

that would be more appropriate and effective.

#### Other Issues

Finally, we welcome any other suggestions on ways to improve the processing of rate reasonableness and exemption/revocation cases.<sup>11</sup> In general, we expect to expedite the record-building stage of cases by looking with disfavor on requests to extend the procedural schedule. We intend to deny all requests for extensions of time that fail to demonstrate a compelling need for additional time.

We tentatively conclude that the proposed action will not have a substantial adverse impact on a significant number of small entities. In any event, the impact on small entities should be beneficial because it should allow parties to more quickly avail themselves of their statutory right to institute proceedings before the Board and to have the Board expedite the processing of those proceedings.

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

Decided: March 8, 1996.

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

Vernon A. Williams,  
Secretary.

[FR Doc. 96-6986 Filed 3-21-96; 8:45 am]

BILLING CODE 4915-00-P

### 49 CFR Parts 1002 and 1150

[STB Ex Parte No. 529]

#### Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers Under 49 U.S.C. 10902

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The ICC Termination Act of 1995 (ICCTA) enacted a new provision for Class II and Class III rail carrier acquisitions or operations of rail lines. Pursuant to the request by the Regional Railroads of America (RRA) and The American Short Line Railroad Association (ASLRA), the Surface Transportation Board (Board) is proposing to institute a new class exemption procedure to apply to

<sup>11</sup> In several recent cases, we have required that pleadings be filed in paper form and on computer disk in WordPerfect format. We have also required that spreadsheets be filed in Lotus 1-2-3. Having evidence on electronic media in a format that is familiar to the staff has been quite beneficial as we analyze the record. We intend to require that evidence be filed on computer disks in the future.

transactions in which Class III rail carriers seek to acquire additional rail properties. As proposed, the class exemption would be similar to the Board's existing rules for noncarrier transactions. Because the new statute precludes the Board from imposing labor protective conditions on Class III carriers receiving a certificate under 49 U.S.C. 10902, labor protection will not be provided under the proposed class exemption.

**DATES:** Comments are due on April 22, 1996.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Ex Parte No. 529 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC). Responsibility for administering certain regulation over the rail industry was vested in a new Surface Transportation Board (Board) within the U.S. Department of Transportation. See ICCTA Section 101 (abolition of the ICC). See also new 49 U.S.C. 701(a) (establishment of Board), as enacted by ICCTA Section 201(a). The transfer took effect on January 1, 1996.

In the ICCTA, Congress established a new provision—49 U.S.C. 10902—that applies to the acquisition or operation of additional rail lines by Class II or Class III railroads. As enacted, subsection 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate authorizing the transaction “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” The new provision requires Class II rail carriers to provide adversely affected railroad employees a maximum of 1 year of severance pay—equal to the employee's earnings during the 12 months preceding the application filing date. The Board may not require labor protection from a Class III rail carrier. See 49 U.S.C. 10902(d). The Board may approve the requested certificate as filed or may include conditions (other than labor protection conditions) the Board finds necessary in the public interest. See 49 U.S.C. 10902(c).

The criteria for approving a transaction under section 10902 are substantially the same as those found in section 10901, which requires that the

Board approve the construction of rail lines and noncarrier acquisitions and operations. Noncarrier transactions under section 10901 are subject to a class exemption found in 49 CFR 1150.31 through 1150.35. See *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), 4 I.C.C.2d 309 (1988), 4 I.C.C.2d 822 (1988). Those rules have been carried forward by section 204 of the ICCTA as rules of the Board. Petitioners assert that the 10901 class exemption for noncarriers is beneficial in that it allows certainty in the timing of closing line sales, which is of critical importance to the financing of those transactions.

RRA and ASLRA submit that a similar class exemption should apply to transactions by a Class III rail carrier under section 10902.<sup>1</sup> They contend that such a class exemption would not alter the competitive balance between rail carriers and shippers and thus the covered transactions would not result in an abuse of market power. Petitioners assert that the exemption will conform to the national rail transportation policy in 49 U.S.C. 10101, continue sound public policy, and make efficient use of the Board's limited resources.

Petitioners' proposed rules, unlike those adopted by the ICC establishing the class exemption for transactions under section 10901, do not distinguish between small and large transactions. We believe that it is necessary for Class III railroads that wish to make more significant acquisitions of rail line—acquisitions that would produce projected revenues following the acquisition that would result in the applicant qualifying as a Class II or I railroad—to provide additional information in their filings. We also believe that these exemptions should not become effective until 21 days after they are filed, rather than in 7 days as is the case under the proposed rules for the acquisition of smaller lines. These requirements are similar to those currently imposed by the rules for the class exemption from section 10901 at 49 CFR 1150.35.<sup>2</sup>

We are also proposing that verified notices of exemption and caption summaries be submitted on diskette in

<sup>1</sup> RRA and ASLRA indicate that they intend to file subsequent rulemaking requests for a class exemptions governing Class II acquisitions under section 10902 and a class exemption for Class III consolidations or transactions under section 11323.

<sup>2</sup> We note that our proposal for differing requirements depending on whether the transaction would result in the applicant's becoming a Class II or I railroad is consistent with Congressional intent as evidenced by the different handling under the ICCTA, including section 10902, of many transactions according to the class of railroad involved.

addition to the written submission. The diskette would be required to be a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1.

Petitioners propose that the fee for filing under the proposed section 10902 class exemption be the same as the fee for filing under the current class exemption under section 10901, i.e., \$950. Petitioners note that this fee would be subject to change as part of the Board's periodic updating of its filing fees, to reflect the Board's experience in handling requests under the new procedure. Our rulemaking incorporates this fee proposal while noting that the Board is currently reviewing its filing fees and that fee increases may be required in the near future.

Finally, petitioners ask that their proposal be implemented immediately as interim rules pending the Board's review of comments and publication of the final rules. We will not grant this request because we want to wait for the comments of the public on the proposed rules before putting them into effect.<sup>3</sup> Rather, we will handle section 10902 Class III applications on a case-by-case basis in the interim, and we will attempt to meet individual requests for expedited handling where sufficiently justified. Once we receive and review the comments from the public on these proposed rules, we intend to issue final rules and make them effective in as timely a manner as possible.

**Request for Comments**

We invite comments on all aspects of the proposed regulations. Written comments (an original and 10 copies) are due on April 22, 1996.

We encourage comments on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any diskette submission (one diskette will be sufficient) should be in addition to the written submission.

<sup>3</sup> United Transportation Union (UTU), on March 4, 1996, submitted a statement in opposition to the proposed rules. UTU contends that the new procedure does not provide adequate notice to employees and that the filing fee is too low. UTU suggests a 60-day notice period before the exemption becomes effective and a minimum filing fee of \$5000. In this document, we are merely giving notice and seeking comments on the proposal submitted by RRA and ASLRA, as amended to conform to the current rules upon which the proposal is based. In determining final rules for this class of transactions, we will give full consideration to UTU's comments along with all other comments we receive. We invite comments on UTU's requests as well.

**Small Entities**

The Board certifies that this rule, if adopted, would not have a significant effect on a substantial number of small entities. If anything, the proposed class exemption should lessen the economic burden on such entities by expediting regulatory decisions affecting Class III railroads and by minimizing the cost of complying with the ICCTA and the Board's implementing rules.

**Environment**

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

**List of Subjects**

**49 CFR Part 1002**

**User Fees.**

**49 CFR Part 1150**

Administrative practice and procedure, Railroads.

Decided: March 11, 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 amend title 49, chapter X, parts 1002 and 1150 of the Code of Federal Regulations, as follows:

**PART 1002—FEES**

1. The authority citation for part 1002 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), and 553, 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.2 is proposed to be amended by adding a new paragraph (f) (36) to read as follows:

**§ 1002.2 Filing fees.**

\* \* \* \* \*  
(f) \* \* \*

Type of proceeding	Fee
* * * * *	*
(36) Notice of exemption under 49 CFR 1150.41–1150.45 .....	\$950
* * * * *	*

**PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES**

3. The authority citation for part 1150 is proposed to be revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10901, 10902, and 10502.

4. The heading for subpart D is revised to read as follows:

**Subpart D—Exempt Transactions Under 49 U.S.C. 10901**

5. A new subpart E, consisting of §§ 1150.41–1150.45, is added to read as follows:

**Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers**

- 1150.41 Scope of exemption.
- 1150.42 Procedures and relevant dates for small line acquisitions.
- 1150.43 Information to be contained in notice for small line acquisitions.
- 1150.44 Caption summary.
- 1150.45 Procedures and relevant dates—transactions under 49 U.S.C. 10902 that involve creation of Class I or Class II carriers.

**Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers**

**§ 1150.41 Scope of exemption.**

Except as indicated below, this exemption applies to acquisitions and operations by Class III rail carriers under 49 U.S.C. 10902. This exemption also includes:

- (a) Acquisition by a Class III rail carrier of rail property that would be operated by a third party;
- (b) Operation by a Class III carrier of rail property acquired by a third party;
- (c) A change in operators on the line; and
- (d) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party that occur at the time of the purchase.

**§ 1150.42 Procedures and relevant dates for small line acquisitions.**

(a) This exemption applies to the acquisition of rail lines with projected annual revenues which, together with the acquiring carrier's projected annual revenue, do not exceed the annual revenue of a Class III railroad. To qualify for this exemption, the Class III rail carrier applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.44, for publication in the Federal Register. In addition to the written submission, the notice and summary must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(b) The exemption will be effective 7 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the Federal Register within 30 days of the filing. A change in operators would

follow the provisions at § 1150.44, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

**§ 1150.43 Information to be contained in notice for small line acquisitions.**

(a) The full name and address of the Class III rail carrier applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

(2) The proposed time schedule for consummation of the transaction;

(3) The mile-posts of the subject property, including any branch lines; and

(4) The total route miles being acquired;

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states; and

(g) A certificate that applicant's projected revenues following the transaction do not exceed those that would qualify it as a Class III rail carrier.

**§ 1150.44 Caption summary.**

The caption summary must be in the following form. The information symbolized by numbers is identified in the key in this section as follows:

DEPARTMENT OF TRANSPORTATION—  
Surface Transportation Board

*Notice of Exemption*

STB Finance Docket No. (1)—Exemption  
(2)—(3)

(1) Has filed a notice of exemption to (2)  
(3)'s line between (4). Comments must be  
filed with the Board and served on (5). (6).

Key to symbols:

(1) Name of carrier acquiring or  
operating the line, or both.

(2) The type of transaction, e.g., to  
acquire, operate, or both.

(3) The transferor.

(4) Describe the line.

(5) Petitioner's representative,  
address, and telephone number.

(6) Cross reference to other class  
exemptions being used. The notice is  
filed under 49 CFR 1150.41. If the notice  
contains false or misleading  
information, the exemption is void *ab  
initio*.

The filing of a petition to revoke will not  
automatically stay the transaction.

**§ 1150.45 Procedures and relevant dates—  
transactions under 49 U.S.C. 10902 that  
involve creation of Class I or Class II  
carriers.**

(a) To qualify for this exemption,  
applicant must serve a notice of intent  
to file a notice of exemption no later  
than 14 days before the notice of  
exemption is filed with the Board.

(b) The notice of intent must contain  
all the information required in § 1150.43  
plus:

(1) A general statement of service  
intentions; and

(2) A general statement of labor  
impacts.

(c) The notice of intent must be served  
on:

(1) The Governor of each state in  
which track is to be sold;

(2) The state(s) Department of  
Transportation or equivalent agency;

(3) The national offices of the labor  
unions with employees on the affected  
line(s); and

(4) Shippers representing at least 50  
percent of the volume of local traffic  
and traffic originating or terminating on  
the line(s) in the most recent 12 months  
for which data are available (beginning  
with the largest shipper and working  
down).

(d) Applicant must also file a verified  
notice of exemption conforming to the  
requirements of paragraph (b) of this  
section and of § 1150.44, and certify  
compliance with § 1150.45 (a), (b), and  
(c), attaching a copy of the notice of  
intent. In addition to the written  
submission, the notice must be  
submitted on a 3.5-inch diskette  
formatted for WordPerfect 5.1.

(e) The exemption will be effective 21  
days after the notice is filed. The Board,  
through the Director of the Office of  
Proceedings, will publish a notice in the  
Federal Register within 30 days of the  
filing.

(f) If the notice contains false or  
misleading information, the exemption  
is void *ab initio*. A petition to revoke  
under 49 U.S.C. 10502(d) does not  
automatically stay the transaction. Stay  
petitions must be filed within 7 days of  
the filing of the notice of exemption.  
Replies will be due 7 days thereafter. To  
be considered, stay petitions must be  
timely served on the applicant.

(g) Applicant must preserve intact all  
sites and structures more than 50 years  
old until compliance with the  
requirements of section 106 of the  
National Historic Preservation Act, 16  
U.S.C. 470f, is achieved.

[FR Doc. 96-6826 Filed 3-21-96; 8:45 am]

BILLING CODE 4915-00-P

**49 CFR Part 1121**

[Ex Parte No. 400 (Sub-No. 4)]

**New Procedures in Rail Exemption  
Revocation Proceedings**

AGENCY: Surface Transportation Board,  
DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation  
Board is discontinuing the rulemaking  
in Ex Parte No. 400 (Sub-No. 4).

DATES: This withdrawal is made on  
March 22, 1996.

FOR FURTHER INFORMATION CONTACT:  
Thomas J. Stilling, (202) 927-7312.  
[TDD for the hearing impaired: (202)  
927-5721.]

SUPPLEMENTARY INFORMATION: In an  
Advanced Notice of Proposed  
Rulemaking (ANPR) served April 28,  
1995, 60 FR 22035 (May 4, 1995) the  
Interstate Commerce Commission  
solicited comments on a proposal to  
expedite rail exemption revocation  
proceedings. Subsequent to the issuance  
of the ANPR, the ICC Termination Act  
of 1995 (ICCTA), Pub. L. No. 104-88,  
109 Stat. 803 was enacted. The  
provisions of 49 U.S.C. 10704(d), part of  
section 102(a) of ICCTA, require the  
Surface Transportation Board to  
establish procedures to expedite the  
handling of challenges to the  
reasonableness of railroad rates and of  
proceedings involving the granting or  
revocation of railroad exemptions.

In response to section 10704(d), we  
have instituted a new proceeding,  
*Expedited Procedures for Processing  
Rail Rate Reasonableness, Exemption  
and Revocation Proceedings*, Ex Parte  
No. 527 (published elsewhere in this  
section of the Federal Register). Because  
Ex Parte No. 527 will review the  
exemption revocation procedures at 49  
CFR 1121, we are discontinuing this  
proceeding. The comments previously  
filed in response to the ANPR will be  
made part of the record in Ex Parte No.  
527 and need not be refiled.

Decided: March 8, 1996.