Federal supply classification					
Group No.	Group identification	Classes	Not reportable to GSA	Reportable to GSA	Minimum reportable disposal condition code
		5811 other cryptologic equipment and components	x		
59	Electrical and electronic equipment components	All		x	9
60	Fiber optics	All		x	9
61	Electrical wire, and power and distribution equipment	All		x	9
62	Lighting fixtures and lamps	All		x	7
63	Alarm and signal systems	All	x		
65	Medical, dental, and veterinary equipment and supplies	All except		x	9
		6505 drugs, biologicals, and official reagents	x		
		6508 medicated cosmetics and toiletries	x		
66	Instruments and laboratory equipment	All		x	8
67	Photographic equipment	All except		x	7
		6770 film, processed	x		
68	Chemicals and chemical products	All		x	2
69	Training aids and devices	All		x	9
70	General purpose automatic data processing equipment including firmware, software, supplies and support equipment (see 101-43.4601(c)).	All		x	9
71	Furniture	All		x	9
72	Household and commercial furnishings and appliances	All		x	8
73	Food preparation and serving equipment	All		x	8
74	Office machines, text processing equipment, and visible record equipment.	All		x	9
75	Office supplies and devices	All		x	7
76	Books, maps, and other publications	All except	x		
		7610 books and pamphlets		x	4
77	Musical instruments, phonographs, and home-type radios	All except		x	5
		7710 musical instruments		x	9
78	Recreational and athletic equipment	All		x	5
79	Cleaning equipment and supplies	All		x	5
80	Brushes, paints, sealers, and adhesives	All		x	4
81	Containers, packaging, and packing supplies	All		x	8
83	Textiles, leather, furs, apparel, and shoe findings, tents, and flags.	All except	x		
		8305 textiles fabrics		x	9
		8340 tents and tarpaulins		x	9
84	Clothing and individual equipment and insignia	All except	x		
		8455 badges and insignia	x		
85	Toiletries	All	x		
87	Agricultural supplies	All	x		
89	Subsistence	All except	x		
		8965 beverages, alcoholic		x	2
91	Fuels, lubricants, oils and waxes	All		x	3
93	Nonmetallic fabricated materials	All		x	2
94	Nonmetallic crude materials	All	x		
95	Metal bars, sheets, and shapes	All		x	5
96	Ores, minerals, and their primary products	All		x	4
99	Miscellaneous	All except	x		
		9905 signs, advertising displays, and identification plates		x	9
		9910 jewelry		x	9
		9999 miscellaneous items		x	9

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: February 2, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-4889 Filed 2-24-82; 8:45 am]

BILLING CODE 6820-96-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 82-57]

Delegations of Authority to the Chief, Cable Television Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends Part 0, § 0.288(m) of the Commission's Rules and Regulations concerning the delegations of authority to the Chief, Cable Television Bureau relating to the monetary limitations involved in the imposition of forfeitures. This action is necessary to reduce the Commission's workload of routine cases, and to increase the Cable Television Bureau's efficiency in handling routine matters in order to reduce the Bureau's backlog.

EFFECTIVE DATE: February 26, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ronald Parver, Cable Television Bureau. (202-254-3407).

SUPPLEMENTARY INFORMATION:

Adopted: January 28, 1982.

Released: February 12, 1982.

1. In November 1978, the Commission revised its delegation of authority to the Chief of the Cable Television Bureau, *inter alia,* to impose forfeitures pursuant to Section 503(b) of the Communications Act of 1934, as amended, in amounts not to exceed $4,000 against cable television system operators found to have violated the Communications Act and the Commission's rules, and $2,000 against licensees of Cable Television Relay Service (CARS) stations. *Amendment of Part 0,* FCC 78-764, 69 FCC 2d 1435 (1978). Since that time, there has been an increase in the number of cases involving forfeitures which have had to be referred to the Commission *en banc,* that otherwise might have been

processed pursuant to delegated authority, but for the monetary limitations placed on the Chief of the Cable Television Bureau to impose forfeitures.

2. The Commission has reviewed the delegations of authority to the Chief of the Cable Television Bureau and has concluded that the public interest would be served by amending § 0.288(m) of the Commission's rules to permit the Chief of the Cable Television Bureau to impose forfeitures pursuant to Section 503(b) of the Communications Act of 1934, as amended, against both cable television system operators and CARS station licensees in amounts not to exceed $10,000 for violations of the Communications Act and the Commission's rules. This amendment should result in more efficient handling of forfeiture matters and aid the Cable Television Bureau in expediting the processing of pending cases as well as reduce the Commission's workload of routine cases. Since this amendment relates only to Commission organization and procedures, the prior notice provisions of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

3. Authority for the rule amendment adopted herein is contained in Sections 4 (i) and (j), 5 (b) and (d), 301, 303, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, that, effective February 26, 1982, Part 0 of the Commission's rules and regulations is amended as set forth in the attached Appendix.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083, 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

Section 0.288(m) is revised to read as follows:

§ 0.288 Authority delegated.

* * * * *

(m) To issue citations pursuant to § 1.80 of this chapter, and to issue notices of apparent liability, final forfeiture orders, and orders cancelling or reducing forfeitures imposed under § 1.80(f) in amounts of $10,000 or less for cable television systems and for facilities in the Cable Television Relay Service.

[FR Doc. 82-5051 Filed 2-24-82; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1120

[Ex Parte No. 392]

Application Procedures for a Certificate To Construct, Acquire or Operate Railroad Lines

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Final Rules.

SUMMARY: The rules adopted here revise the procedures to be followed for the construction, acquisition or operation of rail lines, 49 CFR Part 1120. Since the rules were last revised, there have been a number of statutory and regulatory changes. The new regulations eliminate the filing of redundant and unnecessary information and streamline the application procedure.

On August 31, 1981 the Commission published proposed rules to reflect these changes and requested public comment (46 FR 43721). After reviewing the comments, the Commission has decided to adopt the proposed rules with certain modifications. The new rules are set forth in the appendix to this notice.

The rules also provide procedures for obtaining a certificate of designated operator that have not previously been codified, and the modified certificate procedures under which abandoned lines acquired by a State or State agency may be operated.

DATES: These regulations are effective on February 25, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275-7245; or Warren Wood, (202) 275-7977; or Elaine Sehrt, (202) 275-7899.

For copies of these rules: Contact the Office of the Secretary, (800) 424-5230.

SUPPLEMENTARY INFORMATION: The notice of proposed rules published August 31, 1981, contemplated a complete revision of the informational requirements and the procedures to be followed for applications under 49 CFR Part 1120. That notice explains that these revisions were in response to current transportation policy, as reflected in present legislation and regulations. The notice also explains that data which had not been found to be useful in reaching an informed decision would be eliminated from the informational requirements of the regulations.

Comments on the proposed rules were submitted by Consolidated Rail Corporation (Conrail), Wisconsin Department of Transportation (WIDOT), the Washington Legal Foundation (WLF), Union Pacific Railroad Company (UP), the Association of American Railroads (AAR), Patrick W. Simmons, Illinois Legislative Director for the United Transportation Union (UTU), and the Commission's Office of Special Counsel (OSC). Except for UTU, the parties have expressed overall support for the new rules, although a number of specific points are raised which require minor changes in language or emphasis. UTU, however, has mounted a broad-based attack on many aspects of the new rules. Its contentions, as well as the matters raised by the other parties, are discussed below.

Jurisdictional Scope of Section 10901

Conrail is concerned that the statement in section 1120.1(a) that the acquisition of an active rail line by a carrier falls within the ambit of 49 U.S.C. 11343 rather than section 10901 is overly broad. It believes that section 11343 would apply only where the purchaser is a carrier and the acquisition is part of a unification, consolidation, or merger proceeding. Conrail's concern is shared by AAR, which points out that the acquisition by a carrier of a rail line owned by a noncarrier would not be subject to section 11343.[1] The jurisdictional scope of sections 10901 and 11343 has been discussed in numerous Commission decisions. The distinction is an important one, in view of the discretion afforded the Commission in imposing labor protective conditions under section 10901.[2]

The Commission has uniformly held that acquisition of a line of railroad by a noncarrier (including a newly formed entity organized for the purpose of providing interstate common carrier rail service) is governed by the filing requirements of 49 U.S.C. 10901. See "Prairie Trunk Railway—Acquisition and Operation", 348 I.C.C. 832 (1977) and cases cited therein. Section 10901 is

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[1] Under section 11343(e), the Commission has jurisdiction over "a purchase, lease, or contract to operate property of *another carrier* by any number of carriers."

[2] Under section 10901(e), the "Commission may require any rail carrier proposing both to construct and operate a new railroad line pursuant to this section to provide a fair and equitable arrangement for the protection of the interests of railroad employees who may be affected thereby * * *". By contrast, labor protection in consolidation proceedings is mandatory under 49 U.S.C. 11347.

intended to deal with the extension or acquisition of an individual line of railroad and is essentially directed at the transportation-oriented activities of a single carrier. Cf. "Okmulgee Northern Ry. Co. Abandonment", 320 I.C.C. 637, 639 (1964); and "Iowa Term. R. Co. Acquisition and Operation", 312 I.C.C. 546, 548–549 (1961). An application by a noncarrier will be considered under section 10901 even if it is incorrectly filed under section 11343 [3] and regardless of whether the common carrier owner of the line sought to be acquired has filed an application to abandon it.[4]

The Commission has also permitted existing rail carriers to acquire additional rail lines under section 10901, provided the selling carrier first seeks authority to abandon the line and that application is granted. "Okmulgee Northern Ry. Co., *supra*; and Tennessee Central Ry. Co. Abandonment", 334 I.C.C. 235 (1969). Section 11343 would be inapplicable to these situations because upon abandonment, the line would no longer function in interstate or foreign commerce and, in effect, would no longer be an active rail line. "Central R. Co. of New Jersey—Abandonment", 342 I.C.C. 227, 264 (1972). On the other hand, the acquisition of an *active* rail line by an existing carrier is governed by section 11343, which we have found to be analytically more appropriate for dealing with the unification or *existing* railroad facilities. "Prairie Trunk", *supra*, at 850.

AAR correctly notes that section 11343 is applicable only to acquisition where both the buyer and the seller are carriers. Section 1120.1 will be modified to clarify that acquisition by a carrier of an active rail line *owned by a carrier* is covered by section 11343.

Waiver Procedure

OSC and UTU believe that the waiver procedure in the new rules is both unnecessary and inappropriate. OSC points out that the new rules will eliminate the "return to questionnaire" aspect of the present application procedures and thus substantially reduce the amount of information required to be filed. OSC believes that further relaxing the informational requirements through use of a separate waiver process may deprive parties of data needed to assess a proposal properly. It contends that the regulations pertaining to mergers and consolidations (49 CFR Part 1111) and abandonments (49 CFR Part 1121) require extensive information and that waiver procedures there reflect a greater need to eliminate the submission of redundant and irrelevant data. If the waiver procedure is retained, OSC suggests that notice of approval of any waiver request be given to the public by including it in the newspaper publication under § 1120.10(f).

First, we note that although the "return to questionnaire" has been eliminated, much of the information required to be included in it has been incorporated into the application. The new rules generally require the submission of only that information necessary for proper analysis of the transaction. However, there may be circumstances in which the required information would not materially aid either our evaluation of the transaction or a potential party's decision as to whether to participate. In reviewing a waiver request, we will balance our need for the data against the burden required to produce it. Information which is essential for an informed decision will not be waived. Indeed, under § 1120.8 the Commission may require additional information to be filed where necessary. Although we believe the reduction in information contemplated by the new rules will result in infrequent use of the waiver provisions, we nevertheless see a continuing need for flexibility in this area. That need will best be served by retaining a specific waiver procedure in the final rules.

We also do not believe that a summary of the waived information should be included in the newspaper publication which notices the filing of the application. First, such a requirement would impose an additional burden and expense on applicant. Also, it is preferable, in terms of administrative procedure, to encourage a party or potential party to review the information which has been filed in the application (rather than merely to highlight the data which have been waived) before reaching a decision as to whether production of the data is necessary.[5] OSC's proposed notice procedure might encourage reflexive and unnecessary demands that the waived information be made available. We note, however, that once an application has been filed and accepted, protestants have the opportunity to demonstrate that the waived information is relevant and necessary to full consideration of an issue in the proceeding. They can seek to have the record supplemented at that time. See "Ryder System, Inc.—Control—Atlantic Express, Inc.", 127 M.C.C. 728, 730 (1980); "Aberdeen and Rockfish Railroad Co. v. United States", 270 F. Supp. 695 (E.D. La. 1967). At that time, both protestants and the Commission can better judge the substantive completeness of the application and better assess the need for and utility of omitted information.

Finally, UTU contends that the waiver procedures in the new rules will encourage improper ex parte contacts between applicants and the Commission's staff. We disagree. Although an applicant may seek guidance at an early stage from the Commission in framing a request for waiver, we do not consider such communications to be improper. The purpose of the Commission's regulations concerning ex parte communications, Appendix C following 49 CFR Part 1100, is to prevent parties from attempting improperly to influence the Commission's decisionmaking process in proceedings pending before it. The Commission's staff is under direction not to discuss with prospective applicants (or other potential parties to a prospective proceeding) the merits of any potential proposal. Any discussion by Commission staff of prospective waiver requests is limited to the type of advice and guidance that would be offered to any member of the public using the Commission's regulations—an explanation of the purpose of the Commission's various requirements and the type of circumstances which have, in the past, been considered to allay the need for or benefit of particular requirements. We do not consider such general, uniform assistance, even when offered in the context of a particular prospective proposal, to be prohibited.

Actual Date Comments Are Due

OSC also believes that the newspaper notice should indicate the actual calendar date on which comments are due. Under proposed rule 1120.10(f), the notice need only indicate that comments are due within 35 days of the filing of the application.

We believe OSC's suggestion should be adopted. The date of filing is a matter within a applicant's control and knowledge. Requiring that a date certain be given by which comments may be timely filed will impose only a marginal burden and will not materially delay publication of the notice. Participants in the proceeding will be spared the necessity of independently verifying the

[3] See "Iowa Term. R. Co. Acquisition and Operation", *supra*, at 549.

[4] See "Prairie Trunk Railway—Acquisition and Operation", *supra*, at 850. In general, if a related abandonment application has been filed by the transferor, that application has been dismissed.

[5] Under § 1120.10(b), copies of the application are to be furnished to interested parties promptly on request.

filing date. In cases where public participation is likely to be extensive, this procedure will save a substantial amount of effort on the part of all concerned. The proposed rule will be modified to reflect this change.

Substantive Informational Requirements

WIDOT in general supports the proposed rules but requests that certain additional information be required under § 1120.3. First, WIDOT requests us to require the application to include reference to State statutes and the jurisdictions in which the applicant and any affiliated companies are organized, and whether they are corporations or partnerships. Also, if special tax provisions come into consideration, WIDOT requests that they be identified. It believes that the submission of this information will aid in determining the organizational structure, business purpose, and financial objectives of an applicant.

The additional organizational information requested by WIDOT is required under the proposed rules for entities other than corporations, partnerships and individuals. We believe that the information would be potentially useful to parties in evaluating a proposed service. Accordingly, we shall require it to be submitted by all applicants, regardless of the form or nature of their enterprise. Such information should be readily available and present only a minor filing burden on an applicant.

AAR believes that organizational information required under § 1120.3 should be eliminated for existing carriers on the grounds that the Commission already has this information. We agree. A major purpose of these rules is to reduce unnecesary filing and reporting burdens on the industry. An applicant may satisfy the informational requirements of § 1120.3 by making appropriate reference to prior applications filed within three years of the date of filing of the section 10901 application in which the information has been furnished.

WIDOT also requests that the present requirement for a five-year pro forma income projection and a statement as to how and when the enterprise will become self-supporting be continued. It believes the latter requirement could be satisfied by reference to the level of traffic expected to be generated under § 1120.4(b) and the revenue divisions needed to achieve financial viability. AAR, on the other hand, questions whether even a two-year projection of income should be required, arguing that such matters are within management's discretion and that a valid decision can be made on the basis of other information presented in the application.

We disagree with AAR's position that a two-year pro forma analysis of the projected income is solely a managerial concern. The Commission has a duty under the rail transportation policy, 49 U.S.C. 10101a, to ensure the availability of accurate cost information in regulatory proceedings (subsection 14) and also to ensure that transportation facilities and equipment are operated without detriment to the public health and safety (subsection 8). We cannot fulfill this duty without first determining whether revenues are sufficient to maintain safe operations. In addition, under section 10901, we must find that the public convenience and necessity require or permit the proposed construction or acquisition and operation. Unless it is demonstrated that the operation has a reasonable prospect of financial success, we cannot make this finding. Thus, a revenue projection of at least two years is necessary for proper analysis of an application.

However, we are not convinced that the requirement of a five-year pro forma analysis of projected income, as required under the present rules, should be continued. As WIDOT itself notes, such analyses are speculative in nature. In the past, we have generally not found extended revenue forecasts to be useful in assessing a proposal. The level of uncertainty in such data increases markedly as a function of time. Forecasts beyond two years are dependent on too many aleatory, and often imponderable events (e.g., the overall business cycle, export-import policies, and possible competition for freight from other modes) to provide a consistent or accurate picture of future profitability. In a rare situation where additional financial information is needed, we can require that it be filed. Section 1120.8.

AAR also requests that a dichotomy should be made between transactions that constitute a major market extension and minor proposals. It believes the full range of information called for under the new rules should be required only for proposals of the former type.

As noted, the new rules generally require the submission of information which is needed to evaluate the transaction properly. However, some of the information referenced by AAR may not be relevant or applicable to certain transactions of limited scope. AAR's recommendation would give an applicant the initial choice as to the level of information which should be provided. This, in turn, might generate a substantial number of requests by parties for supplementary information. By contrast, the waiver process gives the Commission the option to reduce the filing burden and to reach an informal decision in the matter on the basis of clearly identified reasons in support of the request.

Opportunity for Reply

AAR believes that the proposed rules should be amended to permit an applicant to reply to comments. We believe AAR's suggestion should be adopted. There is a clear advantage both to the Commission and to interested parties in developing a full and complete record in all proceedings. However, we must be mindful of the strict time constraints under which we must decide rail proceedings under the Staggers Act. So as not to prolong unduly the procedural stages of a proceeding, we shall permit replies to written comments, provided they are filed and served within 5 days of the due date of the pleadings they address.[6]

Notice of Common Carrier Status of Designated Operators and Operators Under a Modified Certificate

AAR notes that many industry agreements which it administers, including rules for the joint movement and interchange of freight cars and traffic, and arrangements for accounting, billing and settlements, require that a subscriber be a common carrier by railroad subject to the Commission's jurisdiction. AAR wishes to receive notice of the start up and termination of operations by designated operators and holders of a modified certificate and requests that we clarify their common carrier status.

Both designated operators and holders of a modified certificate are common carriers by railroad. See §§ 1120.16 and 1120.11 of the rules included here. Therefore, both are entitled to participate in AAR agreements for which common carrier status is a prerequisite. Under the present procedure, AAR is served with the modified certificate notice. In the future, it will also receive copies of designated operator certificates. We will not publish those certificates in the **Federal Register** as requested by AAR. The service provided under these provisions is usually a local service, and generally of concern only to local shippers and the AAR. Our rules already require notification of shippers when service terminates.

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[6] See recently revised § 1121.36(c)(4), which permits replies under these conditions in abandonment proceedings.

Modified Certificate Procedures and Designated Operator Rules

WIDOT belives that carriers which operate under a modified certificate should be required to file for a full certificate of public convenience and necessity when either (1) any financial assistance they receive terminates or (2) the operator assumes ownership of the line.

The modified certification procedures of Section 1120 Subpart C have been included for informational purposes only. The final rules have already been adopted and are not being modified here. Although we are not precluded from reopening the modified certificate rulemaking proceeding and instituting a new proceeding to effect needed changes, we do not believe that either of the proposed changes advanced by WIDOT warrants adoption.

The first change, requiring an operator to apply for a certificate if an operating subsidy is discontinued, defeats the main purpose of these rules. The modified certificate rules were designed to remove regulatory hurdles which might otherwise discourage new operators from initiating service over marginal lines. "Common Carrier Status of State, State Agencies", 363 I.C.C. 132, 133 (1980). A number of operators now providing service under modified certificates receive no operational subsidies from the governmental bodies which own the tracks over which they operate. Requiring them to obtain a full-fledged certificate of public convenience and necessity might discourage continuation of their service.

In addition, WIDOT's suggestion that operators under a modified certificate be required to apply for a full-fledged certificate when they acquire a line is already implicit in the rules. Under § 1120.21, the modified certificate procedures "apply to the operators over abandoned rail line, which has been acquired (through purchase or lease) by a State." Acquisition of the line from the State would require our approval under 49 U.S.C. 10901 and a certificate of public convenience and necessity would be needed for the operations to continue.

UTU's Remaining Contentions

UTU objects to the inclusion in 49 CFR Part 1120 of the Designated Operator and Modified Certificate regulations. It believes that use of the designated operator rules (Subpart B of Part 1120) will become less frequent in the future as federal subsidies are reduced. As indicated in the notice of proposed rulemaking, the designated operator rules have not previously been codified in the Code of Federal Regulations. Our intent is thus to make the rules available on a wider basis for the convenience of the public.

UTU correctly notes that in No. 79-2457, "John W. McGinness, Brotherhood of Locomotive Engineers and Railway Labor Executives' Association v. Interstate Commerce Commission and United States of America" (U.S.C.A. D.C. Cir., decided August 17, 1981), the Court determined that designated operators may not be relieved of the obligation under 49 U.S.C. 11347 to protect the interest of employees who may be affected by a consolidation transaction under 49 U.S.C. 11343 and 11344, but otherwise affirmed the Commission's decision in Ex Parte No. 361, 361 I.C.C. 379 (1979). The procedures adopted here reflect the court's ruling.[7]

UTU contends that the recodification of the rules adopted here has eliminated the need for a subsidy arrangement as a prerequisite for receiving a designated operator certificate. However, under 49 CFR 1120.15, Information about Offeror, the necessity for a rail service continuation payment or subsidy is clearly indicated. The designated operator rules adopted here have been recodified without substantive modification, in this and all other respects.

UTU objects to deletion of the term "extension" from the title of the new rules, noting that this term is contained in the statute and that it has appeared in many Commission decisions since its initial introduction as part of the Transportation Act of 1920.

The term "extension" is frequently used to differentiate the acquisition or construction of a line of railroad (over which the Commission exercises jurisdiction) from that of a spur or industrial track which is exempt under 49 U.S.C. 10907. See, e.g., "Texas & Pac. Ry. v. Gulf, etc., Ry.", 270 U.S. 266, 277-279 (1920); "Powell v. United States", 300 U.S. 276, 286-88 (1937); "Georgia Southern F. Ry. Co. v. Atlantic Coast Line R. Co.", 373 F.2d 497, 499-500 (Fifth Cir. 1967); and "Central of Georgia Ry. Co.—Operator—In Ala.", 336 I.C.C. 623, 631-636 (1970). If a proposed transaction involves an extension of a line of railroad, the prior approval of the Commission is needed before it can be consummated. Thus, the term "extension" characterizes the nature of the trackage. The words "construction" and "acquisition" delineate the manner in which a new line of railroad—an "extension"—is brought into interstate commerce. We believe the term is redundant and should be omitted.

UTU also objects to the reduction in public notice contemplated by the new rules (the new rules would require only one publication rather than three). It believes that even the present notice requirement is inadequate and that further reduction would lower the level of public awareness of construction and acquisition applications.

Under recently revised § 1108.6(a), an Environmental Impact Statement (EIS) is normally required for most types of rail constructions.[8] Prior to its preparation of an EIS, the Commission's Energy and Environmental Branch publishes a notice of intent in the **Federal Register**. After preparation of a draft EIS, comments are elicited by publishing a Notice of Availability. Thus, for many transactions within the scope of the rules, extensive public notice arises out of the environmental scoping process. Although an EIS is generally not required for the acquisition of an existing rail line (and hence notice of the proposal will not be given by the Energy and Environment Branch), acquisitions imply the continuance of rail service by a new carrier. The potential for injury to the public through lack of notice in such situations is less likely than where new rail facilities are to be built. Therefore, although the new rules envision a reduction in notice by eliminating the requirement that a second and third announcement of the proposed transaction be given, we believe the cumulative burden on the industry outweighs the remote possibility of injury to the public or to affected shippers.

Environmental Impact

We conclude that this proceeding will not have a significant impact upon either the quality of the human environment or the conservation of energy resources. Each application decided under Section 10901 must contain an independent environmental analysis and finding. Although these rules relax environmental reporting requirements to reflect the fact that this information is presented elsewhere, they in no way affect standards under which environmental data are evaluated.

Regulatory Flexibility Analysis

Under section 604 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (September 19, 1980), we are required to analyze the economic impact

[7] UTU's opposition to inclusion of the modified certificate procedures parallels a judicial appeal taken to the Commission's decision in "Common Carrier Status of States, State Agencies", *supra*.

[8] An EIS is required under Section 102(e)(c) of NEPA for all actions which may have a significant environmental impact.

of the rules adopted here on small entities (e.g., small businesses, not-for-profit organizations, and small governmental bodies). The primary purpose of these rules is to reduce the administrative filing burden on the rail industry so that applications under 49 U.S.C. 10901 can be processed more expeditiously. The rules will be particularly helpful to small rail carriers which may file section 10901 applications only occasionally. Format requirements have been substantially relaxed and the level of information required to be presented in an application has been greatly reduced. We have decreased the required time period for operational and financial analysis to two years. This should eliminate or greatly lessen the need of small carriers to pay for economic analysis more extensive than that needed for their own purpose. In sum, the new rules should enable small carriers to submit, either as is or in slightly modified form, information that is already available on a proprietary basis. Shippers should benefit from more rapid access to rail transportation service which the new rules will make possible. Not-for-profit organizations and small governmental bodies will not be measurably affected by the new rules. To the extent such entities are affected, the impact of the new rules will be salutary. They will participate indirectly in the benefits to be enjoyed by the rail industry through adoption of these rules.

Although notice requirements are reduced somewhat for proceedings which involve the acquisition of existing rail lines and minor construction projects, it is unlikely that this will adversely affect any sector. Such proceedings are unlikely to have significant environmental or economic impacts, and often involve a mere change in ownership of a rail facility, with service patterns either remaining unchanged or improved. The right of all interested persons to participate in a section 10901 transaction is clearly and fully preserved. The rules adopted here are the best alternative among those considered in terms of effectuating legislative goals.

Conclusion

We adopt the final rules set forth in the appendix.

(49 U.S.C. 10321 and 10901 and 5 U.S.C. 553)

Dated: February 11, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham and Clapp.

Agatha L. Mergenovich,

Secretary.

Appendix

49 CFR Part 1120 is revised to read as follows:

PART 1120—CERTIFICATE TO CONSTRUCT, ACQUIRE OR OPERATE RAILROAD LINES

Authority: 49 U.S.C. 10321 and 10901 and 5 U.S.C. 553.

Subpart A—Applications Under 49 U.S.C. 10901

§ 1120.1 Introduction.

(a) *When an application is required.* This subpart governs applications under 49 U.S.C. 10901 for a certificate of public convenience and necessity authorizing the construction, acquisition or operation of railroad lines. Noncarriers require Commission approval under section 10901 to construct, acquire or operate a rail line in interstate commerce. Existing carriers require approval under section 10901 only to construct a new rail line or operate a line owned by a noncarrier, since acquisition by a carrier of an active rail line owned by a carrier is covered by 49 U.S.C. 11343. We have exempted from these requirements the acquisition by a State entity of a rail line that has been approved for abandonment, as well as operations over these lines. See subpart C of this part. In addition, where appropriate, we have granted individual exemptions from these certification requirements. See 49 U.S.C. 10505.

(b) *Content of the application.* Applications filed under this subpart shall include the information set forth in §§ 1120.2 through 1120.9. The applicant must also comply with the Energy and Environmental Regulations, at 49 CFR Parts 1106 and 1108 (including consulting with the Commission's Energy and Environmental Branch at least 6 months prior to filing an application, to begin the scoping process to identify environmental issues and outline procedures for analysis of this aspect of the proposal).

§ 1120.2 Overview.

(a) A brief narrative description of the proposal.

(b) The full name and address of applicant(s).

§ 1120.3 Information about applicant(s).

(a) The name, address, and phone number of the representative to receive correspondence concerning this application.

(b) Facts showing that applicant is either a common carrier by railroad or has been organized to implement the proposal for which approval is being sought.

(c) A statement indicating whether the rail line will be operated by applicant. If not, the operator which has been selected must join in the application, and provide all information required for an applicant. If the operator has not yet been selected, state who is being considered.

(d) A statement indicating whether applicant is affiliated by stock ownership or othewise with any industry to be served by the line. If so, provide details about the nature and extent of the affiliation.

(e) Date and place of organization, applicable State statutes, and a brief description of the nature and objectives of the organization.

(f) If a corporation, submit:

(1) A list of officers, directors, and 10 principal stockholders of the corporation and their respective holdings. A statement whether any of these officers, directors or major shareholders control other regulated carriers. Also a list of entities, corporation(s) individual(s), or group(s) who control applicant, the extent of control, and whether any of them control other common carriers.

(2) As exhibit A, any resolution of the stockholders or directors authorizing the proposal.

(g) If a partnership or individual, submit the name and address of all general partners and their respective interests, and whether any of them control other carriers.

(h) If applicant is an entity other than as described in paragraphs (e) or (f) of this section, submit name, title, and business address of principals or trustee, and whether the entity controls any other common carriers.

(i) If applicant is a trustee, receiver, assignee, or a personal representative of the real party in interest, details about the appointment (including supporting documents, such as the court order authorizing the appointment and the filing) and about the real party in interest.

(j) If applicant is an existing carrier, it may satisfy the informational requirements of f–i above by making appropriate reference to the docket number of prior applications that have been filed within the previous three years in which the information has been submitted.

§ 1120.4 Information about the proposal.

(a) A description of the proposal and the significant terms and conditions, including consideration to be paid (monetary or otherwise). As exhibit B, copies of all relevant agreements.

(b) Details about the amount of traffic and a general description of commodities.

(c) The purposes of the proposal and an explanation of why the public convenience and necessity require or permit the proposal.

(d) As exhibit C, a map which clearly delineates the area to be served including origins, termini and stations, and cities, counties and States. The map should also delineate principal highways, rail routes and any possible interchange points with other railroads. If alternative routes are proposed for construction, the map should clearly indicate each route.

(e) A list of the counties and cities to be served under the proposal, and whether there is other rail service available to them. The names of the railroads with which the line would connect, and the proposed connecting points; the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, division of rates or trackage rights.

(f) The time schedule for consummation or completion of the proposal.

(g) If a new line is proposed for construction:

(1) The approximate area to be served by the line.

(2) The nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries.

(3) Whether the construction will cross another rail line and the name of the railroad(s) owning the line(s) to be crossed. If the crossing will be accomplished with the permission of the railroad(s), include supporting agreements. If a Commission determination under 49 U.S.C. 10901(d)(1) will be sought, include such requests.

§ 1120.5 Operational data.

As exhibit D, an operating plan, including traffic projection studies; a schedule of the operations; information about the crews to be used and where employees will be obtained; the rolling stock requirements and where it will be obtained; information about the operating experience and record of the proposed operator unless it is an operating railroad; any significant change in patterns of service; any associated discontinuance or abandonments; and expected operating economies.

§ 1120.6 Financial information.

(a) The manner in which applicant proposes to finance construction or acquisition, the kind and amount of securities to be issued, the approximate terms of their sale and total fixed charges, the extent to which funds for financing are now available, and whether any of the securities issued would be underwritten by industries to be served by the proposed line. Explain how the fixed charges will be met.

(b) As exhibit E a recent balance sheet. As exhibit F, an income statement for the latest available calendar year prior to filing the application.

(c) A present value determination of the full costs of the proposal. If construction is proposed, the costs for each year of such construction (in a short narrative or by chart).

(d) A statement of projected net income for 2 years, based upon traffic projections. Where construction is contemplated, the statement should represent the 2 years following completion of construction.

§ 1120.7 Environmental and energy data.

As exhibit H, information and data prepared under 49 CFR Part 1108, and the "Revision of the Nat'l. Guidelines Environmental Policy Act of 1969," 363 I.C.C. 653 (1980), and in accordance with "Implementation of the Energy Policy and Conservation Act of 1975," 49 CFR Part 1106.

§ 1120.8 Additional support.

Any additional facts or reasons to show that the public convenience and necessity require or permit approval of this application. The Commission may require additional information to be filed where appropriate.

§ 1120.9 Notice.

A summary of the proposal which will be used to provide notice under § 1120.10(f).

§ 1120.10 Procedures.

(a) *Waivers.* Prior to filing an application, prospective applicants may seek an advance waiver, either on a permanent or temporary basis, of required information which is unavailable or not necessary or useful in analysis of the proposal. However, if the information is clearly not applicable to the individual proposal, a waiver is not necessary and need not be sought. A petition must specify the sections for which waiver or clarification is sought and the reasons why it should be granted. No replies will be permitted. Parties may, upon an appropriate showing, demonstrate their need to examine data which have previously been waived. In such circumstances, the Commission only requires that it be produced under § 1120.8 above.

(b) *Filing procedures.* The original and five copies of the application and all documents shall be filed with the Secretary. A $700 fee is required to file an application. (49 CFR 1002.2(d)(1).) Copies of documents shall be furnished promptly to interested parties upon request. The application shall include a stamped self-addressed envelope to be used to notify applicant of the docket number. Additionally, if possible, telephonic communication of the docket number shall be made.

(c) *Signatures.* The original of the application shall be signed by applicants (if a partnership, all general partners must sign; and if a corporation, association, or other similar form of organization, the signature should be that of the executive officer having knowledge of the matters and designated for that purpose). Applications shall be made under oath and shall contain an appropriate certification (if a corporation, by its secretary) showing that the affiant is duly authorized to verify and file the application. Any persons controlling an applicant shall also sign the application.

(d) *Related applications.* Applicant shall file concurrently all directly related applications (e.g., to issue securities, control motor carriers, obtain access to terminal operations, acquire trackage rights). All such applications will be considered with the main application.

(e) *Service.* As soon as the docket number is obtained the applicant shall serve a conformed copy of the application by first-class mail upon the Governor (or Executive Officer), Public Service Commission, and Department of Transportation of each State in which any part of the properties involved in the proposed transaction is located. Within 2 weeks of filing, applicant shall submit to the Commission a copy of the certificate of service indicating that all persons so designated have been served a copy of the application.

(f) *Publication.* Within 2 weeks of filing, applicant shall have published the summary of the application (prepared under § 1120.9) in a newspaper of general circulation in each county in which the line is located. The notice should inform interested parties of the date by which they must advise the Commission of their interest in the proceeding. This date shall be calculated as the 35th day after the filing of the application which is neither a Saturday, Sunday, or legal holiday in the District of Columbia. Applicant must file an affidavit of publication immediately after the publication has been completed. The Commission will, as soon as practicable, either publish the notice summary in the **Federal Register** or reject the application if it is incomplete.

(g) *Public participation.* Written comments (with five copies) must be filed within 35 days of the filing of the application. Comments must contain the basis for the party's position either in support or opposition. Applicant must be served with a copy of each comment. On the basis of the comments and the assessment by the Energy and Environmental Branch, the Commission will decide if a hearing is necessary. A hearing may be either oral or through receipt of written statements (modified procedure). (See 49 CFR 1100.43 *et seq.*) If there is no opposition to the application, additional evidence normally need not be filed, and a decision will be reached using the information in the application.

(h) *Replies to written comments.* Applicant's replies will be considered by the Commission provided they are filed and served within 5 days of the due date of the pleadings they address.

Subpart B—Designated Operators

§ 1120.11 Introduction.

A certificate of designated operator will be issued to an operator providing service pursuant to a rail service continuation agreement under section 304 of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976. The designated operator (D–OP) may commence and terminate the service in accordance with the terms of the agreement. When service is terminated the D–OP must notify all shippers on the line. To obtain a D–OP certificate, the information in this subpart must be filed with the Commission. A copy of the certificate of designated operator shall be served on the Association of American Railroads.

§ 1120.12 Information about the designated operator.

(a) The name and address of the D–OP.

(b) If a new corporation or other new business entity, a copy of the certificate of incorporation or, if unincorporated, the facts and official organizational documents relating to the business entity.

(c) The names and addresses of all officers and directors, with a statement from each which indicates present affiliation, if any, with a railroad.

(d) Sufficient information to establish its financial responsibility for the proposed undertaking, unless the D–OP is a common carrier by railroad. The nature and extent of all liability insurance coverage, including insurance binder or policy number, and name of insurer.

§ 1120.13 Relevant dates.

The exact dates of the period of operation which have been agreed upon by the D–OP, the offeror of the rail service continuation payment, and the owner of the line to be operated, in their lease and operating agreements.

§ 1120.14 Proposed service.

(a) A copy of all agreements between the D–OP, the offeror of the rail service continuation payment, and the owner of the line to be operated.

(b) Any additional information which is necessary to provide the Commission with a description of:

(1) The line over which service is to be provided (e.g., U.S.R.A. Line); and

(2) All interline connections, including the names of the connecting railroads.

§ 1120.15 Information about offeror.

(a) The name and address of the offeror of the rail service continuation payment.

(b) Sufficient information to establish the financial responsibility of the offeror for the proposed undertaking, or if the offeror is a State or municipal corporation or authority, a statement that it has authority to perform the service or enter into the agreement for subsidy.

§ 1120.16 Procedures.

Upon receipt of this information, the matter will be docketed by the prefix initials "D–OP." Operators may begin operating immediately upon the filing of the necessary information (plus three copies). Although the designated operator will not be required to seek and obtain authority from the Commission either to commence or to terminate operations, the designated operator is a common carrier by railroad subject to all other applicable provisions of 49 U.S.C. Subtitle IV. However, we have exempted designated operators from some aspects of regulation. See "Exempting of Certain Designated Operators from section 11343, 361 ICC 379 (1979), as modified by No. 79–2457, John W. McGinness, Brotherhood of Locomotive Engineers and Railway Labor Executives' Association v. Interstate Commerce Commission and United States of America." (U.S.C.A. D.C. Cir., decided August 17, 1981).

Subpart C—Modified Certificate of Public Convenience and Necessity

§ 1120.21 Scope of rules.

These special rules apply to operations over abandoned rail lines, which have been acquired (through purchase or lease) by a State. The rail line must have fully abandoned, or approved for abandonment by the Commission or a bankruptcy court. As used in these rules, the term "State" includes States, political subdivisions of States, and all instrumentalities through which the State can act. An operator has the option of applying for a modified certificate of public convenience and necessity under this subpart or a common carrier certificate under Subpart A. of this part. A copy of the modified certificate shall be served on the Association of American Railroads.

§ 1120.22 Exemptions and common carrier status.

The acquisition by a State of a fully abandoned line is not subject to the jurisdiction of the Interstate Commerce Commission. The acquisition by a State of a line approved for abandonment and not yet fully abandoned is exempted from the Commission's jurisdiction. If the State intends to operate the line itself, it will be considered a common carrier. However, when a State acquires a rail line described under § 1120.21 and contracts with an operator to provide service over the line, only the operator incurs a common carrier obligation. The operators of these lines are exempted from 49 U.S.C. 10901 and 10903 which are the statutory requirements governing the start up and termination of operations. Operators exempted from these requirements must comply with the requirements of this part and must apply for a modified certificate of public convenience and necessity. The operator is a common carrier and incurs all benefits and responsibilities under 49 U.S.C. Subtitle IV; however, the State through its operational agreement or the operator of the line may determine certain preconditions, such as payment of a subsidy, which must be met by shippers to obtain service over the line. The operator must notify the shippers on the line of any preconditions. The modified certificate will authorize service to shippers who meet these preconditions and the operator will be required to provide complete common carrier service under this certificate only to those shippers. (See 363 ICC 132.)

§ 1120.23 Modified certificate of public convenience and necessity.

(a) The operator must file a notice with the Commission for a modified certificate of public convenience and necessity. Operations may commence immediately upon the filing; however, the Commission will review the information filed, and if complete, will issue a modified certificate notice.

(b) A notice for a modified certificate of public convenience and necessity shall include the following information:

(1) The name and address of the operator and, unless the operator is an existing rail carrier:

(i) Its articles of incorporation or, if it is unincorporated, the facts and organizational documents relating to its formation;

(ii) The names and addresses of all of its officers and directors and a statement indicating any present affiliation each may have with a rail carrier; and

(iii) Sufficient information to establish the financial responsibility of the operator.

(2) Information about the prior abandonment, including docket number, status and date of the first decision approving the abandonment.

(3) The exact dates of the period of operation which have been agreed upon by the operator and the State which owns the line (if there is any agreement, it should be provided);

(4) A description of the service to be performed including, where applicable, a description of:

(i) The line over which service is to be performed;

(ii) All interline connections including the names of the connecting railroads;

(iii) The nature and extent of all liability insurance coverage, including binder or policy number and name of insurer; and

(iv) Any preconditions which shippers must meet to receive service.

(5) The name and address of any subsidizers, and

(6) Sufficient information to establish the financial responsibility of any subsidizers (if the subsidizer is a State, the information should show that it has authority to enter into the agreement for subsidized operations).

(c) The service offered and the applicable rates, charges, and conditions must be described in tariffs published by the operator to the Commission's rules.

§ 1120.24 Termination of service.

The duration of the service may be determined in the contract between the State and the operator. An operator may not terminate service over a line unless it first provides 60 days' notice of its intent to terminate the service. The notice of intent must be: (a) Filed with the State and the Commission, and (b) mailed to all persons that have used the line within the 6 months preceding the date of the notice.

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