

Surface Transportation Board

§ 1180.2

(j) *Inclusion of other carriers.* The Board will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(k) *Transnational and other informational issues.* (1) All applicants must submit “full system” competitive analyses and operating plans—incorporating any operations in Canada or Mexico—from which we can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States, and explain how co-operation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems. All applicants must further provide information concerning any restrictions or preferences under foreign or domestic law and policies that could affect their commercial decisions. Applicants must also address how any ownership restrictions might affect our public interest assessment.

(2) The Board will consult with relevant officials, as appropriate, to ensure that any conditions it imposes on an approved transaction are consistent with the North American Free Trade Agreement and other pertinent international agreements to which the United States is a party. In addition, the Board will cooperate with those Canadian and Mexican agencies charged with approval and oversight of a proposed transnational railroad combination.

(l) *National defense.* Rail mergers must not detract from the ability of the United States military to rely on rail transportation to meet the nation’s defense needs. Applicants must discuss and assess the national defense ramifications of their proposed merger.

(m) *Public participation.* To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; af-

fected shippers, carriers, and rail labor; and other interested parties.

[66 FR 32583, June 15, 2001, as amended at 83 FR 15080, Apr. 9, 2018]

§ 1180.2 Types of transactions.

Transactions proposed under 49 U.S.C. 11323 involving more than one common carrier by railroad are of four types: *Major*, *significant*, *minor*, and *exempt*.

(a) A *major* transaction is a control or merger involving two or more class I railroads.

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11325(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made.

(c) A *minor* transaction is one which involves more than one railroad and which is not a *major*, *significant*, or *exempt* transaction.

(d) A transaction is exempt if it is within one of the nine categories described in paragraphs (d)(1) through (9) of this section. The Board has found that its prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and is of limited scope or unnecessary to protect shippers from market abuse. See 49 U.S.C. 10502. A notice must be filed to use one of these class exemptions. The procedures are set out in §1180.4(g). These class exemptions do not relieve a carrier of its statutory obligation to protect the interests of employees. See 49 U.S.C. 10502(g) and 11326. The enumeration of the following categories of

transactions as exempt does not preclude a carrier from seeking an exemption of specific transactions not falling into these categories.

(1) Acquisition of a line of railroad which would not constitute a major market extension where the Board has found that the public convenience and necessity permit abandonment.

(2) Acquisition or continuance in control of a nonconnecting carrier or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

(3) Transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

(4) Renewal of leases and any other matters where the Board has previously authorized the transaction, and only an extension in time is involved.

(5) Joint projects involving the relocation of a line of railroad which does not disrupt service to shippers.

(6) Reincorporation in a different State.

(7) Acquisition of trackage rights and renewal of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings.

(8) Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: {i} based on written agreements, {ii} not filed or sought in responsive applications in rail consolidation proceedings, {iii} for overhead operations only, and {iv} scheduled to expire on a specific date not to exceed 1 year from the effective date of the exemption. If the operations contemplated by the exemption will not be concluded within the 1-year period, the parties may, prior to expiration of the period, file a request for a

renewal of the temporary rights for an additional period of up to 1 year, 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 49 CFR 1180.4(g)(1)(ii). All transactions under this paragraph (d)(8) will be subject to applicable statutory labor protective conditions.

(9) Acquisition of emergency temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are: {i} Based on written agreements, {ii} not filed or sought in responsive applications in rail consolidation proceedings, {iii} for overhead operations only, {iv} scheduled to expire on a specific date not to exceed three months from the effective date of the exemption, and {v} 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. 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

Surface Transportation Board

§ 1180.3

(d)(9) will be subject to applicable statutory labor protective conditions.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985; 51 FR 24669, July 8, 1986; 58 FR 63104, Nov. 30, 1993; 62 FR 9716, Mar. 4, 1997; 68 FR 28140, May 23, 2003; 86 FR 68930, Dec. 6, 2021]

§ 1180.3 Definitions.

(a) *Applicant*. The term *applicant* means the parties initiating a transaction, but does not include a wholly owned direct or indirect subsidiary of an applicant if that subsidiary is not a rail carrier. Parties who are considered applicants, but for whom the information normally required of an applicant need *not* be submitted, are:

(1) In *minor* trackage rights applications, the transferor and

(2) In responsive applications, a primary applicant.

(b) *Applicant carriers*. The term *applicant carriers* means: any applicant that is a rail carrier; any rail carrier operating in the United States, Canada, and/or Mexico in which an applicant holds a controlling interest; and all other rail carriers involved in the transaction. Because the service provided by these commonly controlled carriers can be an important competitive aspect of the transactions that we approve, applicant carriers are subject to the full range of our conditioning power. Carriers that are involved in an application only by virtue of an existing trackage rights agreement with applicants are not applicant carriers.

(c) *Major market extension*. A major market extension is a transaction which may significantly increase competition by extending service into a new market, expanding service in a currently served market when another carrier concurrently contracts its service to that market as part of the same transaction, or providing significantly more efficient and effective competitive service to a market presently being served. Criteria which can be used to determine if a railroad is proposing to provide a more competitive service to a currently served area include: (1) Creating a shorter route; (2) providing enhanced service capabilities (speed is not the only factor); (3) entering an interchange or market gener-

ating more than 5,000 cars per year or 5 percent of applicant's traffic; (4) filing the application as a condition of relief to a pending proceeding; and (5) permitting a carrier to become more competitive (extending its length of haul) See. *Burlington Northern, Inc.—Control & Merger—St. L.*, 354 I.C.C. 616, 617 (1978).

(d) *Petition for clarification*. A request that the Board clarify the applicability of any part of these regulations to a particular situation or explain the type of material needed to comply with these regulations.

(e) *Petition for waiver*. A request that the Board either dispense with material required by the regulations, or accept material in place of that required by these regulations.

(f) *Primary application*. A proposal for approval filed under 49 U.S.C. 11323 which begins a new proceeding and is not proposed either as a condition to or as an alternative to Board approval of another pending application.

(g) *Railroad*. Any common carrier by railroad as defined in 49 U.S.C. 10102(5)–(6).

(h) *Responsive applications*. Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered). For fees covering inconsistent applications or responsive applications not otherwise covered in the Board's fee schedule, see 49 CFR 1002.2(f) (38)–(41) and 1180.4(d)(2). The fees for all other responsive applications are set forth in 49 CFR 1002.2(f).

(i) *Transferee*. The transferee is:

(1) The acquiring corporation in a control proceeding,

(2) The surviving corporation in a merger,

(3) The resulting corporation in a consolidation,

(4) The leasee in a lease,