

§ 1121.2

49 CFR Ch. X (10–1–13 Edition)

§ 1121.2 Discovery.

Discovery shall follow the procedures set forth at 49 CFR part 1114, subpart B. Discovery may begin upon the filing of the petition for exemption or petition for revocation of an exemption. In petitions to revoke an exemption, a party must indicate in the petition whether it is seeking discovery. If it is, the party must file its discovery requests at the same time it files its petition to revoke. Discovery shall be completed 30 days after the petition to revoke is filed. The party seeking discovery may supplement its petition to revoke 45 days after the petition is filed. Replies to the supplemental petition are due 15 days after the supplemental petition is filed.

§ 1121.3 Content.

(a) A party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition.

(b) A petition must comply with environmental or historic reporting and notice requirements of 49 CFR part 1105, if applicable.

(c) A party seeking revocation of an exemption or a notice of exemption shall provide all of its supporting information at the time it files its petition. Information later obtained through discovery can be submitted in a supplemental petition pursuant to 49 CFR 1121.2.

(d) *Transactions imposing interchange commitments.* (1) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”), the following additional information must be provided:

(i) The existence of that provision or agreement and identification of the affected interchange points; and

(ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing

of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to paragraph (d)(1) of this section by filing, and serving upon the petitioner, a “Motion for Access to Confidential Documents,” containing:

(i) An explanation of the party’s need for the information; and

(ii) An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

(3) *Deadlines.* (i) Replies to a Motion for Access are due within 5 days after the motion is filed.

(ii) The Board will rule on a Motion for Access within 30 days after the motion is filed.

(iii) Parties must produce the relevant documents within 5 days of receipt of a Board approved, signed confidentiality agreement.

[61 FR 52714, Oct. 8, 1996, as amended at 73 FR 31034, May 30, 2008]

EFFECTIVE DATE NOTE: At 78 FR 54590, Sept. 5, 2013, §1121.3 was amended by revising the paragraph heading to paragraph (d), paragraphs (d)(1) introductory text, and (d)(1)(ii), and by adding paragraphs (d)(1)(iii) through (viii), effective Oct. 5, 2013. For the convenience of the user, the added and revised text is set forth as follows:

§ 1121.3 Content.

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(d) *Interchange Commitments.* (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means (“interchange commitment”). If such a provision exists, the following additional information must be provided (the information in paragraphs (d)(1)(ii), (iv), (vii) of this section may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b)):

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- (ii) A confidential, complete version of the document(s) containing or addressing that provision or agreement;
- (iii) A list of shippers that currently use or have used the line in question within the last two years;
- (iv) The aggregate number of carloads those shippers specified in paragraph (d)(1)(iii) of this section originated or terminated (confidential);
- (v) A certification that the filing party has provided notice of the proposed transaction and interchange commitment to the shippers identified in paragraph (d)(1)(iii) of this section;
- (vi) A list of third party railroads that could physically interchange with the line sought to be acquired or leased;
- (vii) An estimate of the difference between the sale or lease price with and without the interchange commitment (confidential);
- (viii) A change in the case caption so that the existence of an interchange commitment is apparent from the case title.

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§ 1121.4 Procedures.

- (a) Exemption proceedings are informal, and public comments are generally not sought during consideration of exemption petition proposals, except as provided in §1121.4(c). However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption.
- (b) If the Board determines that the criteria in 49 U.S.C. 10502 are met for the proposed exemption, it will issue the exemption and publish a notice of exemption in the FEDERAL REGISTER.
- (c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:
 - (i) Direct that additional information be filed; or
 - (ii) Publish a notice in the FEDERAL REGISTER requesting public comments.
- (2) If a petition for a new class exemption is filed, the Board will publish a notice in the FEDERAL REGISTER requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board

- may deny a request for a class exemption without seeking public comments.
- (d) Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.
- (e) Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions for reconsideration or petitions to reopen under 49 CFR part 1115 or 49 CFR 1152.25(e) must be filed within 20 days of the service date.
- (f) Petitions to revoke an exemption or the notice of exemption may be filed at any time. The person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met.
- (g) In abandonment exemptions, petitions to revoke in part to impose public use conditions under 49 CFR 1152.28, or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time prior to the consummation of the abandonment, except that public use conditions may not prohibit disposal of the properties for any more than the statutory limit of 180 days after the effective date of the decision granting the exemption.
- (h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

[61 FR 52714, Oct. 8, 1996, as amended at 61 FR 58491, Nov. 15, 1996; 62 FR 47583, Sept. 10, 1997; 64 FR 46595, Aug. 26, 1999]

**PARTS 1122-1129 [RESERVED]
Parts 1130-1149—Rate Procedures**