

§ 1069.10-9 Assistance to Vietnam-era veterans.

Grantees are encouraged to make on-the-job training and job opportunities available to Vietnam-era veterans, especially disadvantaged and disabled veterans, through distribution of announcements of training programs and job vacancies in places accessible to a large population of veterans (i.e., employment offices, rehabilitation and training centers or veterans organizations).

[FR Doc. 80-14567 Filed 5-9-80; 8:45 am]

BILLING CODE 6315-01-M

FEDERAL MARITIME COMMISSION**46 CFR Parts 536 and 538**

[Docket No. 79-58]

Dual Rate Contract Systems in the Foreign Commerce of the United States—Rate Increase on Less Than 90 Days' Notice; Withdrawal of Proposed Rule

AGENCY: Federal Maritime Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The proposed rule prescribed a uniform method for ocean carriers and conferences to justify short notice (less than 90 days) dual rate increases. The Commission has decided not to amend its existing regulations at this time and accordingly withdraws the proposed rule.

DATES: May 12, 1980.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5725.

SUPPLEMENTAL INFORMATION: This proceeding was instituted by Notice of Proposed Rulemaking published June 6, 1979 (44 FR 32408-32418). The proposal would amend Article 14 of the Uniform Merchants' Contract contained in Subpart B of Part 538 of the Commission's rules (46 CFR 538.10). This Article sets forth in the dual rate contract a provision allowing less than 90 day rate increases in extraordinary circumstances. The proposal would also add a new section to the Commission's tariff filing rules (46 CFR Part 536) prescribing a form of justification for carriers or conferences seeking to invoke Article 14 of the Uniform Merchants' Contract. The proposal was designed to allow increases in rates covered by Commission approved exclusive patronage contracts to go into effect on as little as 15 days' notice for sudden, severe, and unforeseen cost increases. The proposed rule was

intended to cover, among other things, unforeseen cost increases in bunker fuel.

Comments have been filed by carriers, conferences, and shippers. Upon review of these comments and reexamination of the proposed rule, the Commission finds that the rule will not serve its intended purpose and that the Commission's current regulation of short notice dual rate increases better serves to grant relief to ocean carriers and conferences for sudden, severe, and unforeseen cost increases, including bunker fuel costs. Accordingly, the proposed rule is withdrawn and this proceeding is discontinued.

It is so ordered.

By the Commission.¹

Francis C. Hurney,
Secretary.

[FR Doc. 80-14573 Filed 5-9-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[BC Docket No. 80-93; RM-3196; RM-3254]

FM Broadcast Stations in Chilton, Clintonville, and Manitowac, Wis.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving the proposed assignment of FM channels in Chilton, Clintonville and Manitowac, Wisconsin. Petitioner, Add, Inc., states the additional time is needed to file comments.

DATES: Comments must be filed on or before June 5, 1980, and reply comments must be filed on or before June 26, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Chilton, Clintonville and Manitowac, Wisconsin, BC Docket No. 80-93, RM-3196, RM-3254.

Adopted: May 2, 1980.

Released: May 7, 1980.

¹Commissioner Peter N. Teige did not participate because the case was decided before he took office.

1. On March 5, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR 17598, in the above-entitled proceeding. The dates for filing comments and reply comments are May 6 and May 27, 1980, respectively.

2. On April 29, 1980, counsel for Add, Inc., filed a request seeking the extension of time for filing comments and reply comments to and including June 5, and June 26, 1980, respectively. Counsel states that because of vacation schedules the preparation of comments has not been completed.

3. We are of the view that under these circumstances additional time is warranted. Providing this time will help assure development of a sound and comprehensive record on which to base a decision in this proceeding.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in Docket No. 80-93 are extended to and including June 5, and June 26, 1980, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,
Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-14583 Filed 5-9-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-91; RM-3296; RM-3415]

FM Broadcast Stations in Carson City, Gardnerville-Minden and Sparks, Nev.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding concerning the proposed assignment of FM channels in Carson City, Gardnerville-Minden and Sparks, Nevada. Petitioner, Carson Valley Broadcasters, states the additional time is needed to file comments.

DATES: Comments must be filed on or before June 6, 1980, and reply comments must be filed on or before June 27, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: May 2, 1980.

Released: May 7, 1980.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Carson City, Gardnerville-Minden and Sparks, Nevada), BC Docket No. 80-91, RM-3296, RM-3415.

1. On February 26, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR 16217, concerning the above-entitled proceeding. The dates for filing comments and reply comments are May 2, and May 19, 1980, respectively.

2. On April 30, 1980, counsel for Carson Valley Broadcasters, filed a request seeking an extension of time for filing comments to and including June 6, 1980. Counsel states that because of major computation errors in the engineering study, it must be completely redone thus necessitating the additional time. Counsel states that three of the other four parties in the proceeding have indicated no objection to the additional time, and the fourth party has already filed its comments in this proceeding.

3. Section 1.46 of the Commission's rules states that extension requests must be filed seven days in advance of the deadline date. Although this request was not received within the required time period, we believe good cause has been shown in this instance for the late filing, so we are granting the request. Also, as a result, it is necessary to extend the reply comment date.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in BC Docket No. 80-91 are extended to and including June 6, and June 27, 1980, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 80-14582 Filed 5-9-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1045

[Ex Parte No. MC 96 (Sub-3)]

Property Broker Practices

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission proposes to revise its rules governing the operational

practices of property brokers. Our goal is to improve the way in which we regulate property broker practices by eliminating regulations which are unnecessary and modifying those regulations which are unnecessarily restrictive. We are also attempting to simplify and clarify the language used in the regulations and to incorporate changes resulting from the codification of the Interstate Commerce Act.

DATE: Comments are due on or before June 26, 1980.

ADDRESS: An original and 15 copies, if possible, of any comments should be sent to: Ex Parte MC 96 (Sub-3), Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko, (202) 755-7885, or Donald J. Shaw, Jr., (202) 275-7292.

SUPPLEMENTARY INFORMATION: By a notice published March 27, 1979 (44 FR 18459), the Commission proposed to conduct a thorough examination of its regulation of brokers. Because of the complex and varied issues involved, the Commission subsequently decided to divide its examination into four segments (see 44 FR 44847, August 9, 1979). This segment deals exclusively with the operational practices of property brokers.

The Commission's rules governing property brokers were adopted in 1949 (Ex Parte No. MC-39, *Practices of Property Brokers*, 49 M.C.C. 277) and were revised to a minor extent in 1951 (see 53 M.C.C. 633). The Commission adopted special procedures in 1977 under which a number of property brokers have received licenses (Ex Parte No. MC-96, *Entry Control of Brokers*, 126 M.C.C. 46). Since the adoption of those special procedures, the Commission has received questions from operating brokers on a continuing basis. It is for that reason that we decided to include a reexamination of our operational practice regulations in our examination of the broker industry.

The notice published March 27, 1979 asked if any of the Commission's operational regulations for property brokers should be changed. We received a wide variety of responses to this question, and our review of these comments has led to the changes proposed in this notice. We invited the public to comment on these proposed changes and to suggest alternatives or additions to them.

The rules, as they would appear if the changes proposed in this notice are adopted, appear in the appendix to this notice. The present rules appear at 49 CFR 1045. Changes which involve

elimination of present rules or substantive change in present regulations are discussed below. Changes which are being proposed to eliminate gobbledygook or to conform to the codification of the Interstate Commerce Act are, in most cases, not discussed.

Discussion

§ 1045.2 *Definitions.* We propose to make a number of changes in the definitions for the sake of clarity. We do not propose to make any changes in the legal meanings of the definitions, which were previously discussed in *Practices*, *supra*, 49 M.C.C. at 288-303 and at 53 M.C.C. at 633-647.

§ 1045.3 *Records to be kept by brokers.* The Property Brokers Association of America, Inc. (PBAA) contends that some of our recordkeeping requirements may be unnecessary. We agree. For example, it should not be necessary to record the address and lead docket number of the originating motor carrier and consignor for every shipment. It would probably be sufficient for brokers to keep a master list containing this information.

We propose to eliminate subsections (d), (e), and (f) of the present rule, since they relate to information which can be obtained from carrier records. We request that parties apprise us of any other reporting requirements which might be eliminated. The primary purpose of our record-keeping requirements is to ascertain whether improper rebating activities are taking place. Since we are proposing revisions in our rebating rules to reflect what we believe is a more realistic appraisal of rebating dangers, it may be that there is further action which we can take to reduce recordkeeping requirements.

We recognize that our recordkeeping requirements may pose a greater burden on brokers of transportation of less-truckload freight than on others. However, there does not appear to be a practical way to condense or summarize the information needed to detect improper activities. We would like to receive suggestions as to how the recordkeeping burden might be reduced for brokers of less-truckload traffic.

We have added one recordkeeping requirement: any party to a brokered transaction shall have a right to review the record of the transaction required to be kept under this section. This addition enables us to eliminate more complex rules found in sections 1045.5, 1045.6, and 1045.10.

§ 1045.4 *Carrier's operating authority.* We propose to delete this paragraph as unnecessary. It merely restates the obvious, and it offers no

real protection to shippers. The shipper-carrier relationship, including loss and damage responsibilities, is defined elsewhere.

§§ 1045.5 and 1045.6 *Charges for brokerage services and Charges for non-brokerage services.* We propose to eliminate these two sections. The broker is now given broad discretion in its ability to charge fees for brokerage and non-brokerage services. In effect, there is no limitation on the size of the fees under the present rules since a broker can, by careful statement of the fee maxima and minima, render these sections meaningless. The situation has not caused any problems, and, as a result, we do not believe that eliminating these two sections will have any practical effect. We believe that the suspected evils against which these rules were designed to guard (see discussion in *Practices, supra*, at M.C.C. 314-320) were extremely hypothetical. Therefore, we are proposing to eliminate these two sections and to replace them with the new requirement in section 1045.3 that the affected parties have the right to look at the description of the charges contained in the record of the transaction. This will enable them to determine what portion of their bill is related to the broker's services.

§§ 1045.7 and 1045.8 *Misrepresentation and Billing.* We propose to modify section 1045.7 to eliminate the requirement that the broker status appear in type which is as clear, as bold and as large as any other in the advertisement. This requirement unnecessarily hinders advertising. We believe the rule, as we propose to rewrite it, covers the situations addressed in section 1045.8, thus making that section no longer necessary.

§ 1045.9 *Rebating.* Paragraph (a) of the present rule is the most controversial of the regulations which affect the property broker. The rule reads:

(a) No broker shall charge or receive compensation from a motor carrier for brokerage service performed in connection with any shipment which he owns or in which he has a material interest, or the routing of which he controls by reason of any affiliation with, or nonbrokerage relationship to, the shipper, consignor, or consignee as traffic consultant or otherwise, or which he controls by reason of his performance for the shipper, consignor, or consignee of non-brokerage services, as defined in the rules in this part.

The previous policy of the Commission viewed the party making the first request for the transportation arrangement as receiving the sole benefit of the broker's services. Thus, if

a shipper requested that a broker arrange transportation, the shipper was the one receiving the primary benefit and the Commission believed that the shipper was the one who should pay for the broker's services. The Commission was concerned that if a broker, in effect, offered a shipper free services, it could then auction off the shipper's traffic to whichever carrier would pay the highest commission. We do not believe that this concern is valid today, if it ever was. We believe that both the shipper and the carrier will commonly benefit from a brokered arrangement. It is the very nature of brokerage services that they are performed jointly for the benefit of both shipper and carrier. Therefore, we do not believe that we should place unwarranted restrictions on the broker's ability to seek a commission from either or both of the parties. If the transaction is not mutually beneficial, either principal may refuse to take part in it. But, if the transaction is sufficiently attractive to both parties, they should both be willing to pay the broker a fee.

The amount of the broker's fee is not regulated by the Commission. This means that a broker must engage in a bargaining process with its principals. The amount of commission that a principal agrees to pay will vary accordingly to the benefits it perceives it will gain from the transaction. No party is obligated to deal with a broker or to pay its commissions. A party may either choose to do without the broker's services or to look for another broker who will offer the service at a lower price. In this regard, we note that the property broker industry is a highly competitive one.

Our goal in regulating transactions between brokers, carriers, and shippers is to remove all unnecessary restrictions which might impede the free operation on the marketplace. With that in mind, we propose to revise section 1045.9(a) to give brokers more freedom. Under the proposed rule, a broker would be precluded from charging a commission to a carrier only when the broker owns or has a material beneficial interest in the shipment or the broker is able to exercise some control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two. This proposed rule would still guard against shippers who seek to set up "sham" broker operations as a device to accomplish illegal rebates.

The proposed rule would also eliminate confusion stemming from the language in the present rule which makes it unclear whether a broker can charge a carrier a fee for brokerage

services when the broker has a pool of shipper and carrier clients among which it marries freight. Under the revised rule, the broker would be able to charge the carrier a commission in such a situation.

Section (b) of the present rule, which contains the prohibition against a broker giving or offering anything of value to a client, except for advertising items, has been retained.

§1045.10 *Duties and obligations of brokers.* We propose to delete subsections (a), (b) and (c) of the present rule and to combine sections (d) and (e). Most of sections (a) and (b) contain standards of conduct which reflect what the proper role of the broker should be. We do not believe that these sections are necessary. There are not penalties for violations of the standards set forth in them, and enforcement of the standards can only come from the interactions of the marketplace and healthy competition.

Subsection (c) would be replaced by the new provision which we propose to add to section 1045.3 to give any party to a brokered transaction the right to review the record of the transaction. Present subsection (c) requires that brokers not accept or charge compensation for a shipment from both a shipper and a carrier without first advising both parties of the charge or payment of the other. This requirement does not appear necessary and could hinder all parties since proper notification might delay service. The present rule is especially apt to be burdensome when a broker is attempting to marry freight on an expedited basis or trying to arrange transportation for a large number of small shipments.

We propose to combine subsections (d) and (e) to require that a broker not disrupt the normal billing and payment procedures between shippers and carriers. The present regulation's admonition to "pay promptly any monies" is vague and unenforceable. The proposed rule also would allow brokers to simplify their billing practices.

§ 1045.11 and 1045.12 *Transfer of property broker's licenses; change in control of corporations and associations holding brokers' licenses and Petitions for reconsideration.* We propose to combine these two sections into a new section 1045.11. Petitions for reconsideration with regard to the transfer rules are handled differently from other administrative appeals, and present section 1045.12 was intended to reflect only the appeal rules with regard to transfers. Other administrative appeals are governed largely by 49 CFR 1100.97.

We propose to adopt the revisions to 49 CFR 1045 set forth in the appendix to this notice.

This proposed action does not appear to affect significantly the quality of the human environment or the conservation of energy resources; however, the public is encouraged to comment on any possible environmental effects in its comments in this proceeding.

These proposals are made under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: April 28, 1980.

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

Agatha L. Mergenovich,
Secretary.

Appendix

49 CFR 1045 would be revised by making the following changes:

1. Revise section 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 a property. It can be performed on behalf of a motor carrier, consignor, or consignee.

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

2. Revise section 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 sections 1045.4, 1045.5, and 1045.6 and reserve them for future use.

4. Revise section 1045.7 to read as follows:

§ 1045.7 Misrepresentation

(a) A broker shall not perform any brokerage service, or offer to perform 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 operation to be that of a carrier. Any advertising shall show the broker status of the operation.

§ 1045.8 [Deleted and reserved]

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

6. Revise section 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 of 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 section 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.

§ 1045.11 Transfer of property brokers licenses; change in control of corporations and associations holding brokers' 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 CFR 1100.225).

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

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

10. Revise section 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.

[FR Doc. 80-14471 Filed 5-9-80; 8:45 am]

BILLING CODE 7035-01-M