

the official or office responsible for maintaining the system, the official or office shall:

- (1) Accept the transfer statement;
- (2) Promptly amend its records to reflect the transfer; (emphasis added) and
- (3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) [Transfer not a disposition; no relief of secured party's duties.] A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

I have also considered the Official Comments of the UCC drafters wherein they explain the intent of UCC 9-916:

Transfer of Record or Legal Title. Potential buyers of collateral that is covered by a certificate of title (e.g., an automobile) or is subject to a registration system (e.g., a copyright) typically require as a condition of their purchase that the certificate or registry reflect their ownership. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as may be the case after the default, the debtor refuses to cooperate, the secured party may have great difficulty disposing of the collateral. (emphasis added)

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. (emphasis added) Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a secured party prior to the secured party's exercise of those remedies. Under subsection (c), a transfer of record or legal title (under subsection (b) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., \* \* \*, federal registry rules, or the like) (emphasis added) may provide a means by which the secured party may obtain or transfer record or legal title for the purpose of a disposition of the property under this Article. The mechanism provided by this section is in addition to any title-clearing provision under law other than this Article.

After due consideration of these facts, provisions and comments, it is my opinion that the FAA will consider utilization of a transfer statement as contemplated by Section 9-619 of the Uniform Commercial Code for purposes of transferring the rights of the aircraft owner, as Lessor, to the Indenture Trustee in existing leases.

Further, your proposed transfer statement is eligible for recording as a stand-alone document because it is a conveyance affecting an interest in a civil aircraft of the United States in that it affects an interest in a recorded lease between Wells Fargo Bank and Northwest Airlines concerning operational control of aircraft.

Be advised that for purposes of transferring ownership of an aircraft FAA will not consider a transfer statement a substitute for a Certificate of Repossession or its equivalent under 14 CFR 47.11

Sincerely,

Joseph R. Standell  
Aeronautical Center Counsel

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2006-25886]

#### State Enforcement of Household Goods Consumer Protection

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) gives State household goods regulatory authorities and State attorneys general the right to enforce certain consumer protection provisions that apply to individual shippers and are related to interstate movement of the goods. This notice specifies the Federal statutory and regulatory provisions that States may enforce.

**DATES:** The policy in this notice is effective as of the enactment of SAFETEA-LU, August 10, 2005. State household goods regulatory authorities and State attorneys general may enforce the statutory provisions and FMCSA regulations identified in this notice for actions on or after that date.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothea Grymes, Household Goods Team, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Room 8310, Washington, DC 20590-0001. (202) 385-2400. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** On August 10, 2005, the President signed the Safe, Accountable, Flexible, and Efficient

Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Public Law 109-59). Section 4206 of SAFETEA-LU amends Title 49 of the United States Code (U.S.C.) by adding two new sections, 14710 and 14711, to address the enforcement of the consumer protection provisions of Title 49 and related regulations applicable to the delivery and transportation of household goods in interstate or foreign commerce. Before the passage of SAFETEA-LU, the Federal government was responsible for enforcing these statutes and regulations. Section 14710 extends to State agencies that regulate the movement of intrastate household goods the authority to "enforce the consumer protection provisions of this title [Title 49] that apply to individual shippers, as determined by the Secretary [of the U.S. Department of Transportation], and are related to the delivery and transportation of household goods in interstate commerce." Section 14711 gives State attorneys general the authority to bring a civil action or impose civil penalties in the U.S. district courts to enforce the consumer protection provisions that apply to individual shippers and are related to the delivery and transportation of household goods in interstate or foreign commerce.

Section 4202 of SAFETEA-LU amended 49 U.S.C. 13102 to define "individual shipper" as follows:

The term "individual shipper" means any person who—

- (A) Is the shipper, consignor, or consignee of a household goods shipment;
- (B) Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
- (C) Owns the goods being transported; and
- (D) Pays his or her own tariff transportation charges.

FMCSA has determined that the States, under sections 14710 and 14711, may enforce the following statutory provisions and FMCSA regulations<sup>1</sup> immediately:

#### Statutes

1. Tariff requirement for certain transportation, 49 U.S.C. 13702.

Household goods (HHG) carriers must have tariffs covering transportation and related services and must charge in accordance with their tariff. (Tariffs are the rates charged for services and the service terms.) The carrier must give notice of availability of the tariff to individual shippers and must make it available for inspection to shippers upon reasonable request.

<sup>1</sup> The brief description accompanying each item listed below is for informational purposes only and is not intended to be a definitive interpretation of legal requirements.

2. Household goods rates—estimates; Guarantees of service, 49 U.S.C. 13704.

Rates for transportation of household goods moving on a written binding estimate must be available to shippers on a non-preferential basis and must not result in charges that are predatory.

3. Payment of rates; Exceptions, 49 U.S.C. 13707(b).

HHG carriers must give up possession of a shipment upon payment of 100 percent of a binding estimate or 110 percent of a non-binding estimate, but may collect all charges related to post-contract services and impracticable operations at delivery (with some limitations as to the latter).

4. Requirement for registration, 49 U.S.C. 13901; General civil penalties, 49 U.S.C. 14901(d)(3).

FMCSA registration is required to provide transportation or brokerage services subject to FMCSA jurisdiction. Transportation or brokering of HHG goods without FMCSA registration is punishable by a minimum civil penalty of \$25,000 per violation.

5. Household goods carrier operations; Estimates, 49 U.S.C. 14104(b).

HHG carriers must comply with certain estimating requirements and provide individual shippers with prescribed informational publications.

6. Liability of carriers under receipts and bills of lading; Limiting liability of household goods carriers to declared value, 49 U.S.C. 14706(f).

HHG carriers are liable for the replacement value of goods unless the individual shipper waives full value protection in writing.

7. Dispute settlement program for household goods carriers, 49 U.S.C. 14708.

HHG carriers must provide binding arbitration upon shipper request for disputes up to \$10,000 involving loss and damage and payment of charges in addition to those collected at delivery. The arbitration program must contain several required elements.

8. General civil penalties; Estimate of broker without carrier agreement, 49 U.S.C. 14901(d)(2).

HHG brokers making estimates before entering into an agreement with a carrier are liable for a minimum civil penalty of \$10,000 per violation.

9. General civil penalties; Violation relating to transportation of household goods, 49 U.S.C. 14901(e).

Any person falsifying documents relating to HHG shipment weight or charging for accessorial services that are not performed or are not reasonably necessary for the safe and adequate movement of the shipment is subject to a minimum civil penalty of \$2,000 for

the first violation and \$5,000 for each subsequent violation.

10. Civil penalty procedures, 49 U.S.C. 14915.

Holding a HHG shipment hostage is punishable by a minimum civil penalty of \$10,000 per violation.

### Regulations

1. Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations, 49 CFR part 375.

Contains consumer protection regulations governing transportation of household goods for individual shippers in interstate commerce.

2. Bills of lading for freight forwarders, 49 CFR 373.201.

All HHG freight forwarders must issue a shipper a thorough bill of lading covering transportation from origin to destination.

3. Designation of process agent; required States, 49 CFR 366.4.

All carriers and brokers must designate agents for service of court process in States of operation.

4. Principles and practices for the investigation and voluntary disposition of loss and damage claims, 49 CFR 370.3 through 370.9.

Contains regulations governing voluntary disposition of loss and damage claims. The regulations protect individual shippers (as well as business shippers) by ensuring that motor carriers investigate claims and process them in accordance with prescribed procedures.

5. Records to be kept by brokers; right of review, 49 CFR 371.3(c).

Brokers must provide access to transaction records by each party to a brokered transaction.

6. Records to be kept by brokers; misrepresentation, 49 CFR 371.7.

**Brokers must not misrepresent their name or broker status.**

7. Procedures governing the processing, investigation, and disposition of overcharge, duplicate payment, or over-collection claims, 49 CFR 378.3 through 378.9.

Contains regulations governing processing of overcharge claims (where the carrier has collected payments exceeding what is permitted by its tariff). Like part 370, designed to ensure claim is investigated and disposed of in accordance with prescribed procedures.

8. Surety bond, certificate of insurance, or other securities; Cargo insurance, 49 CFR 387.301(b).

HHG carriers must obtain cargo insurance in prescribed amounts and file evidence of such insurance with FMCSA.

9. Property broker surety bond or trust fund, 49 CFR 387.307.

All brokers (including HHG brokers) must obtain and file a surety bond or trust fund to pay shippers or motor carriers if the broker fails to carry out its contracts for the arrangement of transportation.

10. General requirements, 49 CFR 387.403.

All freight forwarders (including HHG freight forwarders) must obtain and file the same level of cargo insurance required of motor carriers.

### Future Applicable Rulemaking

Additionally, section 4212 of SAFETEA—LU directs the Secretary to establish regulations requiring HHG brokers to provide individual shippers with certain specific information. FMCSA is developing a notice of proposed rulemaking under regulatory identification number 2126-AA84 *Brokers of Household Goods Transportation by Motor Vehicle* to propose regulations that would require HHG brokers to provide individual shippers with the specific information required by section 4212. When this rule becomes final, it will be added to the regulations list above.

Issued on: November 9, 2006.

**John H. Hill,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2006-25808, Notice No. 1]

### Establishment of an Emergency Relief Docket for Calendar Year 2006

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of establishment of public docket.

**SUMMARY:** On August 30, 2006, FRA published an Interim Final Rule (IFR) addressing the establishment of emergency relief dockets (ERD) and the procedures for handling petitions for emergency waivers of safety regulations, 71 FR 51517. The IFR provided that each year, FRA will establish an ERD for that year and publish a notice in the **Federal Register** identifying the docket number of the ERD for that year. This Notice announces the establishment of FRA's ERD for the current year (calendar year 2006). The designated ERD for calendar year 2006 is docket number FRA-2006-25808.

**ADDRESSES:** See Supplementary Information section for further