§ 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:

(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) 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)):
   (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;
   (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 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.

(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.

§ 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.

(g) Applicant must comply with §1150.33(g) regarding section 106 of the National Historic Preservation Act, 16 U.S.C. 470.

§ 1150.36 Exempt construction of connecting track.

(a) Scope. This class exemption applies to proceedings involving the construction and operation of connecting lines of railroad within existing rail rights-of-way, or on land owned by connecting railroads, under 49 U.S.C. 10901 (a), (b), and (c). (See the reference to connecting track in 49 CFR 1105.6(b)(1).) This class exemption is designed to expedite and facilitate connecting track construction while ensuring full and timely environmental review. The Surface Transportation Board (Board) has found that its prior