

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36611]

Ports of Indiana and Indiana Ports Railroad Holding Corporation—Continuance in Control Exemption—Burns Harbor Shortline Railroad Company

Ports of Indiana (Ports) and Indiana Ports Railroad Holding Corporation (IPR), both noncarriers, have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to continue in control of Burns Harbor Shortline Railroad Company (BHS), a noncarrier wholly owned by IPR, which in turn is owned by Ports, upon BHS's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in Burns Harbor Shortline Railroad—Operation Exemption—in Porter County, Ind., Docket No. FD 36610, in which BHS seeks to operate an approximately 4.15-mile segment of track owned by the State of Indiana and controlled and managed by Ports within the Port of Indiana-Burns Harbor, in Portage, Porter County, Ind.

According to the verified notice, Ports is a statewide port authority that operates state-owned port facilities at Burns Harbor, Jeffersonville, and Mt. Vernon, Ind. IPR is a noncarrier subsidiary of Ports that directly controls two Class III shortlines that operate on track owned by the State of Indiana and controlled and managed by Ports at the port facilities in Jeffersonville and Mt. Vernon. According to the verified notice, Ports and IPR will continue in control of BHS upon BHS's becoming a railroad common carrier.

Ports and IPR represent that: (1) the rail line to be operated by BHS does not connect with the rail lines of any of the rail carriers controlled by Ports or IPR; (2) the transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. § 11323 pursuant to 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. § 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§ 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 11, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36611, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Ports' and IPR's representative, Thomas J. Healey, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to Ports, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: July 29, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.