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§ 1150.24 Termination of service.

The duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be:

(a) Filed with the State and the Board, and

(b) Mailed to all persons that have used the line within the 6 months preceding the date of the notice.

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

SOURCE: 51 FR 2504, Jan. 17, 1986, unless otherwise noted.

§ 1150.31 Scope of exemption.

(a) Except as indicated below, this exemption applies to all acquisitions and operations under section 10901 (*See* 1150.1, *supra*). This exemption also includes:

(1) Acquisition by a noncarrier of rail property that would be operated by a third party;

(2) Operation by a new carrier of rail property acquired by a third party;

(3) A change in operators on the line; and

(4) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the assignment of trackage rights to operate over the line of a third party that occur at the time of the exempt acquisition or operation. This exemption does not apply when a class I railroad abandons a line and another class I railroad then acquires the line in a proposal that would result in a major market extension as defined at § 1180.3(c).

(b) Other exemptions that may be relevant to a proposal under this subpart are the exemption for control at § 1180.2(d)(1) and (2), and the from securities regulation at 49 CFR part 1175.

§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.

(a) To qualify for this exemption, applicant must file a verified notice providing details about the transaction,

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and a brief caption summary, conforming to the format in § 1150.34, for publication in the FEDERAL REGISTER.

(b) The exemption will be effective 30 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 16 days of the filing. A change in operators would follow the provisions at § 1150.34, 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. Stay petitions must be filed at least 7 days before the exemption becomes effective.

(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. 470 is achieved.

(e) If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

[51 FR 2504, Jan. 17, 1986, as amended at 53 FR 4626, Feb. 17, 1988; 53 FR 5982, Feb. 29, 1988; 62 FR 47584, Sept. 10, 1997; 69 FR 58366, Sept. 30, 2004; 71 FR 62212, Oct. 24, 2006]

§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.

(a) The full name and address of the 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,

(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 do not exceed those that would qualify it as a Class III carrier.

(h) *Transactions imposing interchange commitments.* (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided:

(i) The existence of that provision or agreement and identification of the affected interchange points; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (h)(1) of this section by filing, and serving upon the petitioner, a "Motion for Access to Confidential Documents," containing:

(i) An explanation of the party's need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

(3) *Deadlines.* (i) Replies to a Motion for Access are due within 5 days after the motion is filed.

(ii) The Board will rule on a Motion for Access within 30 days after the motion is filed.

(iii) Parties must produce the relevant documents within 5 days of receipt of a Board approved, signed confidentiality agreement.

[51 FR 2504, Jan. 17, 1986, as amended at 51 FR 25207, July 11, 1986; 53 FR 4626, Feb. 17, 1988; 53 FR 5982, Feb. 29, 1988; 56 FR 36111, July 31, 1991; 73 FR 31034, May 30, 2008]

EFFECTIVE DATE NOTE: At 78 FR 54590, Sept. 5, 2013, §1150.33 was amended by revising the paragraph heading to paragraph (h), paragraphs (h)(1) introductory text, and (h)(1)(ii), and by adding paragraphs (h)(1)(iii) through (viii), effective Oct. 5, 2013. For the convenience of the user, the added and revised text is set forth as follows:

§ 1150.33 Information to be contained in notice—transactions that involve creation of Class III carriers.

(h) *Interchange Commitments.* (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"). If such a provision exists, the following additional information must be provided (the information in paragraphs (h)(1)(ii), (iv), (vii) of this section may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b)):

* * * * *

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement;

(iii) A list of shippers that currently use or have used the line in question within the last two years;

(iv) The aggregate number of carloads those shippers specified in paragraph (h)(1)(iii) of this section originated or terminated (confidential);

(v) A certification that the filing party has provided notice of the proposed transaction and interchange commitment to the shippers

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identified in paragraph (h)(1)(iii) of this section;

(vi) A list of third party railroads that could physically interchange with the line sought to be acquired or leased;

(vii) An estimate of the difference between the sale or lease price with and without the interchange commitment (confidential);

(viii) A change in the case caption so that the existence of an interchange commitment is apparent from the case title.

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§ 1150.34 Caption summary—transactions that involve creation of Class III carriers.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key below:

SURFACE TRANSPORTATION BOARD

Notice of Exemption

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 entity 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) Petitioners representative, address, and telephone number.
- (6) Cross reference to other class exemptions being used.

The notice is filed under §1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[47 FR 8199, Feb. 25, 1982. Redesignated at 47 FR 49581, Nov. 1, 1982, as amended at 53 FR 5982, Feb. 29, 1988; 69 FR 58366, Sept. 30, 2004]

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§ 1150.35 Procedures and relevant dates—transactions 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, and applicant must comply with the notice requirement of §1150.32(e).

(b) The notice of intent must contain all the information required in §1150.33 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 is available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of (b) above and of §1150.34, and certify compliance with §1150.35 (a), (b), and (c), attaching a copy of the notice of intent.

(e) The exemption will be effective 45 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 16 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. Stay petitions must be filed at least 14 days before the exemption becomes effective. To be considered, stay petitions must be timely served on the applicant.