

the pooling agreement will unduly restrain competition. If neither of these two factors is present, the application will be granted without further hearing. Where either factor is found to exist, the application will be published in the FEDERAL REGISTER using the caption summary filed with the application, and a hearing will be scheduled (normally to receive written verified statements) to consider the issues further. In this second phase of the proceeding, the Board will consider whether the pooling agreement would be in the interest of better service to the public or of economy of operation and whether it will unduly restrain competition.

## PART 1185—INTERLOCKING OFFICERS

Sec.

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AUTHORITY: 49 U.S.C. 721, 10502, and 11328.

SOURCE: 62 FR 2042, Jan. 15, 1997, unless otherwise noted.

### § 1185.1 Definitions and scope of regulations.

(a) This part addresses the requirement of 49 U.S.C. 11328 authorization of the Surface Transportation Board (STB) needed for a person to hold the position of officer or director of more than one rail carrier, except where only Class III carriers are involved. STB authorization is not needed for individuals seeking to hold the positions of officers or directors only of Class III railroads. 49 U.S.C. 11328(b).

(b) When a person is an officer of a Class I railroad and seeks to become an officer of another Class I railroad, an application under 49 U.S.C. 11328(a) (or petition for individual exemption under 49 U.S.C. 10502) must be filed. All other “interlocking directorates” have been exempted as a class from the prior approval requirements of 49 U.S.C. 11328(a), pursuant to 49 U.S.C. 10502 and former 49 U.S.C. 10505. For such interlocking directorates exempted as a

class, no filing with the STB is necessary to invoke the exemption.

(c) An *interlocking directorate* exists whenever an individual holds the position of officer or director of one rail carrier and assumes the position of officer or director of another rail carrier. This provision applies to any person who performs duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent or chief purchasing agent.

(d) For purposes of this part, a *rail carrier* means a person providing common carrier railroad transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide such transportation.

### § 1185.2 Contents of application.

(a) Each application shall state the following:

(1) The full name, occupation, business address, place of residence, and post office address of the applicant.

(2) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of, and accurate description of, such securities of each carrier for which the applicant seeks authority to act. (Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by the applicant, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.)

(3) Each and every position with any carrier:

(i) Which is held by the applicant at the time of the application; and

(ii) Which the applicant seeks authority to hold, together with the date and manner of his or her election or appointment thereto and, if the applicant has entered upon the performance of

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his duties in any such position, the nature of the duties so performed and the date when he first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize that person to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(4) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in rail transportation. (If any such carrier neither operates nor owns any railroad providing transportation that is subject to 49 U.S.C. 10501, the application shall include a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date or, if already filed with the former Interstate Commerce Commission (ICC) or with the STB, a reference thereto, with any intervening amendments.)

(5) A full statement of pertinent facts relative to any carrier involved which does not make annual reports to the STB.

(6) Full information as to the relationship—operating, financial, competitive, or otherwise—existing between the carriers covered by the requested authorization.

(7) Every corporation—industrial, financial, or miscellaneous—of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(8) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(9) Whether or not any other application for authority has been made in behalf of the applicant and, if so, the date and docket number thereof, by whom made, and the action thereon, if any.

(b) When application has been made on behalf of any person, a subsequent application by that person need not repeat any statement contained in the previous application but may incor-

porate the same by appropriate reference.

### § 1185.3 Procedures.

The original application or petition shall be signed by the individual applicant or petitioner and shall be verified under oath. Petitions and applications should comply with the STB's general rules of practice set forth at 49 CFR part 1104. Applications or petitions may be made by persons on their own behalf.

### § 1185.4 General authority.

Any person who holds or seeks specific authority to hold positions with a carrier may also request general authority to act as an interlocking officer for all affiliated or subsidiary companies or properties used or operated by that carrier, either separately or jointly, with other carriers. A carrier may apply for general authority on behalf of an individual who has already received authority to act as an interlocking officer. However, a carrier may not apply for general authority for an individual who holds a position with another railroad which is not an affiliate or subsidiary of the carrier or whose properties are not used or operated by the carrier, either separately or jointly with other carriers.

### § 1185.5 Common control.

It shall not be necessary for any person to secure authorization to hold the position of officer or director of two or more carriers if such carriers are operated under common control or management either:

(a) Pursuant to approval and authority of the ICC granted under former 49 U.S.C. 11343-44 or by the STB granted under 49 U.S.C. 11323-24; or

(b) Pursuant to an exemption authorized by the ICC under former 49 U.S.C. 10505 or by the STB under 49 U.S.C. 10502; or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

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