# STB EX PARTE NO. 529

# CLASS EXEMPTION FOR ACQUISITION OR OPERATION OF RAIL LINES BY CLASS III RAIL CARRIERS UNDER 49 U.S.C. 10902

*Decided June 14, 1996*

The Surface Transportation Board adopts a class exemption for the acquisition or operation of rail lines by Class III railroads.

## BACKGROUND

BY THE BOARD:

In the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA),[1] Congress established a new provision, 49 U.S.C. 10902, that applies to the acquisition or operation of additional rail lines by Class II or Class III railroads. As enacted, subsection 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate authorizing the transaction "unless the Board finds that such activities are inconsistent with the public convenience and necessity." The new provision requires Class II rail carriers to provide adversely affected railroad employees a maximum of 1 year of severance pay, equal to the employee's earnings during the 12 months preceding the application filing date. We may not impose any conditions for the protection of employees on a Class III rail carrier. *See* 49 U.S.C. 10902(d). We may approve the requested acquisition as filed or may include any conditions (other than labor protection conditions) that we find necessary in the public interest. *See* 49 U.S.C. 10902(c).

[1] The ICCTA, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to railroad acquisitions or operations that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

Pursuant to a request by the Regional Railroads of America (RRA) and The American Short Line Railroad Association (ASLRA), we proposed a new class exemption to apply to transactions in which Class III rail carriers acquire or operate additional rail properties. By notice of proposed rulemaking served on March 22, 1996, and published at 61 Fed.Reg. 11,802 -04 (1996), we requested comments on the proposed class exemption. We explained that the proposed procedures would be similar to those currently in place for noncarrier transactions under 49 U.S.C. 10901. However, because the new statute precludes us from imposing labor protective conditions on Class III carriers receiving a certificate under section 10902, the proposal would not provide labor protection for adversely affected rail employees.

In our notice of proposed rulemaking, we noted that the criteria for approving a transaction under section 10902 are substantially the same as those found in section 10901, which requires Board approval for the construction of rail lines and noncarrier acquisitions and operations. Noncarrier transactions under section 10901 currently are subject to a class exemption at 49 CFR 1150.31 through 1150.35.[2] *See Class Exemption--Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), *aff'd, Illinois Commerce Commission v. ICC*, 817 F.2d 145 (D.C. Cir. 1987), revised at 4 I.C.C.2d 309 (1988), 4 I.C.C.2d 822 (1988).

In requesting that we institute this proceeding, RRA and ASLRA contended that a class exemption, similar to the class exemption for section 10901 transactions, should apply to transactions by a Class III rail carrier under section 10902. They argued that such an exemption would not alter the competitive balance between rail carriers and shippers and thus would not result in an abuse of market power. In publishing the notice, however, we expressed concern that petitioners' proposed rules, unlike those adopted by the Interstate Commerce Commission (ICC) for the class exemption for transactions under section 10901, did not distinguish between small and large transactions. We tentatively concluded that Class III railroads that wished to acquire relatively large sections of rail line--acquisitions that would, coupled with the revenues of the purchaser, generate revenues equal to that of a Class I or II railroad -- should provide additional information in their filings. We also proposed that those exemptions should not become effective until 21 days after they were filed, rather than in 7 days as is the case under the rules for

[2] Those rules have been carried forward by section 204 of the ICCTA as rules of the Board.

the acquisition of smaller lines. We noted that these requirements would be similar to those currently imposed by the rules for larger transactions covered by the class exemption from section 10901 at 49 CFR 1150.35.

## PUBLIC COMMENTS

Comments on our proposal were submitted by RRA and ASLRA;[3] Rail Management and Consulting Corp (RMCC);[4] RailTex;[5] the United Transportation Union (UTU); and Joseph C. Szabo, the Illinois legislative director for United Transportation Union (IL-UTU).

RRA and ASLRA are non-profit trade associations representing the legislative and regulatory interests of more than 400 short line railroads. They assert that adoption of the proposal would expedite the Board's approval of non-controversial transactions, allow new operators to preserve rail service to local communities and smaller shippers, and permit the Board to allocate its limited resources to more pressing areas.

Petitioners express two objections to the exemption as published by the Board. They contend that the proposed distinction, based on whether the purchaser remains a Class III carrier following the acquisition or instead becomes a Class II or I carrier, is neither required nor warranted by the statute. Petitioners argue that this distinction in the proposed rule may competitively disadvantage larger Class III carriers who would be expected to be among the more active line acquirers. ASLRA and RRA allege that rail labor would not be harmed by adoption of petitioners' original proposal, in lieu of the NPR because any subsequent line acquisition bya newly-created Class II would be subject to the 1-year severance pay standard of section 10902. Petitioners have no objection to the exclusion from the class exemption of line purchases resulting in a Class I carrier, but say that they consider such transactions to be highly unlikely.

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[3] The views of RRA and ASLRA were supported in brief comments separately filed by the Association of American Railroads; Allegheny & Eastern Railroad, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Genesee & Wyoming Switching Services, L.P.; Illinois & Midland Railroad, Inc.; Louisiana & Delta Railroad; Portland & Western Railroad, Inc.; Rochester & Southern Railroad, Inc.; and Willamette & Pacific Railroad, Inc.

[4] RMCC is a noncarrier holding company that co-owns 13 Class III short line railroads.

[5] RailTex's comments were submitted on behalf of its 25 subsidiary railroads.

ASLRA and RRA also object to our proposed additional disclosure requirements and longer waiting period for the larger transactions. Petitioners argue that, in enacting section 10902, Congress intended to simplify and encourage the sale of rail lines to Class III carriers by eliminating mandated labor protection from small business transactions. Because, in their view, section 10902 bars us from imposing labor protective conditions regardless of the size of the Class III carrier's acquisition, petitioners aver that the additional requirements are misguided and inappropriate.

RMCC states that there is no statutory authority for the Board to impose labor-related protections on Class III rail acquisitions which may make the carrier a Class II railroad after the transaction. RMCC contends that the proposed notice requirements for larger transactions are contrary to the intent of Congress that all purchases of rail property by Class III carriers should be subjected to minimal Board scrutiny and no labor protection. The additional requirements would purportedly disadvantage larger Class III carriers with revenues close to the Class II threshold.[6] Like petitioners, RMCC does not object to excluding from the exemption's scope those acquisitions that would result in a Class I carrier.

RailTex, describing itself as a "likely candidate to acquire additional rail lines," supports the proposed class exemption. RailTex states that transactions covered by the exemption generally maintain the status quo and do not affect competition. The exemption would also expedite a Class III carrier's acquisitions and timing for closing. RailTex endorses the proposed $950 filing fee for a notice of exemption.

UTU is concerned about the timing and costs of filing involved in the proposed class exemption rules. UTU submits that an exemption under section 10902, no matter the size of the line, should not become effective until 60 days after the exemption notice is filed.[7] UTU contends that a 60-day period would be in greater conformity with the national rail transportation policy set forth in 49 U.S.C. 10101, and that it would substantively protect the employees and their communities, and significantly alleviate the distress

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[6] Under the Board's rules, the threshold between a Class III and a Class II carrier is $20 million in annual carrier operating revenues after applying the railroad revenue deflator formula based on the Railroad Freight Price Index developed by the Bureau of Labor Statistics. *See* 49 CFR 1201. The formula is: Current Year's Revenues x (1991 Average Index/Current Year's Average Index). The current threshold based on 1995 data is $20,478,289.

[7] In supplemental comments filed May 9, 1996, UTU asked that the notice be required to be submitted to each affected employee and each employee representative.

associated with job loss. It believes that this longer notice period would provide stronger protection to workers and their families and communities by giving terminated workers the opportunity to seek other jobs or retraining. UTU argues, moreover, that this period would be in line with the Worker Adjustment and Retraining Notification Act. *See, e.g.*, 20 CFR 639.1.

UTU contends that petitioners' suggested $950 filing fee is inadequate because it is not even equal to the present cost for filing a complaint before the Board, which is $1,500. The union argues that a substantially higher filing fee is warranted by the expedited nature of an exemption petition. For such a complex administrative function, UTU suggests a $5,000 filing fee to ensure proper compensation.

UTU also submits that the 7-day period for filing a stay would be insufficient. It indicates that in prior class exemption proceedings UTU has not received a copy of the notice of exemption until this 7-day period has nearly elapsed. The union therefore could not seek a stay, which UTU contends is unfair and harmful to employees. UTU seeks a 14-day period from the date of filing the notice of exemption in order to petition the Board for a stay.

IL-UTU opposes the proposed exemption. It argues that the Board's comparison to noncarrier acquisitions under section 10901 lacks merit. The appropriate comparison should be to carrier-to-carrier transactions governed by section 11323 of the ICCTA. According to IL-UTU, any exemption under section 10902 should be patterned after the class exemption for inter-carrier transactions. Therefore, the exemption should be restricted to transactions that do not involve connecting properties, a Class I railroad, or a series of anticipated transactions that would connect the lines. *See* 49 CFR 1180.2(d)(2). With regard to labor protection, IL-UTU argues that the proposed exemption misconstrues the provisions of section 10902. IL-UTU argues that the statute, by precluding the imposition of a labor protection "arrangement" on a Class III carrier, does not expressly preclude the imposition of labor protection "conditions" on a Class III carrier. According to IL-UTU, an exemption patterned after the noncarrier class exemption would be controversial and divisive. IL-UTU requests additional time for the Board to reassess the merits of the exemption and for the filing of reply comments.

## DISCUSSION AND CONCLUSIONS

After considering the comments, we will adopt the class exemption in the form set out in our notice of proposed rulemaking. IL-UTU requests that we delay adopting the proposed rules and seek additional comments, arguing that the ICC adopted prior class exemptions only after a considerable period of experience gained by handling individual exemption requests. But IL-UTU has failed to show why the opportunity we have provided for the submission of comments in this proceeding is inadequate for the submission of views. Nor has IL-UTU explained why the Board needs to acquire additional experience through the consideration of individual petitions for exemption from section 10902 before adopting a class exemption While section 10902 is relatively new, a number of petitions seeking individual exemption from the requirements of that statute already have been granted.[8] The Board also has the benefit of the ICC's considerable experience in considering individual petitions for exemption and in adopting class exemptions from the provisions of section 10901 and section 11343 of the Interstate Commerce Act, involving the acquisition of rail lines. Those exemptions, which have worked well, have been in effect for a number of years.

Section 10902 is entirely consistent with our decision to facilitate and expedite acquisitions by Class III carriers. The new statute provides, in subsection 10902(c), that the Board:

> shall issue a certificate authorizing activities for which such authority is requested * * * unless the Board finds that such activities are inconsistent with the public convenience and necessity.

Congress thereby deems these transactions to be consistent with the public convenience and necessity unless shown to be otherwise.

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[8] *See, Livonia, Avon & Lakeville Railroad Corporation--Acquisition and Operation Exemption--Line of Consolidated Rail Corporation*, STB Finance Docket No. 32754 (STB served March 11, 1996); *Economic Development Rail II Corporation--Acquisition Exemption--Lines of Consolidated Rail Corporation*, STB Finance Docket No. 32799 (STB served April 15, 1996); and *Angelina & Neches River Railroad Company--Purchase Exemption--Texas South-Eastern Railroad Company*, STB Finance Docket No. 32888 (STB served May 29, 1996).

Our decision to go forward here also is in accord with the legislative history. In explaining the House provision introducing section 10902, the provision adopted by Congress, the Conference Report on the ICCTA states:[9]

> * * * [T]his new provision * * * establishes a clear statutory division between transactions involving large Class I railroads on one hand and smaller railroads on the other. This should promote clearer and more expeditious handling of the affected transactions and avoid imposing additional and sometimes potentially fatal costs on start-up operations of smaller railroads who often can keep rail lines in service, even if not viable as part of a larger carrier's system.

Furthermore, the criteria for approving a transaction under section 10902 are substantially the same as those found in section 10901. The language of the approval criteria in both statutes is identical.[10] IL-UTU ignores the obvious relationship between the two provisions in arguing that we should pattern our class exemption on section 11323 (formerly section 11343), where the competitive effect of a transaction is more often the primary consideration. Labor protection is mandated in any transaction approved or exempted under sections 11323-25 involving more than just Class III rail carriers. No labor protection may be imposed, however, on a Class III carrier's acquisition under section 10902, regardless of the presence of other classes of rail carriers as part of the transaction. IL-UTU would nevertheless base the proposed class exemption on the class exemption criteria for section 11323 transactions. IL-UTU has failed to justify its position.

Because the class exemption proposed under section 10902 is similar to the current class exemption for noncarrier transactions under section 10901, which has been working well, we see no reason to lengthen the period of time between the date when the notice is filed and the date when the notice becomes effective, as suggested by UTU. Nor do we see any reason to adopt UTU's suggestion for a substantial increase in the filing fee. UTU has failed to show the need for a 60-day period before a notice invoking the exemption could become effective. Nor has UTU justified its proposed filing fee. We establish all filing fees based on the cost incurred by the Board in processing the application. In view of the similarity between the proposed class exemption and the one at 49 CFR part 1150, it is reasonable to establish an

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[9] H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 179-80 (1995).

[10] Moreover, Congress has eliminated labor protection altogether from section 10901 transactions and has not given the Board any discretion regarding the imposition of labor protection for acquisitions under section 10902.

initial fee for the former at the same level as the latter. After we have acquired experience with the new class exemption, we will review the filing fee as we do periodically with all fees.

We also continue to believe that, as in the case of the class exemption under section 10901, there should be a higher notice and disclosure standard for transactions resulting in the creation of a Class II or Class I rail carrier. Any transaction so substantial that it will result in the creation of a new Class I or Class II railroad is important enough to require that the proponents provide additional notice and information to the public, the affected employees, and the Board. Moreover, we do not believe the additional requirements will be burdensome because the ICC applied comparable provisions for many years in the class exemption from section 10901 for noncarrier acquisitions without any apparent undue burden on the affected carriers.

In the absence of an exemption, a Class III carrier's acquisition or operation of additional rail lines would require our approval under 49 U.S.C. 10902. However, section 10502(a), in pertinent part, directs us to exempt a transaction if we find that regulation:

> (1) is not necessary to carry out the transportation policy of section 10101 of this title; and (2) either (A) the transaction or service is of limited scope, or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

In the past, Congress made clear its intent that this broad exemption authority should be used by our predecessor (the ICC) to free transactions and service from the administrative and financial costs associated with continued regulation wherever possible:

> The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the Conference Report accompanying the ICCTA, which reenacted the existing exemption provisions as section 10502. There, Congress specifically stated that the basic criteria for exemption--a crucially important power to expand existing statutory deregulation through

administrative action--remain as in prior law. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-69 (1995).

We find that the proposed class exemption meets the criteria of section 10502(a). A class exemption from the requirements of section 10902 will facilitate the acquisition of rail lines by Class III carriers and ensure the continuation of rail service on lines that may otherwise be abandoned if not for the sale. Detailed scrutiny of such transactions, which often are not controversial, through applications for review and approval under section 10902, is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. The exemption will thus promote the continuation of a sound rail system to meet the needs of the public and will enhance efficiency, coordination and competition among rail carriers. *See* 49 U.S.C. 10101(4), (5) and (9).

The exemption will also minimize the need for Federal regulatory control over the rail transportation system and reduce the barriers to entry into and exit from the industry. By limiting the level of regulatory review of such transactions and by relying upon the more expeditious notice of exemption procedure, the Board's regulation of Class III acquisitions will be facilitated and reduced. 49 U.S.C. 10101(2) and (7).

The acquisition or operation of rail lines by Class III carriers under the exemption will be limited in scope. Major changes in rail operations or competitive relationships between railroads are not likely to occur because, under the exemption, the purchasing carrier's operation will merely supplant the selling carrier's operation. Moreover, purchases by Class III railroads typically do not have the impact of acquisitions by larger Class I or II carriers.

Regulation of Class III acquisitions is not necessary to protect shippers from the abuse of market power under 49 U.S.C. 10502(a)(2)(B). Competition or transportation options for the shipping public typically will not be lessened. Rather, continued rail operations made possible by such acquisitions should improve service for shippers and decrease the cost of its provision.

As noted, although section 10902 is relatively new, we have already used our exemption authority to exempt a number of individual acquisition transactions by Class III carriers. This new class exemption will further benefit the public interest. A class exemption will reduce regulatory burdens, expedite the acquisition of rail lines by imposing specific time frames on the exemption process, and allow us to use our resources in a more efficient manner.

## LABOR PROTECTION

That leaves the issue of labor protection. Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its obligation to protect the interests of adversely affected employees. As discussed above, section 10902 requires a Class II rail carrier to provide adversely affected railroad employees a maximum of 1 year of severance pay--equal to the employee's earnings during the 12 months preceding the application filing date. However, the statute prohibits us from requiring any labor protective arrangement from a Class III rail carrier. *See* 49 U.S.C. 10902(d). We may approve the requested certificate as filed or we may include conditions (*other than labor protection conditions*) that we find necessary in the public interest. *See* 49 U.S.C. 10902(c) (emphasis added). Thus, it is clear that under section 10902, no labor protection may be imposed on a Class III rail carrier's acquisition.

IL-UTU's argument that the statute prohibits labor protection arrangements, but not the imposition of labor protective conditions, contravenes the plain intent of Congress to exclude such protection under section 10902 for rail employees affected by an acquisition by a Class III carrier however the protection may be described. Whether the labor protection is in the form of an arrangement or a condition is of no consequence; the statute is unambiguous that we may not impose any manner of labor protection on a Class III carrier's acquiring or operating rail property under section 10902. Accordingly, the class exemption--which applies only to Class III carriers--does not provide for the imposition of labor protection.

## REGULATORY FLEXIBILITY ACT

In our March 22, 1996 Notice of Proposed Rulemaking, we tentatively certified that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Because the comments have produced no evidence to the contrary, we adopt our tentative conclusion as final.

## ENVIRONMENT

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

*CHAIRMAN MORGAN, commenting:*

The class exemption we are adopting in this decision is yet another action taken by the Board since its establishment on January 1, 1996, to implement the deregulatory direction of the ICC Termination Act of 1995. The Termination Act, in 49 U.S.C. 10101(2), directs the Board "to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required." The Termination Act also grants the Board important exemption authority that is to be used where appropriate under the statute to remove unnecessary regulatory oversight and to ensure the expeditious handling of appropriate business transactions.

The class exemption that we are adopting applies the exemption authority to this end. It removes substantial regulatory burdens from transactions in which Class III rail carriers are acquiring additional lines of railroad, thereby advancing the growth of short line carriers to preserve rail service and rail employment on lines that might otherwise be lost through abandonment.

This new class exemption mirrors the highly successful class exemption for transactions involving the acquisition of rail lines by noncarriers, codified at 49 CFR 1150.31-35. Like the noncarrier acquisition exemption, it contains additional information and notice requirements for larger transactions. These additional requirements, however, amount merely to providing certain general information about service intentions and labor impacts; a short prefiling notice to the involved states, labor organizations and major shippers; and an effective date for the exemption 21 days from the date of filing of the notice of exemption with the Board, rather than the 7 days applicable to smaller transactions under the class exemption.

It may be argued that these minimal information and notification requirements for larger transactions are unnecessary and burdensome; that they produce inflated transaction costs; and that they thereby may impede small business transactions and deprive communities of rail service and rail employment. Such arguments are without merit.

The requirements for larger transactions can hardly be considered burdensome or impediments to small business transactions. First of all, an entity that would result from a transaction subject to the additional notice and information requirement would generate in excess of $20 million per year in operating revenues -- certainly not a "small business" in the railroad industry. Furthermore, identical procedures exist for noncarrier acquisitions, and no one to my knowledge has ever suggested before now that such

procedures have burdened applicants, increased transaction costs, or otherwise discouraged the preservation of rail lines.

It also may be argued that the additional notice and information is unnecessary, because the agency already has the authority to hold up transactions as to which the public has raised concerns. The 7-day notice period applicable to smaller transactions, however, is clearly too short to permit the public to relate, and the Board to act on, serious concerns about a proposed acquisition. In the interest of fairness, providing a modicum of notice and information for larger transactions will allow those potentially affected a period of time in which to analyze the effects of the proposal before it is scheduled to become effective, thereby minimizing the need for the automatic filing of stay requests and petitions to revoke an exemption. And, in those instances in which such requests and petitions are filed, the additional notice and information will allow the Board a more reasonable amount of time to address stay requests without having to grant a stay to allow more time to gather evidence, and more information initially to formulate appropriate procedures for the timely and fair resolution of the dispute when the proposed transaction is challenged. Thus, this additional notice requirement is important to ultimately reduce, rather than increase, regulatory delays and resulting regulatory burdens.

Experience under the existing procedures for non-carrier acquisitions has shown this to be true. In *Montana Rail Link, Inc.--Exemption Acquisition and Operation--Certain Lines of Burlington Northern Railroad Company*, Finance Docket No. 31089, the ICC processed a larger transaction under the class exemption procedures for noncarrier acquisitions before those procedures were modified to provide for extra notice and more information for larger transactions. This case took some 10 *months* (decision on revocation petitions) to 16 *months* (decision on petition to reopen) for resolution before the agency after the filing of the notice of exemption. By contrast, in *New England Central Railroad, Inc.--Acquisition and Operation Exemption--Lines Between East Alburgh, VT and New London, CT*, Finance Docket No. 32432, the ICC processed a larger transaction under the same class exemption, but after it had been revised to provide for more notice and information. It took some 60 *days* (decision allowing exemption to become effective) to 90 *days* (decision on petition for clarification) for resolution before the agency after the filing of the notice of exemption. Thus, experience has proven that, in larger cases with more widespread impact, more notice and information at the outset can prevent unnecessary and stifling regulatory delay later on.

Under the ICC Termination Act of 1995, the Board is charged with the responsibility of resolving matters before it quickly, fairly, and with the least regulatory oversight possible. The class exemption for Class III acquisitions ensures minimal regulatory intervention. The *de minimis* notice and general information requirements for larger transactions provide the greatest assurance that all of these transactions can be handled in the most expeditious and efficient manner possible.

COMMISSIONER OWEN, *concurring*, in part, and *dissenting*, in part:

I concur with the majority in granting a class exemption to automatically relieve Class III railroads from the costly and time-consuming requirements of filing detailed applications for authority to acquire or operate additional rail lines.

I dissent with regard to the imposition of a longer notification period on transactions that will increase the size of Class III railroads and transform them into Class II railroads.

The establishment of separate standards for a class exemption based solely upon resulting revenue unjustly discriminates because it requires, without evidence of wrongdoing, that when a small business grows larger it must endure more costly regulatory oversight. There is no justification for imposing unnecessary costs and delays upon small businesses intent upon preserving rail service and rail jobs for local communities.

The transactions covered by this proposed class exemption involve the sale of uneconomic lines by relatively high-cost carriers to those with lower costs. The alternative generally is abandonment. Any artificial increase in transaction costs -- such as the limitation proposed -- serves only to further discourage the preservation of rail service and rail jobs.

In rare instances where controversy may attach to the proposed transaction, adequate mechanisms already are available to the public allowing it to petition this Board to revoke the exemption. This agency also has the authority, on its own, to impose a stay and demand additional information. Thus, I oppose any limitation on the class exemption.

This agency should not oppose a congressional intent to deregulate. As the House of Representatives urged in drafting the ICC Termination Act, this agency should utilize exemptions "to the maximum extent permissible."[11]

If there are to be artificial burdens associated with such transactions, it is my opinion that the burdens begin with those who would deprive communities of the rail service and rail jobs contemplated. The class exemption should be approved without limitation.

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*It is ordered*:

1. The request for the class exemption is granted and the exemption described herein is adopted.

2. Notice of the rules adopted herein will be published in the *Federal Register* on June 24, 1996, and will be transmitted to Congress pursuant to Pub. L. No. 104-121 (March 29, 1996).

3. This decision will be effective on July 24, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Chairman Morgan commented with a separate expression. Commissioner Owen concurred in part and dissented in part with a separate expression.

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[11] Report of the House Committee on Transportation and Infrastructure on H.R. 2539, Rpt. No. 104-311, 104th Cong., 1st Sess., November 6, 1995, at 96.

## APPENDIX

Regulations Implementing STB Ex Parte No. 529

For the reasons set forth in the preamble, the Board proposes to amend title 49, chapter X, parts 1002 and 1150 of the Code of Federal Regulations, as follows:

PART 1002--FEES

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

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

2. Section 1002.2(f) is amended by adding a new paragraph (36) to read as follows:

* * * * *

§ 1002.2 *Filing fees.*

(f) * * *

(36) Notice of exemption under 49 CFR 1150.41-150.45 . . . . . $950

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PART 1150--CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559, 49 U.S.C. 721(a), 10901, 10902, and 10502.

Subpart D [Amended]

The heading for Subpart D is revised to read as follows:

Subpart D - Exempt Transactions Under 49 U.S.C. 10901

5. A new Subpart E is added to read as follows:

Subpart E - Exempt Transactions Under 49 U.S.C. 10902 For Class III Rail Carriers

1150.41 Scope of exemption.

1150.42 Procedures and relevant dates for small line acquisitions.

1150.43 Information to be contained in notice for small line acquisitions.

1150.44 Caption summary.

1150.45 Procedures and relevant dates - transactions under section 10902 that involve creation of Class I or Class II rail carriers.

§ 1150.41 Scope of exemption.

Except as indicated below, this exemption applies to acquisitions or operations by Class III rail carriers under section 10902. This exemption also includes:

(a) Acquisition by a Class III rail carrier of rail property that would be operated by a third party;

(b) Operation by a Class III rail carrier of rail property acquired by a third party;

(c) A change in operators on such a line; and

(d) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party, that occurs at the time of the purchase.

§ 1150.42 Procedures and relevant dates for small line acquisitions.

(a) This exemption applies to the acquisition of rail lines with projected annual revenues which, together with the acquiring carrier's projected annual revenue, do not exceed the annual revenue of a Class III railroad. To qualify for this exemption, the Class III rail carrier applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.44, for publication in the *Federal Register*. In addition to the written submission, the notice and summary must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(b) The exemption will be effective seven days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the *Federal Register* within 30 days of the filing. A change in operators must follow the provisions at § 1150.44, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

§ 1150.43 Information to be contained in notice for small line acquisitions.

(a) The full name and address of the Class III rail carrier applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;
(2) The proposed time schedule for consummation of the transaction;
(3) The mileposts of the subject property, including any branch lines; and
(4) The total route miles being acquired.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states; and
(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.

§ 1150.44 Caption summary.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key below:

Surface Transportation Board

*Notice of Exemption*

STB Finance Docket No.

(1)--Exemption (2)--(3)

(1) Has filed a notice of exemption to (2) (3)'s line between (4). Comments must be filed with the Board and served on (5). (6). Key to symbols:

(1) Name of carrier acquiring or operating the line.
(2) The type of transaction, *e.g.*, to acquire or operate.
(3) The transferor.
(4) Describe the line.
(5) Petitioner's representative, address, and telephone number.
(6) Cross reference to other class exemptions being used.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

§ 1150.45 Procedures and relevant dates--transactions under section 10902 that involve creation of Class I or Class II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board.
(b) The notice of intent must contain all the information required in § 1150.43 plus:

(1) A general statement of service intentions; and
(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each state in which track is to be sold;
(2) The state(s) Department of Transportation or equivalent agency;
(3) The national offices of the labor unions with employees on the affected line(s); and
(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data are available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of paragraph (b) of this section and of § 1150.44, and certify compliance with § 1150.45(a), (b), and (c), attaching a copy of the notice of intent. In addition to the written submission, the notice must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(e) The exemption will be effective 21 days after the notice is filed. The Boa rd, through the Director of the Office of Proceedings, will publish a not ice in the *Federal Register* within 30 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the transaction. Stay petitions must be filed within seven days of the filing of the notice of exemption. Replies will be due seven days thereafter. To be considered, stay petitions must be timely served on the applicant .

(g) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.