ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014–AA20

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Proposed rule; meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two informational meetings to provide the public with additional opportunities to discuss proposed requirements relating to automated teller machines, reach ranges, and captioning equipment included in its Notice of Proposed Rulemaking to amend the accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. The meetings will be held on the dates and at the locations noted below.

DATES: The Access Board will hold an informational meeting on access to automated teller machines on October 24, 2000 from 8:30 a.m. to 5:30 p.m. and an informational meeting on captioning equipment on October 25, 2000 from 8:30 a.m. to 10:30 a.m. and reach ranges on October 25, 2000 from 10:30 a.m. to 5:30 p.m.

ADDRESSES: The meetings will be held at the Hilton Garden Inn, 815 14th Street, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 121 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: mazz@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request.

SUPPLEMENTARY INFORMATION: On November 16, 1999 the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the accessibility guidelines for the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. 64 FR 62248 (November 16, 1999). Proposed section 707 includes several provisions that may affect access to automated teller machines (ATMs), point of sale machines, and interactive transaction machines by people who are blind or have vision impairments. Proposed section 308 includes provisions for maximum high unobstructed reach. While section 707 is based on the American National Standard for Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1–1998, the Board departed from this consensus standard with regard to reach ranges. In the proposed rule, the Board sought information on different means of providing captioning for movie theaters (Question 36). The Board is interested in receiving more information about various types of captioning as it relates to the built environment.

The Board wishes to provide affected parties the opportunity to share their views and expertise directly with the Board on these issues. Specific areas of inquiry are:

ATMs

- What are the performance expectations of people who are blind or have a vision impairment?
- What functions are currently accessible in audible format and on what types of devices?
- What functions cannot be made accessible in audible format and why?
- What are the hardware and software costs associated with audible output?
- What does the industry hope to gain from a ''performance standard''?
- What effect would a 48 inch maximum reach have on ATMs, point of sale machines, and interactive transaction machines?

Reach Ranges

- What manufactured equipment cannot provide a 48 inch high side reach and why?
- Are there newly constructed building elements that would be substantially affected in terms of usability by lowering the high side reach from 54 inches to 48 inches?
- What is the experience in those States where the ICC/ANSI A117.1–1998 standard requiring the side reach to be no higher than 48 inches is used?

Captioning for Movie Theaters

- What technical provisions are necessary to facilitate or augment the use of auxiliary aids such as captioning and videotext displays?
- What are the various options for providing captioning that would best facilitate effective communication?
- If provisions for conduit, electrical service, screen anchoring devices at seats, or other requirements that make providing accessible communication possible in the built environment are required in the final rule, how specific should those provisions be?

Members of the public are encouraged to share their views on these subjects with the Board. Following the informational meetings, the Board will determine the provisions to be included in the final rule. The informational meetings will be informal and open to the public.

Members of the public are encouraged to contact Marsha Mazz at (202) 272–5434 extension 121 (Voice), (202) 272–5449 (TTY), or electronic mail mazz@access-board.gov to preregister to attend the informational meetings.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available at the meetings. Persons attending the informational meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–25382 Filed 10–2–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 582 (Sub-No. 1)]

Major Rail Consolidation Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Surface Transportation Board (Board) seeks public comment on proposed modifications to its regulations governing proposals for major rail consolidations. These proposed new rules would substantially increase the burden on applicants to demonstrate that a proposed transaction is in the public interest, requiring them, among other things, to demonstrate that the transaction would enhance competition as an offset to negative impacts resulting from service disruptions and competitive harms likely to be caused by the merger.

DATES: Comments are due on November 17, 2000. Replies are due on December 18, 2000. Rebuttal submissions are due on January 11, 2001.

ADDRESSES: An original and 25 copies of all paper documents filed in this

proceeding must refer to STB Ex Parte No. 582 (Sub-No. 1) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582 (Sub-No. 1), 1925 K Street, NW., Washington, DC 20423–0001.

In addition to submitting an original and 25 copies of all paper documents, parties must submit to the Board, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 9.0 format), an electronic copy of each such paper document. Any party may seek a waiver from the electronic submission requirement. Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. A printed copy of the Board's decision is available for a fee by contacting: Da-To-Da Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 466–5530. The Board's decision is also available for viewing and downloading on the Board's website at ''www.stb.dot.gov.''

Initial Regulatory Flexibility Analysis: The Board preliminarily concludes that the proposed revisions to its regulations, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These rules will create additional filing requirements only for Class I applicants, which are very large rail carriers. At the same time the Board has given increased weight to issues and concerns of smaller railroads and shippers, a change that should benefit these small entities.

The Board nevertheless seeks public input on whether the proposed revisions to its regulations would have significant economic impacts on a substantial number of small entities. If submissions made by the parties to this proceeding provide information that there would be significant economic impacts on a substantial number of small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

Environmental and Energy Considerations: The Board preliminarily concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Request for Comments, Replies, and Rebuttal: The Board invites comments, replies, and/or rebuttal on all aspects of the proposed regulations, including impacts on small entities and effects on either the quality of the human environment or the conservation of energy resources.

Final Stage of This Proceeding: After considering the comments due on November 17, 2000, the replies due on December 18, 2000, and the rebuttal due on January 11, 2001, the Board will issue final rules by June 11, 2001.

Authority: 49 U.S.C. 721 and 11323–11325.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: September 25, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn. Vice Chairman Burkes and Commissioner Clyburn commented with separate expressions.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, Title 49, Subtitle B, Chapter X, Part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

2. Section 1180.0 is proposed to be revised to read as follows:

§ 1180.0 Scope and purpose.

The regulations in this subpart set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11323.

Section 1180.2 separates these transactions into four types: *Major, significant, minor,* and *exempt.* The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Board. This procedure is explained in § 1180.4. The required contents of an application are set out in §§ 1180.6 (general information supporting the transaction), 1180.7 (competitive and market information), 1180.8 (operational information), 1180.9 (financial data), 1180.10 (service assurance plans), and 1180.11 (additional information needs for transnational mergers). A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7(a), 1180.7(b), 1180.8(a), 1180.8(b), 1180.9, 1180.10, and 1180.11. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7(a), 1180.7(c), and 1180.8(b). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(c).

Procedures (including time limits, filing requirements, participation requirements, and other matters) are contained in § 1180.4. All applications must comply with the Board's Rules of General Applicability, 49 CFR parts 1100 through 1129, unless otherwise specified. These regulations may be cited as the Railroad Consolidation Procedures.

3. Section 1180.1 is proposed to be revised to read as follows:

§ 1180.1 General policy statement for merger or control of at least two Class I railroads.

(a) *General.* To meet the needs of the public and the national defense, the Surface Transportation Board seeks to ensure balanced and sustainable competition in the railroad industry. The Board recognizes that the railroad industry (including Class II and III carriers) is a network of competing and complementary components, which in turn is part of a broader transportation infrastructure that also embraces the nation's highways, waterways, ports, and airports. The Board welcomes private sector initiatives that enhance the capabilities and the competitiveness of this transportation infrastructure. Although mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved. Such public benefits include improved service, enhanced competition, and greater economic efficiency. The Board also will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier's common

carrier obligation to provide adequate service upon reasonable demand.

(b) *Consolidation criteria.* The Board's consideration of the merger or control of at least two Class I railroads is governed by the public interest criteria prescribed in 49 U.S.C. 11324 and the rail transportation policy set forth in 49 U.S.C. 10101. In determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction will promote a competitive, efficient, and reliable national rail system.

(c) *Public interest considerations.* The Board believes that mergers serve the public interest only when substantial and demonstrable gains in important public benefits—such as improved service, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms. Although the Board cannot rule out the possibility that further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. To maintain a balance in favor of the public interest, merger applications must include provisions for enhanced competition. Unless merger applications are so framed, approval of proposed combinations where both carriers are financially sound will likely cause the Board to make broad use of the powers available to it in 49 U.S.C. 11324(c) to condition its approval to preserve and enhance competition. When evaluating the public interest, the Board will also consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation. The Board believes that other private sector initiatives, such as joint marketing agreements and interline partnerships, can produce many of the efficiencies of a merger while risking less potential harm to the public.

(1) *Potential benefits.* By eliminating transaction cost barriers between firms, increasing the productivity of investment, and enabling carriers to lower costs through economies of scale, scope, and density, mergers can generate important public benefits such as improved service, enhanced competition, and greater economic efficiency. A merger can strengthen a carrier's finances and operations. To the extent that a merged carrier continues to operate in a competitive environment, its new efficiencies will be shared with shippers and consumers. Both the public and the consolidated carrier can benefit if the carrier is able to increase its marketing opportunities and provide better service. A merger transaction can also improve existing competition or provide new competitive opportunities, and such enhanced competition will be given substantial weight in our analysis. Applicants shall make a good faith effort to calculate the net public benefits their merger will generate, and the Board will carefully evaluate such evidence. To ensure that applicants have no incentive to exaggerate these projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner.

(2) *Potential harm.* The Board recognizes that consolidation can impose costs as well as benefits. It can reduce competition both directly and indirectly in particular markets, including product markets and geographic markets. Consolidation can also threaten essential services and the reliability of the rail network. In analyzing these impacts we must consider, but are not limited by, the policies embodied in the antitrust laws.

(i) *Reduction of competition.* Although in specific markets railroads operate in a highly competitive environment with vigorous intermodal competition from motor and water carriers, mergers can deprive shippers of effective options. Intramodal competition is reduced when two carriers serving the same origins and destinations merge. Competition in product and geographic markets can also be eliminated or reduced by end-to-end mergers. Any railroad combination entails a risk that the merged carrier will acquire and exploit increased market power. Applicants shall propose remedies to mitigate and offset competitive harms. Applicants shall also explain how they would at a minimum preserve competitive options such as those involving the use of major existing gateways, build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) *Harm to essential services.* The Board must ensure that essential freight, passenger, and commuter rail services are preserved. An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available. The Board's focus is on the ability of the nation's transportation infrastructure to continue to provide and support essential services. Mergers should strengthen, not undermine, the ability of the rail network to advance the nation's economic growth and competitiveness, both domestically and internationally. The Board will consider 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.

(iii) *Transitional service problems.* Experience shows that significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid such disruptions. Because service disruptions harm the public, the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems. In addition, under paragraph (h) of this section, the Board will require applicants to provide a detailed service assurance plan. Applicants also should explain how they will cooperate with other carriers in overcoming natural disasters or other serious service problems during the transitional period and afterwards.

(iv) *Enhanced competition.* To offset harms that would not otherwise be mitigated, applicants shall explain how the transaction and conditions they propose will enhance competition.

(d) *Conditions.* The Board has broad authority under 49 U.S.C. 11324(c) to impose conditions on consolidations, including divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. The Board will condition the approval of Class I combinations to mitigate or offset harm to the public interest, and will carefully consider conditions proposed by applicants in this regard. The Board will impose conditions that are operationally feasible and produce net public benefits so as not to undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier. Conditions are generally not appropriate to compensate parties who may be disadvantaged by increased competition. In this regard, the Board expects that any merger of Class I carriers will create some anticompetitive effects that are difficult to mitigate through appropriate

conditions, and that transitional service disruptions may temporarily negate any shipper benefits. Therefore, to offset these harms, applicants will be required to propose conditions that will not simply preserve but also enhance competition. The Board seeks to enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers).

(e) *Labor protection.* The Board is required to provide adequate protection to the rail employees of applicants who are affected by a consolidation. The Board supports early notice and consultation between management and the various unions, leading to negotiated implementing agreements, which the Board strongly favors. Otherwise, the Board respects the sanctity of collective bargaining agreements and will look with extreme disfavor on overrides of collective bargaining agreements except to the very limited extent necessary to carry out an approved transaction. The Board will review negotiated agreements to assure fair and equitable treatment of all affected employees. Absent a negotiated agreement, the Board will provide for protection at the level mandated by law (49 U.S.C. 11326(a)), and if unusual circumstances are shown, more stringent protection will be provided to ensure that employees have a fair and equitable arrangement.

(f) *Environment and safety.* (1) We encourage negotiated agreements between railroad-applicants and affected communities, including groups of neighborhood communities and other entities such as state and local agencies. Agreements of this nature can be extremely helpful and effective in addressing local and regional environmental and safety concerns, including the sharing of costs associated with mitigating merger-related environmental impacts.

(2) Applicants will be required to work with the Federal Railroad Administration, on a case-by-case basis, to formulate Safety Integration Plans to ensure that safe operations are maintained throughout the merger implementation process. Applicants will also be required to submit evidence about potentially blocked grade crossings as a result of merger-related traffic increases.

(g) *Oversight.* As a condition to its approval of any major transaction, the Board will establish a formal oversight process. For at least the first 5 years following approval, applicants will be required to present evidence to the Board, on no less than an annual basis, to show that the merger conditions imposed by the Board are working as intended, that the applicants are adhering to the various representations they made on the record during the course of their merger proceeding, that no unforeseen harms have arisen that would require the Board to alter existing merger conditions or impose new ones, and that the merger benefit projections accepted by the Board are being realized in a timely fashion. Parties will be given the opportunity to comment on applicants' submissions, and applicants will be given the opportunity to reply to the parties' comments. During the oversight period, the Board will retain jurisdiction to impose any additional conditions it determines are necessary to remedy or offset unforeseen adverse consequences of the underlying transaction.

(h) *Service assurance and operational monitoring.* (1) Good service is of vital importance to shippers. Accordingly, applicants must file, with the initial application and operating plan, a service assurance plan, identifying the precise steps to be taken to ensure continuation of adequate service and to provide for improved service. This plan must include the specific information set forth at § 1180.10 on how shippers and connecting railroads (including Class II and III carriers) across the new system will be affected and benefitted by the proposed consolidation. As part of this plan, the Board will require applicants to establish contingency plans that would be available to address the negative impacts if projected service levels do not materialize in a timely fashion.

(2) The Board will conduct extensive post-approval operational monitoring to help ensure that service levels after a merger are reasonable and adequate.

(3) We will require applicants to establish problem resolution teams and specific procedures for problem resolution to ensure that post-merger service problems, related claims issues, and other matters are promptly addressed. Also, we would envision the establishment of a Service Council made up of shippers, railroads, and other interested parties to provide an ongoing forum for the discussion of implementation issues.

(i) *Cumulative impacts and crossover effects.* Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation—the Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination. The Board expects applicants to anticipate with as much certainty as possible what additional Class I merger applications are likely to be filed in response to their own application and explain how these applications, taken together, could affect the eventual structure of the industry and the public interest. When calculating the likely public benefits that their merger will generate, applicants are to measure these benefits in light of the anticipated downstream mergers. Applicants will be expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be altered, or any new conditions imposed, following approval by us of any future consolidation(s).

(j) *Inclusion of other carriers.* The Board will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(k) *Transnational issues.* (1) Future merger applications may present novel and significant transnational issues. In cases involving major Canadian and Mexican railroads, applicants must submit ''full system'' competitive analyses and operating plans—incorporating their operations in Canada or Mexico—from which we can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States. With respect to rail safety in the United States, applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants. 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 be detrimental to the interests of the United States rail network, and applicants must address how any ownership restrictions imposed by foreign governments should affect our public interest assessment.

(2) The Board will consult with relevant officials as appropriate to ensure that any conditions it imposes on a transaction are consistent with the North American Free Trade Agreement and other pertinent international agreements to which the United States is a party. In addition, the Board will

cooperate with those Canadian and Mexican agencies charged with approval and oversight of a proposed transnational railroad combination.

(l) *National defense.* Rail mergers must not detract from the ability of the United States military to rely on rail transportation to meet the nation's defense needs. Applicants must discuss and assess the national defense ramifications of their proposed merger.

(m) *Public participation.* To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.

4. Section 1180.3 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 1180.3 Definitions.

(a) *Applicant.* The term *applicant* means the parties initiating a transaction, but does not include a wholly owned direct or indirect subsidiary of an applicant if that subsidiary is not a rail carrier. Parties who are considered applicants, but for whom the information normally required of an applicant need *not* be submitted, are:

(1) In *minor* trackage rights applications, the transferor; and

(2) In responsive applications, a primary applicant.

(b) *Applicant carriers.* The term *applicant carriers* means: any applicant that is a rail carrier; any rail carrier operating in the United States, Canada, and/or Mexico in which an applicant holds a controlling interest; and all other rail carriers involved in the transaction. This does not include carriers who are involved only by virtue of an existing trackage rights agreement with applicants.

* * * * *

5. Section 1180.4 is proposed to be amended by revising paragraph (a)(1) to read as follows, by removing paragraph (a)(4), by adding new paragraphs (b)(4) and (c)(6)(vi) to read as follows, and by revising paragraphs (d), (e)(2), (e)(3), and (f)(2) to read as follows:

§ 1180.4 Procedures.

(a) * * * (1) The original and 25 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.

* * * * *

(b) * * *

(4) When filing the notice of intent required by paragraph (b)(1) of this section, applicants also must file:

(i) *A proposed procedural schedule.* In any proceeding involving either a major transaction or a significant transaction, the Board will publish a **Federal Register** notice soliciting comments on the proposed procedural schedule, and will, after review of any comments filed in response, issue a procedural schedule governing the course of the proceeding.

(ii) *A proposed draft protective order.* The Board will issue, in each proceeding in which such an order is requested, an appropriate protective order.

(iii) *A statement of waybill availability for major transactions.* Applicants must indicate, as soon as practicable after the issuance of a protective order, that they will make their 100% traffic tapes available (subject to the terms of the protective order) to any interested party on written request. The applicants may require that, if the requesting party is itself a railroad, applicants will make their 100% traffic tapes available to that party only if it agrees, in its written request, to make its own 100% traffic tapes available to applicants (subject to the terms of the protective order) when it receives access to applicants' tapes.

(iv) *A proposed voting trust.* In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must inform the Board as to how the trust would insulate them from an unlawful control violation and as to why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest. Following a brief period of public comment and replies by applicants, the Board will issue a decision determining whether applicants may establish and use the trust.

(c) * * *

(6) * * *

(vi) The information and data required of any applicant may be consolidated with the information and data required of the affiliated applicant carriers.

(d) *Responsive applications.* (1) No responsive applications shall be permitted to minor transactions.

(2) An inconsistent application will be classified as a major, significant, or minor transaction as provided for in § 1180.2(a) through (c). The fee for an inconsistent application will be the fee for the type of transaction involved. See 49 CFR 1002.2(f)(38) through (41). The fee for any other type of responsive application is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f).

(3) Each responsive application filed and accepted for consideration will automatically be consolidated with the primary application for consideration.

(e) * * *

(2) The evidentiary proceeding will be completed:

(i) Within 1 year (after the primary application is accepted) for a *major* transaction;

(ii) Within 180 days for a *significant* transaction; and

(iii) Within 105 days for a *minor* transaction.

(3) A final decision on the primary application and on all consolidated cases will be issued:

(i) Within 90 days (after the conclusion of the evidentiary proceeding) for a *major* transaction;

(ii) Within 90 days for a *significant* transaction; and

(iii) Within 45 days for a *minor* transaction.

* * * * *

(f) * * *

(2) Except as otherwise provided in the procedural schedule adopted by the Board in any particular proceeding, petitions for waiver or clarification must be filed at least 45 days before the application is filed.

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6. Section 1180.6 is proposed to be amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), and (b)(8) to read as follows, and by adding new paragraphs (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13) to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) * * *

(1) *Form 10–K (exhibit 6).* Submit: the most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form 10–K subsequently filed with the SEC over the duration of the proceeding.

(2) *Form S–4 (exhibit 7).* Submit: the most recent filing with the SEC under 17 CFR 239.25 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form S–4 subsequently filed with the SEC over the duration of the proceeding.

(3) *Change in control (exhibit 8).* If an applicant carrier submits an annual report Form R–1, indicate any change in ownership or control of that applicant

carrier not indicated in its most recent Form R–1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R–1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.

(4) *Annual reports (exhibit 9).* Submit: the two most recent annual reports to stockholders by each applicant, or by any entity that is in control of an applicant, made within 2 years of the date of filing of the application. These shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

* * * * *

(6) *Corporate chart (exhibit 11).* Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family, which includes a rail carrier. Such information may be referenced through notes to the chart.

* * * * *

(8) *Intercorporate or financial relationships.* Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph (b)(8), ''affiliates'' has the same meaning as ''affiliated companies'' in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

(9) *Employee impact exhibit.* The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impacts will occur, the time frame of the impacts (for at least 3 years after consolidation), and whether any employee protection agreements have been reached. This information (except with respect to employee protection agreements) may be set forth in the following format:

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES

Current location	Classification	Jobs transferred to	Jobs abolished	Jobs created	Year

(10) *Conditions to mitigate and offset merger harms.* Applicants are expected to propose measures to mitigate and offset merger harms. These conditions should not simply preserve, but also enhance, competition.

(i) Applicants must explain how they will preserve competitive options for shippers and for Class II and III rail carriers. At a minimum, applicants must explain how they will preserve the use of major gateways, the potential for build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) Applicants must explain how the transaction and conditions they propose will enhance competition and improve service.

(11) *Calculating public benefits.* Applicants must enumerate and, where possible, quantify the net public benefits their merger will generate (if approved). In making this estimate, applicants should identify the benefits arising from service improvements, enhanced competition, cost savings, and other merger-related public interest benefits. Applicants must also identify, discuss, and, where possible, quantify the likely negative effects approval will entail, such as losses of competition, potential for service disruption, and other merger-related harms. In addition, applicants must suggest additional measures that the Board might take if the anticipated public benefits identified by applicants fail to materialize in a timely manner.

(12) *Downstream merger applications.* (i) Applicants should anticipate what additional Class I merger applications are likely to be filed in response to their own application and explain how, taken together, these applications could affect the eventual structure of the industry and the public interest.

(ii) Applicants are expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be altered, or any new conditions imposed, should the Board approve additional future rail mergers.

(iii) In calculating the public benefits arising from their merger, applicants should measure them in light of the anticipated downstream merger applications.

(13) *Purpose of the proposed transaction.* The purpose sought to be accomplished by the proposed transaction, *e.g.,* improving service, enhancing competition, strengthening the nation's transportation infrastructure, creating operating economies, and ensuring financial viability.

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7. Section 1180.7 is proposed to be revised to read as follows:

§ 1180.7 Market analyses.

(a) For *major* and *significant* transactions, applicants shall submit impact analyses (exhibit 12) that describe the impacts of the proposed transaction—both adverse and

beneficial—on inter- and intramodal competition with respect to freight surface transportation in the regions affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study on the implications of those data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the relevance of the markets and issues analyzed and the validity of the methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that will be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).

(b) For *major* transactions, applicants shall submit ''full system'' impact analyses (incorporating any operations in Canada or Mexico) from which they must demonstrate the impacts of the transaction—both adverse and beneficial—on competition within regions of the United States and this nation as a whole (including inter- and intramodal competition, product competition, and geographic competition) and the provision of essential services (including freight, passenger, and commuter) by applicants and other network links (including Class II and Class III rail carriers and ports). Applicants' impact analyses must at least provide the following types of information:

(1) The anticipated effects of the transaction on traffic patterns, market concentrations, and/or transportation alternatives available to the shipping public. Consistent with § 1180.6(b)(10), these must incorporate a detailed examination of the ways in which the transaction would enhance competition and of the specific measures proposed by applicants to preserve existing levels of competition and essential services;

(2) Actual and projected market shares of originated and terminated traffic by railroad for each major point on the combined system before and after the proposed transaction. Applicants may define points as individual stations or as larger areas (such as Bureau of Economic Analysis statistical areas or U.S. Department of Agriculture Crop Reporting Districts) as relevant and indicate the extent of switching access and availability of terminal belt railroads. Applicants should list points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction (both before and after applying proposed remedies for competitive harm);

(3) Actual and projected market shares of revenues and traffic volumes before and after the proposed transaction for major interregional or corridor flows by major commodity group. Origin/destination areas should be defined at relevant levels of aggregation for the commodity group in question. The data should be broken down by mode and (for the railroad portion) by single-line and interline routings (showing gateways used). Applicants should explain relevant differences in the effectiveness of competing routings (with respect, *e.g.,* to transit time, terrain, track conditions, and capacity);

(4) For each major commodity group, an analysis of traffic flows indicating patterns of geographic competition or product competition across different railroad systems, showing actual and projected revenues and traffic volumes before and after the proposed transaction;

(5) Maps and other graphic displays where helpful in illustrating the analyses in this section;

(6) An explicit delineation of the projected impacts of the transaction on the ability of various network links (including Class II and Class III rail carriers and ports) to participate in the competitive process and to sustain essential services; and

(7) Supporting data for the analyses in this section, such as the basis for projections of changes in traffic patterns, including shipper surveys and econometric or other statistical analyses. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

(c) For *significant* transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. As a general guideline, applicants shall provide supporting data that may (but need not) include: current and projected traffic flows; data underlying sales forecasts or marketing goals; interchange data; market share analysis; and/or shipper surveys. *It is important to note that these types of studies are neither limiting nor all inclusive.* The parties must provide supporting data, but are free to choose the type(s) and format. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

8. Section 1180.8 is proposed to be amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding a new paragraph (a) to read as follows:

§ 1180.8 Operational data.

(a) For *major* transactions applicants must submit a ''full system'' operating plan—incorporating any prospective operations in Canada and Mexico—from which they must demonstrate how the proposed transaction will affect operations within regions of the United States and this nation as a whole.

(1) *Safety integration plan.* Applicants must submit a safety integration plan.

(2) *Blocked crossings.* Applicants must indicate what measures they plan to take to address potentially blocked grade crossings as a result of merger-related changes in operations or increases in rail traffic.

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9. A new § 1180.10 is proposed to be added to read as follows:

§ 1180.10 Service assurance plans.

For *major* transactions: *service assurance plan.* Applicants shall 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. The plan shall describe with reasonable precision how operating plan efficiencies will translate into present

and future benefits for the shipping public. The plan must also describe any potential area of service degradation that might result due to operational changes. The plan must encompass:

(a) *Integration of operations.* Based on the operating plan, and using benchmarks for the year immediately preceding the filing date of the application, applicants must describe how the transaction will result in improved service levels and must identify potential instances where service may be degraded. While precise in nature, this description is expected to be a route level review rather than a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and respond to the potential areas of service degradation for their customary traffic routings. The plan should inform Class II and III railroads and other connecting railroads of the operational changes that may have an impact on their operations, including operations involving major gateways.

(b) *Coordination of freight and passenger operations.* If Amtrak or commuter services are operated over the lines of the applicant carriers, applicants must describe definitively how they will continue to operate these lines to fulfill existing performance agreements for those services. Whether or not the passenger services operated are over lines of the applicants, applicants must establish operating protocols that ensure effective communications with Amtrak and/or regional rail passenger operators in order to minimize any potential transaction-related negative impacts.

(c) *Yard and terminal operations.* The operational fluidity of yards and terminals is key to the successful implementation of a transaction and effective service to shippers. Applicants must describe how the operations of principal classification yards and major terminals will be changed or revised and how these revisions will affect service to customers. As part of this analysis, applicants must furnish dwell time information for one year prior to the transaction for each facility described above, and estimate what the expected dwell time will be after the revised operations are implemented. Also required will be a discussion of on-time performance for the principal yards and terminals in the same terms as required for dwell time.

(d) *Infrastructure improvements.* Applicants must identify potential infrastructure impediments (using volume/capacity line and terminal forecasts), formulate solutions to those impediments, and develop timeframes for resolution. Applicants must also develop a capital improvement plan (to support the operating plan) for timely funding and completing the improvements critical to transition of operations. They should also describe improvements related to future growth, and indicate the relationship of the improvements to service delivery.

(e) *Information technology systems.* Because the accurate and timely integration of applicants' information systems are vitally important to service delivery, applicants must identify the process to be used for systems integration and training of involved personnel. This must include identification of the principal operations-related systems, operating areas affected, implementation schedules, the realtime operations data used to test the systems, and pre-implementation training requirements needed to achieve completion dates. If such systems will not be integrated and on line prior to implementation of the transaction, applicants must describe the interim systems to be used and how those systems will assure service delivery.

(f) *Customer service.* To achieve and maintain customer confidence in the transaction and to ensure the successful integration and consolidation of existing customer service functions, applicants must identify their plans for the staffing and training of personnel within or supporting the customer service centers. This discussion must include specific information on the planned steps to familiarize customers with any new processes and procedures that they may encounter in using the consolidated systems and/or changes in contact locations or telephone numbers.

(g) *Labor.* Applicants must furnish a plan for reaching necessary labor implementing agreements. Applicants must also provide evidence that sufficient qualified employees to effect implementation will be available at the proper locations prior to the transaction.

(h) *Training.* Applicants must establish a plan to provide necessary training to employees involved with operations, train and engine service, operating rules, dispatching, payroll and timekeeping, field data entry, safety and hazardous material compliance, and contractor support functions (i.e., crew van service), as well as to other employees in functions that will be affected by the transaction.

(i) *Contingency plans for merger-related service disruptions.* In order to address potential disruptions of service that may occur, applicants must establish contingency plans. Those plans, based upon available resources and traffic flows and density, must identify potential areas of disruption and the risk of occurrence. Applicants must provide evidence that contingency plans are in place to minimize negative service impacts and promptly restore service.

(j) *Timetable.* Applicants must identify all major functional or system changes/consolidations that will occur and the time line for successful completion.

10. A new § 1180.11 is proposed to be added to read as follows:

§ 1180.11 Additional information needs for transnational mergers.

(a) Applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants.

(b) 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 be detrimental to the interests of the United States, and discuss any ownership restrictions imposed on them by foreign governments.

(c) Applicants must discuss and assess the national defense ramifications of the proposed merger.

[FR Doc. 00–25043 Filed 10–2–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG12

Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Zapata Bladderpod.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the Zapata bladderpod (*Lesquerella thamnophila*).

We also provide notice that the public comment period for the proposal is reopened to allow all interested parties