

tors of carriers, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 11328 of this title.

§ 11323. Consolidation, merger, and acquisition of control

(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.

(3) Acquisition of control of a rail carrier by any number of rail carriers.

(4) Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier.

(5) Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.

(6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is reached, only with the approval and authorization of the Board under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

(1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.

(2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

(c) A person is affiliated with a rail carrier under this subchapter if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 838.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11343 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 11323, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1433; Pub. L. 99-521, §10(a), (b)(1), Oct. 22, 1986, 100 Stat. 2997, related to limitation on ownership of other carriers by household goods freight forwarders, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

§ 11324. Consolidation, merger, and acquisition of control: conditions of approval

(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest. The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and