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Docket No. FHWA-1997-2979 - 49

DEPT. OF TRANSPORTATION
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Written Testimony of

Joe Ruland

President

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Action Scale & Weighing Systems, Inc. is an independent scale dealer located in Toledo, Ohio. Toledo, Ohio is a "hub" for truck traffic coming from the North, South, East, and West including Michigan "train trucks" and grain vehicles from Canada. It is my opinion that on board weighing would not be in the best interest of the public, as the fox would virtually be guarding the hen house. The *only* way to insure accurate weights is on a static scale operated by a third party.

federal register

FHWA-1997-2919-1

Friday
May 15, 1998

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 375 and 377
Transportation of Household Goods;
Consumer Protection Regulations;
Proposed Rule

The regulations also would provide, in § 375.403, that a carrier transporting a shipment under a binding estimate reaffirms that estimate and waives any subsequent claims about additional transported items unless its objection is made at the time of pickup. Once the objection is made, the carrier would be required to execute a new binding or non-binding estimate.

Proposed Changes to the Credit Regulations

The American Movers Conference and the Household Goods Carrier's Bureau Committee filed a petition with the ICC on May 3, 1995, requesting an amendment to the credit regulations (now contained in 49 CFR 377.215) to prescribe an increased minimum service charge for the extension of credit. They also petitioned to require assessment of the service charge until the freight bill is paid Ex Parte No. MC-1 (Sub-No. 6). *Payment of Rates and Charges of Motor Carriers—Credit Regulations—Household Goods (Petition of America Movers Conference and Household Goods Carrier's Bureau To Amend Credit Regulations)*. On March 26, 1997 the STB served a notice on the parties indicating the ICCTA transferred the regulatory function for the proceeding from the ICC to the Secretary of Transportation. The responsibility for considering such regulatory issues has been delegated to the FHWA. The American Movers Conference changed its name to the American Moving and Storage Association (AMSA) on January 1, 1998.

The household goods transportation regulations require carriers to present their freight bills within 15 days of date of delivery and provide for a credit period of 7 days (excluding weekends and legal holidays). The regulations further provide for the automatic extension of the prescribed 7-day credit period to a total of 30 calendar days for any shipper who has not paid the freight bill within the 7-day period. However, a service charge of one percent of the amount of the freight bill, subject to a minimum charge of \$10.00, must be applied to the extended credit period. The Petitioners requested the ICC to amend this regulation to do both of the following two things:

- (1) Increase the minimum service charge from \$10.00 to \$20.00; and
 - (2) Extend the one percent service charge to each 30-day period or fraction thereof after the initial credit period.
- The Petitioners noted that since the existing credit regulation does not assess any credit charge to shippers who have not paid the carrier's freight bill within the initial 30-day credit period,

delinquent shippers thereafter obtain free credit indefinitely.

The ICC took no action on this petition. The FHWA will incorporate this petition in this rulemaking and discontinue Ex Parte No. MC-1 (Sub-No. 6). For purposes of this rulemaking, the FHWA proposes to adopt the above-described amendments to the credit regulations and solicits public comment regarding their propriety. The FHWA also proposes to move the credit regulations pertaining to household goods transportation from 49 CFR 377.215(c) to 49 CFR 375.807 for ease of reference.

On-Board Trailer Scales

The public has alerted the FHWA to a few motor carriers who have begun to use on-board trailer scales. These are generally non-certified scales and expressly prohibited. The FHWA believes their use is a violation of the former ICC's regulations. The FHWA is affirming the prohibited use of such on-board trailer scales.

The FHWA, however, solicits comments regarding the accuracy, reliability, and acceptability of such non-certified on-board trailer scales, preferably supported by scientific data.

The Maximum Threshold for Weighing Shipments Upon a Certified Platform or Warehouse Scale

The AMSA has asked the FHWA to consider amending § 375.7(a)(5) by raising the 454 kilogram (1,000 pound) maximum threshold requirement for weighing shipments upon a certified platform or warehouse scale. This threshold requirement has remained unchanged since 1939, when the ICC first allowed the practice of weighing small shipments on platform or warehouse scales rather than weighing the entire motor vehicle. See 17 M.C.C. 467.

The AMSA's October 1997 petition states average weights for private transferee C.O.D. household goods shipments have increased from 4,611 pounds in 1982 to 6,023 pounds today. The AMSA believes the industry now considers 1,362 kilograms or less (3,000 pounds or less) shipments to be small rather than 454 kilograms or less (1,000 pounds or less) shipments.

Although the rationale behind the 1,000 pounds weight threshold in § 375.7(a)(5) is unclear, it is possible that the ICC may have linked the 1,000 pounds weight threshold to tariff provisions assessing a minimum charge for shipments weighing less than 1,000 pounds.

The FHWA believes raising the limit to a higher maximum (i.e., 1,362

kilograms) might, in essence, allow movers to charge a minimum rate at the higher weight threshold when the shipment actually weighs less than the higher weight threshold. We are concerned that by adopting the AMSA's definition of a small shipment as one weighing 3,000 pounds or less (1,362 kilograms or less), we could be perceived as giving our blessing to an increase in the minimum rate threshold in household goods carriers' tariffs. The FHWA has no authority to approve or disapprove of household goods carriers' tariff charges. The statute gives this responsibility to the SIB.

In addition, the FHWA believes that should an increase in the weight threshold result in higher minimum charges for small shipments, there may be a negative impact upon highway and motor carrier safety. Higher minimum charges might force individual shippers to reconsider using professional carriers to perform the transportation service. These individual shippers, who would otherwise ship their own household goods, might decide to save money by transporting their own household goods using rental trucks. The FHWA believes allowing more individual shippers to operate large, unfamiliar rental vehicles, would add more risks to highway safety than maintaining a lower weight threshold, thereby maintaining a lower minimum charge. The risks might include more accidents, near misses, and personal injuries due to carrying goods improperly or unsecured.

The FHWA would like comments about whether the FHWA should retain, raise, or lower the 454 kilogram maximum threshold. In your comments, please provide any historical background information you may have on this subject.

Replacement of the Term "Money Order"

The FHWA is proposing to replace the individual shipper's use of the term "money order" to pay for transportation of household goods with a much more general term, a "cashier's check." The FHWA proposes to use this term, as it is defined in 12 CFR 229.2(i).

This would allow individual shippers to use financial or depository institutions' official checking systems, or U.S. Postal Service money orders. The regulations at 12 CFR 229.2(k) define a money order as a check, too. Thus, an individual shipper could use a cashier's "money order." The FHWA believes the use of general money orders may compromise the individual shipper's financial safety during a time period when the individual shipper is at a greater risk of losing his ability to pay

The FHWA estimates motor carriers sell excess liability insurance policies on 100,000 shipments of the 600,000 shipments each year. The FHWA also estimates each policy takes 1 hour to process and copy. This would result in 100,000 hours of burden for selling insurance policies to individual shippers.

The FHWA estimates the financial burden in selling insurance policies would be creating the insurance policy record, copying the policy, providing one copy to the individual shipper, and filing and storing the policy. As discussed above, the FHWA estimates 100,000 insurance policies would be executed each year. This means 100,000 policies would be made each year, and 100,000 copies would be made, filed, and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to provide insurance policies using the following four calculations. 100,000 times \$1.145 for creating one record equals \$114,500. 100,000 times \$1.076 for duplicating one record equals \$107,600. 100,000 times \$0.118 for filing one record equals \$11,800. 100,000 times \$0.0228 for storing one record equals \$2,280. The total of the four results is \$236,180.

Bills of Lading

A bill of lading must include the following twelve information items:

1. The carrier's name and address, or the name and address of the motor carrier issuing the bill of lading.
2. The names and addresses of any other motor carriers, when known, who will participate, through interline, in the transportation of the shipment.
3. The name, address, and telephone number of the office of the motor carrier to contact in relation to the transportation of shipments.
4. When the transportation is to be performed on a collect-on-delivery basis, the name, the address and, if furnished, the telephone number of a person to whom notification is provided for in proposed § 375.605 must be given.
5. For *non-guaranteed service*, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.
6. For *guaranteed service* subject to tariff provisions, the dates for pickup

and delivery and any penalty or per diem entitlements due the individual shipper under the agreement.

7. The actual date of pickup.

8. The company or carrier identification number of the vehicle(s) on which the motor carrier loads the shipment.

9. The terms and conditions for payment of the total charges including notice of any minimum charges.

10. When the transportation is to be performed on a collect-on-delivery basis and if a pre-move estimate of the charges is provided to the individual shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

11. The required released rates valuation statement (see RELEASED RATES OF MOTOR COMMON CARRIERS OF HHG, 9 I.C.C. 2d 523 (1993)) (as amended), and the charges, if any, for optional valuation coverage.

12. Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

A copy of the bill of lading must accompany a shipment at all times. When the shipment is loaded upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment. The proposed retention period would remain the same as the current period. See 49 CFR 379.13, Appendix A, item I.1.

The FHWA estimates a bill of lading takes 30 minutes to complete. Multiplying this by the estimated 600,000 bills of lading executed each year results in 300,000 burden hours.

The FHWA estimates the financial burden in providing bills of lading would be creating the bill of lading record, copying through the use of carbon or carbonless paper, attaching a copy to the estimate and order for service, providing a copy to accompany the load, and filing and storing the bill of lading with the estimate of charges and order for service. As discussed above, the FHWA estimates 600,000 orders for service are executed each year. This means 600,000 bills of lading would be made each year. The FHWA estimates at least three copies for each bill of lading would be made (1,800,000 copies), and 1,800,000 copies filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to write bills of lading using the following four calculations: 600,000 times \$1.145 for creating one record equals \$687,000. 1,800,000 times \$1.076 for duplicating

one record equals \$1,936,800. 1,800,000 times \$0.118 for filing one record equals \$212,400. 1,800,000 times \$0.0228 for storing one record equals \$41,040. The total of the four results is \$2,877,240.

Weight Tickets

Every weight ticket must be signed by the person performing the weighing and must contain the following six information items:

1. The complete name and location of the scale.
2. The date of each weighing.
3. Identification of the weight entries as being the tare, gross, or net weights.
4. The company or carrier identification of the vehicle.
5. The last name of the individual shipper as it appears on the Bill of Lading.

6. The carrier's shipment registration or Bill of Lading number.

When both weighings are performed on the same scale, one weight ticket may be used to record both weighings.

All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight. The proposed retention period would remain the same as the current period. See 49 CFR 379.13, Appendix A, item J.5 for the current retention period.

The FHWA estimates weighing freight takes 5 minutes to complete. The FHWA estimates 5 percent of shipments move under a binding estimate and an additional 5 percent move under an estimate based upon volume. These two types of estimates do not require weighing—therefore, the FHWA will exclude 60,000 shipments from our calculations. The FHWA calculates 540,000 shipments times two weighings per shipment equals 1,080,000 weighings. This multiplied by 5 minutes per weighing results in 90,000 burden hours.

The FHWA estimates the financial burden in providing a weighing would be in creating the weight record, copying would generally be done through the use of carbon or carbonless paper, attaching a copy to the bill of lading and order for service, and filing and storing the weight ticket with the bill of lading and order for service.

The FHWA estimates one copy for each weight ticket would be made (1,080,000 copies), and 2,160,000 copies filed and stored. The FHWA assumes the records would be active rather than inactive.

Thus, the FHWA calculates the organizational unit cost analysis to record weight tickets using the

will participate in interline transportation of the shipment.

(3) The name, address, and telephone number of your office (or the office of your agent) where the individual shipper can contact you in relation to the transportation of the shipment.

(4) When you transport under a collect-on-delivery basis, the name, address and, if furnished, the telephone number of a person to notify about the charges, as required in § 375.605.

(5) For non-guaranteed service, the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered upon the bill of lading must conform to the agreed dates or periods of time for pickup and delivery entered upon the order for service or a proper amendment to the order for service.

(6) For guaranteed service, subject to tariff provisions, the dates for pickup and delivery and any penalty or per diem entitlements due the individual shipper under the agreement.

(7) The actual date of pickup.

(8) The company or carrier identification number of the vehicle(s) upon which you load the individual shipper's shipment

(9) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(10) The maximum amount you will demand at the time of delivery to obtain possession of the shipment, when you transport under a collect-on-delivery basis.

(11) The Surface Transportation Board's required released rates valuation statement, and the charges, if any, for optional valuation average (see RELEASED RATES OF MOTOR COMMON CARRIERS OF HHC, 9 I.C.C. 2d 523 (1993)).

(12) Evidence of any insurance coverage sold to or procured for the individual shipper from an independent insurer, including the amount of the premium for such insurance.

(c) A copy of the bill of lading must accompany a shipment at all times while in your (or your agent's) possession. When you load the shipment upon a vehicle for transportation, the bill of lading must be in the possession of the driver responsible for the shipment.

(d) You must retain bills of lading for at least one year from the date you created the bill of lading.

Weighing the Shipment

§ 375.505 Must I determine the weight of a shipment?

(a) When you transport household goods on a non-binding estimate dependent upon the shipment weight, you must determine the weight of each shipment transported before the assessment of any charges,

(b) You must weigh the shipment upon a certified scale.

§ 375.507 What is a certified scale?

A certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority (e.g., a State). A certified scale may also be a platform or warehouse type scale properly inspected and certified.

§ 375.509 How must I determine the weight of a shipment?

(a) You must weigh the shipment by using one of the following two methods:

(1) *First method—origin weigh.* You determine the difference between the tare weight of the vehicle before loading at the origin of the shipment and the gross weight of the same vehicle after loading the shipment

(2) *Second method—back weigh.* You determine the difference between the gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after you unload the shipment.

(b) The following three conditions must exist for both the tare and gross weighings.

(1) The vehicle must have installed or loaded all pads, dollies, hand trucks, ramps, and other equipment required in the transportation of the shipment.

(2) The driver and other persons must be off the vehicle at the time of either weighing.

(3) The fuel tanks on the vehicle must be full at the time of each weighing, except when you use the *first method—origin weigh*, in paragraph (a) (1) of this section where the tare weighing is the first weighing performed, you must refrain from adding fuel between the two weighings.

(c) You may detach the trailer of a tractor-trailer vehicle combination from the tractor and the trailer weighed separately at each weighing provided the length of the scale platform is adequate to accommodate and support the entire trailer at one time.

(d) You must use the net weight of shipments transported in containers. You must calculate the difference between the tare weight of the container [including all pads, blocking and

bracing used in the transportation of the shipment) and the gross weight of the container with the shipment loaded in the container.

§ 375.511 May I use an alternative method for shipments weighing 454 kilograms or less?

For shipments weighing 454 kilograms or less (1,000 pounds or less), you may weigh the shipment upon a platform or warehouse certified scale before loading for transportation or after unloading.

§ 375.513 Must I give the individual shipper an opportunity to observe the weighing?

You must give the individual shipper or any other person responsible for the payment of the freight charges the right to observe all weighings of the shipment. You must advise the individual shipper, or any other person entitled to observe the weighings, where and when each weighing will occur. You must give the person who will observe the weighings a reasonable opportunity to be present. So observe the weighings.

§ 375.515 May an individual shipper waive his/her right to observe each weighing?

An individual shipper has the privilege to waive his/her right to observe any weighing or reweighing. This does not affect any other rights of the individual shipper under this part or otherwise.

§ 375.517 May an individual shipper demand reweighing?

After you inform the individual shipper of the billing weight and total charges and before actually beginning to unload a shipment weighed at origin (*first method* under § 375.509(a)(1)), the individual shipper may demand a reweigh. You must base your freight bill charges upon the reweigh weight.

§ 375.519 Must I obtain weight tickets?

(a) Yes, you must obtain weight tickets whenever we require you to weigh the shipment in accordance with this subpart. You must obtain a separate weight ticket for each weighing. The weigh master must sign each weight ticket. Each weight ticket must contain the following six items:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) The identification of the weight entries as being the tare, gross, or net weights.

(4) The company or carrier identification of the vehicle.

(5) The last name of the individual shipper as A appears on the bill of lading.