BEFORE THE

SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 582 (SUB-NO. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS ON THE PROPOSED RULES

SUBMITTED BY THE

U.S. DEPARTMENT OF AGRICULTURE

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Washington, D.C. 20250

Date: November 17, 2000

AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

Although the Board has attempted to address the concerns expressed by shippers, USDA and its agricultural constituents believe that the proposed regulations governing major railroad consolidations fall far short of protecting the public interest. There is a lack of specificity in the rules and the Board relies upon voluntary offers, negotiations, and applicant-proposed penalties.

In 1999, American farmers produced nearly 15.5 billion bushels of grain and oilseeds and agricultural shippers paid nearly $3.5 billion in freight costs just to the U.S. Class I railroads to transport agricultural products.[1] Rail moved, on a ton-mile basis, about 44 percent of field crops (such as grains and oilseeds), about 23 percent of lumber and wood products, and about 40 percent of fertilizers and pesticides in the United States during 1993.[2] Although an average of about 40 percent of the grain and oilseeds moved in the United States between 1990 and 1995 were transported by rail, preliminary data indicate that railroad share of domestic grain and

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[1] Freight cost data is obtained from the Association of American Railroads, *Freight Commodity Statistics, 2000.*

[2] U.S. Department of Agriculture. *Agricultural Transportation Challenges for the 21st Century: A Framework for Discussion*, July 1998, pg. 8. This is the most recent data of this type that USDA has.

oilseed movements decreased sharply to 31.1 percent by 1998, while the truck share increased to 51.7 percent.[3]

Historically, nearly 80 percent of all interstate wheat shipments from Plains States are by rail, and rail has accounted for 90 percent of all export traffic from the region. Rail has been the dominant mode of transportation for interstate shipment of wheat, historically accounting for approximately 80 percent of such shipments in the Upper Great Plains States.[4] However, rail transportation has consistently lost modal share in recent years. From 1990 to 1995, rail moved, on average, about one-third of the corn, about two-thirds of the wheat, and about one-quarter of the soybeans in the United States in any year.[5] Preliminary data indicate that, by 1998, rail share decreased to only 25.4 percent of corn, 54.8 percent of wheat, and 19.5 percent of soybean movements.

The U. S. Department of Agriculture (USDA) believes that the severe service disruptions associated with recent rail mergers have been a major reason for the recent loss of rail share. Since rail is the only cost-effective transportation mode for those agricultural producers distant from markets and water transportation, the shift to truck transportation could only have been

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[3] Eriksen, Ken A., Jerry D. Norton, and Paul J. Bertels. *Transportation of U.S. Grains: A Modal Share Analysis, 1978-1995*. U.S. Department of Agriculture, Agricultural Marketing Service, 1998.

[4] Ferguson, Allen R. *U. S. Agricultural Interests and the Merger of the Burlington Northern and the Atcheson, Topeka and Santa Fe Railroads*. Report to the U. S. Department of Agriculture, July 1995, pg. 10.

[5] Eriksen, Ken A., Jerry D. Norton, and Paul J. Bertels. *Transportation of U.S. Grains: A Modal Share Analysis, 1978-1995*. U.S. Department of Agriculture, Agricultural Marketing Service, 1998.

accomplished at great cost to agricultural producers and rural communities. This is particularly true in large areas of the Midwest and Plains States where shippers have little direct access to inland waterway transportation and the distances involved make truck transportation uneconomical.

The size of the freight bill that U.S. agriculture pays–along with the railroad modal shares of grains, oilseeds, lumber, and fertilizer movements–demonstrates the importance of adequate and efficient rail services and capacity for the marketing of U.S. agricultural products and the delivery of needed farm supplies. To compete effectively in increasingly competitive world markets, U.S. farmers must have access to efficient, reliable and cost-competitive transportation. The rates agricultural shippers pay for rail transportation must be at a level which promote, not penalize, American competitiveness in world agricultural markets.

The present U.S. freight transportation system has evolved to move large quantities of undifferentiated bulk grains and oilseeds over long distances. The efficiency and cost effectiveness of this system rely upon the ability to standardize grains and oilseeds into just a few grades or classes. The emergence of genetically modified crops–which offer the potential to produce specialty grains and oilseeds having high-value traits designed for specific end uses–is resulting in a demand to preserve their identity from the farm to the end user. Class I railroads, however, promote unit-train movements of grain, even though the emergence of genetically modified crops will require identity-preserved handling in much smaller quantities.

Recent railroad mergers have given the resulting Class I railroads the market power to dictate the terms of rail service–even though those service terms do not meet the present and future needs of many agricultural shippers. The two western Class I railroads have recently increased demurrage charges by 50 percent and sharply decreased the loading times allowed, even though the market for delivery of railcars has been soft. Although these railroads claim these actions will improve equipment utilization, this goal will not be achieved until they enhance their own accountability for timely notice and delivery of equipment, as well as movement of loaded railcars.[6]

In addition, recent railroads mergers have increased the ability of Class I railroads to restrict competition from smaller railroads. An example of this is Burlington Northern Santa Fe's (BNSF) demand that Montana Rail Link not renew a contract with a newly constructed grain transfer facility at Big Timber, Montana, that provided competition to grain shippers located on BNSF.[7] Another example is the refusal of several Class I railroads, especially after construction of shuttle-train loading facilities on their own lines, to allow the coloading of grain and multiple switching by short line and regional railroads.[8] Other examples of restricted

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[6] National Grain and Feed Association Newsletter, October 19, 2000.

[7] Duff, Diane. Testimony submitted to the Transportation Subcommittee on Appropriations by the Alliance for Rail Competition, September 12, 2000, pg. 19.

[8] Verified Comments of Farmrail System, Inc. STB Ex Parte No. 582 (Sub-No. 1), Major Rail Consolidation Procedures, pg. 24, 25.

competition include pricing and railcar allocation policies that discriminate against smaller railroads, as well as paper and steel barriers which restrict access to the rail network.[9]

The manner in which Class I railroads have abused their increased market power–which has adversely affected agricultural producers, shippers, and communities, as well as the ability of short line and regional railroads to compete–concerns USDA. Thus, USDA requests that the Board modify its proposed rules governing major railroad consolidations–to more fully protect the public interests–for the following reasons: (1) The possible harm to short line and regional railroads, which are important to the grain gathering process, (2) the effects of increased transportation costs on the net income of agricultural producers, (3) the loss of rural rail lines will result in greatly increased road maintenance costs for rural areas, (4) the Staggers Act relies upon the effectiveness of competition, rather than regulation, to discipline the marketplace, and (5) the increased potential of antitrust violations to the detriment of agricultural producers and rural communities.

The possible harm to short line and regional railroads. At the end of 1998, short line and regional railroads operated 49,985 route miles in the United States–more than 29 percent of the rail network–and accounted for nearly 9 percent of all railroad freight revenues.[10] In many agricultural States, the importance of these smaller railroads has become even greater; by the end

[9] Turner, Frank K. American Short Line and Regional Railroad Association Statement, STB Ex Parte 582, Public Views on Major Rail Consolidations, February 29, 2000. Also, Verified Comments of Farmrail System, Inc. STB Ex Parte No. 582 (Sub-No. 1), May 15, 2000, pg. 18 - 20, 27.

[10] Association of American Railroads. *Railroad Facts, 1999.*

of 1998, they operated 58 percent of the rail network in Wisconsin, 52 percent in South Dakota, 49 percent in Michigan, 43 percent in Iowa, and 42 percent in Kansas.[11]

Nationwide, short line and regional railroads in the United States now participate in the movement of an estimated 33 percent of the total carloads, 45 percent of the lumber carloads, 34 percent of the farm product carloads, 23 percent of the food product carloads, and 19 percent of the chemical carloads. Short line and regional railroads are also an important part of the grain gathering network, originating nearly 20 percent of all U.S. railcar loadings of grain in 1996.[12]

This increased concentration of Class I railroads, and the corresponding increase in their market power relative to connecting short line and regional railroads, threatens the viability of smaller railroads serving rural regions.

Effects of increased transportation costs on agricultural producer income. Agricultural products transported by rail typically approach a purely competitive market structure. Due to a competitive market structure, agricultural producers, unlike people in other industries, must accept the prices offered for their goods rather than being able to set their price. Thus, increased costs due to inadequate and noncompetitive transportation services are not borne by the final consumer, but come directly from producer incomes. Not only are producer incomes decreased,

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[11] Prater, Marvin E., John Bitzan, Douglas Benson, Nick Schauer, and Kim Vachal. *The Importance of Short Line and Regional Railroads to Agriculture and Rural America*, U. S. Department of Agriculture, Agricultural Marketing Service, forthcoming.

[12] Ibid.

but also, due to the multiplier effect, the incomes of those living in rural communities decrease–resulting in smaller municipal budgets from which to support schools, emergency services, hospitals, roads, and other local governmental services. Therefore, an affordable, reliable transportation network is an indispensable ingredient to the strength and competitiveness of United States agriculture and the economic well-being of our rural communities.

Recently, U.S. agricultural policy has changed, requiring agricultural producers to respond more to forces in the market place rather than relying upon government for price support. The ability of agricultural producers to compete in world export markets, and thus, the success of the *Federal Agricultural Improvement and Reform Act* (1996 Farm Bill), is highly dependent upon the ability of the U.S. transportation sector to provide competitively priced transportation services and to perform reliably. If farm incomes cannot be expanded through exports of raw and value-added goods due to inadequate or non-competitive transportation services, the freedom provided under the 1996 Farm Bill to farmers to plant and compete will have less value.

Effects the loss of rail service has upon rural road maintenance costs. Increased truck traffic–caused by shipping to locations on Class I railroads and/or the loss of rural rail lines–greatly increases highway maintenance costs because many of the roads in rural agricultural production regions were not designed for heavy truck traffic. The damage a loaded semi-trailer does to a major rural collector highway is approximately 13.5 times the damage the same truck causes to a rural interstate. For a minor rural collector highway, the damage ratio

increases to 21 times that done to a rural interstate.[13] Since rural regions typically have lower population densities, they are less able to pay for increased highway maintenance costs or increased road capacities required by increased truck traffic. The resulting decrease in the condition of the rural road infrastructure also affects the safety of the rural residents traveling those roads.

The Staggers Act relies upon the effectiveness of competition to discipline the marketplace. One of the key assumptions underlying the deregulation of the rail industry was that there would be sufficient competition to improve allocative and technical efficiency. Thus, the authors of the *Staggers Act of 1980* and the *Interstate Commerce Commission Termination Act of 1995* (ICCTA) included the preservation of effective competition as one of the rail transportation policy goals of the United States. Not only does effective competition promote reasonable rates and minimize the need for regulatory control, but it also encourages honest and efficient management of railroads.

In many agricultural production regions of the Nation, truck and barge transportation provide adequate competition to constrain rail prices. However, barge transportation is not available to those agricultural producers located in the western portions of the Plains States, and truck transportation is not cost-effective due to the long distances to market. Thus, for

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[13] Denver Tolliver, presentation at the *Agricultural Transportation Summit*, Kansas City, Missouri, July 27-28, 1998. His calculations were based on data contained in the *Highway Cost Allocation Study*, Federal Highway Administration, 1997.

agricultural producers located in those regions, competition, including rail-to-rail competition, must be preserved and promoted for there to be effective competition.

Increased potential of antitrust violations. A hallmark of our economic system has been the concept that the most efficient allocator of resources is individuals acting in their own self-interest. However, late in the 19th century, the United States realized that these self-interests must be constrained by effective and fair competition and enacted antitrust laws.

As the market power of Class I railroads has increased relative to that of shippers and connecting short line railroads, the potential for the violation of antitrust laws also has increased. Unlike most other businesses operating in the United States, railroads have partial antitrust immunity. This immunity appears to be limited to: Mergers as approved by the STB; actions necessary to implement these mergers; the authority to engage in car pools; joint ownership of track and dispatching facilities; discussion of tariff rates for joint hauls; and actions to allow rate discrimination for movements on a railroad's own line.[14] USDA believes the Class I railroads have gone beyond this limited immunity. Although part of the increased potential for violation of antitrust statutes may be due to reduced emphasis on the application of antitrust statutes and principles to previous Class I railroad mergers, the larger part may be due to differing opinions regarding the extent of the railroad industry's antitrust immunity, as well as the reduced consciousness and application of antitrust statutes and principles by railroad and shipper

[14] *ICCTA Termination Act of 1995*; §10501(b);§10706;§11321.

management. Whatever the reason for the increased potential for violation of antitrust statutes, USDA asserts that if railroads were subject to the same antitrust scrutiny as most other industries, many of their practices would be prohibited. Thus, as the Board revises its proposed major merger rules, it should consider the increased potential for violations of antitrust law and the effects these violations, should they occur, can have upon shippers and smaller connecting railroads.

BACKGROUND

Subsequent to the public hearings on Public Views on Major Rail Consolidations (Ex Parte 582), the Surface Transportation Board (Board) concluded that the rail community was not in a position to undertake further major railroad mergers and that the Board's current rules were not adequate for addressing the broad concerns associated with merger proposals that would likely lead to just two North American transcontinental railroads. Therefore, the Board imposed a 15-month moratorium on Class I railroad mergers and, in an Advance Notice of Proposed Rulemaking, sought public comment on modifications to regulations governing major rail consolidations.

Concerns that caused the Board to initiate this proceeding included the following effects of further major mergers: Reduced competition, downstream effects, the important role of smaller railroads in the rail network, the possibility of major service disruptions which could spread throughout the entire rail network, the measurement of merger benefits, the possibility

that rail safety would be degraded, and the existence of transnational trade and operational issues arising from the merger of Canadian and U.S. railroads.

Under current regulations, the Board is required to approve and authorize a merger transaction when it finds that the transaction is consistent with the public interest. In approving a transaction, the Board also 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 anti-competitive effects of the transaction must provide for operating terms and compensation levels to alleviate such effects.[15]

Since future major rail mergers will almost certainly be end-to-end rather than parallel in nature, additional efficiencies obtained through the elimination of excess capacity or through operating efficiencies will tend to be limited. Thus, the public benefits associated with further major railroad mergers will be more difficult to achieve. The potential costs of these mergers upon shippers, communities, and other railroads, however–as well as the probability of those costs occurring–will become increasing large, particularly to rural communities. The Board's final rules must include provisions to protect shippers from the costs of further major rail consolidations.

[15] U.S.C. § 11324(c).

The substantial service disruptions associated with many of the recent railroad consolidations demonstrate that the integration of two large railroad firms is a particularly complex task. These service disruptions may also suggest that returns due to the size of the rail network operated by a single firm may be decreasing in nature–at least in the integration phase of the merger if not in the fully implemented merger. It is also possible that Class I railroads are becoming too large to manage efficiently.

The U. S. Department of Agriculture (USDA) applauds the Board for its effort in proposing changes to the regulations governing major rail consolidation procedures. USDA recognizes that the complexity of the issues and the large number of the comments from affected parties made the Board's job especially difficult.

Although the Board has attempted to address the concerns expressed by shippers, USDA and its agricultural constituents believe that the proposed regulations governing major rail consolidations fall far short of protecting the public interest. There is a lack of specificity in the rules and the Board relies upon voluntary offers, negotiations, and applicant-proposed penalties. Therefore, USDA asks the Board to consider the following suggestions regarding the proposed regulations.

SPECIFIC COMMENTS REGARDING THE PROPOSED RULES

Proposed § 1180.1(b): Consolidation criteria. The proposed rule requires that an "approved transaction will promote a competitive, efficient, and reliable national rail system." The word

"competitive" here could be interpreted as cost-efficient, rather than requiring the presence of sufficient transportation competition.

When the Board is balancing the public interest, USDA agrees with its proposal to increase the importance of competition, possible transitional service harms, and the role of railroads in the broader transportation infrastructure. USDA also agrees with the Board's decision to decrease the importance it gives to improved carrier efficiency.

USDA, as well as many shipper groups, would prefer that the weights given each component be specified in the final rules. In addition, USDA does not believe that assigning an increased weight to the probability of transitional service disruptions adequately protects the public interest (discussed further below).

USDA recommends that the last sentence of the proposed rule be changed to read, "The Board must ensure that any approved transaction will promote competition, as well as an efficient and reliable national rail system."

Proposed § 1180.1(c): Public interest considerations. The proposed rule requires that "merger applications must include provisions for enhanced competition." USDA applauds the Board for placing much more emphasis upon enhancing competition.

USDA recommends changing the wording of the fifth sentence in this paragraph to require the Board, where both carriers are financially sound, "to make broad use of the powers available to it . . . to condition its approval to preserve and enhance competition." Also, should the conditions proposed by the consolidating firms be inadequate to fully alleviate the effects of reduced competition, or if the plan proposed by the consolidating carriers fails to remedy specific competitive or other harms that are threatened by the merger, the Board should be required to condition the transaction to accomplish the goal of preserving and enhancing competition.

In addition, the words "financially sound" should be defined in specific terms so that the exemption from Board imposed conditions refers to those railroads in immediate danger of bankruptcy or service discontinuance only, rather than to instances where the consolidating carriers, as determined by the Board, are not "revenue adequate".

Proposed § 1180.1(c)(1): Potential benefits. This proposal requires merger applicants to make a good faith effort to calculate the net public benefits their merger will generate and to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner. USDA applauds the Board's intention to more carefully evaluate merger applicants' claims of the net public benefits a merger will generate, however, USDA does not believe that any penalties suggested by the applicants will sufficiently protect the public interest–particularly that of shippers and financially vulnerable smaller railroads.

Proposed § 1180.1(c)(2): Potential harm. *(i) Reduction of competition.* This proposed rule requires merger applicants to propose remedies to mitigate and offset competitive harms caused by a merger transaction.

USDA concurs with the Board's recognition that additional consolidation of Class I railroads is likely to have anticompetitive effects, such as the loss of geographic and product competition, that are increasingly difficult to remedy directly or proportionately. USDA appreciates the Board's awareness that many of these anticompetitive effects are a result of Class I railroad decisions–particularly as the size of Class I railroads have increased–that exploit their increased market power. USDA applauds the Board's attempt, in the case of "bottlenecks" created by the consolidation, to preserve the opportunity for shippers to enter into contracts for movement of freight over the non-bottleneck segment. However, the Board has failed to protect shippers from being forced to pay for a railroad merger through higher tariffs. If the public benefits of a merger truly outweigh its costs, consolidating railroads would not need to force shippers to pay for the merger.

USDA strongly urges the Board to require consolidating railroads to preserve competitive options–such as those involving the use of major existing gateways and build-outs or build-ins–both physically and economically, rather than just requiring them to propose remedies to mitigate and offset competitive harms.

USDA strongly urges the Board to prohibit carriers from charging shippers higher tariffs to recover the "premiums" paid for the acquired railroad or to take advantage of their increased market power. This could be accomplished by capping post-merger tariff rate increases to no more than the increase in the adjusted rail cost adjustment factor for a period of five years subsequent to the merger.

USDA also recommends that antitrust statutes be applied more rigorously to those Class I railroads proposing further consolidations. In addition, USDA suggests that the Board be required to seek and consider the opinions of the U. S. Department of Justice and the Federal Trade Commission before approving any further consolidations involving Class I railroads.

Proposed § 1180.1(c)(2): Potential harm. *(ii) Harm to essential services.* This proposed rule states that the Board must ensure that essential freight, passenger, and commuter rail services are preserved.

USDA is pleased that the Board recognizes the importance of preserving essential freight, passenger, and commuter services by considering whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services.

USDA recommends changing the second sentence (which defines . . . "an existing service as being essential if there is sufficient public need for the service and adequate alternative transportation is not available .") to require ". . . adequate cost-effective alternative transportation . . .".

Proposed § 1180.1(c)(2): Potential harm. *(iii) Transitional service problems.* This proposed rule states that the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems and require applicants to provide a detailed service assurance plan.

USDA does not believe that this proposed rule is sufficient to protect the public interest. This rule, by placing only an increased weight upon the likelihood of transitional service problems, allows the consolidating carriers to transfer the costs of service disruptions to shippers, affected communities, and other railroads. The Conrail transaction has demonstrated that extensive and detailed merger pre-planning is not sufficient to prevent service disruptions –especially as the size and complexity of the transaction increases. If a merger truly makes economic sense, the consolidating railroads should be able to reimburse those harmed by transitional service disruptions.

This proposed rule also places nearly all of the adverse risks associated with rail merger transactions upon shippers and other railroads, rather than with the applicants. When the adverse risks of a transaction are transferred to other parties, it encourages firms to take risks that

otherwise would not be taken. Thus, the proposed merger rules will encourage, rather than discourage, merger transactions that are not in the public interest.

USDA strongly urges the Board to require consolidating railroads to reimburse shippers and other railroads fully for any damages caused by service degradation, rather than placing a heavier weight on those transitional service harms when balancing the public interest. This reimbursement should be required until the rail service provided each shipper and railroad is equal to that received prior to the consolidation.

Proposed § 1180.1(d): Conditions. This proposed rule reflects the willingness of the Board to use its conditioning power to mitigate or offset all types of threatened merger harms to the public interest.

USDA appreciates the difficulty of conditioning mergers to offset the harm to the public interest, while not undermining or defeating beneficial transactions. However, the potential magnitude and probability of public harm caused by future Class I railroad consolidations may be so great as to justify extraordinary caution.

USDA suggests that the final merger rules should be phrased so that in the application of conditions, the Board err on the side of protecting the public interest. Also, the final rule should be phrased to make clear that the Board is not limited to conditions suggested by the consolidating railroads.

Proposed § 1180.1(h): Service assurance and operational monitoring. This proposed rule requires merger applicants to file a service assurance plan, establish contingency plans, and establish problem resolution teams, as well as specific procedures for problem resolution. The Board will conduct extensive post-approval operational monitoring to help ensure that service levels after a merger are reasonable and adequate.

USDA agrees with the Board's emphasis upon contingency plans and post-approval monitoring to help ensure that service levels after a merger are reasonable and adequate. Also, USDA approves of the requirement that the applicants establish problem resolution teams and the establishment of a Service Council. USDA cautions that it may be better for the Board to prevent service disruptions by not approving a questionable merger than to try to monitor service disruptions afterward.

The explanation for this section of the proposed rules indicates that the Board expects applicants to engage in good faith negotiations with shippers and connecting carriers and that the Board would consider the extent to which applicants are successful in such negotiations when determining the need for mitigation. However, this intent is not stated anywhere in this section of the proposed rules, and indeed, probably should be stated in paragraph §1180.1(c)(2)(ii).

Although the Board prefers to rely on mutual negotiations between parties, the application of this policy ignores the huge differences in market power that exist between Class I railroads on the one hand, and shippers and smaller railroads on the other. USDA does not have

as much faith as the Board apparently has in the effectiveness of good faith negotiations due to the large differences in market power between the respective parties and the tendency for the needs of smaller shippers to be ignored. Continuing this policy will further disadvantage smaller shippers and railroads.

USDA recommends that a paragraph be added to §1180.1(c)(2)(ii) to require the Board monitor negotiations between applicants, on the one hand, and shippers and connecting railroads, on the other , to prevent unfair discrimination against smaller shippers and railroads.

Proposed § 1180.1(i): Cumulative impacts and crossover effects. This proposed rule requires the Board to consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination, rather than considering the proposed merger transaction in isolation. USDA agrees with the Board's proposal to consider cumulative impacts and crossover effects.

Proposed § 1180.1(k): Transnational issues. The proposed rule requires applicant railroads to submit "full system" competitive analyses and operating plans. When an application would result in foreign control of a Class I railroad, applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and address how any ownership restrictions imposed by

foreign governments should affect the Board's public interest assessment. USDA appreciates the Board's decision to include these provisions which address much of our prior recommendations.

USDA proposes a minor change to the wording of the last sentence in proposed §1180.1(k). Instead of ". . . and be detrimental to the interests of the United States rail network . . ", insert the words "and shippers" after "rail network".

Proposed § 1180.10: Service assurance plans. The proposed rule requires major railroad merger applicants to submit a service assurance plan, which, in concert with the operating plan requirements will identify the precise steps to be taken by applicants to ensure that projected service levels are attainable and that key elements of the operating plan will improve service.

USDA applauds the Board for adding this section which recognizes the importance of adequate service to shippers and other affected parties. The comprehensive information required in the service assurance plan addresses numerous issues of concern to shippers. USDA particularly appreciates the requirement that applicant railroads furnish dwell time information for one year prior to the transaction. The availability of prior benchmarks is essential for the Board to be able to assess post-merger service levels.

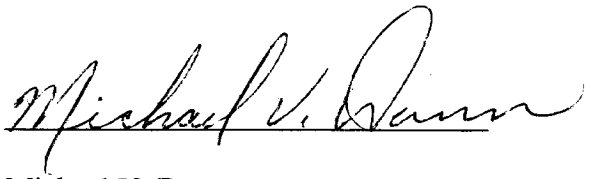
USDA recommends that the Board require applicant railroads to provide historical data on the transit times for major origin-destination pairs.

Proposed § 1180.11: Additional information needs for transnational mergers. The proposed rule requires applicants in transnational mergers to assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and discuss any ownership restrictions imposed on them by foreign governments. USDA is pleased that the Board has included paragraph (b) in this section, which protects the interest of U.S. shippers in the event of a transnational merger.

CONCLUSION

USDA and its agricultural constituents believe that, although the Board has attempted to address the concerns expressed by shippers, the proposed changes fall far short of protecting the public interest in the event of future major railroad consolidations. USDA believes this is due to a lack of specificity in the rules, as well as the Board's reliance upon voluntary offers, negotiations, and applicant proposed penalties. Thus, USDA petitions the Board to consider USDA's comments and implement our suggestions regarding the proposed regulations.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 17, 2000, he caused a copy of the Department of Agriculture's comments to be served by first-class mail, postage paid, on all parties of record in STB Ex Parte 582 (Sub-No. 1).

James A. Caron
Acting Associate Deputy Administrator
Transportation and Marketing Programs
Agricultural Marketing Service