



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36185]

Hainesport Industrial Railroad, LLC—Lease and Operation Exemption—Hainesport Secondary Railroad, LLC

Hainesport Industrial Railroad, LLC (Hainesport Industrial), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate a line of railroad consisting of a yard, grounds, and improvements thereon (the Line), owned by its corporate affiliate, Hainesport Secondary Railroad, LLC (Hainesport Secondary). The Line is located at Block 104 of Lot 11 on the Tax Map of the Township of Hainesport, N.J., at 5900 Delaware Avenue. The Line includes a permanent easement running over Block 104, Lot 8.01, on the Tax Map of Hainesport.<sup>1</sup>

The verified notice states that Hainesport Industrial and Hainesport Secondary entered into a 10-year lease agreement on January 1, 2016, but did not realize that the lease and operation agreement required Board approval.

Hainesport Industrial states that the transaction will not result in it becoming a Class I or Class II rail carrier but that its projected annual revenues will exceed \$5 million. Accordingly, Hainesport Industrial is required, at least 60 days before this

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<sup>1</sup> Hainesport Industrial states that there are no milepost designations associated with the Line.

exemption is to become effective, to send notice of the transaction to the national office of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. 49 CFR 1150.42(e).

Hainesport Industrial, concurrently with its notice of exemption, filed a letter requesting waiver of the 60-day advance labor notice requirement under § 1150.42(e), asserting that: (1) Hainesport Secondary will be the entity actually performing rail operations and employing personnel; and (2) no Hainesport Industrial employees will be affected because Hainesport Industrial does not have any employees. Hainesport Industrial's waiver request will be addressed in a separate decision. The Board will establish in the decision on the waiver request the date this exemption will become effective.

Hainesport Industrial also certifies that the proposed acquisition does not involve an interchange commitment or other limitation of future interchange with a third-party connecting carrier.<sup>2</sup>

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<sup>2</sup> The verified notice of exemption includes conflicting information regarding the existence of interchange commitments. See Verified Notice of Exemption 7. However, in a letter filed on May 4, 2018, Hainesport Industrial certified that "there are no interchange commitments involved in this transaction." The letter cites 49 CFR part 1180. The correct regulation governing disclosure of interchange agreements in this proceeding is 49 CFR 1150.43(h), but as the relevant portion of the regulations in parts 1150 and 1180 are identical, the certification is adequate.

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 May 18, 2018.

An original and 10 copies of all pleadings, referring to Docket No. FD 36185, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John D. Heffner, ClarkHillStrasburger, 1025 Connecticut Avenue, N.W., Suite 717, Washington, DC 20036.

According to Hainesport Industrial, this action is exempt from environmental review under 49 CFR 1105.6(c) and exempt from historic review under 49 CFR 1105.8(b)(1).

Board decisions and notices are available on our website at [WWW.STB.GOV](http://WWW.STB.GOV).

Decided: May 8, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

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