

## STB EX PARTE NO. 556

RAILROAD CONSOLIDATION PROCEDURES --  
MODIFICATION OF FEE POLICY

49 CFR Parts 1002 and 1180

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*Decided April 24, 1997*

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**AGENCY:** Surface Transportation Board (Board).**ACTION:** Final rules.**SUMMARY:** In this proceeding, the Board adopts as final rules with one minor change in the interim rules relating to the Board's fee policy for proceedings involving major railroad consolidations, which were published in the *Federal Register* at 62 Fed. Reg. 9714 (1997).**EFFECTIVE DATE:** These final rules are effective May 5, 1997.**FOR FURTHER INFORMATION CONTACT:** Kathleen M. King, (202) 565-1639 or David T. Groves, (202) 565-1551. [TDD for the hearing impaired: (202) 565-1695.]**SUPPLEMENTAL INFORMATION:** On March 4, 1997, at 62 Fed. Reg. 9714, the Board published interim rules that modified the Board's user fee policy for proceedings involving major railroad consolidations under 49 CFR part 1180 and the Board's corresponding fee regulations at 49 CFR part 1002.

The interim rules modified the Board's fee policy to require that the primary applicant in a major railroad consolidation proceeding pay a separate filing fee for each and every directly related proceeding that is filed with the primary application. The Board's fee policy was further revised to provide that for filing fee purposes an inconsistent responsive application would be classified as a major, significant, or minor transaction under the Board's regulations in 49 CFR 1180.2(a)-(c), and that the fee for an inconsistent application would be based on the classification of the transaction in the Board's fee schedule at 49 CFR

1002.2(f)(38)-(41). In addition, the Board's fee policy at 49 CFR 1180.4(d)(4)(ii) was modified to provide that the fee for any other type of responsive application would be the fee for that particular type of filing as set forth in the Board's fee schedule.

The interim rules also contained technical amendments to conform part 1180 to the *ICC Termination Act of 1995*, Pub. L. 104-88 (December 29, 1995).

No comments were filed in this proceeding. Therefore, we are adopting the interim rules as final rules with only one minor change. We are modifying the interim rule for 49 CFR 1180.3(h) relating to responsive applications to provide a more accurate cross-reference to the proper fees for various responsive applications. To provide the appropriate cross-reference, we are deleting the last sentence of §1180.3(h) and replacing it with the following two sentences:

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).

We conclude that the fee and other changes adopted here will not have a significant economic impact on a substantial number of small entities. Our regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

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

Notice of the final rules adopted here will be transmitted to Congress pursuant to Pub. L. 104-121 (March 29, 1996).

#### List of Subjects

##### 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

##### 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

By the Board, Chairman Morgan and Vice Chairman Owen.

APPENDIX

Accordingly, the interim rules amending 49 CFR parts 1002.2 and 1180, which were published at 62 Fed. Reg. 9714 (1997), are adopted as final rules with the following changes:

PART 1180-RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation 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. Section 1180.3 is amended by revising paragraph (h) to read as follows:

§ 1180.3 *Definitions.*

\* \* \* \* \*

(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).

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