

STB FINANCE DOCKET NO. 33685

CLASS EXEMPTION FOR MOTOR PASSENGER
INTRA-CORPORATE FAMILY TRANSACTIONS

Decided February 17, 2000

We are adopting final rules exempting intra-corporate family transactions of motor carriers of passengers that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family. We are also making changes to the Board's regulations concerning fees and delegation of authority.

BY THE BOARD:

BACKGROUND

Request for Comments. In a decision served May 11, 1999, and published at 64 Fed. Reg. 25, 392 (1999) (*May decision*), the Board sought comments on a petition filed by Coach USA, Inc. (Coach) to be exempted pursuant to 49 U.S.C. 13541(a)¹ from the prior approval requirements of 49 U.S.C. 14303 and the regulations at 49 CFR 1182 involving the merger or consolidation of motor carriers of passengers controlled by Coach. Under its proposal, Coach would file a notice similar to the one applicable for class exemptions covering railroad intra-corporate family transactions that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family. *See*, 49 CFR 1180.2(d)(3)² and 1180.4(g).

¹ Under 49 U.S.C. 13541(a), the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not necessary to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

² The predecessor of the present section 1180.2(d)(3) class exemption was adopted by the Interstate Commerce Commission (ICC) in *Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980) (*Railroad Consolidation*) at former section 1115.2(c)(3). This rule was first redesignated as section 1111.2(d)(3) in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982) and subsequently as section 1180.2(d)(3) in Ex Parte No. 55 (Sub-No. 55) *Revision and Redesignation of the Rules of Practice*, 47 Fed. Reg. 49,534, 49,592 (1982).

Under its proposal, Coach and/or one of its subsidiaries would file a verified notice of exemption with the Board for the merger or consolidation of at least two Coach-controlled carriers. The transaction could not be consummated sooner than 7 days after the filing of the notice, and a copy of the notice would be sent simultaneously to the Federal Highway Administration. Coach proposed that the Board would publish the notice of exemption in the *Federal Register* within 30 days of filing. Coach also proposed that, if the notice contains false or misleading information that is brought to our attention, we could revoke the exemption and order divestiture. Coach noted, moreover, that petitions for revocation could be filed at any time pursuant to 49 U.S.C. 13541(d).

In support of its proposal, Coach argued that under current procedures (the filing of applications and petitions for exemption), it takes a minimum of two and one half months for merger/consolidations to be approved or exempted. In the case of applications, accepted applications are published in the *Federal Register* within 30 days of filing as a tentative grant of authority, with comments due within 45 days. (A tentative grant does not give the applicant the right to consummate the transaction before the end of the comment period.) If no adverse comments are timely filed, the tentative grant becomes effective automatically.³

In the alternative, a party can file a petition for exemption under 49 U.S.C. 13541 seeking an individual exemption from the prior approval requirements of 49 U.S.C. 14303 for merger or consolidation. Coach argued that these proceedings take 3 or 4 months from the filing of the petition to complete.⁴

In requesting comments, our *May decision* raised several issues. We asked the parties to address whether the exemption should apply only to one party. We also sought comments on whether the interim approval process under 49 U.S.C. 14303(i) and 49 CFR 1182.7 would satisfy the timeliness concerns of Coach because the interim approval request is processed within 30 days. We also asked for comments on whether a notice of exemption is in the public interest.

³ If opposing comments are filed, the applicant can reply within 60 days of the filing of the application. The Board will then determine whether to issue a decision on the record developed or to receive more evidence before issuing a decision. Under the statute, evidentiary proceedings are to be concluded within 240 days of publication of the application. The Board must issue a decision within 180 days after the close of the evidence. Time periods may be extended, in total, for up to 90 days. 49 U.S.C. 14303(e).

⁴ We have indicated that we would normally process exemptions as we do applications: we would publish the exemption request within 30 days of filing, and, after the expiration of the comment period, we would issue a decision on the merits of the petition. See, *Revision to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served July 8, 1997) at 6.

Five parties filed comments, three in favor of the exemption (Coach, Global Passenger Services, L.L.C. (Global), and Laidlaw Inc. and Greyhound Lines, Inc.(Laidlaw/Greyhound)) and two in opposition (Nevada Coaches, LLC (Nevada Coaches)⁵ and Ground Systems, Inc. dba Airport Bus (Airport Bus)).

One Party Exemption.

Among the parties in favor of the exemption, Global and Laidlaw/Greyhound support an exemption that applies not only to Coach but to all persons. Coach states that it “does not oppose fashioning an exemption so that it would apply to any group of commonly controlled motor passenger carriers that may wish to utilize the exemption.”

Interim Approval Alternative.

As noted, we sought comments on whether interim approval requests, which are normally processed in 30 days, are a suitable alternative to a class exemption.⁶ Global argues that using the interim authority procedure instead of the proposed exemption is an inadequate substitute. It claims that the 23-day difference in processing the two is significant, especially when the intra-corporate family transaction is based on tax and accounting considerations at the end of a quarter or fiscal year. Some of the tax and accounting benefits, it claims, cannot be achieved without formally consummating the transactions. Citing *Atrim Transportation System, Inc. — Control and Merger*, 116 M.C.C. 812, 817 (1974), Global submits, moreover, that temporary authority was usually granted to leases of operations in an asset transaction or temporary control

⁵ Nevada Coaches also filed on January 13, 2000, a request for investigation and informal complaint and, in the alternative, a request for a supplemental order in *Coach USA, Inc. and K-T Contract Services, Inc. — Control and Merger Exemption — Gray Line Tours of Southern Nevada*, STB Finance Docket No. 33431. Nevada Coaches alleges, *inter alia*, that Gray Line Tours of Southern Nevada is engaged in monopolistic practices. Nevada Coaches has not related this filing to this proceeding, and we see no basis for our consideration of it here. We will address the concerns raised by Nevada Coaches in its January 13, 2000, filing in a separate decision.

⁶ Under 49 U.S.C. 14303(i), interim approval can be granted for not more than 180 days “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.” See also, 49 CFR 1182.7. “Temporary authority” was carried forward under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) as “interim approval.” See, *Revisions to the Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served July 8, 1997).

through management in a stock transaction to avoid the premature consummation of the asset or stock purchases. Such consummation, it avers, required permanent approval.

Laidlaw/Greyhound also take the position that the interim approval process would not be an adequate substitute for the class exemption. They argue that interim approval could rarely be used by carriers already controlled by applicant, because it would be difficult to show that failure to promptly effect a merger or consolidation of such motor carriers of passengers would, under section 14303(i), destroy or injure property "or substantially interfere with their future usefulness in providing adequate and continuous service to the public."

Coach also questions whether interim approval is an adequate alternative to a class exemption. It claims that this provision would generally not be applicable for mergers or consolidations involving two or more financially viable carriers already under common control. Coach argues that section 14303(i) is intended "for the 'distress sale' setting in which, unless a transaction can be consummated quickly, the target carrier may be forced out of business, its good will impaired or its assets dissipated." [Citation omitted.] Coach states that it is seeking to quickly reorganize controlled carriers that are not in dire financial condition. Coach contends that by waiting 75 days under section 14303 procedures, business opportunities might be missed, "but Coach does not envision that the conditions that would trigger a section 14303(i) procedure normally would be present."

Airport Bus, on the other hand, claims that "[a] 23-day difference in time is hardly worth the effort" and thus there is no need for a process in addition to the interim approval alternative. It argues that Coach has not shown a factual basis for needing to proceed more quickly than allowed by our current procedures and, if there is such a need, the request could be decided on a case-by-case basis.

Public Interest and Other Issues.

a. *Parties Other Than Coach.*

Like Coach, Global argues that an exemption is in the public interest, but it also supports an exemption that is not limited to consolidations and mergers within a corporate family. It argues that, under 49 CFR 1180.2(d)(3), the class exemption applies to "transactions within a corporate family," and there are intra-corporate family transactions that do not involve consolidations or

mergers.⁷ In particular, it maintains that the exemption should apply to the voluntary surrender of dormant ICC/FHWA authority of a carrier that is being brought under common control with at least one other entity holding ICC/FHWA authority.⁸

Nevada Coaches, by contrast, requests that we deny the exemption because it is allegedly contrary to the public interest. Nevada Coaches states that it had filed an application seeking intrastate motor common carrier passenger operating authority with the Nevada Transportation Services Authority to operate in the Las Vegas, NV area. It submits that the only carriers that protested its application were owned by Coach USA — K-T Contract Services and Gray Line Tours of Southern Nevada.⁹ Nevada Coaches claims that although Coach's acquisition of K-T and Gray Line were accomplished through its representation of market competition, Gray Line and K-T argued in their protest to Nevada Coaches' intrastate application at 6, that "*** [a]pplicant's proposed operations will create competition that will be detrimental to the travelling public and to common carrier operations within Clark County." Nevada Coaches alleges that Coach is trying "to have it both ways" and argues that "Coach USA seems to be using the STB as a method to gain access to markets without complying with the local law and then using local law as a method to stifle competition. [I]t is using the STB as a method of abusing market power. ***" Comments at 1-2.¹⁰

⁷ Global seeks guidance on two situations that, it claims, do not fall under our jurisdiction based on pre-ICCTA precedent: the transfer of the stock of a carrier subsidiary from one affiliated company to another, and the transfer of ICC/FHWA authority from a carrier subsidiary to a new, noncarrier affiliate.

⁸ A situation of this type would be presented where a holding company that controls regulated bus carriers proposes to acquire a school bus operator (whose operations are exempt under 49 U.S.C. 13506(a)(1)) that holds a dormant certificate. Board approval for the acquisition would be required, Global submits, because the dormant certificate cannot be presently voluntarily surrendered as a means of rendering Board review unnecessary.

⁹ Nevada Coaches claims that K-T and Gray Line, in Docket No. 98-11003, also protested the application of Gourmet Tour, Inc., which operated one van.

¹⁰ Nevada Coaches cites our decisions in *Coach USA, Inc. and K-T contract Services, Inc. — Control and Merger Exemption — Gray Line Tours of Southern Nevada*, STB Finance Docket No. 33431 (STB served December 4, 1997) (*Gray Line Tours*) and *Coach USA, Inc. — Control Exemption — American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc. and K-T Contract Services, Inc.*, STB Finance Docket No. 33073 (STB served November 8, 1996) (*K-T Contract*), where, in granting the exemptions, we found that the bus "industry's low entry barriers and pervasive intermodal and intramodal competition effectively foreclose any opportunity for abuse of market power." *Gray Line Tours* at 5 (footnote omitted).

Airport Bus filed a comment that opposed the exemption and also requested supervision of Coach's merger and acquisition activities; an investigation as to the propriety of the Board's grant of prior exemptions; revocation and divestiture orders based on the alleged submission of false and misleading information to the Board; and an evidentiary hearing. Airport Bus argues that, by seeking the exemption, Coach is actually trying to prevent the public from scrutinizing its actions, shortening the time for the public to act, and ultimately shifting the burden to opposing parties to begin costly revocation proceedings.

Airport Bus argues that Coach has provided the Board false and misleading information. In particular, Airport Bus contends that Coach falsely claims that it is a noncarrier, since "Coach USA, Inc." entered into a contract for daily bus operations with the city of Los Angeles, and Coach has been sued for injuries from bus operations. Airport Bus also contends that Coach falsely asserted to the Board that the carrier would operate under its own name and in the same manner as before Coach took control of it. Airport Bus alleges that Coach completed the acquisition of PCSTC, Inc. (PCSTC) before obtaining Board approval, and that, despite contrary assertions, PCSTC operating personnel were replaced by Coach personnel.

Airport Bus criticizes the "roll-up" concept employed by Coach whereby small companies are consolidated into larger ones. It contends that roll-ups are "leveraged buildups," the opposite of "leveraged buyouts." Likening roll-ups to a house of cards, Airport Bus submits that Coach should be monitored, and, if necessary, the Board should order revocation and divestiture of previous consolidations.

Finally, Airport Bus claims that Coach is a \$900 million company and that actions of Coach can not be considered of limited scope, and that Coach has substantial market power. Airport Bus also alleges that when it refused a takeover attempt from Coach, Coach threatened to put it out of business.

b. *Coach's Reply.*

Coach filed a reply together with a petition for leave to file the reply. Coach claims that the comments of Airport Bus concern matters that are far outside the scope of the proceeding, and that Airport Bus has asked the Board to take a number of affirmative actions — investigation of prior exemptions, revocation of exemptions, and divestiture — that are harmful to Coach. Coach argues that it could not have reasonably anticipated when it filed its comments that such matters would be raised. Also, Coach contends that Airport Bus's filing is actually a petition because it has requested relief that is unrelated to the

exemption request proceeding. Coach also submits that its reply will “update” the record concerning an issue raised by Nevada Coaches. Neither Airport Coach nor Nevada Coaches responded to Coach’s request. In order to develop a more detailed record, we will accept Coach’s reply.

In its reply, Coach submits that it is not a carrier; that Coach-controlled carriers withdrew their opposition to the Nevada Coaches intrastate application; that the carriers it has acquired have usually continued to operate in the same markets; that the “roll-up” concept that it has used to build its business entities is irrelevant to the issue of a short notice exemption; that it did not acquire PCSTC before obtaining Board approval; that it is financially sound; that it did not threaten to put Airport Bus out of business; and that its status as the industry’s largest holding company does not represent undue concentration because its control of over 70 carriers must be compared to the several thousand carriers in the industry.

DISCUSSION AND CONCLUSIONS

We will grant a class exemption that is applicable to all carriers, not just Coach.¹¹ The regulations will be codified at 49 CFR 1182.9. We are also modifying our delegation of authority rules to indicate that the notice of exemption will be issued by the Director of the Office of Proceedings. 49 CFR 1011.8(c)(12). Finally, we are adopting fee regulations to provide for a \$1,100 filing fee. 49 CFR 1002.2(f)(6).¹²

As noted, under 49 U.S.C. 13541(a), the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not necessary to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest. The class exemption meets the statutory criteria.

¹¹ Making the exemption applicable to all carriers was unopposed by the exemption supporters. Any party can use a class exemption if it meets the exemption criteria.

¹² This fee is the same as the one for a notice of exemption for similar transactions involving rail carriers. 49 CFR 1002.2(f)(38)(iv). We believe that our new class exemption will take about the same time and effort to process as the rail exemption, and thus the cost to the Board to handle these transactions should be the same.

a. *Transportation Policy.*

We find that regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101. The intra-corporate mergers/consolidations should help bus carriers achieve operational and efficiency gains through consolidated management, shedding of redundancies, and coordinated planning and safety services. Under 49 U.S.C. 13101(a)(2), efficient and competitive transportation would be promoted by meeting the needs of passengers (section 13701(a)(2)(C); “allow[ing] the most productive use of equipment and energy resources” (section 13701(a)(2)(E)); and “improv[ing] and maintain[ing] a sound, safe, and competitive privately owned motor carrier system” (section 13701(a)(2)(I)). The exemption will also produce expeditious decisions, consistent with 49 U.S.C. 13101(a)(2)(B).¹³

b. *Market Power/Limited Scope.*

We also find that regulation is not needed to protect passengers from the abuse of market power. Carriers within a corporate family do not normally compete with each other to any significant degree. In any event, there should be no adverse effect on competition because the bus passenger industry has several thousand participants. Coach reply at 10. *See also, Coach USA, Inc., and Coach USA North Central, Inc. — Control — Nine Motor Passenger Carriers*, STB Docket No. MC-F-20931, *et al.*, (STB served July 14, 1999) (*Coach Control*) at 5-6. Indeed, we have “determined that “[w]ith the low entry barriers and the pervasive intramodal and intermodal competition that characterizes the bus industry, most opportunities for the abuse of market power are effectively foreclosed.” *Id.* at 6 (quoting *Notre Capital Ventures II, LLC, and Coach USA, Inc. — Control Exemption — Arrow Stage Lines, Inc., et al.*, STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996)). *See also, Gray Line Tours* at 5 and *K-T Contract* at 6.¹⁴

c. *The Public Interest.*

¹³ We believe that a class exemption that permits parties to consummate a transaction within 7 days is preferable to the use of interim approval requests, which are processed in 30 days. As Global notes, the 23-day difference in time may be significant in some situations. Given that the statutory exemption criteria have been met, we believe the benefits of the transaction should be available as quickly as possible.

¹⁴ Given our finding regarding the anticipated effect of the transactions on market power, we need not determine whether the transactions are limited in scope.

This class exemption is consistent with the public interest. The exemption will reduce regulatory procedures, processing times, and costs, and should be available to more than one party. Its benefits would not be replicated with the interim approval alternative. As the ICC noted in approving the rail intra-corporate class exemption in *Railroad Consolidation*, “regulation of these transactions * * *, where no operational, competitive, or service functions will change, serves little or no useful public purpose.” 363 I.C.C. at 206. Importantly, we note that the class exemption is not free from regulatory review: if the notice contains false or misleading information, it is void ab initio; and petitions to revoke the exemption may be filed at any time under 49 U.S.C. 13541(d) and will be granted upon a showing that regulation is necessary to carry out the transportation policy of 49 U.S.C. 13101. We find that the public interest is served by granting this exemption, as it will enable transactions that do not significantly affect service, operations, and competition to be processed quickly and efficiently. It can expedite the achievement of the economies and efficiencies of the transaction.

We disagree with Nevada Coaches’ contention that the exemption request is not in the public interest and that Coach is using the Board as a means of abusing market power. It may be, as Nevada Coaches claims, that Coach is trying to have it both ways: gaining entry by claiming low entry barriers, then seeking to prevent the entry of others. Yet, Coach is entitled to avail itself of the state regulatory process, as Nevada Coaches seems to acknowledge.¹⁵ More fundamentally, such state regulatory schemes do not change the fact that the bus industry is characterized by low entry barriers and pervasive intermodal and intramodal competition.

We also must reject the arguments of Airport Bus concerning the exemption. Specifically, we will deny its requests that we hold hearings focusing on all of Coach’s recent merger and acquisition activities.

In this regard, in support of its claim that, when it refused Coach’s acquisition overture, Coach threatened to put it out of business, Airport Bus submitted Coach letters to it concerning the purchase attempt and testimony before the Public Utilities Commission of California by an Airport Bus witness. But the letters contain no mention of a threat. And although Airport Bus’s witness spoke of “[t]he threat to be forced out of business by a huge company who was stronger and better equipped than us[,]” the allegation (which has been

¹⁵ Coach’s actions, according to Nevada Coaches, are the “kind of activity that goes with the territory when there is a state entry and exit regulatory scheme.” Comments at 1.

denied by Coach) has not been supported. We find that Airport Bus has not demonstrated that Coach's actions were predatory.

Airport Bus claims that Coach filed false and misleading evidence by identifying itself as a noncarrier. But we have already found that Coach is not a carrier. *Coach Control*, at 4-5. We have no basis for rejecting Coach's statement that it does not hold interstate operating authority from the FHWA or intrastate authority, that it operates no buses, and that all interstate operations are done by operating subsidiaries that are licensed carriers.

Airport Bus also contends that Coach has misled the Board regarding the operations and identities of its controlled carriers. But we have no basis on which to reject Coach's statements that the carriers over which it acquired control, in almost all cases, have continued to operate in the same markets, and that they have kept their own names and identities.¹⁶ As for the allegations concerning PCSTC, Coach claims that PCSTC was not acquired before obtaining Board approval, because PCSTC stock was held in an independent voting trust pending Board action. Moreover, Coach asserts that the president of PCSTC prior to Coach's acquisition of control remains the president of PCSTC with day to day control of the company, and that lower level managers have not been replaced by Coach.

Finally, we do not see the relevance of the roll-up or "leveraged buildup" issue to the class exemption. In any event, as Coach notes, the market has viewed it with confidence, as can be seen in the initiation by Stagecoach Holdings PLC of a tender offer for all of the outstanding shares of Coach. *See, Stagecoach Holdings PLC — Control — Coach USA, Inc., et al.*, STB Docket No. MC-F-20948 (STB served July 22, 1999). At this time, Coach appears to be sound financially relative to other members of its industry.

In summary, the arguments made by Nevada Coaches and Airport Bus have no foundation. We see no reason to deny the exemption or supervise Coach more closely than we supervise other bus carriers.

In response to Global's questions, we note that the class exemption we are issuing is not limited to intra-corporate mergers and consolidations — it applies to transactions within a bus passenger 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. Citing ICC

¹⁶ Coach asserts that these carriers are beginning to use the "Coach USA" name more aggressively for marketing purposes, which, Coach claims, it has told the Board would happen. *See, STB Finance Docket No. 33343, verified petition of January 23, 1997, at 12* (Coach "will provide centralized marketing and reservations for the bus firms that it controls * * * .").

precedent, Global seeks guidance on three alleged examples of intra-corporate family transactions, claiming that two of the transactions (*see*, note 7, *supra*) fell outside ICC jurisdiction while the third one (note 8, *supra*) fell within ICC jurisdiction. We can not rule definitively on the examples presented by Global without more information. As to the first two, however, we should note that under section 204(a) of the ICCTA, ICC precedent in effect on the date of enactment of the ICCTA continues in effect until modified or revoked in accordance with law by the Board, any other authorized official, a court of competent jurisdiction, or by operation of law. *I&M Rail Link, LLC — Acquisition and Operation Exemption — Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway*, STB Finance Docket No. 33326, *et al.* (STB served April 2, 1997). In the third example (voluntary surrender of authority held by an entity being brought under common control), it appears that this would not fall under the corporate family class exemption: it seems to involve a situation involving an entity prior to its becoming part of the corporate family.

d. *Summary.*

The Board finds that an exemption here is appropriate. Regulation is not needed to carry out transportation policy nor to protect shippers from market abuse, and is consistent with the public interest.

REGULATORY FLEXIBILITY ANALYSIS

The Board concludes that these rules will not have a significant economic effect on a substantial number of small entities. The procedures established are simple and expeditious and impose no new reporting requirements on small entities. The rules protect all parties by providing for revoking the exemption for violations of the rules or the statute.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

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

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common Carriers, Freedom of Information, User Fees.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1182

Administrative practice and procedure, Motor Carriers.

It is ordered:

1. We are adopting the final rules found in the appendix.
2. This decision is effective on March 19, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, Commissioner Clyburn.

APPENDIX

For the reasons set forth in the preamble, Title 49, Parts 1002 and 1182 of the Code of Federal Regulations are revised to read 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 amended by adding paragraph (f)(6) to read as follows:

§ 1002.2 Filing fees.

(f) ***

Type of Proceeding	Fee
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	1,100

PART 1011 - BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for Part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 7901; and 49 U.S.C. 701, 721, 11144, 14122, and 15721.

4. In §1011.8(c)(11), remove "10505" and add in its place "10502".

5. In §1011.8, redesignate paragraphs (c)(12) to (c)(17) as paragraphs (c)(13) to (c)(18), and add a new paragraph (c)(12) to read as follows:

§1011.8 Delegations of authority by the Board to specific offices of the Board.

(c) ***

(12) Whether to issue a notice of exemption under 49 U.S.C. 13541 for a transaction under 49 U.S.C. 14303 within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.

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

1. The authority citation for Part 1182 is revised to read as follows:

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; and 49 U.S.C. 13501, 13541(a), 13902(c), and 14303.

2. Add §1182.9 to read as follows:

§ 1182.9 Notices of Exemption.

(a) A transaction within a motor passenger corporate family is exempt from 49 U.S.C. 14303 if it does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family. The Board has found that its prior review and approval of these transactions is not necessary to carry out the transportation policy of 49 U.S.C. 13101; regulation is not necessary to protect shippers from abuse of market power; and an exemption is in the public interest. See, 49 U.S.C. 13541(a).

(b) To qualify for a class exemption, a party must file a verified notice of the exempt transaction with the Board. The notice shall contain a brief summary of the proposed transaction, the name of the applicants, their business address and telephone number, and the name of counsel to whom questions would be addressed. The notice shall describe the purpose of the transaction and give the proposed consummation date for the transaction, which must be at least 7 days after the filing of the

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notice. The notice shall describe any contracts or agreements that have been entered into, or will be entered into, concerning the transaction, and shall indicate the impact, if any, that the transaction would have on employees.

(c) The Board shall publish notice of the exemption in the *Federal Register* within 30 days from the filing of the verified notice of exemption. If the notice contains false or misleading information, the Board shall summarily revoke the exemption and require divestiture. Petitions to revoke the exemption under 49 U.S.C. 13541(d) may be filed at any time and will be granted upon a finding that the application of 49 U.S.C. 14303 to the person, class, or transportation is necessary to carry out the transportation policy of 49 U.S.C. 13101.