

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 559

REVISIONS TO REGULATIONS GOVERNING FINANCE APPLICATIONS
INVOLVING MOTOR PASSENGER CARRIERS

Decided: June 20, 1997

The Board proposes to establish revised procedures governing finance applications involving motor passenger carriers, filed under 49 U.S.C. 14303. The proposed regulations adopt, with modifications, the existing procedures promulgated by the Interstate Commerce Commission (ICC) at 49 CFR 1182. In addition, the regulations in parts 1187 (concerning temporary authority) and 1188 (concerning computation of the jurisdictional threshold) are proposed to be removed and replaced by new provisions incorporated in new part 1182. Accordingly, the rulemaking that was proposed by the ICC in Ex Parte No. MC-216, *Jurisdiction over Motor Finance Transactions*, is no longer necessary and is being discontinued concurrently with this action.

The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), which took effect on January 1, 1996, abolished the ICC and transferred certain of its motor carrier regulatory functions to the Secretary of Transportation (Secretary) and to the Surface Transportation Board (Board). *See* ICCTA section 101 (abolition of the ICC). *See also* new 49 U.S.C. 13101-14914 (regulatory provisions applicable to motor carriers, administered in part by the Secretary and in part by the Board).

Finance Jurisdiction. The ICC had jurisdiction, under former 49 U.S.C. 11343, over finance transactions—i.e., consolidations, mergers, purchases, leases, and contracts to operate properties or franchises—involving rail, motor, and water carriers. Under the ICCTA, the Board's finance transaction jurisdiction pertains only to rail carriers (49 U.S.C. 11323) and motor carriers of passengers (49 U.S.C. 14303). The Board does not have jurisdiction over finance transactions involving motor carriers of property or water carriers.

Our jurisdiction over motor passenger carrier finance transactions is similar to that of the ICC. Since enactment of ICCTA, accordingly, we have continued to apply in motor passenger carrier cases procedural rules that were promulgated by the ICC. In most instances, the former rules have provided adequate and appropriate guidance to applicants and other interested parties, and we have had no difficulties in applying those rules under the new statute. The rules, however, are obsolete in some areas. We have applied the rules at 49 CFR 1182, on a case-by-case basis, so as to minimize conflict and confusion and to process the applications expeditiously and fairly.

We have reviewed the regulations and have determined that certain modifications are required to conform them to the new statute and to assure expeditious processing of motor passenger carrier finance proceedings. Relatively few substantive modifications are required to the former regulations, and we will detail these below.

Proposed Modifications to the Regulations. We will continue the ICC's practice of processing these applications without prescribing a specific application form. Because of the nature and frequency of these cases, we do not believe that developing and publishing a standard form is particularly helpful, either to us or to the parties. Moreover, it has been the experience, especially under the ICC's jurisdiction but also under ours since the enactment of ICCTA, that few of these applications are protested.

Accordingly, the ICC had developed streamlined procedures to process these finance applications in the shortest possible time. While the Board does not have an employee board to consider finance applications, we will also try to decide these cases quickly. Consistent with the statutory requirement, we will publish notice of motor passenger carrier finance applications in the

Federal Register within 30 days after they are filed. 49 U.S.C. 14303(c). We shall also continue the practice of issuing the published notice in the form of a tentative grant of authority. This tentative grant will become final automatically, and without issuance of any further decision by the Board, if no comments opposing the application are filed within the statutory comment period of 45 days after publication of the notice. 49 U.S.C. 14303(d).^{1/} We shall provide for replies to comments to be filed within 60 days after publication of the notice.

Because this practice has worked well in the past, we will continue its use. Approval of the applications is expedited by dispensing in unopposed cases with the need to issue two decisions: one accepting the application for publication; and a second granting the approval sought. If the application is unopposed, as most are, the procedure is quickly completed. Only on those occasions when there is opposition to an application must a formal schedule be established to receive evidence from the parties upon which to base a final decision.

Under our proposed rules, the list of information needed in the application is nearly identical to that required by the ICC, with modifications only as appropriate to reflect the changes that have been made to the underlying statute.^{2/} We will identify and discuss the more significant changes below.

Jurisdictional Threshold. Prior to the ICCTA, under former 49 U.S.C. 11343, as here relevant, certain motor carrier transactions, including those related to mergers, purchases, and acquisitions of control, required prior ICC approval. Under former 49 U.S.C. 11343(d)(1), however, ICC approval was not needed if the only parties were motor carriers and their "aggregate gross operating revenues" did not exceed \$2 million during a consecutive 12-month period ending not more than 6 months before the date of the agreement underlying the transaction.^{3/}

New 49 U.S.C. 14303(g) is the only remaining statutory provision analogous to the non-rail portions of former 49 U.S.C. 11343. Under section 14303, motor carriers of passengers must obtain Board approval for the same transactions that had been subject to ICC jurisdiction under former section 11343, unless the parties' aggregate gross operating revenues do not exceed the \$2 million jurisdictional threshold (now codified at 49 U.S.C. 14303(g)).^{4/}

In a notice of proposed rulemaking (NPR) in Ex Parte No. MC-216, served December 15, 1993, and published December 16, 1993 (58 FR 65695), the ICC proposed to redefine aggregate gross operating revenues for purposes of calculating the \$2 million threshold to include revenues of all motor carrier parties and all of their motor carrier affiliates from all transportation sources, whether they were from interstate, intrastate, regulated, or unregulated operations. The ICC's NPR

¹ A tentative grant of authority does not entitle the applicant to consummate the transaction before the end of the comment period.

² Most of the changes we have made to the list of required information reflect the fact that motor property carriers and water carriers are not subject to our jurisdiction over finance transactions.

³ Those transactions not qualifying under section 11343(d)(1) were, however, subject to prior approval under former 49 U.S.C. 10926 if they involved the sale, lease, or merger requiring the transfer of a permit or certificate. *See* the small carrier transfer rules of 49 CFR 1181. Control transactions involving only motor carriers whose aggregate gross operating revenues did not exceed the \$2 million threshold were not subject to ICC jurisdiction.

⁴ Other regulatory approval, as was needed under former 49 U.S.C. 10926, is no longer required when the parties' aggregate gross operating revenues do not exceed the \$2 million threshold.

included both a revised 49 CFR part 1188, detailing the new definition, and conforming amendments to 49 CFR parts 1181, 1182, and 1186.^{5/}

In response to the NPR, comments were filed by the American Bus Association (ABA), the Illinois Commerce Commission (Illinois), and Herbert M. Canter. The ABA had no objection to the proposed definition of "aggregate gross operating revenues." Mr. Canter asked for clarification as to whether the definition included revenues derived entirely outside the United States (e.g., within Canada).

Illinois argued that the NPR would expand the scope of former section 11343 so that more finance transactions could qualify for preemption. Former section 11341 exempted a transaction approved under section 11343 from the operation of all other laws to the extent necessary to facilitate consummation of a transaction.^{6/} Illinois argued that the proposed rule would "alter the equilibrium of the current playing field to the disadvantage of the States. . . ." Illinois referred to *North Alabama Express, Inc. v. ICC*, 971 F.2d (11th Cir. 1992), *modified on rehearing to delete one sentence of dictum*, 996 F.2d 1072 (11th Cir. 1993), *reaffirmed after remand*, 62 F.3d 361 (11th Cir. 1995) (*North Alabama*) and related cases.

After considering the comments and the statute, we again propose to adopt the definition in Ex Parte No. MC-216 of aggregate gross operating revenues with one modification: the inclusion of foreign revenues in the definition. The new statute, 49 U.S.C. 14303(g), speaks plainly of aggregate gross operating revenues without qualification. We also believe that the original Congressional intent (as well as the Congressional intent in enacting the ICCTA) was not to measure the strict extent of revenues generated subject to Federal regulatory jurisdiction, but rather to gauge the economic power of the parties participating in a finance transaction, as an indicator of the degree to which their combinations affecting interstate commerce should be subjected to regulatory scrutiny. The original purpose of former 49 U.S.C. 11343(d)(1) [originally section 5(10) of the Interstate Commerce Act] was to relieve small motor carriers from burdensome application filing requirements.

Thus, we are proposing to interpret the statute literally, without discounting any operating revenues that are generated beyond Federal regulatory jurisdiction. Accordingly, in response to the comment of Mr. Canter, we are proposing to include revenues generated solely in a foreign country in the definition of gross operating revenues for calculating the aggregate \$2 million threshold. We see no reason to make a distinction for foreign operating revenues, for intrastate operating revenues, or for exempt operating revenues earned within the U.S.

This approach is not inconsistent with the principles expressed in *North Alabama*. There, the court essentially held that the ICC could not exempt transfers of intrastate authority where the concomitant transfer of interstate authority effects no real change in the interstate authority of buyer or seller. The jurisdictional threshold computation issue has no direct bearing on that analysis. While the rule we are proposing will make it easier for a transaction to qualify for preemption under 49 U.S.C. 14303(f), it will also make it harder for a transaction to avoid Board jurisdiction by not attaining the jurisdictional threshold. In any event, we believe that our rule correctly interprets the statute.

Accordingly, we propose to remove part 1188 from the existing regulations and incorporate the more concise standard for assessing the jurisdictional threshold within new section

⁵ Soon after the ICC issued its NPR in Ex Parte No. MC-216, it applied the NPR's proposed jurisdictional computation methodology in *Fleet Delivery Service Northwest—Purchase (Portion) Exemption—Excel Transport, Inc.*, No. MC-F-20274 (ICC served Feb. 14, 1994).

⁶ As relevant here, this preemption provision is now found at 49 U.S.C. 14303(f).

1182.2(a)(5).⁷ We are also, in a separate decision, discontinuing Ex Parte No. MC-216. The comments previously filed in that proceeding will be made part of the record here and need not be refiled.

Mexican Carriers. We propose to ask that applicants certify whether they are either domiciled in Mexico or owned or controlled by persons of that country. The provisions of the so-called "Mexican moratorium," under 49 U.S.C. 13902(c), are subject to change. At present, Mexican charter and tour bus operations in international transportation service are permitted, but other restrictions remain on Mexican passenger carriers. Accordingly, we propose to require that applicants identify whether they are Mexican nationals; if so, we shall be able to consider current restrictions on Mexican passenger carriers under the public-interest standard of 49 U.S.C. 14303(b).

Filing of the Application. We believe that other regulatory bodies that may be affected by our approval of a transaction should be notified directly of the filing of the application. Accordingly, we shall require that a copy of the application be provided to each State regulatory body that has jurisdiction over operations that any of the parties conduct in intrastate commerce. In addition, because Federal jurisdiction over issuance of operating authorities has been divided, under the ICCTA, we also propose to require that, if the transaction involves or contemplates the transfer of Federal operating authorities or registrations, a copy of the application be provided to the Office of Motor Carriers of the Federal Highway Administration of the U.S. Department of Transportation. We propose no changes in fees in the context of this rulemaking, but we are proposing to amend the fee table to reflect the titles identifying these proceedings more accurately.

Comments. Under the former statute, applications were subject to protest; under the new law (49 U.S.C. 14303(d)), interested parties may "comment" on a proposed transaction. As noted, comments and replies are due 45 days and 60 days, respectively, after publication of the notice of the application. See proposed sections 1182.5(a) and 1182.6(b). In general, as discussed above, we expect to continue (as we have on an interim basis) the ICC's practice of issuing tentative grants of authority concurrently with publication of notice of the application, and providing for these tentative grants of authority to become effective automatically if the application is unopposed. If comments are submitted that oppose the transaction, additional procedures are required to provide for further processing of the application.

Because, in general, we expect to receive few comments in these cases, we propose to handle further processing on a case-by-case basis. When opposing comments are filed, we will review them and any reply applicants submit to determine the best way to process the application as expeditiously as possible within the time allowed by statute.⁸ Where necessary, we will establish a procedural schedule allowing both applicants and opposing commenters an opportunity to present evidence supporting their positions. Because the original, tentative, grant of authority will automatically be vacated upon the filing of a comment opposing the application, the procedural schedule would, most likely, provide: (a) for applicants to file additional evidence supporting the application; (b) for the opposing commenter to file evidence in opposition to the application; and (c) for applicants to file a reply to the evidence in opposition. We are not proposing to establish, by regulation, specific time frames for submitting such evidence, but parties may expect the procedural schedules that we establish on a case-by-case basis to be short, encompassing at most a few weeks' time after service of

⁷ In *Motor Carrier Transportation; Redesignation of Regulations from the Surface Transportation Board Pursuant to the ICC Termination Act of 1995*, published in the *Federal Register* on October 21, 1996, 49 CFR part 1181 was transferred to the Federal Highway Administration and redesignated as subpart D of 49 CFR part 365. In *Removal of Obsolete Regulations Concerning Exemption of Motor Carrier of Property Finance Transactions*, STB Ex Parte No. 553, ___ STB ___ (1997), we removed the obsolete regulations at 49 CFR part 1186.

⁸ Under section 14303(e), evidentiary proceedings must close within 240 days after notice of the application is published. The Board must issue a final decision within 180 days of the close of the evidentiary proceedings. The Board can extend a time period, but the total of all extensions cannot exceed 90 days.

the decision setting the procedural schedule. Accordingly, parties should be prepared to submit their evidence promptly.

There may be instances in which the issues upon which opposition is based are relatively straightforward and may be resolved without gathering further evidence. Accordingly, we propose to allow applicants an opportunity to request expedited processing of the case, based on the comments and the applicants' reply. (Commenters can reply to a request for expedited consideration.) We will consider such requests, and we expect either (1) to set a procedural schedule notwithstanding the request for expedition or (2) to make a decision on the record as it stands, including the application, the comment, and the applicants' reply. We note that even if no request for expedited action is made, we may still decide the case on the existing record without issuing a procedural schedule.

Interim Approval. The current temporary authority regulations are in 49 CFR part 1187. The new statute at 49 U.S.C. 14202(i) also carries forward the concept of "temporary authority," now designated as "interim approval." Pending a final decision on the application, the Board may approve, for a period of not more than 180 days (i.e., on an interim or temporary basis), operation of the properties sought to be acquired, when it appears that failure to do so may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

We propose simply to permit a request for interim approval to be submitted concurrently with or after filing of a finance application. If the request for interim approval is filed with the application, the decision granting or denying interim approval will be made in conjunction with the notice of the application and the tentative decision approving the transaction. (If the application is rejected or denied for any reason, the request for interim approval will also be denied.) If the request for interim approval is filed after the application, a separate decision will be served.

Accordingly, we propose to remove part 1187 from the existing regulations and incorporate provisions for interim approval within new part 1182. By so doing, we are also eliminating the ICC's application form OP-F-46,⁹ previously used for finance temporary authorities, and it will no longer be used in these proceedings. We do, however, propose to continue charging a separate filing fee for interim authority requests, whether they are included in the application or filed separately.

Exemption Procedures. The ICCTA also amended the statute to provide new motor carrier exemption authority to the Board.¹⁰ 49 U.S.C. 13541. In the ordinary case, an exemption is unnecessary, for the application procedures that we are proposing are simple and expeditious. We have processed the few exemption requests that have been filed already on a case-by-case basis with no difficulty.

We will continue to process exemption cases as we do now: notice of the exemption request will be published, ordinarily within the same 30-day time frame required by statute for ordinary applications; and, after the comment period has expired, a separate decision will be issued granting or denying the exemption.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

REGULATORY FLEXIBILITY ANALYSIS

⁹ This application form is obsolete and calls for information that is both irrelevant to the issues we need to consider and burdensome for applicants to complete.

¹⁰ Under the previous statute, former 49 U.S.C. 11343(e), the ICC could only grant exemptions for finance transactions involving motor carriers of property.

The Board preliminarily concludes that the rules proposed, if adopted, would not have a significant economic impact on any substantial number of small entities. The procedures established are simple and expeditious, impose no additional reporting requirements on small entities, and maintain the rapid processing time typical of such applications under the former rules promulgated by the ICC. The proposed rules, in unopposed cases, provide the easiest and quickest possible way to process motor passenger finance applications, within the constraints of the statute. The Board seeks comments, however, on whether there would be effects on small entities that should be considered.

It is ordered:

1. Notice of the proposed rulemaking will be published in the *Federal Register* on July 8, 1997. Comments are due on August 7, 1997.
2. This decision is effective on July 8, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX

For the reasons set forth in the preamble, title 49, chapter X, parts 1002, 1182, 1187, and 1188 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1002 — FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. Section 1002.2 is proposed to be amended by revising paragraphs (f)(2) and (f)(5) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(2) An application to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers, under 49 U.S.C. 14303. 1,100.

* * * * *

(5) A request for interim approval in connection with a finance application involving a motor carrier of passengers, under 49 U.S.C. 14303(i). 250.

* * * * *

3. Part 1182 is proposed to be revised to read as follows:

PART 1182 - PURCHASE, MERGER, AND CONTROL OF MOTOR PASSENGER CARRIERS

Sec.

- 1182.1 Applications covered by these rules.
- 1182.2 Content of applications.
- 1182.3 Filing the application.
- 1182.4 Board review of the application.
- 1182.5 Comments.
- 1182.6 Processing an opposed application.
- 1182.7 Interim approval.
- 1182.8 Miscellaneous requirements.

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; and 49 U.S.C. 13501, 13902(c), and 14303.

§ 1182.1 Applications covered by these rules.

These rules govern applications for authority under 49 U.S.C. 14303 to consolidate, merge, purchase, lease, or contract to operate the properties or franchises of motor carriers of passengers or to acquire control of motor carriers of passengers. There is no application form for these proceedings. Applicants shall file a pleading containing the information described in 49 CFR 1182.2. *See* 49 CFR 1002.1(f)(2) and (5) for filing fees.

§ 1182.2 Content of applications.

(a) The application must contain the following information:

(1) Full name, address, and authorized signature of each of the parties to the transaction;

(2) Copies or descriptions of the pertinent operating authorities of all of the parties; (NOTE: If an applicant is domiciled in Mexico or owned or controlled by persons of that country, copies of the actual operating authorities must be submitted.)

(3) A description of the proposed transaction;

(4) Identification of any motor passenger carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom;

(5) A jurisdictional statement, under 49 U.S.C. 14303(g), that the aggregate gross operating revenues, including revenues of all motor carrier parties and all of their motor carrier affiliates from all transportation sources (whether interstate, intrastate, foreign, regulated, or unregulated) exceeded \$2 million; (NOTE: The motor passenger carrier parties and their motor passenger carrier affiliates may select a consecutive 12-month period ending not more than 6 months before the date of the parties' agreement covering the transaction. They must, however, select the same 12-month period.)

(6) A statement indicating whether the transaction will or will not significantly affect the quality of the human environment and the conservation of energy resources;

(7) Information to demonstrate that the proposed transaction is consistent with the public interest, including particularly: the effect of the proposed transaction on the adequacy of transportation to the public; the total fixed charges (e.g., interest) that result from the proposed transaction; and the interest of carrier employees affected by the proposed transaction. *See* 49 U.S.C. 14303(b);

(8) Certification of the U.S. Department of Transportation safety fitness rating of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction;

(9) Certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. 13906(a) and (d) for the service it intends to provide;

(10) A statement indicating whether any party acquiring any operating rights through the transaction is either domiciled in Mexico or owned or controlled by persons of that country; and

(11) If the transaction involves the transfer of operating authority to an individual who will hold the authority in his or her name, that individual must complete the following certification:

I, _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted,

after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that I have been so convicted, but I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 853a.

(b) The application shall contain applicants' entire case in support of the proposed transaction, unless the Board finds, on its own motion or that of a party to the proceeding, that additional evidentiary submissions are required to resolve the issues in a particular case.

(c) Any statements submitted on behalf of an applicant supporting the application shall be verified, as provided in 49 CFR 1182.8(e). Pleadings consisting strictly of legal argument, however, need not be verified.

(d) If an application or supplemental pleading contains false or misleading information, the granted application is void ab initio.

§ 1182.3 Filing the application.

(a) Each application shall be filed with the Board, complying with the requirements set forth at 49 CFR 1182.8.

(1) One copy of the application shall be delivered, by first-class mail, to the appropriate regulatory body in each State in which any of the parties operates in intrastate commerce.

(2) If the application involves the merger or purchase of motor passenger carriers (contemplating transfer of operating authorities or registrations from one or more parties to others), one copy of the application shall be delivered, by first-class mail, to:

Chief, Lic. & Ins. Div., U.S.D.O.T. Office of Motor Carriers-HIA 30, 400
Virginia Ave. SW, Ste. 600, Washington, DC 20004

(b) In their application, the parties shall certify that they have delivered copies of the application as provided in paragraph (a) of this section.

§ 1182.4 Board review of the application.

(a) All applications will be reviewed for completeness. Applicants will be given an opportunity to correct minor errors or omissions. Incomplete applications may be rejected, or, if omissions are corrected, the filing date of the application, for purposes of calculating the procedural schedule and statutory deadlines, will be deemed to be the date on which the complete information is filed with the Board.

(b) If the application is accepted, a summary of the application will be published in the *Federal Register* (within 30 days, as provided by 49 U.S.C. 14303(c)), to give notice to the public, in the form of a tentative grant of authority.

(c) If the published notice does not properly describe the transaction for which approval is sought, applicants shall inform the Board within 10 days after the publication date.

(d) A copy of the application will be available for inspection at the Board's offices in Washington, DC. Interested persons may obtain a copy of the application from the applicants' representative, as specified in the published notice.

§ 1182.5 Comments.

(a) Comments concerning an application must be received by the Board within 45 days after notice of the application is published, as provided by 49 U.S.C. 14303(d). Failure to file a timely comment waives further participation in the proceeding. If no comments are filed opposing the application, the published tentative grant of authority will automatically become effective at the close of the comment period. A tentative grant of authority does not entitle the applicant to consummate the transaction before the end of the comment period.

(b) A comment shall be verified, as provided in 49 CFR 1182.8(e), and shall contain all information upon which the commenter intends to rely, including the grounds for any opposition to the transaction and the commenter's interest in the proceeding.

(c) The docket number of the application must be conspicuously placed at the top of the first page of the comment.

(d) A copy of the comment shall be delivered concurrently to applicants' representative(s).

§ 1182.6 Processing an opposed application.

(a) If timely comments are submitted in opposition to an application, the tentative grant of authority is void.

(b) Applicants may file a reply to opposing comments, within 60 days after the date the application was published.

(1) The reply may include a request for an expedited decision on the issues raised by the comments. Otherwise, the reply may not contain any new evidence, but shall only rebut or further explain matters previously raised.

(2) The reply shall be verified, as provided in 49 CFR 1182.8(e), unless it consists strictly of legal argument.

(3) Applicants' reply must be served on each commenter in such manner that it is received no later than the date it is due to be filed with the Board.

(4) Opposing commenters may reply to a request for an expedited decision, within 70 days after notice of the application was published.

(c) The Board may

(1) Dispense with further proceedings and make a final determination based on the record as developed; or

(2) Issue a procedural schedule specifying the dates by which: applicants may submit additional evidence in support of the application, in response to the comment(s) in opposition; and the opposing commentator(s) may reply.

(d) Further processing of an opposed application will be handled on a case-by-case basis, as appropriate to the particular issues raised in the comments filed in opposition to the application. Evidentiary proceedings must be concluded within 240 days after publication of the notice of the application.

§ 1182.7 Interim approval.

(a) A party may request interim approval of the operation of the properties sought to be acquired through the proposed transaction, for a period of not more than 180 days pending determination of the application. This request may be included in the application or may be submitted separately after the application is filed (e.g., once a comment opposing the application has been filed). An additional filing fee is required, whether the request for interim approval is included

in the application or is submitted separately, at a later time. *See* 49 CFR 1002.2(f)(5) for the additional filing fee.

(b) A request for interim approval of the operation of the properties sought to be acquired in the application must show that failure to grant interim approval may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public.

(c) If a request for interim approval is submitted after the application is filed, it must be served on each person who files or has filed a comment in response to the published notice of the application. Service must be simultaneous upon those commenters who are known when the request for interim approval is submitted; otherwise, service must be within 5 days after the comment is received by applicants or their representative.

(d) Because the basis for requesting interim approval is to prevent destruction of or injury to motor passenger carrier properties sought to be acquired under 49 U.S.C. 14303, the processing of such requests is intended to promote expeditious decisions regarding interim approval. The Board has no obligation to give public notice of requests for interim approval, and such requests are decided without hearing or other formal proceeding.

(1) If a request for interim approval is included in the application, the Board's decision with regard to interim approval will be served in conjunction with the notice accepting the application.

(2) If an application is rejected, the request for interim approval will be denied.

(3) If an application is denied, after comments in opposition are submitted, any interim approval will terminate 30 days after service of the decision denying the application.

(e) A petition to reconsider a grant of interim approval may be filed only by a person who has filed a comment in opposition to the application.

(1) A petition to reconsider a grant of interim approval must be in writing and shall state the specific grounds upon which the commenter relies in opposing interim approval. The petition shall certify that a copy has been served on applicants' representative.

(2) The original and 10 copies of the petition to reconsider a grant of interim approval shall be filed with the Board, and one copy of the petition shall be served on applicants' representative(s).

(f) The Board may act on a petition to reconsider a grant of interim approval either separately or in connection with the final decision on the application.

§ 1182.8 Miscellaneous requirements.

(a) If applicants wish to withdraw an application, they shall jointly request dismissal in writing.

(b) An original and 10 copies of all applications, pleadings, and other material filed under this part must be filed with the Board.

(c) All pleadings (including motions and replies) submitted under this part shall be served on all other parties, concurrently and by the same (or more expeditious) means with which they are filed with the Board.

(d) Each pleading shall contain a certificate of service stating that the pleading has been served in accordance with paragraph (c) of this section.

(e) All applications and pleadings containing statements of fact (i.e., except motions to strike, replies thereto, and other pleadings that consist only of legal argument) must be verified by the person offering the statement, in the following manner:

I, [*Name and Title of Witness*], verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application is true and correct. Further, I certify that I am qualified and authorized to file this application or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

[*Signature and Date*]

(f) If completion of a transaction requires the transfer of operating authorities or registrations from one or more parties to others, the parties shall comply with relevant procedures of State authorities and of the Office of Motor Carriers of the U.S. Department of Transportation, to accomplish such transfers.

4. Part 1187 is proposed to be removed.
5. Part 1188 is proposed to be removed.