SUPPLEMENTARY INFORMATION:

FOR FURTHER INFORMATION CONTACT:

ADDRESSES:

DATES:

ACTION:

AGENCY:

BILLING CODE 6560–50–P

On February 5, 2020, after considering the petition and reply, the Board granted AAR’s petition to initiate a rulemaking proceeding to establish a new emergency temporary trackage rights class exemption. The rule proposed here, which is set forth below, differs in some respects from AAR’s request, as explained below. The Board also proposes certain other related changes to the class exemptions for trackage rights and temporary trackage rights, also explained below.

Background

Pursuant to 49 U.S.C. 11323(a)(6), prior Board approval is required for a rail carrier to acquire trackage rights over a rail line owned or operated by another rail carrier. Under 49 U.S.C. 11324(d), the Board is required to approve trackage rights applications unless it finds that: (1) As a result of a transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Under 49 U.S.C. 10502, the Board is directed, to the maximum extent consistent with 49 U.S.C. subtitle IV part A, to exempt a person, class of persons, or a transaction or service from regulation whenever it finds that: (1) Regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power.

The Board may exempt not only a single transaction but also an entire class of transactions that meets the exemption criteria of 49 U.S.C. 10502. A class exemption for transactions otherwise subject to Board licensing does not place those transactions beyond the Board’s jurisdiction; rather, it is a means by which a carrier may obtain Board authorization without going through the otherwise-applicable full licensing process.1

In 2003, the Board adopted a class exemption at 49 CFR 1180.2(d)(8) for temporary overhead trackage rights of not more than one year in duration. See R.R. Consolidation Proc.—Exemption for Temp. Trackage Rts., EP 282 (Sub-No. 20) (STB served May 23, 2003), modified (STB served May 17, 2004). Under 49 CFR 1180.4(g)(1), exemptions sought under § 1180.2(d)(8) and various other class exemptions under § 1180.2(d) cannot become effective until at least 30 days after a railroad files a verified notice of the transaction. As a result, when a railroad seeks to have a temporary trackage rights exemption become effective in less than 30 days, the railroad must petition for waiver of the 30-day period. In such cases, in addition to serving and publishing the notice of the exemption in the Federal Register, the Board also issues a separate decision acting on the waiver request and setting the effective date of the exemption. See, e.g., Union Pac. R.R.—Temp. Trackage Rts. Exemption—BNSF Ry., FD 36424 et al. (STB served Aug. 10, 2020) (granting a waiver of the 30-day notice period for a trackage rights exemption under § 1180.2(d)(8) and setting effective date); Ala. & Gulf Coast Ry.—Temp. Trackage Rts. Exemption—Kan. City S. Ry., FD 36418 (STB served July 2, 2020) (same).

AAR’s Requested Exemption. AAR asks the Board to initiate a rulemaking to create a new emergency temporary trackage rights class exemption. Under AAR’s request, the 30-day notice requirement under 49 CFR 1180.4(g)(1) would not apply to individual exemptions sought under the new exemption provision; the temporary trackage rights would take effect immediately upon publication of a notice of the transaction by the Board in the Federal Register, which, according to AAR, would take place within 5 days of a party’s filing of a verified notice of exemption. (Pet., App. A at §§ 1180.2(d)(9), 1180.4(g)(5)(iii).) As requested by AAR, the temporary trackage rights could be requested for a

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1Exemptions may be revoked, in whole or in part, pursuant to 49 U.S.C. 10502(d).

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

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[FR Doc. 2021–11341 Filed 6–4–21; 8:45 am]

SURFACE TRANSPORTATION BOARD

49 CFR Part 1180

[Docket No. EP 282 (Sub-No. 21)]

Petition for Rulemaking—Railroad Consolidation Procedures—Exemption for Emergency Temporary Trackage Rights

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) grants a petition filed by the Association of American Railroads (AAR) to initiate a rulemaking proceeding to establish a new class exemption for emergency temporary trackage rights. The Board also proposes certain other related changes to the class exemptions for trackage rights and temporary trackage rights.

DATES: Comments are due by July 12, 2021. Reply comments are due by August 11, 2021.

ADDITIONAL INFORMATION CONTACT:

FOR FURTHER INFORMATION CONTACT:

Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Assistance for the hearing impaired at (800) 877–8339.

SUPPLEMENTAL INFORMATION: On October 9, 2020, AAR filed a petition requesting that the Board initiate a rulemaking proceeding to establish a new emergency temporary trackage rights class exemption that could be invoked in specific situations and would allow emergency temporary trackage rights to take effect immediately, without need for the 30-day notice requirement under 49 CFR 1180.4(g)(1). On November 4, 2020, Samuel J. Nasca, for and on behalf of SMART-Transportation Division-New York State Legislative Board (SMART/TD–NY), filed a reply in opposition to AAR’s petition.

On February 5, 2020, after considering the petition and reply, the Board granted AAR’s petition to initiate a rulemaking proceeding to establish a new emergency temporary trackage rights class exemption. The rule proposed here, which is set forth below, differs in some respects from AAR’s request, as explained below. The Board also proposes certain other related changes to the class exemptions for trackage rights and temporary trackage rights, also explained below.

The Board may exempt not only a single transaction but also an entire class of transactions that meets the exemption criteria of 49 U.S.C. 10502. A class exemption for transactions otherwise subject to Board licensing does not place those transactions beyond the Board’s jurisdiction; rather, it is a means by which a carrier may obtain Board authorization without going through the otherwise-applicable full licensing process.1

In 2003, the Board adopted a class exemption at 49 CFR 1180.2(d)(8) for temporary overhead trackage rights of not more than one year in duration. See R.R. Consolidation Proc.—Exemption for Temp. Trackage Rts., EP 282 (Sub-No. 20) (STB served May 23, 2003), modified (STB served May 17, 2004). Under 49 CFR 1180.4(g)(1), exemptions sought under § 1180.2(d)(8) and various other class exemptions under § 1180.2(d) cannot become effective until at least 30 days after a railroad files a verified notice of the transaction. As a result, when a railroad seeks to have a temporary trackage rights exemption become effective in less than 30 days, the railroad must petition for waiver of the 30-day period. In such cases, in addition to serving and publishing the notice of the exemption in the Federal Register, the Board also issues a separate decision acting on the waiver request and setting the effective date of the exemption. See, e.g., Union Pac. R.R.—Temp. Trackage Rts. Exemption—BNSF Ry., FD 36424 et al. (STB served Aug. 10, 2020) (granting a waiver of the 30-day notice period for a trackage rights exemption under § 1180.2(d)(8) and setting effective date); Ala. & Gulf Coast Ry.—Temp. Trackage Rts. Exemption—Kan. City S. Ry., FD 36418 (STB served July 2, 2020) (same).

AAR’s Requested Exemption. AAR asks the Board to initiate a rulemaking to create a new emergency temporary trackage rights class exemption. Under AAR’s request, the 30-day notice requirement under 49 CFR 1180.4(g)(1) would not apply to individual exemptions sought under the new exemption provision; the temporary trackage rights would take effect immediately upon publication of a notice of the transaction by the Board in the Federal Register, which, according to AAR, would take place within 5 days of a party’s filing of a verified notice of exemption. (Pet., App. A at §§ 1180.2(d)(9), 1180.4(g)(5)(iii).) As requested by AAR, the temporary trackage rights could be requested for a
period of no more than six months; however, the requestor could, prior to expiration of that period, seek a renewal for up to six additional months. (Id. at App. A at § 1180.2(d)(9).)

Under AAR’s request, to qualify for the new exemption, a rail carrier would be required to provide certain information regarding the transaction that is required for other notices of exemption under 49 CFR part 1180 and the trackage rights would have to be: (1) Based on written agreements; (2) not filed or sought in responsive applications in rail consolidation proceedings; (3) for overhead operations only; and (4) as certified by the rail carrier, sought in response to a track outage expected to last more than seven days and where there is no reasonable alternative for maintaining pre-outage service levels. (See id., App. A at §§ 1180.2(d)(9), 1180.4(g)(5)(i).) Every 30 days during the initial exemption period, the rail carrier would be required to recertify to the Board that the outage continues to exist and the temporary trackage rights continue to be necessary to maintain service. (Id., App. A at § 1180.2(d)(9).) AAR further requests that under the existing class exemption for temporary trackage rights, rail carriers availing themselves of the proposed class exemption would not need to file for discontinuance authority at the end of the authorized period, (Id., App. A at § 1180.2(d)(9)), and would be subject to applicable statutory labor protective conditions.2

AAR argues that the current two-step approach for obtaining temporary trackage rights without having to wait 30 days for them to become effective is inefficient, and asserts that its proposed class exemption would benefit shippers, railroads, and the Board by providing a streamlined and simple approach for obtaining temporary trackage rights in emergency situations, ensuring the continued flow of commerce without any decrease in regulatory oversight. (Pet. 1–4.)

As noted above, on November 4, 2020, SMART/TD–NY filed comments opposing AAR’s petition. SMART/TD–NY argues that the Board should deny AAR’s petition and decline to institute a rulemaking proceeding because an emergency temporary trackage rights exemption is unwarranted given the existing trackage rights exemptions and because the proposed exemption would threaten rail safety. (SMART/TD–NY Reply 3–4.) SMART/TD–NY states that detour arrangements in the railroad industry provide for pilot employees from the landlord carrier to provide guidance for the tenant carrier’s operation in emergency situations. (Id. at 4.) According to SMART/TD–NY, the proposed exemption would allow for the “immediate cessation of detour operation[s]” or even the avoidance of detour operations altogether and thereby allow operation solely by tenant carrier personnel unfamiliar with the line over which the trackage rights have been granted. (Id.)

The Statutory Exemption Criteria

As noted above, 49 U.S.C. 10502 directs the Board to exempt a person, class of persons, or a transaction or service from regulation whenever it finds that: (1) Regulation is not necessary to carry out the RTP; and (2) either the transaction or service is of limited scope or regulation is not needed to protect shippers from an abuse of market power.

The Board agrees that the current process for obtaining temporary trackage rights in emergency situations can be inefficient, and notes that petitions for waiver of the 30-day notice requirement are routinely granted. See, e.g., Union Pac. R.R., FD 36424 et al., slip op. at 2 (granting a waiver of the 30-day notice period); Ala. & Gulf Coast Ry., FD 36418, slip op. at 2 (same). A class exemption for emergency temporary trackage rights, as proposed below, would meet the requirements of section 10502 and would advance the RTP in several ways. It would provide for the expedient handling and resolution of proceedings, 49 U.S.C. 10101(15), and encourage the efficient management of railroads, 49 U.S.C. 10101(9), by making the process of obtaining temporary trackage rights in emergencies more efficient by eliminating the need for a waiver of the 30-day notice period under 49 CFR 1180.4(g)(1) and more predictable by requiring the Board to act within a set number of days. It would also promote the continuation of a sound rail system, 49 U.S.C. 10101(4), and coordination between carriers, 49 U.S.C. 10101(5), by facilitating the process of line repair and approval of trackage rights agreements.

The class exemption proposed in this decision is limited in scope in terms of both the duration of the rights and the circumstances in which the exemption would apply. Indeed, the proposed exemption is a more limited form—in terms of both duration and circumstances—of the existing temporary trackage rights exemption, which the Board in 2003 found to be of limited scope. See R.R. Consolidation Procs.—Exemption for Temp. Trackage Rts., 6 S.T.B. 910, 913 n.8 (2003).

Regulation is not needed to protect shippers from an abuse of market power. The proposed class exemption would not reduce competition because the temporary trackage rights would be for overhead operations only, and therefore the competitive status quo would not be altered with respect to service to shippers on the affected lines. In addition, the exemption would benefit shippers by enhancing the ability of carriers to maintain service in emergency situations. SMART/TD–NY’s arguments in opposition to the proceeding here are unpersuasive. The proposed class exemption is warranted because it would make the process of obtaining temporary trackage rights in an emergency more efficient and predictable. Moreover, based on the record to date, the Board does not see merit in SMART/TD–NY’s claim that the proposed class exemption would threaten rail safety. This proposal would not alter or impact the existing rail safety operating regulations administered by the Federal Railroad Administration, which is the Federal agency with primary responsibility over rail safety matters. See, e.g., 49 CFR 240.229 (prohibiting a carrier in control of operations on a line from allowing an engineer of a foreign carrier to operate a train on that line without a pilot engineer from the controlling carrier unless the engineer of the foreign carrier has the necessary knowledge of the controlling carrier’s operating rules and the necessary familiarity with the physical characteristics of the line).

The Proposed Class Exemption

For the reasons discussed above, and as set forth below, the Board proposes to establish a new class exemption for emergency temporary trackage rights. As explained further below, the Board’s proposed rule differs in various respects from AAR’s request and includes certain related changes to the existing class exemptions for trackage rights and temporary trackage rights.

Circumstances in which the proposed rule would apply. AAR’s requested new class exemption would apply where there is a track outage that is expected to last more than seven days and there is no reasonable alternative to maintain pre-outage levels of service. (Pet., App.
VerDate Sep<11>2014 16:42 Jun 04, 2021 Jkt 253001 PO 00000 Frm 00030 Fmt 4702 Sfmt 4702 E:\FR\FM\07JNP1.SGM 07JNP1

\[3.2\text{AAR's intent. (Pet. 1–3, 9 (describing the need for the exemption in cases of “unpredictable” or “unexpected” events such as accidents or natural disasters.) The Board also proposes a requirement that, when railroads certify that trackage rights are needed for an unforeseen track outage, the verified notice should provide a description of the situation that includes, to the extent possible, the following information: 1. The nature of the event that caused the unforeseen outage; 2. The location of the outage; 3. The date that the emergency situation occurred; 4. The date the track outage was discovered; and 5. The expected duration of the outage.}

\[3.3\text{\textbf{Duration of the exemption.} AAR requests that the temporary trackage rights would be approved for an initial period of no longer than six months, with the option to request a renewal for an additional six months. The Board's proposal limits the emergency temporary trackage rights to an initial period not to exceed three months, with the option to request a renewal for an additional three months. A review of recent cases in which the Board waived the 30-day notice requirement for temporary trackage rights in emergency situations suggests that trackage rights would rarely be needed for a period longer than three months.\]
The Jackson & Lansing decision, which embraced three separate proceedings, addressed issues related to an interchange commitment disclosed as part of a lease transaction, not the trackage rights transaction. Further, that decision in several instances referred to interchange transactions, though it did cite one previous trackage rights exemption proceeding. Info. Required in Notices & Pets. Containing Interchange Commitments, EP 714 (STB served Sept. 5, 2013). In the notice of proposed rulemaking (NPRM) in that proceeding, the Board did not specifically address the applicability of the interchange certification to trackage rights transactions, though it did cite one previous trackage rights exemption proceeding. Info. Required in Notices & Pets. Containing Interchange Commitments, EP 714 (STB served Sept. 27, 2011). Nor did the final rule in Docket No. EP 714 specifically address the applicability of the interchange commitment certification to railroads obtaining trackage rights. The NPRM refers only to the interchange certification requirement applying to a “purchaser” or “lessee” railroad. Info. Required in Notices & Pets. Containing Interchange Commitments, EP 714, slip op. at 4–5, nn. 17, 18, 20 (STB served Nov. 1, 2012) (citing Jackson & Lansing R.R.—Trackage Rts. Exemption—Norfolk S. Ry., FD 35418 et al. (STB served Sept. 27, 2011)).

The Board did not specifically address the applicability of the interchange commitment certification to railroads obtaining trackage rights. The NPRM refers only to the interchange certification requirement applying to a “purchaser” or “lessee” railroad. Info. Required in Notices & Pets. Containing Interchange Commitments, EP 714, slip op. at 4–6 (STB served Nov. 1, 2012). Further, the Board has generally interpreted this requirement as not applying to trackage rights agreements under § 1180.2(d)(7) or § 1180.2(d)(8). Therefore, the Board proposes to clarify that § 1180.4(g)(4) would not apply to transactions under the proposed new § 1180.2(d)(9). In addition, the Board proposes to clarify that § 1180.4(g)(4) also does not apply to trackage rights transactions under § 1180.2(d)(7) or § 1180.2(d)(8), an issue that has been the cause of some confusion among parties in the past.

The proposed regulation, if promulgated, would have otherwise expired. However, because such notices would consist of a brief statement that use of the trackage rights has ceased and the date on which use of the trackage rights ceased, the Board does not believe that the burden associated with these notices would outweigh the reduction in burden associated with eliminating the requirement to file a petition for waiver of the 30-day notice period under § 1180.4(g)(1). The Board, therefore, expects the impact of the proposed rule would slightly reduce the paperwork burden for small entities. Accordingly, the economic impact of the proposed rule, if any, would be minimal as the burdens associated with obtaining approval of temporary trackage rights agreements in emergencies would be slightly reduced and the rule would likely provide some economic benefit by expediting, in some cases, the process of approving trackage rights agreements necessary to restore service at pro- outage levels. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416. 

\[ \text{Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), and in the Appendix, the Board seeks comments about the impact of the revisions in the proposed rule to the currently approved collection of Statutory Licensing Authority (OMB Control Number: 2140–0023), concerning: (1) Whether the collection of information, as modified or added in the proposed rule, and further described below, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board’s burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.} \]

The Board estimates that the proposed requirements would save a total hourly burden of 54 hours per year as compared to the current procedures for obtaining emergency trackage rights involving the filing of verified notice of exemption and a petition for

\[ \text{would have otherwise expired.} \]
waiver of the 30-day notice period. The new emergency temporary trackage rights notice would incorporate additional language, resulting in approximately 5% more burden hours to prepare than the average notice of exemption, and it is estimated that two notices regarding the cession of trackage rights would be filed annually. There are no changes to the estimated non-hourly burdens associated with this collection. The Board welcomes comment on the estimates of actual time and costs of the collection of the proposed emergency trackage rights notices of exemptions, as detailed below in the Appendix. Other information pertinent to this collection is also included in the Appendix. The proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments received by the Board regarding these information collections will also be forwarded to OMB for its review when the final rule is published.

List of Subjects in 49 CFR Part 1180
Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

It is ordered:
1. Comments are due by July 12, 2021. Reply comments are due by August 11, 2021.
2. Notice of this decision will be published in the Federal Register.
3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.
4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.
Jeffrey Herzig,
Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1180 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:


2. Amend § 1180.2 as follows:

a. Revise the first sentence of paragraph (d) introductory text;

b. In paragraph (d)(8)(iv), remove the words “49 CFR 1180.4(g)(2)(iii)’’ and add in their place the words “49 CFR 1180.4(g)(1)(ii)’’; and remove the words “these rules’’ and add in their place the words “this paragraph (d)(8)’’;

c. Add paragraph (d)(9).

§ 1180.2 Types of transactions.

(d) A transaction is exempt if it is within one of the nine categories described in paragraphs (d)(1) through (9).

(9)(i) Acquisition of emergency temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are:

(A) Based on written agreements.

(B) Not filed or sought in responsive applications in rail consolidation proceedings.

(C) For overhead operations only.

(D) Scheduled to expire on a specific date not to exceed three months from the effective date of the exemption, and

(E) Sought in response to an unforeseen track outage and expected to last more than seven days where there is no reasonable alternative to maintain pre-outage levels of service.

(ii) If during the exemption period, the outage is resolved and use of the temporary emergency trackage rights ceases to be necessary to maintain service at pre-outage levels, the rail carrier must file a notice stating that the outage has been resolved and that use of the trackage rights has ceased and identifying the date on which use of the trackage rights ceased. Such a notice should be filed within 5 business days of the date on which use of the trackage rights ceased. The emergency temporary trackage rights authority expires upon the official filing date of the notice. If the operations contemplated by the exemption will not be concluded within the initial exemption period, the rail carrier may, prior to expiration of the period, file a request for a renewal of the temporary rights for an additional period of up to 3 months, including the reason(s) therefor. Rail carriers acquiring temporary trackage rights need not seek authority from the Board to discontinue the trackage rights as of the expiration date specified under § 1180.4(g)(1)(ii). All transactions under this paragraph (d)(9) will be subject to applicable statutory labor protective conditions.

d. Revise newly redesignated (g)(2);

e. Amend newly redesignated (g)(3) by

i. Removing the paragraph heading “Transactions imposing interchange commitments’’;

ii. Revising the first sentence of paragraph (g)(3)(i).

The revisions read as follows:

§ 1180.4 Procedures.

(g) Notice of exemption. (1) To qualify for an exemption under § 1180.2(d), a railroad must file a verified notice of the transaction with the Board. Except for verified notices filed under § 1180.2(d)(9), all verified notices under § 1180.2(d) must be filed at least 30 days before the transaction is consummated, indicating the proposed consummation date. Verified notices filed under § 1180.2(d)(9) will become effective upon service of notice of the transaction by the Board. Before a verified notice is filed, the railroad shall obtain a docket number from the Board’s Section of Administration, Office of Proceedings.

(i) All notices filed under § 1180.2(d) shall contain the information required in § 1180.6(a)(1)(i)–(iii), (a)(5)–(6), and (a)(7)(i), and indicate the level of labor protection to be imposed.

(ii) Notices filed under §§ 1180.2(d)(7), 1180.2(d)(8), or 1180.2(d)(9) shall also contain the following information:

(A) The name of the tenant railroad;

(B) The name of the landlord railroad;

(C) A description of the trackage rights, including a description of the track. For notices under § 1180.2(d)(8) and (9), the notice must state that the trackage rights are overhead rights. For notices under § 1180.2(d)(7), the notice must state whether the trackage rights are local or overhead;

(D) The date the trackage rights transaction is proposed to be consummated;

(E) The date temporary trackage rights will expire, if applicable; and

(F) For notices under § 1180.2(d)(9), a description of the situation resulting in the outage in sufficient detail to allow the Board to determine an emergency exits, including, to the extent possible, the nature of the event that caused the unforeseen outage, the location of the outage, the date that the emergency situation occurred, the date the outage was discovered, and the expected duration of the outage.

(iii) Except for notices filed under § 1180.2(d)(9), the Board shall publish a notice of exemption in the Federal Register within 10 days of the filing of the notice. For notices filed under § 1180.2(d)(9), the Board shall serve a
notice of exemption on parties of record within 5 days after the verified notice of exemption is filed and shall publish that notice in the Federal Register. The publication of notices under § 1180.2(d) will indicate the labor protection required.
(iv) If the notice contains false or misleading information that is brought to the Board’s attention, the Board shall summarily revoke the exemption for that carrier and require divestiture.
(v) The filing of a petition to revoke under 49 U.S.C. 10502(d) does not stay the effectiveness of an exemption. Except for notices filed under § 1180.2(d)(9), stay petitions must be filed within 7 days before the exemption becomes effective. For notices filed under § 1180.2(d)(9), stay petitions should be filed as soon as possible before the exemption becomes effective.
(vi) Other exemptions that may be relevant to a proposal under this provision are codified at 49 CFR part 1150, subpart D, which governs transactions under 49 U.S.C. 10901.

* * * * *

(3)(i) Except for notices filed under § 1180.2(d)(7), (8), or (9), the filing party must certify whether a proposed acquisition or operation of a railroad involving 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”).

Note: The following will not appear in the Code of Federal Regulations.

Appendix

Information Collected Under the Paperwork Reduction Act

As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the revision and extension of the currently approved information collection, Statutory Licensing Authority (OMB Control Number: 2140–0023), as described below. The requested revision to the existing, approved collection by this notice of proposed rulemaking (NPRM) is expected to (1) provide parties with an emergency temporary trackage right exemption (to replace the need for submitting both a notice of exemption and a separate petition for waiver) and (2) in the event that the use of the temporary emergency trackage rights ceases to be necessary during the exemption period, require a short notice stating such.

Description of Collection

Title: Statutory Licensing Authority.
OMB Control Number: 2140–0023.
STB Form Number: None.
Type of Review: Revision of a currently approved collection.
Respondents: Rail carriers and non-carriers seeking statutory licensing or consolidation authority or an exemption from filing an application for such authority (including, in some circumstances, a certification regarding whether the transaction at issue imposes interchange commitments).

Number of Respondents: 80.
Total Burden Hours (annually including all respondents): 4,203 (sum of estimated hours per response × number of responses for each type of filing, including the increase and decrease in burdens under the NPRM). The tables below show the burden impact of the NPRM, including the (a) current estimates for the existing collection, (b) reduction in estimates due to the NPRM, and (c) increase in estimates due to the NPRM.

As provided in Table 1—Estimated Average Number of Responses below, the Board maintains its existing, approved collection of three applications, 12 petitions for exemption, 103 notices of exemption, and four certifications regarding interchange commitments annually based on an actual three-year average (FY 2018–2020) of filings. Table 1 also shows the expected decrease and increase in filings under the NPRM. Similarly, Table 2—Estimated Number of Hours per Response shows both the existing estimated burden hours for each existing response and provides the estimated burdens for the increase and decrease of responses under the NPRM. When multiplied by the number of hours for each type of filing, as provided in Table 2, the estimated annual burden hours for 122 responses are 4,203 hours (sum of estimated hours per response × number of responses for each type of filing, as shown in Table 3—Total Estimated Annual Burden Hours.
Frequency: On occasion.

### Table 1—Estimated Average Number of Responses

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<tr>
<td>New Notices (emergency trackage rights exemptions)</td>
<td>2</td>
</tr>
<tr>
<td>New notices regarding cessation of trackage rights</td>
<td>2</td>
</tr>
<tr>
<td>Total estimated filings</td>
<td>122</td>
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</tbody>
</table>

### Table 2—Estimated Number of Hours per Response

<table>
<thead>
<tr>
<th>Type of filing</th>
<th>Number of hours per response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing filings:</td>
<td></td>
</tr>
<tr>
<td>Applications</td>
<td>524</td>
</tr>
<tr>
<td>Petitions</td>
<td>58</td>
</tr>
<tr>
<td>Notices</td>
<td>19</td>
</tr>
<tr>
<td>Interchange commitments certifications</td>
<td>8</td>
</tr>
<tr>
<td>Reductions in filings—Proposed:</td>
<td></td>
</tr>
<tr>
<td>Notices (previously used)</td>
<td>(19)</td>
</tr>
<tr>
<td>Petitions for waiver (no longer necessary)</td>
<td>(29)</td>
</tr>
</tbody>
</table>
### TABLE 2—ESTIMATED NUMBER OF HOURS PER RESPONSE—Continued

<table>
<thead>
<tr>
<th>Type of filing</th>
<th>Number of hours per response</th>
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</thead>
<tbody>
<tr>
<td>Additions in filings—Proposed:</td>
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</tr>
<tr>
<td>New Notices (emergency trackage rights exemptions)</td>
<td>20</td>
</tr>
<tr>
<td>New notices regarding cessation of trackage rights</td>
<td>1</td>
</tr>
</tbody>
</table>

### TABLE 3—TOTAL ESTIMATED ANNUAL BURDEN HOURS

<table>
<thead>
<tr>
<th>Type of filing</th>
<th>Hours per response</th>
<th>Annual number of filings</th>
<th>Total annual burden hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing filing:</td>
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<td></td>
</tr>
<tr>
<td>Applications</td>
<td>524</td>
<td>3</td>
<td>1,572</td>
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<tr>
<td>Petitions</td>
<td>58</td>
<td>12</td>
<td>696</td>
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<tr>
<td>Notices</td>
<td>19</td>
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<td>1,957</td>
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<tr>
<td>Interchange commitments</td>
<td>8</td>
<td>4</td>
<td>32</td>
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<tr>
<td>Total Existing Annual Burden Hours</td>
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<td>4,257</td>
</tr>
<tr>
<td>Reductions in filings—Proposed:</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Notices (previously used)</td>
<td>(19)</td>
<td>2</td>
<td>(38)</td>
</tr>
<tr>
<td>Petitions for waiver (no longer necessary)</td>
<td>(29)</td>
<td>2</td>
<td>(58)</td>
</tr>
<tr>
<td>Additions in filings—Proposed:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Notices (emergency trackage rights exemptions)</td>
<td>20</td>
<td>2</td>
<td>40</td>
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<tr>
<td>New notices regarding cessation of trackage rights</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Total new annual burden hours</td>
<td></td>
<td></td>
<td>4,203</td>
</tr>
</tbody>
</table>

**Total ‘‘Non-hour Burden’’ Cost:** Because Board collections are submitted electronically to the Board, there is no cost for filing with the Board. However, for some filings, respondents may be required to send consultation letters to various other governmental agencies. Copies of these letters are part of an environmental and historic report that must be filed with this collection (unless waived by the Board). Because some of these other agencies may require hard copy letters, there may be some limited mailing costs, which staff estimates in total to be approximately $1,750.

**Needs and Uses:** As mandated by Congress, persons seeking to construct, acquire, or operate a line of railroad and railroads seeking to abandon or to discontinue operations over a line of railroad or, in the case of two or more railroads, to consolidate their interests through merger or a common-control arrangement are required to file an application for prior approval and authority with the Board. See 49 U.S.C. 10901–03, 11325–26. Under 49 U.S.C. 10502, persons may seek an exemption from many of the application requirements of §§10901–03 and §§11323–26 by filing with the Board a petition for exemption or notice of exemption in lieu of an application. The collection by the Board of these applications, petitions, and notices (including collection of disclosures of rail interchange commitments under 49 CFR 1121.3(d), 1150.33(h), 1150.43(h), and 1180.4(g)(4)) enables the Board to meet its statutory duty to regulate the referenced rail transactions. In cases in which the requests for authority involve agreements with interchange commitments that may limit the future interchange of traffic with third parties, certain information must be disclosed to the Board about those commitments. 49 CFR 1121.3(d), 1150.33(h), 1150.43(h), 1180.4(g)(4). The collection of this information facilitates the case-specific review of interchange commitments and enables the Board’s monitoring of their usage generally.