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SERVICE DATE – FEBRUARY 17, 2016

SURFACE TRANSPORTATION BOARD

FINAL RULE

Docket No. EP 714

INFORMATION REQUIRED IN NOTICES AND PETITIONS CONTAINING  
INTERCHANGE COMMITMENTS

Digest:<sup>1</sup> The Surface Transportation Board adopts a final rule to clarify that the introductory language in 49 C.F.R. § 1180.4(g)(4)(i) should correspond with the amended language in §§ 1121.3(d)(1), 1150.33(h)(1), and 1150.43(h)(1).

Decided: February 8, 2016

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing a final rule to insert language in 49 C.F.R. § 1180.4(g)(4)(i) that was inadvertently omitted when the amended rule was promulgated on September 5, 2013 (2013 Final Rules). This decision is effective on its date of service.

DATES: This final rule will become effective on February 17, 2016.

FOR FURTHER INFORMATION, CONTACT: Amy Ziehm at 202-245-0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: On September 5, 2013, the Board, with Vice Chairman Begeman dissenting, adopted final rules that established additional disclosure requirements for notices and petitions for exemption where the underlying lease or line sale includes an interchange commitment. Information Required in Notices and Petitions Containing Interchange Commitments (2013 Final Rules), EP 714 (STB served Sept. 5, 2013). Interchange commitments are “contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad.” Review of Rail Access & Competition Issues—Renewed

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Pet. of the W. Coal Traffic League, EP 575, slip op. at 1 (STB served Oct. 30, 2007). The purpose of this rulemaking was to improve the ability of the Board and affected parties to determine at the outset whether a transaction that includes an interchange commitment is appropriate for the exemption process or raises competitive issues that require a more detailed examination.

The 2013 Final Rules' addition of a requirement to certify the existence of any interchange commitments was intended to apply to all notices and petitions for exemption involving transactions where the underlying lease or line sale could include an interchange commitment. 2013 Final Rules 1, 3. The Board included such language in the amended versions of §§ 1121.3(d)(1), 1150.33(h)(1), and 1150.43(h)(1). Due to an oversight, however, the introductory language of 49 C.F.R. § 1180.4(g)(4)(i) was not modified. This inadvertent error will now be addressed by amending 49 C.F.R. § 1180.4(g)(4)(i). Specifically, 49 C.F.R. § 1180.4(g)(4)(i) will now state:

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 or agreement exists, the following additional information must be provided (the information in paragraphs (g)(4)(i)(B), (D), (G) of this subsection may be filed with the Board under 49 C.F.R. § 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 C.F.R. § 1104.14(b)): . . .

As this action relates solely to the rules of agency practice and procedure, it will be issued as a final rule without requesting public comment.<sup>2</sup> 5 U.S.C. § 553(b)(3)(A).

In the 2013 Final Rules, the Board certified that the rules as amended would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601-612. 2013 Final Rules 8. The Board further analyzed the burdens associated with the additional filing requirements pursuant to Paperwork Reduction Act (PRA), 44 U.S.C. § 3501-3549 and stated its belief that the additional disclosure requirements would not discourage parties from entering into efficiency-enhancing transactions. See 2013 Final Rules 6, 8. Those analyses and conclusions apply equally to this decision, and therefore, we adopt those analyses and conclusions and certify under 5 U.S.C. § 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

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<sup>2</sup> Board procedures allow for the issue of final rules without notice or comment when those rules are interpretive, general statements of policy, or relate to organization, procedure, or practice before the Board. See 49 C.F.R. § 1110.3(a).

It is ordered:

1. The Board adopts the final rule as set forth in this decision. Notice of the adopted rules will be published in the Federal Register.

2. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

**Appendix**

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1180 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 for part 1180 continues to read as follows:

Authority: 5 U.S.C. §§ 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323-11325.

2. Amend § 1180.4 by revising paragraphs (g)(4) introductory text, (g)(4)(i) to read as follows:

**§ 1180.4 Procedures.**

(g) \* \* \*

(4) Transactions imposing interchange commitments.

(i) 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 or agreement exists, the following additional information must be provided (the information in paragraphs (g)(4)(i)(B), (D), (G) of this subsection may be filed with the Board under 49 C.F.R. § 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 C.F.R. § 1104.14(b)):

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