

## §1180.2

a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.

[66 FR 32583, June 15, 2001]

### §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 seven categories described below. 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

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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.

[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]

### §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 generating 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)(4)(ii). 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 lessee in a lease,

(5) The purchaser in an acquisition, and

(6) The grantee of trackage rights in a trackage rights proceeding.

(j) *Transferor*. The transferor is:

(1) The corporation acquired in a control proceeding,

(2) The merging corporation in a merger,

(3) All corporations to be consolidated in a consolidation,

(4) The lessor in a lease,

(5) The seller in an acquisition, and

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(6) The grantor of trackage rights in a trackage rights proceeding.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, as amended at 62 FR 9716, Mar. 4, 1997; 62 FR 28376, May 23, 1997; 66 FR 32586, June 15, 2001]

### §1180.4 Procedures.

(a) *General.* (1) The original and 25 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.

(2) Each party to a proceeding shall choose a unique acronym of four letters or less for itself. It shall number each document filed in the proceeding consecutively, prefixed by its acronym.

(3) Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. At any time, the Board may require the submission of additional copies of any document previously filed by any party to the proceeding.

(b) *Prefiling notification.* (1) Between 3 to 6 months prior to the proposed filing of an application in a *major* transaction, and 2 to 4 months prior to the proposed filing of an application in a *significant* transaction, applicant shall file a notice with the Board. The notice shall:

(i) Briefly describe the transaction.

(ii) Indicate the year to be used for the impact analysis,

(iii) Indicate the approximate filing date of the application, and

(iv) Indicate why the transaction is *major* or *significant*.

(2) The Board will publish a notice in the FEDERAL REGISTER within 30 days of receipt of the applicant's notice. The publication shall contain:

(i) A brief description of the transaction,

(ii) The year to be used for the impact analysis,

(iii) The approximate filing date,

(iv) A determination that the transaction is *major*, *significant*, or *minor*, and

(v) A statement of any additional information which must be filed with the application in order for the application to be considered complete.

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(3) A prefiling notice may be amended to indicate a change in the anticipated filing date.

(4) *Prefiling notification.* When filing the notice of intent required by paragraph (b)(1) of this section, applicants also must file:

(i) *A proposed procedural schedule.* In any proceeding involving either a major transaction or a significant transaction, the Board will publish a FEDERAL REGISTER notice soliciting comments on the proposed procedural schedule, and will, after review of any comments filed in response, issue a procedural schedule governing the course of the proceeding.

(ii) *A proposed draft protective order.* The Board will issue, in each proceeding in which such an order is requested, an appropriate protective order.

(iii) *A statement of waybill availability for major transactions.* Applicants must indicate, as soon as practicable after the issuance of a protective order, that they will make their 100% traffic tapes available (subject to the terms of the protective order) to any interested party on written request. The applicants may require that, if the requesting party is itself a railroad, applicants will make their 100% traffic tapes available to that party only if it agrees, in its written request, to make its own 100% traffic tapes available to applicants (subject to the terms of the protective order) when it receives access to applicants' tapes.

(iv) Applicants may also propose the use of a voting trust at this stage, or at a later stage, if that becomes necessary. In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must explain how the trust would insulate them from an unlawful control violation and why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest. Following a brief period of public comment and replies by applicants, the Board will issue a decision determining whether applicants may establish and use the trust.

(c) *Application.* (1) The fees for filing applications, petitions, or notices