

sappi

205771



Fine Paper
North America

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40g

S.D. Warren Company
225 Franklin Street
Boston MA 02110
Tel +1 617 368 6594
Fax +1 617 368 6580
briana.o'regan@na.sappi.com

Briana K. O'Regan
Intellectual Property
and Legal Counsel

July 2, 2002

Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423

Dear Mr. Williams:

Re: **Finance Docket No. 34133**
Notice of Exemption
Motion to Dismiss Notice of Exemption

205771

ENTERED
Office of Proceedings

JUL 03 2002

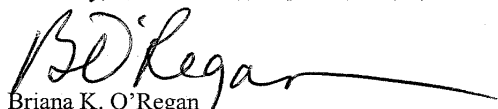
Part of
Public Record

Please find enclosed the following items:

1. The original and ten (10) copies of Verified Notice of Exemption pursuant to 49 C.F.R. §1150.31(a)(1) & (4);
2. The original and ten (10) copies of Motion to Dismiss the Notice of Exemption;
3. Three (3) computer diskettes with copies of the above referenced documents; and
4. A check for the filing fee in the amount of \$1,300.00.

Please do not hesitate to contact me if you have questions regarding this submission or need further information.

Sincerely,


Briana K. O'Regan
Intellectual Property & Legal Counsel

cc: w/enclosures

Robert B. Culliford
Vice President - Transportation
Maine Central Railroad Company
Springfield Terminal Railway Company
Iron Horse Park
North Billerica, MA 01862

FILED

JUL 03 2002

SURFACE
TRANSPORTATION BOARD
FEE RECEIVED

JUL 03 2002

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



DD# 0101982001

FINANCE DOCKET NO. 34133

S.D. WARREN COMPANY, d.b.a.
SAPPI FINE PAPER NORTH AMERICA
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.31(a)(1) & (4)

FILED

JUL 03 2002

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JUL 03 2002

**Part of
Public Record**

Briana K. O'Regan
Sappi Fine Paper North America
225 Franklin Street
Boston, MA 02110
Tel: (617) 368-6594
Fax: (617) 368-6580

Attorney for:
S.D. Warren Company d.b.a
Sappi Fine Paper North America

Dated: July 2, 2002

FEE RECEIVED

JUL 03 2002

**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34133

**S.D. WARREN COMPANY, d.b.a.
SAPPI FINE PAPER NORTH AMERICA
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1150.31(a)(1) & (4)**

The S.D. Warren Company d.b.a. Sappi Fine Papers North America ("Sappi"), a non-carrier, hereby files this Notice of Exemption pursuant to 49 C.F.R. §§1150.31(a)(1) and (4) to acquire from the Maine Central Railroad Company and the Springfield Terminal Railway Company (collectively "Guilford") certain joint operating rights over a portion of the Guilford main line of railroad between approximately milepost 8.55 and milepost 9.80 in Skowhegan, Maine (the "Subject Line"). The total distance of the operating rights over the Subject Line to be acquired is approximately 1.25 route miles.

Pursuant to a Joint Operating Agreement entered into between Sappi and Guilford, Sappi will be acquiring joint operating rights over the Subject Line for the sole purpose of moving railroad cars to and from tracks located entirely on property owned by Sappi. The use by Sappi will be limited to movement of its own traffic, and the Joint Operating Agreement does not provide that Sappi will acquire the right or incur the obligation to conduct any common carrier operations on the Subject Line. Sappi will receive no compensation under the Joint Operating Agreement, which is intended solely to enable Sappi to move more efficiently and expeditiously

rail traffic to and from loading and unloading docks at its facility in Skowhegan, Somerset County, Maine ("Somerset facility").

By extending its operations onto the Subject Line, Sappi believes it may be able to enhance its ability to switch cars within the facility, thereby improving the flow of cars into and out of the facility. Also, by utilizing these operating rights to place cars on the Subject Line for movement by Guilford, this transaction is expected to decrease the overall dwell and transit times for this traffic by removing the necessity of Guilford's operations on the tracks owned by Sappi.

Simultaneously with this Notice of Exemption ("Notice"), Sappi is filing in this docket a motion to dismiss this Notice. Sappi is utilizing this procedure to obtain a determination that, pursuant to 49 U.S.C. §10906, Board approval or exemption is not required to implement the Joint Operating Agreement.

In accordance with the requirements of 49 C.F.R. §1150.33, Sappi submits the following:

(a) **Full name and address of the applicant: 49 C.F.R. 1150.33(a)**

S.D. Warren Company d.b.a. Sappi Fine Paper North America
225 Franklin Street
Boston, MA 02110

(b) **Name, address, and telephone number of the representative of applicant who should receive correspondence: 49 C.F.R. 1150.33(b)**

Briana K. O'Regan, Esquire
Sappi Fine Paper North America
225 Franklin Street
Boston, MA 02110
Tel: (617) 368-6594
Fax: (617) 368-6580

- (c) **A statement that agreement has been reached or details about when an agreement will be reached: 49 C.F.R. 1150.33(c)**

Pursuant to a Joint Operating Agreement entered into by and between Sappi and Guilford, Sappi has obtained certain joint operating rights to place and retrieve its own traffic on the Subject Line. A copy of the Joint Operating Agreement is attached hereto as Exhibit A.

- (d) **The operator of the property: 49 C.F.R. 1150.33(d)**

Sappi expects Guilford to continue to operate over the Subject Line to pick up and deliver freight cars to and from Sappi. Sappi will continue to contract with a non-carrier to perform placement and retrieval of cars between Sappi's intraplant tracks and the Subject Line, as well as spotting cars within the Somerset facility.

- (e) **A brief summary of the proposed transaction: 49 C.F.R. 1150.33(e)**

1. Name and address of railroads transferring the subject property:

Maine Central Railroad Company
Springfield Terminal Railway Company
Iron Horse Park
North Billerica, MA 01862
Attn. Robert B. Culliford
Tel: (978) 663-1029

2. The proposed time schedule for consummation of the transaction:

While Sappi and Guilford have already executed the Joint Operating Agreement, Sappi will not consummate this transaction until this Notice of Exemption becomes effective or is dismissed.

3. The mileposts of the subject property, including any branch lines:

The Subject Line extends from milepost 8.55 to milepost 9.80 in Skowhegan, Somerset County, Maine.

4. The total route miles being acquired:

Sappi will be acquiring joint operating rights over approximately 1.25 route miles.

- (f) **A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties and States: 49 C.F.R. 1150.33(f)**

A map indicating the area to be served is attached hereto as Exhibit B.

- (g) **A certificate that applicant's proposed revenues do not exceed those that would qualify it as a Class III carrier: 49 C.F.R. 1150.33(g)**

Pursuant to the attached Verification and Certification, the projected annual revenues as a result of this transaction do not exceed those that would qualify Sappi as a Class III carrier. Furthermore, the projected annual revenues do not exceed \$5 million, thus exempting Sappi from posting and serving notices under 49 C.F.R. §1150.32(e).

- (h) **Caption Summary: 49 C.F.R. 1150.34**

A caption summary conforming to the requirements of 49 C.F.R. §1150.34 is attached hereto as Exhibit C.

- (i) **49 C.F.R. §1105**

1. Pursuant to 49 C.F.R. §1105.6(c)(2), this acquisition of joint operating rights by Sappi is exempt from environmental reporting requirements. Sappi's acquisition of these joint operating rights will not result in significant changes in carrier operations that would exceed the thresholds established by 49 C.F.R. §1105.7(e)(4) or (5).
2. Pursuant to 49 C.F.R. §1105.8(b)(1) & (2), the proposed acquisition of joint operating rights also is exempt from historic preservation reporting requirements. The proposed acquisition of operating rights will not disturb or interrupt common carrier rights or obligations on the Subject Line, Surface Transportation Board approval will be required to abandon any common carrier service, there are no plans to dispose of or

alter properties subject to Board jurisdiction that are 50 years or older, and the transaction will not substantially change the level of maintenance of railroad property.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B.O'Regan", with a long horizontal flourish extending to the right.

Briana K. O'Regan
Intellectual Property & Legal Counsel

Dated: July 2, 2002

Attorney for:
S.D. Warren Company d.b.a
Sappi Fine Paper North America

VERIFICATION AND CERTIFICATION

The Commonwealth of Massachusetts)
County of Suffolk) SS:

Dallas M. Darland, VP of Procurement, being duly sworn, hereby certifies that the projected annual revenues of the S.D. Warren Company d.b.a. Sappi Fine Paper North America upon consummation of and arising from the proposed transaction do not exceed those that would qualify it as a Class III carrier nor do such projected annual revenues exceed \$5 million.

The undersigned hereby further states that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.


Signature

Sworn to before me this 2 day of
July, 2002


Notary Public

My commission expires: My Commission Expires November 8, 2002

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing
Notice of Exemption upon each of the parties by mailing a copy by prepaid first
class U.S. Mail.

Dated at Boston, Massachusetts, this 2nd day of July, 2002.


Briana K. O'Regan
Intellectual Property & Legal Counsel

Exhibit A
Joint Operating Agreement

JOINT OPERATING AGREEMENT

THIS AGREEMENT dated as of this 4 day of Sept, 2001, by and between the **MAINE CENTRAL RAILROAD COMPANY** and the **SPRINGFIELD TERMINAL RAILWAY COMPANY**, (collectively "Railroad") and **S.D. WARREN COMPANY, d.b.a. SAPPI FINE PAPER NORTH AMERICA** ("Industry").

WITNESSETH:

WHEREAS, Railroad currently provides transportation services, including switching, between Milepost 8.35 and the industrial track serving the facilities of Industry located in Skowhegan, Maine; and

WHEREAS, Industry desires for purposes of economic and convenient operations, to perform the switching of cars into, out of and within such facilities itself; and

WHEREAS, in order to perform such switching services, Industry desires to operate, jointly with Railroad, over certain property of Railroad;

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00) per year, together with other valuable consideration and the mutual promises of the parties hereto, as set forth herein, Railroad and Industry agree as follows:

1. Railroad hereby grants to Industry permission to operate, jointly with Railroad, subject to the rights hereinafter excepted and reserved and upon the terms and conditions hereinafter set forth, the real property, including the tracks and other railroad facilities located thereon, designated as "joint use" on the attached Exhibit A, which is made a part hereof (all of which shall hereinafter be referred to as the "Premises"), for a term beginning as of the date hereof and ending when this Agreement shall be terminated as hereinafter provided.

2. Railroad hereby excepts and reserves the right, to be exercised by Railroad and by any others who have obtained or may obtain permission or authority from Railroad so to do (a) to

operate, maintain, renew and relocate any and all existing pipe, power and communication lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises, (b) from time to time to construct, operate, maintain, renew and relocate such additional facilities of the same character as will not unreasonably interfere with the use of the Premises by Industry for the purposes specified in this Agreement, (c) to use and to operate over the track designated as "joint use" in the Exhibit A attached hereto for any purpose necessary in order to permit Railroad to discharge any common carrier obligation it may have and (d) to use and to operate over any other tracks and facilities on the Premises.

3. Industry shall allow only qualified personnel, as reasonably determined by Railroad, to operate over the joint use tracks and the Premises. Industry is not a common carrier by rail and is not hereby intending to become such a carrier or to hold itself out as performing any activity on the premises other than its own industrial switching. Industry shall control Railroad's access to and from the joint use tracks and the Premises by means of one or more derails, private switch locks, or similar devices, which shall be installed at appropriate locations. Locking and unlocking of the derails, or private switch locks to provide such access and egress shall be the responsibility of Industry, which agrees to promptly open the derail(s), or remove private switch locks, upon the request of Railroad, for the purposes of (i) allowing Railroad to deliver cars to Industry for further handling by Industry; (ii) allowing Railroad to pick up cars from Industry for further handling by Railroad; and (iii) allowing Railroad to deliver to and/or pick up cars from any customers of Railroad located on or beyond the joint use tracks and Premises.

4. The Premises shall be maintained in good condition and repair by Railroad. Railroad shall, subject to the indemnification provisions of paragraph 6 hereof, repair and rebuild the tracks or other facilities in the event of damage or destruction, whether by derailment or otherwise. Industry shall be responsible for snow removal with respect to switches utilized by Industry on track subject to this Agreement.

5. In using the Premises, and in operating over the track, Industry shall comply with any and all requirements imposed by federal or state statutes on Industry, or by ordinances, orders

or regulations of any governmental body having jurisdiction thereover and shall use the Premises only for switching its own traffic. Claims related to derailment of equipment on the Premises and the cost of rerailling such equipment shall be borne by the parties in accordance with Section 6. Such rerailling shall be performed by Railroad. In conducting such operations over crossings at grade, if any, Industry shall undertake such action as is necessary to protect same, including but not limited to, flagging, traffic control, illumination, etc. In no event shall Industry provide or hold itself out to provide rail transportation service for any other shipper.

6. Responsibilities.

6.1 Industry shall be responsible for inspection of the Premises and shall report any defect, in track or otherwise, to Railroad. Railroad shall be responsible for any loss, cost, damage or expense which arises solely as a result of any such defect, but only if (i) Railroad has received prior notice of the defect from Industry and (ii) has failed to remedy same within fourteen (14) days of such notice.

6.2 Except as otherwise provided in Section 6.3, responsibility for Claims (as defined in Section 6.6) as between the parties shall be borne as follows:

(i) Provided that Industry's negligence or its failure to comply with its obligations under this Agreement are not a contributing cause to any Claims, Railroad shall be responsible for such claims arising from its negligence or its failure to comply with its obligations under this Agreement when such negligence or failure are a contributing cause to such Claims;

(ii) Provided that Railroad's negligence or its failure to comply with its obligations under this Agreement are not a contributing cause to any Claims, then Industry shall be responsible for such Claims which arise from its negligence or its failure to comply with its obligations under this Agreement when such negligence or failure are a contributing cause to such Claim;

(iii) The parties shall share responsibility for all Claims arising from their joint or concurring negligence or failure to comply with their respective obligations under this Agreement when any such failure is a contributing cause to such Claims in proportion to their level of fault. If Railroad is subjected to any Claims under the Federal Employers' Liability Act ("FELA") based on the allegation that Railroad failed, in respect to the premises, to provide a safe place to work or failed to correct or guard against an unsafe condition, the standards of negligence and causality established by FELA shall be applied

7. Neither party may assign this Agreement in whole or in part, or any of a party's rights or obligations hereunder without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, a party may assign this Agreement and any of its rights hereunder (i) pursuant to any sale of all or substantially all of its assets or securities, merger, acquisition or consolidation, or (ii) to any subsidiary or affiliate of that party; provided, however, that the assignee agrees to be bound by the terms and conditions of this Agreement.

8. Either party may terminate this Agreement at any time by giving thirty (30) days' written notice of termination to the other party, stating therein the date that such termination shall take place, and upon the expiration of the time specified in any such notice, this Agreement and all rights of the parties hereunder, except for a party's responsibility to indemnify the other party, or their affiliates for incidents which occur on or related to a date prior to the effective date of the termination, shall absolutely cease.

9. Upon the termination of this Agreement in any manner herein provided, Industry shall forthwith surrender to Railroad possession of the Premises and, if a condition interferes with the future use of the Premises and was caused by the negligence of Industry, Industry shall restore the track and other facilities on the Premises so that it does not interfere with the future use of the track by Railroad, reasonable wear and tear excepted. In the event Industry fails to make such restoration, then Railroad may, at its election, restore the Premises, and in such event Industry shall promptly pay Railroad on rendition of a bill therefor the costs so incurred. Notwithstanding the foregoing, Industry shall not be required to undertake any restoration which is caused by natural disasters, Acts of God, criminal acts of third parties, or is directly attributable to Railroad's failure to maintain the Premises in accordance with Section 4 hereof.

10. Any notice hereunder to be given by Railroad to Industry shall be deemed to be properly served if it is deposited in the U.S. mail, postage prepaid, addressed to Industry at: S.D. Warren Company, d.b.a. Sappi Fine Paper North America, 225 Franklin St., 28th Fl., Boston, MA

02110, Fax (617) 368-6580. Any notice to be given hereunder by Industry to Railroad shall be deemed to be properly served if it is deposited in the U.S. mail, postage prepaid, addressed to Vice President - Transportation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, Massachusetts 01862. Notice so served shall be effective upon receipt.

11. All the covenants and provisions of this Agreement shall be binding upon the successors, legal representatives and assigns of the parties to the same extent and effect as the same are binding upon the parties individually, and each and every covenant herein shall inure in favor of and run to the successors and assigns of the parties and to each and every person, firm or corporation which may hereafter own or be in possession of or operate Railroad or Industry to the same extent and as fully as though such person, firm or corporation were specifically named in this Agreement in the place and stead of Railroad or Industry; provided, however, that no assignment hereof by Industry, its successors, legal representatives or assigns, or any subsequent assignee, shall be binding upon Railroad without its prior written consent.

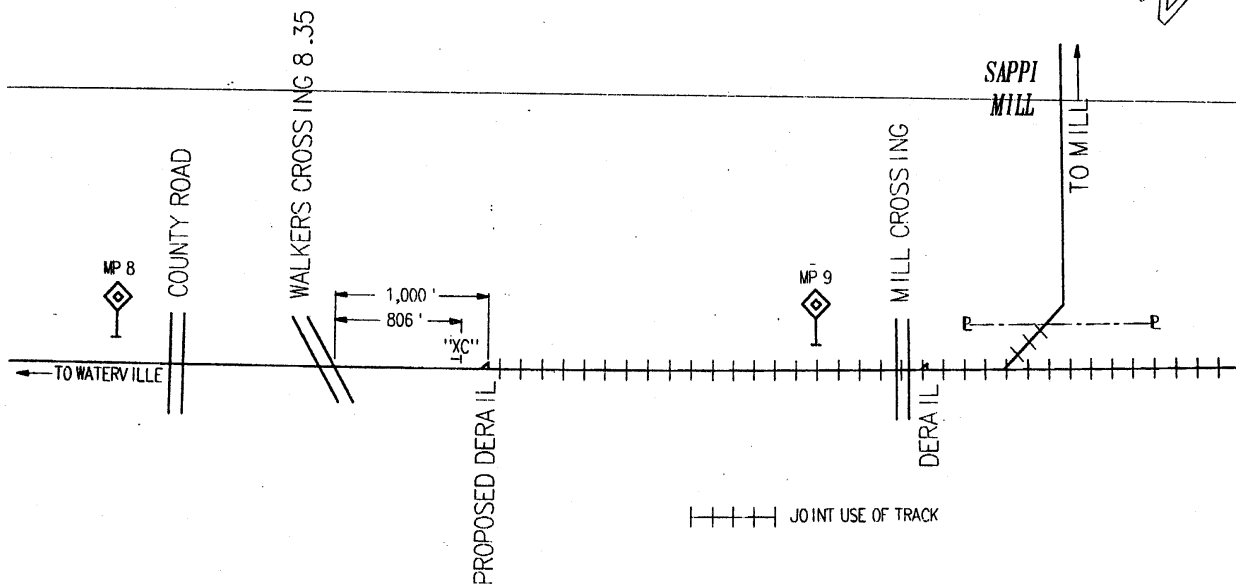
IN WITNESS WHEREOF, this Agreement has been duly executed by the duly authorized representatives of the parties as of the day and year first above written.

**S.D. WARREN COMPANY, d.b.a.
SAPPI FINE PAPER
OF NORTH AMERICA**

**MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY
COMPANY**

By: David G. Mahoney
Printed Name: DAVID G. MAHONEY
Title: V.P. Supply Chain Management
Date: Sept 4, 01

By: J. B. Colliford
Printed Name: J. B. Colliford
Title: V. P. Trans
Date: _____

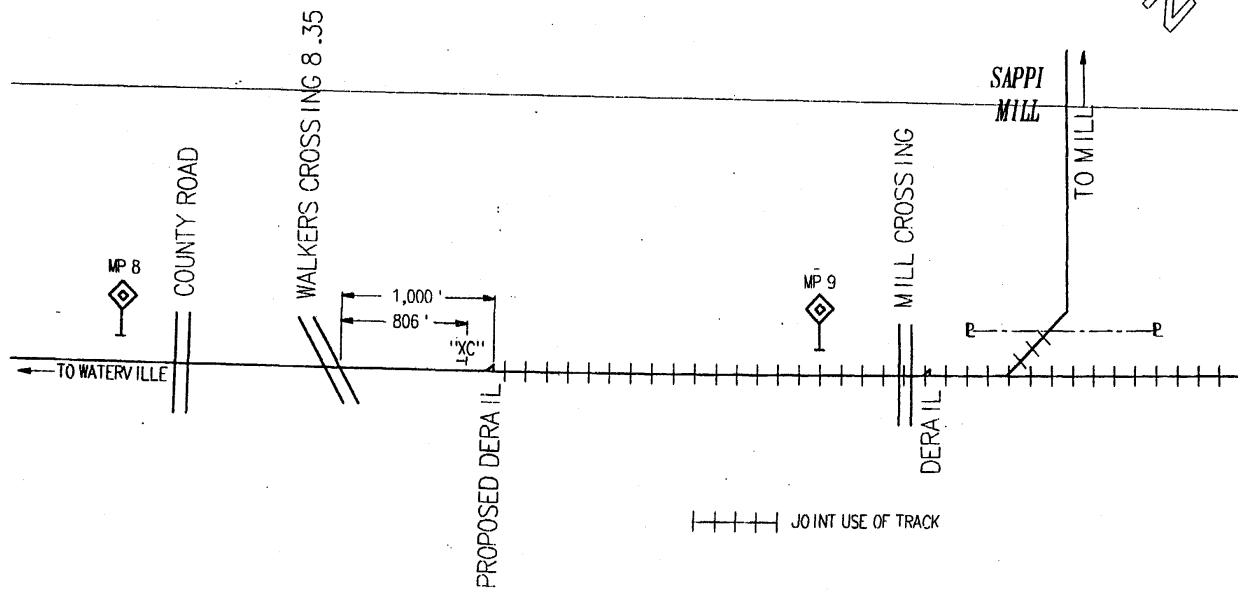


SPRINGFIELD TERMINAL RAILWAY CO.
 HINKLEY BRANCH
 SKOWHEGAN, ME.
 JOINT USE OF TRACK

8.35
 2
 8.55 - END OF RAIL

Exhibit B

Map of Area Served



SPRINGFIELD TERMINAL RAILWAY CO.
 HINKLEY BRANCH
 SKOWHEGAN, ME.
 JOINT USE OF TRACK

8.35
 2
 8.55 - RHOFFRAIL

Exhibit C

Caption Summary

Surface Transportation Board

Notice of Exemption

Finance Docket No. 34133

S.D. Warren Company d.b.a Sappi Fine Papers North America
—Acquisition and Operation Exemption—
Maine Central Railroad Company & Springfield Terminal Railway Company

S.D. Warren Company, d.b.a. Sappi Fine Paper North America (“Sappi”), a non-carrier, has filed a notice of exemption to acquire and operate the line of the Maine Central Railroad Company and the Springfield Terminal Railway Company between approximately milepost 8.55 and milepost 9.80 in Skowhegan, County of Somerset, Maine. Comments must be filed with the Board and served on Briana K. O’Regan, Esquire, Sappi Fine Paper North America, 225 Franklin Street, Boston, MA 02110, Tel: (617) 368-6580.

Sappi simultaneously has filed in this docket a motion to dismiss its notice of exemption. Sappi is utilizing this procedure to obtain a jurisdictional determination regarding the authority of the Surface Transportation Board over this transaction.

Sappi will not consummate this transaction until this Notice becomes effective or is dismissed for lack of jurisdiction.

The notice is filed under 49 C.F.R. §1150.31. 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 automatically stay the transaction.