

Operator Permit" and a re-arrangement of the order in which examinations for first and second class licenses are given. Specifically, the element three examination must be passed before taking the element one and two examinations.

This effective date pertains to the Third Report and Order in Docket 20817 which was adopted July 17, 1980. The Third Report and Order was published in the August 6, 1980, edition of the Federal Register, 45 FR 52154.

Federal Communications Commission.

William J. Tracarico,

Secretary

[FR Doc. 80-31291 Filed 10-16-80; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Second Revised Directed Service Order No. 1482]

Various Railroads—Directed Service— and Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Second revised directed service order No. 1482.

SUMMARY: Pursuant to Section 104 of Pub. L. 96-254 (May 30, 1980) the Commission is directing various carriers named in the Appendix to provide service over described lines of the Chicago, Rock Island & Pacific Railroad Company, debtor (William M. Gibbons, Trustee) (Rock Island or RI) due to lack of rail service which cannot be resolved by a grant of interim operating authority over specific lines.

This directed service order, originally published at 45 FR 56810, August 26, 1980, is being revised to clarify the rates which may be established during the directed service period pursuant to paragraph (5) of the order.

DATE: Effective date: This directed service order shall become effective at 12:01 a.m. (central time) on October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein, (202) 275-0826 or

Joel E. Burns, (202) 275-7849.

SUPPLEMENTARY INFORMATION:

Decision of the Commission

Background

The Rock Island has been in bankruptcy proceedings since 1975. In

September 1979, its cash flow position became so severe as to prevent the continuation of normal rail operations. Accordingly, we issued Directed Service Order No. 1398 (and supplements thereto) directing the Kansas City Terminal Railway Company (KCT) to provide service under 49 U.S.C. 11125 as a subsidized "directed rail carrier" (DRC) over the Rock Island rail system. *Kansas City Term. Ry. Co.—Operate—Chicago, R.I.&P.*, 360 I.C.C. 289, 478, 718 (1979-80) (44 FR 56343, October 1, 1980). That order expired on March 23, 1980.

In order to provide for the continuation of essential rail services, we issued various service orders and directed service orders, without federal subsidy, authorizing several railroads to provide interim service over Rock Island lines on a voluntary basis. Our unsubsidized directed service orders issued under 49 U.S.C. 11125 expired on May 31, 1980, in accordance with statutory time limits.

On May 30, 1980, Pub. L. 96-254 ("Rock Island Railroad Transition and Employee Assistance Act" or "RITEA") was enacted. Section 104 of RITEA provides that the Commission shall, notwithstanding the provisions of 49 U.S.C. 11125 or Pub. L. 96-131, order directed service for a period not to exceed 90 days over any line of the Rock Island if the Secretary of Transportation finds and certifies to the Commission a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and that either (a) grains or foods are ready to be shipped to market, or (b) a rail carrier, shipper, State, or other interested party has expressed in writing to the Secretary an interest in purchasing, leasing, or rehabilitating the particular rail line or facilities for purposes of providing rail services, and there is a reasonable expectation that such transaction will be consummated. RITEA further provides that the Secretary may make available to the Commission not more than \$15 million for purposes of providing directed service.

The Secretary of Transportation made a directed service certification to the Commission pursuant to section 104 of RITEA, with respect to Rock Island's lines listed in the appendix. The certification is incorporated in this decision by this reference. A summary of the certification is attached as an appendix.

Discussion and Conclusions

Section 104 of RITEA requires the Commission to direct service for a period not to exceed 90 days over any RI line for which the Secretary of

Transportation makes an appropriate certification to the Commission. The Secretary has made the appropriate certification for Rock Island's lines described in the appendix. Therefore, we shall direct the named DRCs to perform operations over the certified lines.

We will direct service for the period for which the Secretary of Transportation has certified that need for service over the line exists.

Because of the emergency nature of the situation and the need for immediate action, we are issuing this decision without advance public notice and hearings. The Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, subchapter II, does not require prior notice or hearing where such procedure would be impracticable or inconsistent with the public interest, 5 U.S.C. 553(b)(B). Further, in view of the continuing emergency with respect to service over Rock Island lines, good cause exists to make this decision effective immediately.

The terms and conditions of this directed service are set forth below, and are specifically revised with respect to the rates which may be established during directed service.

Terms and Conditions

Effective date—DSO No. 1482 shall be effective at 12:01 a.m. (central time) on the first day following the service date of this decision.

Expiration date—Unless modified by the Commission, this order will remain in effect, with respect to each particular DRC, according to the terms set forth in the appendix.

Operations—The DRCs are authorized respectively, to operate over the RI tracks described in the appendix. Operation over the designated tracks includes use of facilities and appurtenances thereto that are necessary or reasonably related to train operations, including but not limited to: yards, yard facilities; maintenance facilities; communication, electrical, and signal facilities; locomotive and car repair facilities; scales; etc.

Reimbursement procedures—Reimbursement for directed service operations under this decision shall be subject to the provisions of 49 CFR Part 1126, *Submission of Cost Data to Justify Reimbursement for Directed Service*. To ease the fiscal burdens involved in commencing service under the directed service order, any DRC may elect to use the optional three-stage funding procedure established in our directed service regulations 49 CFR 1126.3. This flexible procedure was established by us to provide for initial, interim, and

final funding to assist a DRC in meeting the startup and subsequent cash requirements involved in directed service.

In an effort to facilitate further the ability of the DRCs to meet startup costs we shall partially relax the reporting requirements associated with initial funding requests under § 1126.3(b). At present, initial funding requests must be documented by three items: (i) a brief description of the DRC's initial operating plan for the directed service; (ii) a statement of its immediate cash requirements; and (iii) a statement of forecasted costs and revenues. See 49 CFR 1126.3(b)(i-iii). To streamline the initial funding process, we shall permit the DRC to omit from its "initial operating plan" certain data which we would ordinarily require.

Section 1126.3(b)(i) requires the DRC's initial operating plan to outline the following information: (1) the frequency and schedule of service planned; (2) the personnel and equipment to be utilized; (3) the crew change and interchange points to be observed; (4) any immediate maintenance and repair work required; and (5) its fuel and supply needs. However, startup funds may well be needed by the DRC before it can determine this information. Therefore, we will permit a DRC to apply for initial funding under 49 CFR 1126.3(b) without filing an initial operating plan containing all the information requested by § 1126.3(b)(i). Rather, the DRC's initial operating plan need only contain the information which it has available to it at the time of its application for initial funding. The DRC shall, however, submit an updated operating plan as soon as one is developed. Initial funding to cover start-up costs may not exceed the estimated net cost of directed service. If the DRC's start-up costs exceed the estimated net cost of directed service, the DRC may borrow the additional funds necessary to commence operations and claim reimbursement for interest on the loan as a cost of directed service. The Commission will not be responsible for the reimbursement of any costs beyond those agreed to by the Secretary of Transportation and the DRCs or in excess of the statutorily available funds under 45 U.S.C. 1003 (Section 4 of RITEA).

The issuance of this directed service order does not preclude interested rail carriers (including the DRC) from filing petitions with the Commission to operate over portions of the RI on a noncompensated basis under section 122 of Pub. L. 96-254 or similar provisions.

Track Safety—The DRCs are not authorized to expend funds to

rehabilitate the track above the level necessary to provide the service certified by the Secretary of Transportation without prior approval of the Commission. The DRCs may make necessary repairs in order to keep the line operable.

A DRC, with the Trustee's consent, may enter Rock Island property before commencing operations in order to perform repairs necessary to make the line operable. Entry prior to the service period shall be at the DRC's own risk and expense with respect to insurance, casualties, and rent. Direct costs of repair work prior to the directed service period, necessary to make the line operable at the level of service specified for directed operations, may be claimed as reimbursable cost of directed service. Reimbursement for these costs may not be claimed until directed service has commenced. DRC may, however, borrow funds as needed in order to perform these repairs and claim interest expense as a reimbursable cost.

Cars and Operating Equipment—In operating the involved RI lines, each DRC shall use its own cars and operating equipment.

Employees—To the maximum extent practicable, the DRC shall hire former employees of Rock Island necessary to perform directed service over Rock Island properties. Rock Island employees hired during the directed service period do not assume an employment relationship with the DRCs. The DRC's work rules, rates of pay, and employment conditions will apply. Rock Island seniority roster shall apply.

Preservation of RI Estate—During the period of its operation of RI's lines, the DRCs shall be responsible for preserving the value of the lines to RI estate. The DRCs shall thus have an affirmative duty to perform that degree of maintenance necessary to avoid deterioration of the lines and related facilities, unless otherwise agreed.

Liabilities and expenses—We shall treat as compensable costs of directed service all liabilities and expenses arising out of wrecks or derailments, personal injury claims and actions, and damage to or destruction of property on directed service lines. Prior to commencing operations, each DRC shall obtain necessary insurance in an amount reasonably estimated to cover major liabilities and expenses of this kind. All liabilities arising out of directed service, but not finally determined as of expiration of the directed service period, should be covered by the DRCs' Casualty Loss reserves.

Both reserves and the cost of appropriate insurance may be claimed

as reimbursable costs of directed service. For outstanding claims covered by insurance, deductible amounts may be included in the reserve accounts.

Reserve accounts may be included in the directed service cost form only if contingent liabilities not covered by (or in excess of) insurance have been incurred during directed service but not finalized in amount. Those amounts shall be dispensed to the DRC as the respective liabilities are finalized and certified by the Commission for payment. See *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 251, 278 (1975) (*Submission of cost Data I*).

Compensation for RI lines and facilities—The Bankruptcy Court has approved abandonment by the Trustee of the entire Rock Island system. Compensation for use of Rock Island tracks in directed service under RITEA presents a situation different from that presented in *Lehigh & New England Ry. Co., v. I.C.C.*, 540 F.2d 71 (3d Cir. 1976), cert. denied 429 U.S. 1061 (1977) (LNE case). In the LNE case we concluded that compensation need not be paid by a DRC for use of tracks and related facilities unless directed service should be profitable. That decision was based to a large extent on the conclusion that directed service confers substantial benefits on the owner of the line, by relieving the owner of its duty to provide service during the period of directed operations. The Bankruptcy Court's action has relieved the RI Trustee of these duties. Therefore, we believe that the Rock Island estate should be compensated for the use of Rock Island tracks and related facilities used in directed operations, whether or not those operations are profitable.

In *St. Louis-San Francisco Railway Company—Compensation Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor* (William M. Gibbons, Trustee)—I.C.C.—(decided April 7, 1980), 45 FR 25401 (April 15, 1980) (*Frisco Compensation* case) we set reasonable compensation terms for use of RI tracks during interim operations under 49 U.S.C. 11123. We believe that the terms set forth in the *Frisco Compensation* case will also provide for payment of just and reasonable compensation for use of RI tracks in directed service operations under section 104 of RITEA. Therefore, DRC shall pay the Trustee, as a reimbursable expense of directed service, compensation for use of Rock Island tracks and related facilities in accordance with the *Frisco Compensation* formula.

Rates. The DRCs may adopt any existing local Rock Island rates or may establish new through or local rates, other than transit rates, on not less than one day's notice to the Commission and the public. Transit rates may be established on not less than one day's notice, provided that tariffs are appropriately modified requiring (1) that the further movement from transit points be from transit points not located on the line over which service is being directed, unless the further movement (a) takes place during the directed service period, or (b) takes place over a another carrier's lines if the directed service period has expired, (2) that it moves no later than sixty days after the end of the directed service period, and (3) that connecting railroads which agree to these tariff changes have no recourse against the United States should the directed carrier fail to settle a transit claim filed after the end of the directed service period.

Operational Difficulties.—Any operational or other difficulties associated with the authorized operations shall be resolved by the DRC and any other affected party through negotiated agreement or, failing agreement, by the Commission's Railroad Service Board.

Reporting Requirements.—The DRCs shall submit to the Commission, on a monthly basis, reports on the directed service operations. These reports shall include summaries of the traffic handled, the revenues collected, and the expenses incurred in the directed service operations, in a form to be specified by the Commission's Bureau of Accounts. Revenue, expenses, and statistics resulting from directed service operations shall be internally maintained separate from the DRC's usual railroad operations.

We find: 1. The Secretary of Transportation has made a directed service certification to the Commission, pursuant to a section 104 of Pub. L. 96-254, with respect to Rock Island's lines described in the appendix.

2. The designated DRCs are capable of performing directed service over the lines certified by the Secretary.

3. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources. See 49 CFR Parts 1106, 1108, (1978).

It is ordered:

§ 1033.1482 Directed service order No. 1482.

(1) *Various railroads—directed service—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).* Entry—Each DRC is

directed to enter upon and operate RI's lines described in the appendix pursuant to this directed service order under and section 104 of Pub. L. 96-254. Entry, by each DRC, respectively, shall occur and continue in accordance with the terms set forth in the appendix. Each DRC shall notify the Commission of its entry on the property immediately after such entry takes place.

(2) *Other Matters.*—Operations under this order shall conform with the directions prescribed above and the directed service certification of the Secretary of Transportation.

(3) *Commission Filings.*—All submissions filed in this proceeding should refer to "DSO No. 1482" and be sent to the following Commission offices in the Commission's Headquarters at 12th and Constitution Avenue, NW., Washington, DC 20423:

(i) Office of the Secretary (Room 2215) (original)

(ii) Section of Finance (Room 5417) Office of Proceedings (3 copies)

(iii) Section of Rail Service Planning (Room 7375) Office of Policy and Analysis (3 copies)

(iv) Railroad Service Board (Room 7115) (3 copies)

(4) *Applicability.*—The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

(5) *Modifications.*—The Commission retains jurisdiction to modify, supplement or reconsider this order at any time.

(6) *Initial and Interim finding.*—All correspondence to the Commission containing requests for initial and interim funding shall be addressed to: Ronald S. Young, Director, Bureau of Accounts, Interstate Commerce Commission, Room 6133, 12th and Constitution Avenue NW., Washington, DC 20423.

Envelopes containing such requests shall have the notation "Rock Island-DS" typed on the lower left corner.

(7) *Costs and revenues.*—The DRC shall record the costs and revenues attributable to directed service in the manner prescribed in this decision and in 49 CFR 1126, 44 FR 6156, 8879 (1979), subject to the limitations set forth in the directed service certification of the Secretary of Transportation.

(8) *Service on Parties.*—This decision shall be served on all parties. This decision shall also be served upon the American Short Line Railroad Association and upon the Association of American Railroads, Car Service Division (as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement).

(9) *Notice to General Public.*—Notice of this decision shall be given to the general public by: (a) depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, DC; and (b) filing a copy with the Director, Office of the Federal Register.

(10) *Effective Date.*—This decision and order shall be effective at 12:01 a.m. (central time) on the first day after this decision's service date.

(11) *Expiration Date.*—Unless otherwise modified by the Commission, this decision and order will expire with respect to the various DRCs in accordance with the terms set forth in the appendix.

Decided: October 9, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Vice Chairman Gresham not participating. Commissioner Trantum dissenting.

Agatha L. Mergenovich,
Secretary.

Appendix

Rock Island Lines Certified for Directed Service Under Rock Island Railroad Transition & Employee Assistance Act—Pub. L. 96-254 (May 30, 1980)

1. A. *Carrier.* Wabash Valley Railroad Company, a wholly owned subsidiary of Morrison-Knudsen Company, Inc.
- B. *Certification Date.* August 8, 1980.
- C. *Description of Lines.*

(1) Subdivision 7, mainline track extending eastward from Phillipsburg, KS, milepost 283.9 to Mahaska, KS, milepost 170.3; and
(2) Subdivision 20-B, branchline track extending southeast from Belleville, KS, milepost 226.1 to Manhattan, KS, milepost 143.3.

D. *Service Period.* Beginning on or about September 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Not less than two trains per week.

F. *Reimbursement.* In no event shall the aggregate of compensation paid or payable by the United States exceed \$1,000,000 for the total directed service period.

2. A. *Carrier.* The Atchison, Topeka and Santa Fe Railway Company.

B. *Certification Date.* September 4, 1980.

C. *Description of Lines.*

(1) Subdivision 25-C, branchline track in Alva, Oklahoma, (milepost 101.0 to 103.5).

D. *Service Period.* Beginning on or about October 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Service to be provided on an as needed basis.

F. *Reimbursement.* The aggregate compensation paid or payable by the United States should not exceed \$170,140 for the total directed service period.

[FR Doc. 80-32402 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1045**[Ex Parte No. MC-96 (Sub-3)]****Property Broker Practices****AGENCY:** Interstate Commerce Commission.**ACTION:** Final rule.

SUMMARY: The Commission is adopting rules which govern the operational practices of property brokers. The Commission proposed these rules at 45 F.R. 31140, May 12, 1980. The rules adopted are identical to those proposed, except for minor corrections.

The adopted rules eliminate unnecessary governmental interference with the business dealings between brokers, shippers and carriers, reduce recordkeeping requirements, and clarify the language of the rules.

EFFECTIVE DATE: These rules become effective November 17, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko, 202-275-7805 or Edward E. Guthrie, 202-275-7691.

SUPPLEMENTARY INFORMATION: These rules deal with the operational practices of property brokers. Following a notice issued last March announcing our intention to conduct a thorough examination of the regulation of brokers, and the receipt of comments in response to that announcement, we issued a set of proposed regulations last May. As we noted there, our fundamental goal in regulating transactions among brokers, carriers and shippers is to remove unnecessary restrictions which might impede the free operation of the marketplace.

Comments were received from only a small number of parties, but significant views are represented. Comments were received from, among others, the National Customs Brokers and Forwarders Association of America, Inc., and the Property Brokers Association of America, Inc., in support of the proposed rule. Several motor carriers, the American Movers Conference and the Household Goods Carrier's Bureau oppose the revisions contemplated to 49 CFR 1045.9, the rebating and compensation rule. Where no public comment has been received on a separate paragraph or section of the proposed rules, we will not address the matter further.

W.S. Hatch Co., argues that the broker is in a predominant position. Once it gets the freight, there is no bargaining. Hatch's experience with brokers, however, has apparently been largely with brokers of exempt commodities, where the brokers are not licensed, and often cannot be precisely located. In

addition, the nature of originating traffic is entirely different in the exempt agricultural area. In the regulated transportation area, points of distribution or manufacture are precisely located. If a carrier wishes to bypass the broker and offer the shipper a better deal, the shipper can easily be found.

In addition, I.C.C. brokers are licensed and bonded. Failure to pay transportation bills is guarded against through the Commission's requirement of a surety bond. If the bond is revoked, a broker may not continue to operate until a valid bond is obtained. See 49 U.S.C. 10927(b). The licensed broker is also required to designate service of process agents in States where it writes contracts of has offices. An aggrieved party may thus readily bring suit against an unscrupulous broker.

Yellow Freight System, Inc., argues that the brokerage services performed are generally on behalf of the shipper, and that the carrier should not be placed in the position where it is forced to accede to the request for a commission. This subject was addressed in the notice of proposed rulemaking. We wish to emphasize, however, that the carrier and shipper are free to deal directly with each other. The carrier may, for example, convince the shipper that it will get all the necessary services from the carrier at a cheaper price. Only where the shipper finds that it can get better service from the broker will it stay with the broker. In short, we believe the carrier has it within its power to market its service in a way that will make it attractive for the shipper to deal directly with the carrier.

We nonetheless recognize that brokerage services are performed for the benefit of both the carrier and the shipper and we do not want to compromise the opportunities for the use of brokerage where that arrangement is beneficial to all parties. We disagree with the contentions of Yellow that benefits flow only to the shipper. Where a shipper requests that a broker find suitable motor carrier service, the broker, in contacting the carrier for the shipper, is performing similar functions to that which the carrier's sales or traffic departments would normally be performing. The broker has opened up a flow of business that would perhaps never have been tapped. Were we to preclude commissions from carriers entirely, the carrier would be obtaining free sales and traffic service. If the carrier chooses to do business with the broker on a continuing basis, it is conceivable that it might reduce its own sales operations.

Finally, the carrier is never required to pay a commission. It will do so only if it determines that the tendered traffic will benefit its operations.

The American Movers Conference and Household Goods Carriers' Bureau (AMC) jointly oppose the modification of 49 CFR 1045.9, especially insofar as it would apply to property brokers of household goods. They also contend that the services of household goods brokers are not mutually beneficial to shippers and carriers. Further, household goods brokers perform services for the shipper which they contend must be paid for by the shipper because payment by the carrier would be an illegal rebate under 49 U.S.C. 10761. They argue that when a person is vested with control of a shipper's traffic because of a non-transportation relationship with the shipper, the payment of a commission by a carrier for the tendering of a shipment is an unlawful rebate, even though the person receiving the payment does not own the goods shipped or pay the transportation charges.

AMC also points to prior Commission decisions, such as *Jacobs Broker Application*, 30 M.C.C. 51, 53 (1941), which state that permitting a carrier to pay for services which benefit only the shipper is unlawful, and that allowing a broker to render free valuable services to a shipper contributes to undesirable control of the traffic, defeating freedom of negotiations.

Further, AMC argues that household goods brokers should be treated differently, since the Commission in the past has stated that these brokers offer little or no benefit to shippers or carriers.

We do not accept the overly strict interpretations of the rebate provisions of the Interstate Commerce Act by the AMC. It is clear that the Motor Carrier Act of 1980 (Act) has substantially changed the way those provisions should be interpreted. Moreover, the philosophy of the new Act gives encouragement to greater individual bargaining. While the Congress has, in certain instances, given the Commission specific direction in implementing transportation policy, it has also clearly given us a general mandate to open up the bargaining process between shippers and carriers. Amendments to the National Transportation Policy, the establishment of a zone of rate freedom accompanied by the eventual elimination of antitrust immunity for single-line rates, and the liberalization of entry for motor carriage of property are all designed to spur individual initiative in service and pricing. It is in

this context that the arguments presented by AMC must be evaluated.

It should be made clear at the outset that payment of a commission by the carrier to the broker was not completely proscribed even under present rule 49 CFR 1045.9. The prohibition extended only to payment of a commission for "brokerage" services. "Non-brokerage" services performed for the carrier, even where there was prior affiliation with the shipper, could have resulted in compensation being paid by the carrier to the broker. Thus, payment of a commission was not an illegal rebate *per se*.

The Commission's policy was partly grounded in the concept, which we now believe is incorrect, that when a broker contacts a carrier on behalf of a shipper that benefits flow only to the shipper. We reject that contention explicitly.

Let us take an example from another industry where brokers play an important part in the transaction, the real estate brokerage industry. While commission payment arrangements differ within that industry, one common arrangement is as follows. A potential seller lists a home with the broker for an agreed upon commission. The seller realizes that if it wishes to receive a certain amount of money from the transaction (hopefully, a profit) it must set the selling price at a level that takes the commission into account. A potential buyer also contacts a broker, which for simplicity we will assume here is the listing broker. The buyer agrees to sign a contract knowing that while technically the commission will come from the seller, the price of the house includes the commission to the broker. The seller agrees to the commission because the broker has found it a buyer. The willing buyer accedes to the arrangement because it knows that it is merely helping to pay the broker's commission for a service the buyer has also received—finding a suitable home. Thus, both buyer and seller have received benefits and both contribute to the broker's payment. The situation in the motor carrier industry is similar—both are receiving a benefit. We will examine some examples in the household goods broker industry.

The broker of household goods may be serving two general types of customers. First, there is the corporate customer. The broker may be hired on a long term basis to handle the household moves of the employees of an entire corporation or other large organization.

While the carrier may attempt to bargain directly with the shipper, it may prefer to allow the broker to handle preliminary details. The broker will have to coordinate schedules and

handle paperwork. The broker may have to set up permanent liaison with the corporation, or may be required to learn details about the corporation in order to plan the moves most effectively. Whatever services are provided, however, also benefit the carrier. Undoubtedly the carrier would have to upgrade its own staff were it to undertake all the preliminary services necessary and incident to the actual transportation. And, obviously, the broker has benefitted the carrier by finding traffic for it.

The broker may not be able to bargain directly with the other general type of customer,¹ the individual shipper of household goods, but the fact remains that benefits still flow to the carrier. If the carrier has not prevailed in this bargaining process, it now has a choice. If it wants the traffic the broker has attracted, it can bargain with the broker. Retrieving this business should be worth something to the carrier. If it sees a benefit, the carrier should be willing to pay an appropriate commission. However, the carrier enjoys another benefit. As with the corporate customer, the broker's initial dealings with the shipper will have substituted for those that would be performed by the carrier. While the cost savings to a carrier may not be discernible in individual cases, in the long run the carrier will achieve savings by having to rely less on its own clerical or sales staff. It must be remembered that even the handling of public inquiries constitutes a real cost to an organization, although this is often not apparent on its face. The carrier may even wish to expand its reliance on the sale, paperwork and information dissemination expertise of the broker.

We thus believe that the Commission's early interpretations of the concept of lack of benefit to the carrier, as in *Jacobs, supra*, were incorrect, and that line of cases cited by AMC is overruled. As the implementation of the new Act makes the trucking industry more competitive, carriers may fully discover the advantages in having brokers find suitable shipments which their own traffic and sales departments have not located.

Finally, the Act impels us to make the compensation rule more flexible

¹ Once the broker has attracted the individual's business, the carrier will not normally know the identity of the shipper. By then the individual may have contracted with the broker, and probably the broker would not willingly disclose the name of the shipper until near the loading date. To counteract this tendency, the carrier will have to step up its salesmanship when contacted by the general public by offering competitive price and service options.

because of what we see as an increased future need for property brokers. The Act, in broad terms, makes entry into the industry easier. In specific terms, it dramatically opens up entry in the transportation of foodstuffs and other commodities by owner-operators, under the provisions of 49 U.S.C. 10922(b)(4)(E). These individuals will require assistance by property brokers in finding loads since they will not have sophisticated, or perhaps any, communications systems or sales personnel. There will be greater incentive for brokers to seek out the clientele of these owner-operators if they know they can lawfully obtain a commission for matching the needs of the owner-operators with the brokers' shipper clients.

Finally, we find little relevance in the argument that household goods brokers should be treated differently since the Commission in the past has frequently found their services to be of little benefit. We are here talking about licensed brokers whose proposed services have already been found to be in the public interest.

We should point out that in the future, household goods broker applications will be decided under an Act which favors negotiation and provides the means, e.g., rate freedoms, to bring real benefits to individual shippers of household goods.

Accordingly, we adopt the rules proposed in the prior Federal Register notice, as set forth in the appendix to this notice.

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

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: September 29, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

Appendix

49 CFR 1045 is revised by making the following changes:

1. Revise § 1045.2 to read as follows:

§ 1045.2 Definitions.

(a) "Broker" means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments

which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) "Bona fide agents" are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

(c) "Brokerage" or "brokerage service" is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) "Non-brokerage service" is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

2. Revise § 1045.3 to read as follows:

§ 1045.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. The record shall show:

- (1) The name and address of the consignor;
- (2) The name, address, and lead MC-number of the originating motor carrier;
- (3) The bill of lading or freight bill number;
- (4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;
- (5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and
- (6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

For purposes of this subsection, brokers may keep master lists of consignors and the address and lead docket number of the carrier, rather than repeating this information for each transaction.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

3. Delete present §§ 1045.4, 1045.5, and 1045.6 and reserve them for future use.

§ 1045.4 [Reserved]

§ 1045.5 [Reserved]

§ 1045.6 [Reserved]

4. Revise § 1045.7 to read as follows:

§ 1045.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its license is issued.

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

5. Delete present § 1045.8 and reserve it for future use.

§ 1045.8 [Reserved]

6. Revise § 1045.9 to read as follows:

§ 1045.9 Rebating and compensation.

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

- (1) The broker owns or has a material beneficial interest in the shipment or
- (2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

7. Revise § 1045.10 to read as follows:

§ 1045.10 Duties and obligations of brokers.

Where the broker acts on behalf of a person bound by law or a Commission regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

8. Revise § 1045.11 to read as follows:

§ 1045.11 Transfer of property broker licenses; change in control of corporations and associations holding broker licenses; petitions for reconsideration.

(a) In order to transfer a property broker license, a transferee must file with the Commission an application for approval of the transfer. The application must contain proof that the transferee is fit, willing, and able to perform the duties of a broker and that the transfer will not be contrary to the public interest.

(b) If there is a change in the control of a corporation or association which holds a broker license, an application must be filed with the Commission describing the change and offering proof that the change is not contrary to the public interest.

(c) The rules that govern the form and manner of filing of applications, the notice that must be given to the public, and the manner of filing protests are the

same as those which apply to the transfer of operating rights (see 49 C.F.R. 1100.225).

(d) Rules governing petitions for reconsideration of a decision under this subsection will be governed by the rules contained in 49 C.F.R. 1132.4 and 1100.225.

9. Delete § 1045.12 and reserve it for future use.

§ 1045.12 [Reserved]

10. Revise § 1045.13 to read as follows:

§ 1045.13 Accounting.

Each broker who engages in any other business shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common shall be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

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49 CFR Part 1100

[Ex Parte 367]

Tariff Integrity Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Upon reconsideration, 49 CFR 1100.22a(e)(4) is being revised to provide for automatic stays of Tariff Integrity Board decisions when administrative appeals of the decisions are timely filed. The final rules adopted in this proceeding on October 10, 1979 (see 44 FR 58511), did not allow such stays. This action is being taken in response to a petition filed by Southern and Eastern Territory railroads to reopen this proceeding for reconsideration. Except for the revision of 49 CFR 1100.22a(e)(4) the petition is denied.

EFFECTIVE DATE: The revision is effective October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: Southern and Eastern Territory railroads (or petitioners) filed a petition for the reopening of this proceeding for reconsideration of our decision served on October 5, 1979, and published in the Federal Register on October 10, 1979, at 44 FR 58511. In that decision we adopted rules which allow tariff users a simplified and expedited procedure for challenging recently filed tariff publications believed to have been established in violation of: the