

107.37, and extending 11,453 feet (2.17 miles) south to the point of switch of Central of Georgia Railroad Company Track No. 24 at V.S. 1120+32.5, WRA milepost XXB-109.55. The total length of trackage rights is 2.24 miles. The trackage rights were to become effective December 1, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,² and served on: Andrew C. Rambo, 104 Depot St., P. O. Box 129, Shelbyville, TN 37160.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

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[Finance Docket No. 31102]

Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision modifying historic preservation condition imposed in 1988.

SUMMARY: The Commission has removed a condition, imposed in 1988 in connection with a sale of rail lines, that prevented the railroad from selling, destroying or modifying affected properties until completion of procedures under section 106 of the National Historic Preservation Act. 16 U.S.C. 470f.

EFFECTIVE DATE: January 12, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 927-6056. [TDD for the hearing impaired: (202) 927-5721.]

² Legislation to terminate the Commission on December 31, 1995, is now pending enactment. Until further notice, the parties submitting pleadings should continue to use the current name and address.

SUPPLEMENTARY INFORMATION: On November 25, 1994, the Commission issued a Federal Register notice (59 FR 60656) concerning a proposal to reopen this proceeding to remove a condition that was imposed 6 years before in this rail line sale proceeding. We noted that the condition is inconsistent with our current procedures and may no longer be necessary. After reviewing the comments, we believe that our proposal should be adopted, and the condition modified.

As we previously noted, Wisconsin Central Ltd. (Wisconsin Central) purchased approximately 1800 miles of rail line from Soo Line Railroad Company (Soo), on October 11, 1987, pursuant to the class exemption for rail line sales, 49 CFR 1150.31 *et seq.*¹ We allowed the sale to proceed under the class exemption, but imposed a historic preservation condition. Rather than delaying the public benefit of the line sale in preserving rail service, we permitted the sale, but ordered the carrier not to take any steps that would affect historic properties until after the National Historic Preservation Act (NHPA) process could be completed. We imposed the following broad historic preservation condition:

The Commission will undertake a section 106 National Historic Preservation Act process in this matter. Pending completion thereof, [Wisconsin Central] shall refrain from taking any action that may jeopardize the historic integrity of sites and structures 50 years old or older.

Because of the large number of properties transferred, our Section of Environmental Analysis (SEA) attempted to reach a "programmatic agreement" (36 CFR 800.13) or "memorandum of agreement" (36 CFR 800.5) with the various State Historic Preservation Officers (SHPOs) involved and the Advisory Council on Historic Preservation (ACHP)² to limit this process to historic properties that might actually be adversely affected by the transfer, so that we could craft

¹ See *Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988). The exemption removes certain regulatory requirements associated with filing a formal application under 49 U.S.C. 10901.

² A programmatic agreement, negotiated between the ACHP and the responsible agency official in consultation with the appropriate SHPO, may be sued to determine proper historic preservation measures for projects when "effects on historic properties are similar and repetitive." The programmatic agreement is a contract that must be agreed to in writing by ACHP, the SHPO, and the agency, to be effective.

A memorandum of agreement (MOA) may be used, usually for a single project, where the agency and the SHPO agree on a course of action. ACHP must have an opportunity for comment.

appropriate mitigation conditions for them. As we detailed in our notice, however, this effort proved unsuccessful. We then used a case-by-case historic preservation process for each particular property that Wisconsin Central has subsequently sought to sell or demolish. This process has typically been very slow, and has often taken several years.

As we pointed out in our notice, the 1991 revisions to our historic preservation rules now require a historic preservation process in line sale cases only where, at the time of the transfer, the applicant plans to dispose of or alter properties subject to our jurisdiction that are 50 years or older.³

Implementation of Environmental Laws, 7 I.C.C.2d 807, 828 (1991). Carriers need not file a historic report for rail line sales "where . . . there are no plans to dispose of or alter properties subject to ICC jurisdiction that are 50 years old or older." 49 CFR 1105.8(b)(1). Nor are historic preservation conditions imposed absent such plans.

In our notice, we explained that, under our new rules, if a condition were imposed in a line sale case such as this one, it would apply only to properties that are used or useful in rail service and that the buyer has plans to dispose of or alter as a result of the acquisition and outside the context of a further abandonment or sale application.⁴ As we noted there, these rules have been applied in about 100 cases and have worked well in narrowing the focus of the historic review process to rail properties that may actually be affected by a sale transaction.

The broad condition imposed here has outlived its usefulness. Before Wisconsin Central can dispose of any of the properties it obtained from Soo in 1987, it must complete a lengthy historic preservation process for each particular property. This situation would continue indefinitely, because unless we amend the condition, it would cover all of Wisconsin Central's properties as long as it remains a railroad.⁵

³ These rule changes were made in consultation with the ACHP. It is unclear whether Wisconsin Central would have had to file a historic report or be subject to historic preservation conditions under this new standard, because it is not clear whether Wisconsin Central anticipated disposing of any properties at the time.

⁴ If subsequent abandonment or sale authority is required for the disposition of properties, the appropriate NHPA review will take place in the context of those proceedings.

⁵ We note that the problem relates to sales of properties that are not part of a line for which abandonment authority is sought. In abandonment proceedings, historic structures would be documented in any event.