

Household Goods Motor Carrier Regulation – A Primer and Update

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The household goods segment of the motor carrier industry is particularly challenging and, increasingly, a gating issue for new and innovative last mile or Do-It-Yourself service offerings. Understanding whether the statutory and regulatory requirements associated with household goods services are triggered can have direct implications on the viability of a commercial offering, its price, and the precise operational requirements. If a service constitutes household goods moving then the world of antiquated pre-deregulation legal requirements and significant consumer protection regulations apply to the provider, whether as a motor carrier or broker.

Definitional Matters

The basic question of whether a service offering triggers the statutes and regulations applicable to household goods service begins with the definitions set forth at 49 USC § 13102. The net effect of statutory definitions is that the determination of household goods regulation principally turns on the nature of the service rather than the nature of the commodity.

Household goods are defined essentially as “personal effects and property used or to be used in a dwelling” and “similar property if arranged and paid for by the householder” or “arranged and paid for by another party.” On its face this is an incredibly broad definition that includes almost any consumer good. A definitional carve-out, however, exists for “property moving from a factory or store, other than property that the householder has purchased with intent to use in his or her dwelling and is transported at [his or her] request....” This of course excludes most last mile delivery service offerings.

Household goods motor carriers, or movers, are defined more narrowly than the term household goods. Regulated household goods motor carriers are motor carriers that “in the ordinary course of providing transportation of household goods, [offer] some or all of the following additional services: (i) binding and nonbinding estimates, (ii) inventorying, (iii) protective packing and unpacking of individual items at personal residences, and (iv) loading and unloading at personal residences.” This set of consumer-centric services are consistent with market expectations for traditional moving and establish the character of service subject to unique consumer protections due to its impact on the lives of everyday people and their personal effects. In the event of enforcement, that determination is made by the U.S. DOT’s Federal Motor Carrier Safety Administration (“FMCSA”) on a case-by-case basis.

One important definitional carve-out also exists for household goods motor carriers. The Limited Service Exclusion, also at 49 USC § 13102, establishes that the term household goods motor carriers does not include those that provide “transportation of household goods in containers or

trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).” This effectively draws containerized, drop trailer, and other increasingly popular Do-It-Yourself type services outside the definition of household goods motor carriers. Typically those services do not include the enumerated “additional services” used to define the scope of a traditional mover.

Unique Requirements

Household goods motor carriers are subject to more stringent statutory and regulatory requirements than carriers of general commodities, and many of those requirements are remnant of the era prior to deregulation of the industry. The FMCSA imposes a number of threshold requirements that must be met even before registration, including publication of a tariff, use of an arbitration program to settle consumer disputes, maintenance of cargo liability insurance, and proficiency with the federal consumer protection regulations. Those requirements are set forth in 49 USC § 13902. Key elements for certain of those requirements are described below.

1) Tariff Publication - The most significant legacy requirement is the necessity of a tariff, found at 49 USC § 13702. The historic “filed rate doctrine” and “reasonable rate” requirements apply to movers. Movers must publish their tariff, shippers must receive notice of the same, and application of those rates and rules is binding subject to potential invalidation by the Surface Transportation Board (“STB”).

2) Binding Arbitration Program - Movers are required to offer a binding arbitration program to their shippers in the interest of settling loss and damage disputes. Any dispute where the amount in controversy is less than \$10,000 must be submitted to the program with binding effect. A mover may elect for binding effect for greater amounts in controversy. The precise requirements of a compliant arbitration program are found at 49 USC § 14708.

3) Cargo Liability and Insurance - Another legacy requirement is the necessity to hold cargo insurance with minimum policy limits of \$10,000 per occurrence and filed on FMCSA Form BMC-34. Legal liability for cargo loss and damage is governed by Released Rates Orders published by the STB. Movers must offer carrier liability of either \$.60/lb at their standard rates or full liability for actual loss and damage subject to any charges or deductibles. Precise language is required for the presentation of those options, which a shipper may change at any point until loading begins.

4) Estimate, Order for Service, and Bill of Lading - Written estimates are required prior to commencement of service as set forth in 49 USC § 14104. Those estimates may be either binding or non-binding, and the choice between the two directly impacts the amount that a mover may collect upon delivery for COD service. Delivery must be completed for collection of the amounts stated on a binding estimate even if additional services were provided. The lawful amounts associated with those services must be invoiced and collected at a later date. Delivery may be completed for collection of 110% of the amount stated on a non-binding estimate with subsequent invoicing for lawful amounts owed. An Order for Service must also be issued to confirm the shipper’s order together with precise disclosures and data points that must be included on the Bill of Lading.

5) Consumer Protection Regulations - Movers must observe the Federal Consumer Protection Regulations in 49 CFR Part 375. The regulations are drafted with a Question & Answer format in order to be easily understood by the moving public. They address issues such as the way in which

in-home estimates, instructional documents, payment and collection, paperwork, weighing, and disputes must be managed. Similar, but far less voluminous, requirements apply to household goods brokers under 49 CFR Part 371.

6) Hostage Goods Enforcement - Failure to release household goods shipments upon tender of payment for those amounts lawfully owed incurs strict consequences for FMCSA enforcement action as well as action by State Attorney General's Offices. Hostage goods activities can net up to \$10,000 per day, per violation, in civil penalties. It can also yield criminal penalties with up to two years imprisonment. The prohibition against hostage goods practices, and the empowerment of State AGO's for enforcement, is found at 49 USC §§ 14710, 14915.

Intrastate Jurisdiction

Many states have enacted their own consumer protection oriented statutes and regulations focused on activities in the household goods segment. Those states paying close attention to the issues tend to have high inbound and outbound traffic as well as high frequencies of consumer abuse, particularly targeting the elderly. California is one such example. The state recently moved its enforcement jurisdiction from the Public Utilities Commission to the newly formed Bureau of Household Goods and Services. California takes an expansive view of activities that constitute regulated household goods service within state jurisdiction. Compliance with applicable rules requires many elements similar to the federal standards including the provision of and adherence to a tariff known as the California MAX-4.

New Developments

The United States Congress recently addressed the regulatory burden for household goods movers as balanced against the efficacy of consumer protections. Specifically, a FMCSA Household Goods Consumer Protection Working Group was mobilized by Section 5503(d) of the FAST Act. The Working Group included representation by both industry and consumer protection interests and ultimately offered nineteen recommendations for improvement. Those recommendations included: (i) modernizing the tools and resources available for industry and consumers, (ii) allowing industry to deliver documentation electronically, (iii) simplification of certain documents that are required to be presented to shippers, (iv) allowing for greater flexibility in offering physical surveys and issuance of Orders for Service, and (v) elimination of the need to disclose interlining carriers on the Bill of Lading. The FMCSA delivered its report to Congress in response to those recommendations in September of 2019.

Important Take-Aways

The household goods motor carrier segment is truly a highly regulated space within a heavily regulated industry. Many of the benefits of deregulation that industry at large have enjoyed are less prevalent for movers due to their direct impact on the livelihoods of consumers. However, despite the compliance burden, the threshold question to consider when determining whether a service is or is not regulated turns on the offering of services with the look and feel of traditional household goods moving. The absence of estimates, inventories, and in-home services tends to draw operations outside the scope of household goods service. The existence of commercial delivery of new items can often also draw an operation outside the scope of regulated service. If a business operation does qualify as household goods service then a wide range of technical statutory and

regulatory requirements at the federal and possibly state level must be observed which, in egregious cases, include significant civil and criminal penalties in the event of violations.

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