

47 CFR Part 101

Fixed microwave services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF DEFENSE**48 CFR Part 52****Federal Acquisition Regulation; Use and Charges Clause Class Deviation**

AGENCY: Department of Defense (DoD).

ACTION: Notice of proposed class deviation.

SUMMARY: The Department of Defense (DoD) is proposing a class deviation from the Federal Acquisition Regulation (FAR) that simplifies the method of determining rental charges for government property. The proposed class deviation will allow defense contractors to propose rental charges for the commercial use of government property and real property while revisions to the FAR are being drafted.

DATES: Comments on the proposed class deviation should be submitted in writing to the address shown below on or before June 14, 1996 to be considered in the formulation of the final class deviation.

ADDRESSES: Interested parties should submit written comments to: Ms. Angelena Moy, MPI, Room 3E144, Pentagon, Washington, DC 20301-3000. FAX (703) 695-7596.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 695-1098.

SUPPLEMENTARY INFORMATION:**A. Background**

A notice of proposed class deviation was published in the Federal Register on September 6, 1995 (60 FR 46259). DoD proposed to deviate from the clause at FAR 52.245-9 to expedite implementation of simplified

government property rental procedures. After evaluating the public comments, DoD made substantive revisions to the proposed class deviation.

Therefore, DoD now proposes to deviate from the clause at FAR 52.245-9 as follows:

Part 52—Solicitation Provisions and Contract Clauses**52.245-9 Use and Charges**

This deviation authorizes DoD to use the following clauses in lieu of the clause at 52.245-9. The clause requires contractors, for real property and associated fixtures, to obtain certified property appraisals that compute a monthly, daily, or hourly rental rate for comparable commercial property. Rental charges would be determined by multiplying the rental time by an appraisal rental rate expressed as a rate per hour. For other government property, rental charges are based upon the property's acquisition cost and the actual rental time. The clause permits contractors to request that the Government consider alternate rental charge methods for either real or other property if the contractor considers a time-based rental to be unreasonable or impracticable.

USE AND CHARGES (APR 1984) (DEVIATION)

(a) *Definitions.* As used in this clause—
Acquisition cost means the acquisition cost recorded in the Contractor's property control system or, in the absence of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

Government property means property owned or leased by the Government.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which government property is made available for commercial purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such

purposes, perform required maintenance, and restore the property to its condition prior to rental.

(b) *General.* (1) Rental requests must be submitted to the administrative Contracting Officer, identify the property for which rental is requested, propose a rental period, and calculate an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (c) of this clause.

(2) The Contractor shall not use government property for commercial purposes until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(c) *Rental charge.* (1) *Real property and associated fixtures.* (i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the administrative Contracting Officer at least 30 days prior to the date the property is needed for commercial use. Except as provided in paragraph (c)(1)(iii) of this clause, the administrative Contracting Officer shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) *Other government property.* The Contractor may elect to calculate the final rental charge using the appraisal method described in paragraph (c)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour—

$$\text{Rental charge} = \frac{(\text{Rental Time in hours}) (.02 \text{ per month}) (\text{Acquisition Cost})}{720 \text{ hours per month}}$$

(3) *Alternate methodology.* The Contractor may request consideration of an alternate basis for computing the rental charge if it considers a time-based rental unreasonable or impractical.

(d) *Rental payments.* (1) Rent is due at the time and place specified by the Contracting

Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time and computation.

Payment shall be made by check payable to the Treasurer of the United States and sent to the payment office specified in this contract or by electronic funds transfer to that office.

(2) Interest will be charged if payment is not made by the specified payment date or,

in the absence of a specified date, the sixty-first day following completion of the rental period. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(e) *Use revocation.* At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition, or both.

(f) *Unauthorized use.* The unauthorized use of government property can subject a person to fines, imprisonment, or both, under 18 U.S.C. 641.

(End of clause)

List of Subjects in 48 CFR Part 52

Government procurement.

Michele P. Peterson,
*Executive Editor, Defense Acquisition
Regulations Council.*

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1305

[STB Ex Parte No. 538]

Disclosure and Notice of Change of Rates and Other Service Terms for Pipeline Common Carriage

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The ICC Termination Act of 1995 (ICCTA) eliminated the tariff and tariff filing requirements formerly applicable to pipeline carriers, but imposed in lieu thereof certain obligations to disclose common carriage rates and service terms as well as a requirement for advance notice of increases in such rates or changes in service terms. ICCTA requires the Board to promulgate regulations to administer these new obligations by June 29, 1996. The Board proposes to add a new part 1305 to its regulations for that purpose as set forth below.

DATES: Comments are due on June 4, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte

No. 538 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-7513. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The Board's decision discussing this proposal is available to all persons for a charge by phoning DC NEWS & DATA, INC., at (202) 289-4357.

The Board certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed rules should result in easier access to pipeline rate and service information and to that extent our action should benefit small entities.

The Board seeks comment on whether there would be effects on small entities that should be considered. If comments provide information that there would be significant effects on small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

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

List of Subjects in 49 CFR Part 1305

Disclosure requirement, Notice requirement, Pipeline carriers.

Decided: May 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Board proposes to add a new part 1305 to title 49, Chapter X, of the Code of Federal Regulations, to read as follows:

PART 1305—DISCLOSURE AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR PIPELINE COMMON CARRIAGE

Sec.

1305.1 Scope; definitions.

1305.2 Disclosure requirement for existing rates.

1305.3 Response to request for establishment of a new rate.

1305.4 Notice requirement.

Authority: 49 U.S.C. 721(a) and 15701(e).

§ 1305.1 Scope; definitions.

(a) The provisions of this part address the requirements imposed on pipeline carriers by 49 U.S.C. 15701(b) and 15701(c). Such requirements apply to pipeline carriers only with respect to the transportation of commodities other than water, gas, or oil.

(b) Except as otherwise provided in paragraph (c) of this section, the provisions of this part apply to any transportation or service provided by a pipeline carrier subject to the jurisdiction of the Surface Transportation Board under 49 U.S.C. 15301.

(c) The provisions of this part do not apply to any transportation or service provided by a pipeline carrier to the extent that such transportation or service is exempted from rate notice and disclosure requirements pursuant to 49 U.S.C. 15302.

(d) For the purposes of this part, service terms means all classifications, rules, and practices that affect the rates, charges, or level of service for pipeline transportation.

§ 1305.2 Disclosure requirement for existing rates.

(a) A pipeline carrier must disclose to any person, on request, the specific rate(s) requested (or the basis for calculating the specific rate(s)), as well as all charges and service terms that may be applicable to transportation covered by that rate(s).

(b) The information provided by a pipeline carrier under this section must be provided immediately. Such information may be provided either in writing or in electronic form as agreed to by the parties.

§ 1305.3 Response to request for establishment of a new rate.

Where a shipper or a prospective shipper requests that the carrier establish a rate in the absence of an appropriate applicable rate for particular transportation, the carrier must promptly establish and provide to the requester, in writing or in electronic form as agreed to by the parties, an appropriate rate and applicable service terms. The response should be provided as soon as reasonably possible, but no later than 10 business days from receipt of the request. If a carrier determines that additional information is required from the requester before a rate or term can be established, the carrier must so notify the requester as soon as possible, but no later than 10 business days after receipt of the request. Once the additional information is received, the carrier must set the rate and related service terms, and relay them to the requester, within 10 business days.

§ 1305.4 Notice Requirement.

(a) A pipeline carrier may not increase any rates or charges, or change any service terms (except for changes that are equivalent to rate reductions) unless 20 days have expired after written or