rate bureaus are not necessarily the prevailing market rates and that a wide range of discounted rates may be available.

Loss-of-Discount Provisions. Finally, the Board addressed "loss-of-discount" provisions under which a shipper must pay the full (undiscounted) class rate if it does not pay its freight bill on time. The Board noted that loss-of-discount provisions are permitted so that carriers may recover the costs incurred in connection with overdue charges, not simply to enrich carriers. Noting that, with discounts as high as 70 percent, a loss-of-discount provision could result in penalties far beyond the collection costs incurred by the carriers, the Board required bureaus to provide, as a condition of membership, that their member carriers not use a bureau-set class rate as the basis for a loss-of-discount penalty for late payment.

The Board's decisions anticipate that the rate and classification bureaus will collect all necessary information and make the necessary modifications to their agreements within approximately four months. The Board's decisions were issued today in *National Classification Committee --Agreement*, Section 5a Application No. 61 (Sub-No. 6), in which Commissioner Burkes submitted a separate expression, and Section 5a Application No. 61, and *EC-Mac Motor Carriers Service Association, Inc., Et Al.*, Section 5a Application No. 118 (Sub-No. 2), et al. Printed copies of the decisions are available for a fee by contacting **D~2-D~ Legal, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decisions also are available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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