

process of line repair and maintenance (49 U.S.C. 10101(4)), and promoting coordination between rail carriers (49 U.S.C. 10101(5)). The proposed class exemption would also reduce the regulatory uncertainty of the parties, facilitate the parties' ability to reach agreement on temporary trackage rights, reduce the filing fees required of carriers seeking such rights, and encourage more use of trackage rights in general and temporary trackage rights in particular. 49 U.S.C. 10101 (7), (15).

The proposed exemption also appears to be of limited scope because we are limiting the class of exempted transactions. And the authorization for trackage rights will be limited in duration.

In addition, it appears that regulation of this class of temporary trackage rights is not necessary to protect shippers from an abuse of market power. Providing temporary trackage rights authorization would not reduce competition, and temporary trackage rights authorizations that add no service on the line (e.g., overhead, or bridge, traffic) merely maintain the status quo among carriers and shippers on the line. Public comments are invited on all of these conclusions, as well as on possible negative consequences, if any, that could result from such a class exemption.

Implementation of the Class Exemption

If the proposed class exemption is adopted, an eighth category of exempt transactions would be added to our rail consolidation regulations. We would amend 49 CFR part 1180 by adding new sections 1180.2(d)(8), and 1180.4(g)(2)(iii) and (iv). Consistent with the regulations in part 1180, carriers seeking to use the proposed exemption would be required to submit the information required by 49 CFR 1180.4(g)(1)(i). This includes the names of the applicants, a summary of the nature of the proposed transaction, a contact person, the proposed time schedule for consummation, the purpose to be accomplished, any other supporting statements deemed material by applicants, the level of labor protection to be imposed, a list of the states in which any part of the property of each applicant carrier is located, and a map showing the involved lines. In addition, the caption summary required in connection with this proposed class exemption must specify the date the authorization will expire. 49 CFR 1180.4(g)(2)(iii). An executed copy of the written trackage rights agreement must also be submitted.

As noted, section 1180.4(g)(1)(i) requires that the exemption notice filed

with the Board indicate the level of employee protection to be imposed.³ As with other grants of trackage rights, approval of temporary trackage rights agreements under 49 U.S.C. 11323 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Association v. ICC*, 675 F.2d 1248 (D.C. Cir. 1982). Accordingly, all temporary trackage rights exemptions would be so conditioned.

As previously discussed, under 49 U.S.C. 10903, after a carrier begins trackage rights operations, even when conducted under an exemption, discontinuance of the service may not occur absent a certificate of discontinuance, or exemption therefrom, issued by the Board. This requirement would continue to apply to carriers utilizing the current trackage rights class exemption, 49 CFR 1180.2(d)(7). Although we normally require that a carrier seeking to terminate trackage rights operations file a separate request for discontinuance authority, this requirement of a separate filing would be unnecessary under the proposed new 49 CFR 1180.2(d)(8) class exemption. In these cases, the authority to exercise trackage rights temporarily, only until a particular date, would implicitly include the authority to discontinue service on that date. Therefore, we would not require separate discontinuance authority to terminate temporary trackage rights operations authorized under the proposed class exemption. Finally, we note that the proposed class exemption would be limited to temporary trackage rights transactions and would not operate to exempt any other regulated activities conducted on that track or exempt any associated transactions of the involved carriers.

Conclusion

We propose under 49 U.S.C. 10502 to add a new category to the specific categories of exempt transactions listed at 49 CFR 1180.2(d). This new category, to be set forth, if adopted, at 49 CFR 1180.2(d)(8), would be for temporary trackage rights proposals under 49 U.S.C. 11323 that are: (1) Based on written agreements, (2) not filed or sought in responsive applications in rail consolidation proceedings, and (3) scheduled to expire on a specific date.

³ Under 49, U.S.C. 10502(g), in granting exemptions, we may not relieve a carrier of its obligations to protect employees.

We also propose to add new subsections (iii) and (iv) to 49 CFR 1180.4(g)(2), regarding the caption summary to be provided by applicant and published in the **Federal Register**. The exemption as proposed would embrace temporary trackage rights sought for any purpose. Public comments on this specific proposal, its scope, and its limits are invited.

Standard labor protective conditions would be imposed on any carrier using this class exemption. Carriers using this class exemption could discontinue service without the need to obtain a certificate or exemption from the Board. Comments on these proposals are also invited.

Regulatory Flexibility Analysis

The Director of the Office of Proceedings has certified, by decision served concurrently with this notice and to be published in the **Federal Register**, that the proposed exemption will not have a significant impact on a substantial number of small entities. Exemption should not affect small shipper or carrier entities because the result of the temporary trackage rights proposed for exemption would not affect rail operations except to increase efficiency. No shipper would lose service and other shippers might receive more efficient service under the proposal. No carrier's operations would be significantly affected by the temporary trackage rights proposed for exemption.

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

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Railroads.

Authority : 49 U.S.C. 10502(b) and 5 U.S.C. 553.

Decided: January 31, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1180 of title 49, chapter X, of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 1180 continues to read as follows: