

- (i) Approach angle;
- (ii) Departure angle;
- (iii) Breakover angle;
- (iv) Axle clearance;
- (v) Minimum running clearance; and
- (vi) Existence of 4-wheel drive

(indicate yes or no).

(6) The fuel economy values provided under paragraphs (c) (2) and (4) of this section shall be determined in accordance with § 537.9.

§ 537.8 [Reserved]

§ 537.9 Determination of fuel economy values and average fuel economy.

(a) Base level and model type fuel economy values. For each base level and model type, the manufacturer shall submit a fuel economy value based on the vehicle configuration values that have been determined and approved under 40 CFR part 600, or, if such a value does not exist, a value based on a comparable test or analysis, and calculated in the same manner as base level and model type fuel economy values are calculated for use under Subpart F of 40 CFR part 600.

(b) Average fuel economy. Average fuel economy must be based upon fuel economy values calculated under paragraph (a) of this section for each model type and must be calculated in accordance with 40 CFR 600.506, using the configurations specified in 40 CFR 600.506(a)(2), except that fuel economy values for running changes and for new base levels are required only for those changes made or base levels added before the average fuel economy is required to be submitted under this part.

§ 537.10 Incorporation by reference.

(a) A manufacturer may incorporate by reference in a report required by this part any document other than a report, petition, or application, or portion thereof submitted to any Federal department or agency more than two model years before the current model year.

(b) A manufacturer that incorporates by references a document not previously submitted to the National Highway Traffic Safety Administration shall append that document to the report.

(c) A manufacturer that incorporates by reference a document shall clearly identify the document and, in the case of a document previously submitted to the National Highway Traffic Safety Administration, indicate the date on which and the person by whom the document was submitted to this agency.

§ 537.11 Public inspection of information.

Except as provided in § 537.12, any person may inspect the information and data submitted by a manufacturer under

this part in the docket section of the National Highway Traffic Safety Administration. Any person may obtain copies of the information available for inspection under this section in accordance with the regulations of the Secretary of Transportation in Part 7 of this title.

§ 537.12 Confidential information.

(a) Information made available under § 537.11 for public inspection does not include information for which confidentiality is requested under § 537.5(c)(7), is granted in accordance with section 32910(c) of Chapter 329 and section 552(b) of Title 5 of the United States Code, and is not subsequently released under paragraph (c) of this section in accordance with section 32910 of Chapter 329.

(b) Denial of confidential treatment. When the Administrator denies a manufacturer's request under § 537.5(c)(7) for confidential treatment of information, the Administrator gives the manufacturer written notice of the denial and reasons for it. Public disclosures of the information is not made until after the ten-day period immediately following the giving of the notice.

(c) Release of confidential information. After giving written notice to a manufacturer and allowing ten days, when feasible, for the manufacturer to respond, the Administrator may make available for public inspection any information submitted under this part that is relevant to a proceeding under the Act, including information that was granted confidential treatment by the Administrator pursuant to a request by the manufacturer under § 537.5(c)(7).

Issued on: May 7, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96-11720 Filed 5-10-96; 8:45 am]

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Surface Transportation Board

49 CFR Part 1185

[STB Ex Parte No. 543]

Revision of Regulations for Interlocking Rail Officers

AGENCY: Surface Transportation Board.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (the Board) is seeking comments on proposed revisions to the regulations for authorization of interlocking rail officers and directors.

DATES: Comments on the proposed revisions are due June 3, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 543 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423.

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

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA) abolished the Interstate Commerce Commission (ICC) and established within the Department of Transportation the Board. Section 204 of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

Under the prior statute at 49 U.S.C. 11322, a person wishing to hold a position of officer or director of more than one rail carrier of any size was required to seek prior ICC authorization. The ICC, however, exercising its general exemption authority under former 49 U.S.C. 10505, adopted rules at 49 CFR 1185 exempting from regulation as a class requests to assume the position of director or officer of a rail carrier while holding the position of director or officer of another rail carrier, except where both carriers are Class I railroads. *Exemption—Certain Interlocking Directorates*, 5 I.C.C.2d 7 (1988) (*Interlocking Directorates*). The class exemption does not apply to an individual who is an officer or director of a Class I carrier and who wishes to become an officer or director of another Class I railroad; that individual is required to file either an application (or petition for an individual exemption).

The ICCTA revised the statute so that, under new 49 U.S.C. 11328, individuals seeking to hold the position of officer or director only of Class III railroads are no longer required to seek Board authorization, either through exemption or through affirmative approval. We propose to revise 49 CFR part 1185 to reflect this statutory change and to eliminate other unnecessary and redundant provisions. The changes would clarify that the class exemption applies exclusively to interlocking directorates that (a) Do not involve an officer or director of a Class I rail carrier who seeks to become an officer or director of another Class I rail carrier, and (b) do not involve only Class III rail

carriers.¹ The proposed rules would also make clear that, where the class exemption applies, it is not necessary to make a filing with the Board to invoke the exemption. *See Southern Electric—Petition for Exemption—Construction of a Rail Line in Shelby Co., AL*, Finance Docket No. 31498 *et al.* (ICC served Sept. 19, 1989).

The proposed revision would also update and clarify the term “carrier” for purposes of administering the interlocking officer and director provisions of the statute. Former 49 U.S.C. 11322, and the current regulations at 49 CFR 1185.2, use the term “carrier” as defined at former 49 U.S.C. 11301(a)(1).² New 49 U.S.C. 11328 does not separately define “carrier.” We note that the general definition of “rail carrier” in new 49 U.S.C. 10102(5) refers to a person providing common carrier railroad transportation “for compensation,” but not to a “sleeping car carrier” or “a corporation organized to provide transportation.”³

In defining “carrier” for interlocking directorate purposes, we propose to exclude “sleeping car carrier” and to add “for compensation.” We also believe that, in the context of interlocking directorates, the term “rail carrier” should be interpreted to embrace corporations organized to provide transportation. Because an individual would need Board approval after a corporation becomes a carrier, we believe it is appropriate to allow an individual to obtain early Board consideration, thereby providing more commercial certainty. This would also benefit the Board, by giving us an earlier opportunity to analyze a potential interlocking officer position or directorate. We thus propose the following definition of rail carrier in our proposed rule 1185.1(d):

¹ All other “interlocking directorates” are exempted as a class by virtue of the decision of the ICC in *Interlocking Directorates*, *supra*. The Board proposes to expressly affirm and adopt that exemption.

² The definition in former section 11301(a)(1) read:

“carrier” means a rail or *sleeping car carrier* providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title (except a street, suburban, or interurban electric railway not operated as part of a general railroad system of transportation), and a corporation organized to provide transportation by rail carrier subject to that subchapter. (Emphasis supplied.)

³ Under new 49 U.S.C. 10102(5), rail carrier is defined as:

a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation[.]

A rail carrier means a person providing common carrier transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide transportation by rail carrier.

We also propose to change the requirements for the form of the application to comply with our rules of practice (proposed section 1185.3). Finally, we seek specific comment on whether to include proposed section 1185.4, which would revise current 49 CFR 1185.9, *General authority*, pertaining to receipt of general authority to hold a directorship with subsidiary or affiliated companies. We question whether this provision is needed, because there are two other similar sections, proposed section 1185.5, *Common control* (currently section 1185.10) and proposed section 1185.6, *Jointly used terminal properties* (currently section 1185.11).⁴ All three of these provisions concern interlocking directorships among carriers in an established system. *See Governing Officers*, 363 I.C.C. at 681 and 683.

The Board certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. In response to the statutory change, this proposed rule will reduce regulation and it imposes no new reporting requirements on small entities. Requirements for the form of the application have been slightly modified to conform to the Board’s rules of practice. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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 1185

Administrative practice and procedure, Railroad.

Decided: April 23, 1996.

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

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X, part

⁴ In *Revised Regulations Governing Officers*, 336 I.C.C. 679 (1970) (*Governing Officers*), the ICC issued rules, codified at 49 CFR 1185.10 and 11, that would allow individuals to hold interlocking directorate positions with carriers lawfully operated under common control and to hold interlocking directorate positions with a carrier and a terminal railroad whose facilities are operated or used by the carrier jointly with other carriers.

1185 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 1185—INTERLOCKING OFFICERS

Sec.

- 1185.1 Definitions and scope of regulations.
- 1185.2 Contents of application.
- 1185.3 Procedures.
- 1185.4 General authority.
- 1185.5 Common control.
- 1185.6 Jointly used terminal properties.

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721, 10502, and 11328.

§ 1185.1 Definitions and scope of regulations.

(a) Under 49 U.S.C. 11328, authorization of the Board is required before a person may hold the position of officer or director of more than one rail carrier, except where only Class III carriers are involved. Board authorization is not needed for individuals seeking to hold the positions of officers or directors only of Class III railroads. 49 U.S.C. 11328(b).

(b) When a person is an officer of a Class I railroad and seeks to become an officer of another Class I railroad, an application under 49 U.S.C. 11328(a) (or petition for individual exemption under 49 U.S.C. 10502) must be filed. All other “interlocking directorates” are exempt as a class from the prior approval requirements of 49 U.S.C. 11328(a). For such interlocking directorates exempted as a class, no filing with the Board is necessary to invoke the exemption.

(c) An “interlocking directorate” exists whenever an individual holds the position of officer or director of one rail carrier and assumes the position of officer or director of another rail carrier. This provision applies to any person who performs duties ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent or chief purchasing agent.

(d) For purposes of this part, a rail carrier means a person providing common carrier railroad transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide such transportation.

§ 1185.2 Contents of application.

(a) Each application shall state the following:

(1) The full name, occupation, business address, place of residence, and post office address of the applicant.

(2) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of, and accurate description of, the securities, owned or held by him, of each carrier for which he seeks authority to act. (Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by him, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.)

(3) Each and every position with any carrier which is held by the applicant at the time of the application; and which he seeks authority to hold, together with the date and manner of his election or appointment thereto and, if he has entered upon the performance of his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize him to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(4) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in rail transportation. (If any such carrier neither operates nor owns any railroad, transportation by which is subject to the Act, there shall be filed with the application, as a part thereof, a copy of such carrier's charter or certificate or

articles of incorporation, with amendments to date. When such copy has once been filed with the former Interstate Commerce Commission (ICC) or with the Board, reference thereto, with amendments, if any, will suffice.)

(5) Thereafter a full statement of pertinent facts relative to any carrier which does not make annual reports to the Board, authorization for a position with which is sought.

(6) Full information as to the relationship, operating, financial, competitive, or otherwise, existing between the carriers covered by the requested authorization.

(7) Every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(8) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(9) Whether or not any other application for authority has been made in behalf of the applicant and, if so, the date and docket number thereof, by who made, and the action thereon, if any.

(b) When application has been made in behalf of any person, a subsequent application by him need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

§ 1185.3 Procedures.

The original application or petition shall be signed by the individual applicant or petitioner and shall be verified under oath. Petitions and applications should comply with the Board's general rules of practice set forth at 49 CFR part 1104. Applications or petitions may be made by persons on their own behalf.

§ 1185.4 General authority.

Any person who holds or may seek specific authority to hold positions with a carrier may also request general authority to act as an interlocking officer

for all affiliated or subsidiary companies or properties used or operated by the carrier, either separately or jointly, with other carriers. A carrier may apply for general authority on behalf of an individual who has already received authority to act as an interlocking officer. However, a carrier may not apply for general authority for an individual who holds a position with another railroad which is not an affiliate or subsidiary of the carrier or whose properties are not used or operated by the carrier, either separately or jointly with other carriers.

§ 1185.5 Common control.

It shall not be necessary for any person to secure authorization under the foregoing provisions to hold the position of officer or director of two or more carriers, if such carriers are operated under common control or management, either:

(a) Pursuant to approval and authority of the ICC granted under former 49 U.S.C. 11343-44 (repealed effective January 1, 1996) or by the Board granted under 49 U.S.C. 11323-24, or

(b) Pursuant to an exemption authorized by the ICC under former 49 U.S.C. 10505 (repealed effective January 1, 1996) or by the Board under 49 U.S.C. 10502, or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

§ 1185.6 Jointly used terminal properties.

Any person holding the position of officer or director of a carrier is hereby relieved from the foregoing provisions to the extent that he may also hold a directorship and any other position to which he may be elected or appointed with a terminal railroad the properties of which are operated or used by the carrier jointly with other carriers.

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