API Work

In addition to the five public workshops, the American Petroleum Institute (API) held two meetings with technical experts to discuss unusually sensitive ecological resources. The meetings were held on October 23–24, 1996, and June 25–26, 1997. Representatives of RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, and The Nature Conservancy attended these meetings. Attendees discussed possible ecological USA candidates and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings include threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

Proposed Definition and Pilot Test

RSPA recently proposed a definition for unusually sensitive drinking water end ecological resources in a notice of proposed rulemaking (64 FR 73464; December 30, 1999). The proposed definition was created through a series of public workshops and our collaboration with a wide-range of federal, state, public, and industry stakeholders. The identification of USAs uses a multi-step process that begins by designating and assessing environmentally sensitive areas (ESAs), determining which of these ESAs are potentially more susceptible to permanent or long term damage from a hazardous liquid release (areas of primary concern), and finally identifying filtering criteria to determine which areas of primary concern can be reached by a release and sustain permanent or long-term damage. The areas that result are the proposed USAs. Proposed section 195.6 gives a more detailed definition of USAs.

OPS is concluding a pilot test to determine if the proposed definition can be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. Texas, California, and Louisiana were the states chosen to test the proposed USA definition due to the large number of hazardous liquid pipelines and the considerable drinking water and ecological resources that exist in these states. OPS will use the results to evaluate whether the proposed definition identifies the majority of unusually sensitive areas and whether environmental data is accessible and appropriate to support the proposed definition. Once OPS finishes the test, has a peer review and gets comment on the proposed definition, it will go forward with a final rule. API will also use the results of this pilot test to create an industry guidance document on USAs.

Workshop and Technical Review

OPS is conducting a public workshop to discuss the results of the pilot test and to begin a technical review of the pilot results. Discussions at the workshop will include background on the USA initiative, the drinking water and ecological definitions, models that were used to apply the proposed definition, data that was gathered, how the data was processed using a geographic information system (GIS), and maps of the resulting USAs.

The workshop will begin a technical review of the pilot results. Drinking water and ecological resource experts from federal and state agencies, academia, environmental groups, and others have been invited to participate in a formal technical review of the pilot results. These experts include the Department of Interior's Office of the Secretary, Fish and Wildlife Service, and National Park Service; the Department of Agriculture's Forest Service; the Department of Commerce's National Marine Fisheries Service; the Environmental Protection Agency's Office of Groundwater and Drinking Water, and Office of Solid Waste and Emergency Response; state Nature Conservancies and Heritage Programs; state drinking water resource agencies; academia and other environmental experts. These reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the definition's capability to identify USAs. OPS welcomes additional comments on the proposed definition and the pilot results. RSPA will use the final pilot results and comments received to move toward completing a USA definition by the end of this year.

Issued in Washington, DC on March 31, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–8454 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 582 (Sub–No. 1)][1]

Major Rail Consolidation Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board) seeks public comment on modifications to its regulations governing proposals for major rail consolidations. We are issuing this advanced notice of proposed rulemaking to explore in more detail how our merger rules can and should be revised.

DATES: Notices of intent to participate are due on April 20, 2000. Comments are due on May 16, 2000. Replies are due on June 5, 2000.

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 7.0 format), an electronic copy of each such paper document. Any party may seek a waiver from the electronic submission requirement.[2]

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

SUPPLEMENTARY INFORMATION: On January 24, 2000, we initiated a proceeding in STB Ex Parte No. 582 to obtain public views on the general subject of major rail consolidations [3] and the present and future structure of the North American railroad industry.[4]

[1] A copy of this decision is being served on all persons who participated in STB Ex Parte No. 582.

[2] Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

[3] Merger or control of at least two Class I railroads. Class I railroads are those United States railroads with annual operating revenues (in inflation-adjusted 1991 dollars) of at least $250 million.

[4] *See Public Views on Major Rail Consolidations,* STB Ex Parte No. 582 (STB served Jan. 24, 2000) (published in the **Federal Register** on Jan. 28, 2000, at 65 FR 4568).

In our recent decision,[5] which we issued after considering the extensive written comments that had been filed as well as the statements delivered in person at a 4-day hearing,[6] we concluded that the rail community is not now in a position to undertake what would likely be the final round of restructuring of the North American railroad industry,[7] and that our current rules are not adequate for addressing the broad concerns associated with reviewing any proposals that, if approved, would likely lead to just two large North American transcontinental railroads. We therefore announced that we would revise our merger rules, and, because we determined that it made no sense to develop new merger rules in the middle of what could likely be the final round of major rail mergers, we announced that we would decline to accept further filings involving a major transaction (defined at 49 CFR 1180.2(a)) until new merger rules are in place.

As indicated in our March 17 decision in STB Ex Parte No. 582 (slip op. at 3 n.6), we are not in a position to propose specific rules at this time because, while several parties raised broad issues of concern, specific rule changes were not the focus of our hearing. Instead, we announced that we would be issuing this advance notice of proposed rulemaking (ANPR) to explore in more detail how our merger rules can and should be revised.

Our current merger regulations[8] were adopted soon after passage of the Staggers Act of 1980. The widespread financial distress faced by our nation's rail carriers in the period leading up to enactment of that statute, and the associated deteriorating service levels faced by their customers, were due in large measure to an overly restrictive regulatory system that unduly limited the ability of railroads to effectively rationalize what was at that time a significant degree of excess rail infrastructure. The merger regulations—aimed at encouraging railroads to formulate proposals that would help rationalize excess capacity[9] so long as competition, access to essential service, and other public interest goals were not degraded—were a proper and reasoned response to the serious problems affecting railroads and their customers at that time.

As we explained in our STB Ex Parte No. 582 decision (slip op. at 6), however:

> The goals of that merger policy have largely been achieved. It does not appear that there are significant public interest benefits to be realized from further downsizing or rationalizing of rail route systems, as there is little of that activity left to do. Looking forward, the key problem faced by railroads—how to improve profitability through enhancing the service provided to their customers—is linked to adding to insufficient infrastructure, not to eliminating excess capacity.

Thus, it appears that further rail mergers now offer limited opportunity for additional efficiencies through elimination of excess capacity. And while extensions of single-line service can offer benefits to railroads and their customers, there is a view that these benefits could be better achieved, short of merger, through innovative joint marketing arrangements and other cooperative efforts, such as joint dispatching to more efficiently move trains through congested terminal areas.[10] Further, our experience has shown that, whether or not a particular proposed consolidation holds promise of significant service enhancing and cost reducing synergies, the integration task is itself quite complex and time consuming, and has, in a number of recent instances, been associated with severe service dislocations.

There were four broad concerns discussed at our hearing that persuaded us that we should begin a proceeding to revise our rules governing major rail mergers now. First, a significant number of shippers and smaller railroads stated that we need new rules to ensure that competition would not be curtailed by future mergers. Their concerns are heightened by the very real prospect that the rail industry is on the threshold of making another round of rail merger proposals that, if approved, could result in a transcontinental rail duopoly. Second, many parties argued that additional safeguards were necessary in our merger regulations to ensure that any future mergers are not accompanied by the serious service disruptions that have proved so costly to shippers, rail employees, and other rail carriers, including shortline railroads, and/or to provide suitable compensation arrangements if unforeseen disruptions do occur. Third, some parties, including Transportation Secretary Slater and representatives of rail employees, suggested that revisions to our merger rules are necessary to guarantee that railroads continue to be operated in as safe a manner as is possible and to provide other employee protections. Finally, certain parties raised concerns that would arise if one of the two large Canadian carriers, CN or CP, sought to merge with or control a large U.S. railroad.

Our merger regulations must advance our mandate—under which we are to approve mergers only to the extent consistent with the public interest, and under which we are to promote a safe and sound rail system that runs smoothly and efficiently to provide the service needed by rail customers—in a manner that is consistent with the overall rail transportation policy established by Congress.[11] In today's environment—with the industry far more concentrated than it was when our current regulations were fashioned; with the prospect that any further major rail merger would trigger strategic responses that could lead to a transcontinental rail duopoly; and with only limited opportunities remaining for significant merger-related efficiency gains—the time has come for us to consider whether we should revise our rail merger policy, as many have suggested,

[5] *See Public Views on Major Rail Consolidations,* STB Ex Parte No. 582 (STB served Mar. 17, 2000).

[6] Written comments were filed on or about February 29, 2000. The hearing was held in our offices in Washington, DC, on March 7–10, 2000.

[7] We explained that the railroad industry has consolidated aggressively in recent years and that now only six large railroads remain in the United States and Canada: The Burlington Northern and Santa Fe Railway Company (BNSF); Union Pacific Railroad Company (UP); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Canadian National Railway Company (CN); and Canadian Pacific Railway Company (CP). Two smaller U.S. Class I railroads (Grand Trunk Western Railroad Incorporated and Illinois Central Railroad Company (IC)) are affiliated with CN. A third smaller U.S. Class I railroad (Soo Line Railroad Company) is affiliated with CP. A fourth smaller U.S. Class I railroad (The Kansas City Southern Railway Company (KCS)) remains independent but has entered into a comprehensive alliance with CN and IC.

[8] *See* 49 CFR part 1180, subpart A (49 CFR 1180.0–1180.9).

[9] *See* 49 CFR 1180.1(a) (The Surface Transportation Board encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation).

[10] Joint marketing arrangements, which enable railroads to offer joint-line service almost as seamless as single-line service, could be more practicable and more likely to be in the public interest when the carriers connect largely end-to-end, rather than competing over broad territories. At the STB Ex Parte No. 582 hearing, Secretary of Transportation Rodney Slater and the Chief Executive Officers of several Class I railroads testified as to the benefits of such arrangements.

[11] Under 49 U.S.C. 11324, in considering a major rail merger proposal, the Board is to be guided by the public interest and must consider, at a minimum: the adequacy of transportation to the public; inclusion of other rail carriers in particular mergers; and financial, employee, and competitive issues. Moreover, the rail transportation policy of 49 U.S.C. 10101, which guides us in our regulatory activities, directs us, among other things, to promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and a transportation system that meets the needs of the public and the national defense.

with an eye towards affirmatively enhancing, rather than simply preserving, competition.[12] Moreover, with serious service concerns surrounding major rail mergers, our rules should also address those concerns and any other areas where the public interest is involved.

Overview

As we stated in our March 17 decision in STB Ex Parte No. 582 (slip op. at 6), we intend to revisit our approach to competitive issues such as the ''one-lump theory'' and the ''three-to-two'' question; downstream effects; the important role of smaller railroads in the rail network; service performance issues; how we should look at the types of benefits to be considered in the balancing test, and how we monitor benefits; how we should view alternatives to merger, such as alliances; employee issues such as ''cram down;'' and the international trade and foreign control issues that would be raised by any CN or CP proposal to combine with any large U.S. railroad.

Request for Comments

We request public comment and more detailed proposals on these issues as more fully described below and on any other ways in which our merger regulations should be modified to promote and enhance competition and/or other public interest goals. We have heard parties suggest a variety of rule changes, including those listed below. We invite all interested persons to comment on these types of changes and any others that commenters would like to propose. We encourage commenters to include specific draft rules for their proposed changes.[13] We also request the parties to prioritize the changes that they propose or endorse. We should note that it is not our intent to ''load up'' our rules so as to make them so onerous that they would necessarily foreclose all merger proposals. Rather, our objective is to identify reasonable means to assure that future merger proposals will promote public interest goals.

Downstream Effects

One change that we definitely intend to propose is elimination of the ''one case at a time'' rule at 49 CFR 1180.1(g). We had previously announced our determination to waive this rule in a decision in STB Finance Docket No. 33842 for that proceeding,[14] and the idea of modifying our rules to that effect for all future major rail consolidation proposals received broad support at the hearing. Under such a proposed change, we would examine in all future major merger proceedings the likely ''downstream'' effects of a proposed transaction, including the likely strategic responses to that transaction by non-applicant railroads.

Maintaining Safe Operations

Transportation Secretary Slater testified that a primary concern of the Department of Transportation is that safety be maintained throughout the rail network. We share that concern. Ensuring that safety concerns are addressed has been, and will remain, a primary goal of our environmental review in railroad merger cases. This process works best on a case-by-case basis, however, and we do not see any reason to alter our merger rules in this respect.[15]

Morever, in recent major rail mergers we have required applicants to work with the Federal Railroad Administration (FRA) to formulate Safety Integration Plans (SIPs) to ensure that safe operations would be maintained throughout the implementation process of any merger proposal that we approve. We also have instituted a joint rulemaking with FRA in which the two agencies, working in conjunction, have proposed regulations designed to ensure adequate and coordinated consideration of safety integration issues in railroad merger cases.[16] We have already solicited and received comments in that proceeding, and a joint hearing was held by the two agencies. Therefore, we see no need to address the SIPs process further in this proceeding. We intend to continue to require SIPs on a case-by-case basis, where appropriate, until the SIPs rulemaking proceeding is concluded.

Safeguarding Rail Service

Many of the shipper and shortline railroad parties at our hearing explained how the serious service disruptions that have been associated with recent mergers have caused significant harm to their businesses. These parties seek additional safeguards in our merger review process so that any future rail mergers would not cause such harm.

Many parties emphasized the need for performance measures with which post-merger service could be compared. Some parties also suggested that merger applicants be required to submit more detailed service integration or implementation plans, with enforceable penalties, to ensure against merger-related service degradation, and mandatory arbitration of post-merger service disputes (perhaps with post-arbitration recourse to the Board). Other parties suggested that merger applicants be required to submit plans for preserving service options available to small shippers (*e.g.,* grain shippers located on shortline railroads that cannot handle the newest generation of heavy rail cars or load trains of a length/volume as may be required by practices of individual Class I carriers.) Others expressed concern over the ability of carriers and shippers to acquire new or utilize existing infrastructure and capacity. Finally, many parties echoed Transportation Secretary Slater's concern that more consolidations in the industry could result in carriers that are ''too big to manage, yet too big to fail,'' and suggested that, in our assessment of the financial viability of a proposed merger, we examine the financial terms carefully with a view toward minimizing future service disruptions and any harm that could result from any such disruptions.

We seek comment on how our merger rules might best be revised to protect customers and shortline railroads from merger-related service disruptions and the loss of adequate infrastructure and capacity.

Promoting and Enhancing Competition

As explained above, we believe that the time has come to consider whether

[12] Agency decisions issued under our existing regulations have preserved and sometimes enhanced competition, while promoting efficiency-enhancing system rationalizations whose benefits were ultimately passed along to shippers in the form of lower rates and improved service. Now, however, we see little opportunity for substantial further efficiencies to be achieved through additional system rationalizations.

[13] We also intend in this rulemaking proceeding to propose necessary technical updates or corrections to the merger rules at the notice of proposed rulemaking (NPR) stage. To that end, we invite commenters to identify, and offer textual suggestions for modifying, existing provisions within 49 CFR part 1180 that are out-of-date or otherwise in need of correction.

[14] *See Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company—Common Control,* STB Finance Docket No. 33842, Decision Nos. 1 & 1A (STB served Dec. 28, 1999) (published in the **Federal Register** on Jan. 4, 2000, at 65 FR 318).

[15] We note that our environmental rules at 49 CFR part 1105 are not specific to rail mergers and we therefore do not intend by this notice to reopen our environmental rules.

[16] *See Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control,* STB Ex Parte No. 574, FRA Docket No. SIP–1, Notice No. 1 (Joint Notice of Proposed Rulemaking published at 63 FR 72225 (Dec. 31, 1998)).

we should alter our rail merger policy to place a greater emphasis on enhancing, rather than simply preserving, competition. Many of the competition-enhancing elements of recent mergers have been proposed by the applicants themselves, either in the initial application or in voluntary agreements reached with other parties, many of which have been encouraged by this agency. For example, in the CSX/NS/Conrail transaction, applicants proposed to use ''Shared Assets Areas'' to open up competition between CSX and NS for $700 million in rail traffic that had been exclusively served by Conrail. In addition, the applicants negotiated agreements that contained other pro-competitive elements.

At our recent hearing in STB Ex Parte No. 582, parties suggested various other means by which rail mergers could be used to promote and enhance competition in the rail industry. These included:

- Requiring merger applicants to maintain open gateways for all major routings.
- Requiring merger applicants to provide switching, at an agreed-upon fee, to all exclusively served shippers located within or adjacent to terminal areas. (The suggestion was that this measure be even broader than the switching condition that we imposed in the CSX/NS/Conrail proceeding—where we expanded upon the privately negotiated agreement that formed the basis of the condition—by including all shippers within or adjacent to terminal areas, and not just those shippers that had switching available prior to the consolidation, as in CSX/NS/Conrail.)
- Requiring merger applicants to offer, upon request, contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment. (This would address shipper concerns that competitive-segment carriers may be unwilling to enter into contracts that would enable shippers to obtain bottleneck rate relief before the Board.)[17]
- Requiring merger applicants to provide a new through route at a reasonable interchange point whenever they control a bottleneck segment and the shipper has entered into a contract with another carrier for the competitive segment. (This would permit shippers who have entered into such contracts to immediately seek bottleneck rate relief, rather than first requiring them to file an access complaint to obtain a new through route.)
- Revising the application of the ''one-lump'' theory to rail mergers. (Based on that theory, the Board has generally declined to require access to additional carriers by exclusively served shippers whose sole carrier sought to merge with one of several connecting carriers. The Board has applied a rebuttable presumption that such shippers would not be competitively harmed. Proponents of this change urge the Board to provide such exclusively served shippers with access to an additional carrier, through trackage rights, in order to promote and enhance, rather than merely preserve, competition.)

We seek comment on which, if any, of these or any other measures should be considered for incorporation into our merger rules.

Shortline and Regional Railroad Issues

Many of the concerns expressed at our hearing in STB Ex Parte No. 582 by shortline and regional railroads, and how these might be reflected through modifications to our rail merger regulations, are subsumed in our discussion of competition and service issues above. Certain shortline and regional railroads also suggested that our revised merger rules require applicants to submit plans for promoting the viability of existing regional and shortline railroads, based on the ''Bill of Rights'' advocated by the American Short Line and Regional Railroad Association—which includes the right to compensation for service failures, the right to interchange and routing freedom (including the elimination of so-called paper and steel barriers), the right to competitive and nondiscriminatory pricing, and the right to fair and nondiscriminatory car supply. We seek comment on whether and how the concerns of shortline and regional railroads should be reflected in our merger rules.

Employee Issues

Many of the concerns expressed at our hearing in STB Ex Parte No. 582 by representatives of rail employees, and how those concerns might be reflected in changes to our merger rules, are subsumed in our discussion of safety and service issues above, and cross-border issues below. In addition, rail labor parties suggested at our hearing that we require merger applicants to agree to forgo any effort to ''cram down'' post-merger changes in collective bargaining agreements under the auspices of 49 U.S.C. 11321(a) and/or 11326, and/or under the auspices of Article I, Section 4 of our standard *New York Dock* labor conditions,[18] and/or to offer their employees expanded labor protection (*e.g.,* 10, rather than 6, years of benefits). We seek comment on whether and how these and other concerns of rail employees should be addressed.

''Three-to-Two'' Issues

Many parties to our STB Ex Parte No. 582 proceeding have suggested that the Board should give greater weight to arguments of competitive harm in those situations where the number of rail carrier alternatives within a corridor would be reduced by a merger from three to two. We seek comment on whether and how our assessment of ''three-to-two'' effects should be reflected in our new merger rules, or whether this issue is best left to a case-by-case examination based on the individual circumstances of each case, as it has been in the past.

Merger-Related Public Interest Benefits

Many parties at our hearing suggested that the Board should be more critical and skeptical of merger applicants' estimates of the synergies and other public interest benefits that would be produced by a proposed merger and that we should conduct post-merger monitoring to help ensure that the projected benefits are actually realized. Some have suggested that merger applicants be required to show that any claimed synergies or other public interest benefits could not be achieved short of merger, through marketing alliances or cooperative operating practices. We seek comment on how claims of public interest benefits should be treated under our merger rules.

Cross-Border Issues

We were presented, in the recent CN/IC merger proceeding, with a few issues relating to the fact that one of the applicant carriers was a Canadian railroad.[19] At our hearing in STB Ex

[17] *Central Power & Light Co.* v. *Southern Pac. Transp.Co.,* Nos. 41242, *et al.* (Dec. 31, 1996), clarified (Apr. 30, 1997), *aff'd sub nom. MidAmerican Energy Co.* v. *STB,* 169 F.3d 1099 (8th Cir. 1999), *reh'g denied* (Apr. 20, 1999), *cert. denied sub nom. Western Coal Traffic League* v. *STB,* 120 S. Ct. 372 (1999); *Union Pac. R.R.* v. *STB,* No. 98–1058 (D.C. Cir. Feb. 15, 2000).

[18] *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60, 85 (1979) (*New York Dock*).

[19] In that case, we determined that it would not be appropriate to require employees to forfeit their *New York Dock* protections if they chose not to move to Canada; we are continuing to monitor IC's Chicago gateway to address the concerns of North Dakota grain shippers that their product be able to continue to compete effectively with Canadian grain moving in new single-line service through Chicago over the combined CN-IC; and we also are monitoring whether there is any merger-related link to any unfair pricing practices in the lumber industry. *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk*

Parte No. 582, we heard a far broader array of concerns over potential harms to the nation's interests if a Canadian railroad proposed to merge with a large U.S. railroad. Transportation Secretary Slater testified that such a proposal would lead to ''yet another uncertainty: the adequacy, consistency, and effectiveness of extra-territorial oversight,'' most notably with respect to FRA's ability to exercise its safety authority. In addition, the representative of the U.S. Department of Defense, explaining that the U.S. military relies on rail transportation in wartime, expressed concern over the possibility that predominant foreign control of a large U.S. railroad might adversely affect our nation's defense operations.

Also, Transportation Secretary Slater explained that foreign control of railroads operating in the United States could lead to traffic shifts that could have significant adverse financial impacts on U.S. ports and waterway systems. The Port Authorities of New York and New Jersey, of Boston, and of Virginia testified at the STB Ex Parte No. 582 hearing that a major merger proposal involving CN could, by shifting traffic flows away from their ports to the Port of Halifax, imperil the significant public investment in their port facilities. Similar concerns were raised by the Ports of Seattle and Tacoma with respect to shifts of traffic to the Port of Vancouver.

Finally, we heard concerns by the U.S. Department of Agriculture and by parties representing grain and lumber interests that a merger of a Canadian carrier with a large U.S. carrier could unfairly disadvantage their product in competition with Canadian grain and lumber in our domestic markets. They suggest that merger applicants would need to submit a more detailed systemwide operating plan and competitive impacts analysis that take these concerns into account.

We seek comments as to whether and how these concerns should be addressed in our merger rules.

Notice Of Intent To Participate. A copy of this decision is being served on all persons who participated in STB Ex Parte No. 582; however, persons who participated in STB Ex Parte No. 582 will *not* automatically be placed on the service list as parties of record for this (Sub-No. 1) rulemaking proceeding. Any persons interested in participating in this rulemaking proceeding (and being on the service list and receiving copies of filings) must file a written notice of intent to participate with the Board by April 20, 2000, in accordance with the filing requirements set forth below.

Service List. A service list, identifying all parties that have filed notices of intent to participate, will be issued by the Board by April 28, 2000.

Comments. Comments are due on May 16, 2000. Each party submitting comments to the Board also must serve a copy of such comments on each person indicated on the service list.

Replies. Replies are due on June 5, 2000. Each party submitting a reply to the Board also must serve a copy of such reply on each person indicated on the service list.

Paper Copies; Electronic Copies; Document Scanning. Each person filing a notice of intent to participate, comments, and/or a reply must file with the Board an original and 25 paper copies of: The notice of intent to participate (these must be filed with the Board by April 20, 2000); the comments (these must be filed with the Board and served on all parties by May 16, 2000); and the reply (these must be filed with the Board and served on all parties by June 5, 2000). Each such person must also submit, in addition to an original and 25 copies of all paper documents filed with the Board, an electronic copy of each such paper document.[20] The electronic copy should be on a 3.5-inch IBM-compatible floppy diskette, and should be in, or convertible by and into, WordPerfect 7.0. Any person may seek a waiver from the electronic submission requirement. The Board will not accept facsimile submissions in this proceeding because of the additional administrative burden required to process such filings. Also, the Board will not accept e-mail submissions in this or any other proceeding because we have not developed policies, procedures, or standards for accepting documents in that format.

The Board intends to make available to the public all filings submitted in this proceeding by publishing an image of each on the Board's website at www.stb.dot.gov under the ''Filings'' link. To ensure the highest quality image is captured during the scanning process the following filing instructions apply in this proceeding: Participants shall submit comments in accordance with existing rules, which require that all filings be clear and legible; on opaque, unglazed, durable paper not exceeding 8.5 by 11 inches; and able to be reproduced by photography. We also will require that only white paper be used; that printing appear on only one side of a page; that parties not employ color printing, but use only black or dark blue ink; and that all pages of filings, including cover letters and any attachments be paginated continuously. The original document must be submitted unbound and without tabs to reduce possible damage to the document during removal of fasteners and to facilitate the use of a high-speed mechanism for automated scanning. Multi-page documents may be clipped with a removable clip or other similar device. All filings, including oversize or other non-scannable items, will be available at the Board's Docket Room.

Subsequent Stages of This Proceeding. As indicated in our STB Ex Parte No. 582 decision (slip op. at 3 n.6), we plan: To issue a notice of proposed rulemaking (NPR) in this proceeding by October 3, 2000;[21] to provide a total of 100 days (ending January 11, 2001) for comments, replies, and rebuttal on the proposals contained in the NPR; and to issue final rules by June 11, 2001.

Small Entities. Because we have not yet proposed specific rules, we need not at this point examine the impacts of any proposed rules on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We welcome, however, any comments respecting whether any suggested revisions to our regulations would have significant economic effects on any substantial number of small entities.

Environment. The issuance of this ANPR will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we do not expect that any revisions to our regulations would significantly affect either the quality of the human environment or the conservation of energy resources. We welcome, of course, any comments respecting whether any suggested revisions would have any such effects.

Board Releases Available via the Internet. Decisions and notices of the Board, including this ANPR, are available on the Board's website at ''www.stb.dot.gov.''

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

Dated: March 30, 2000.

Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999), slip op. at 43, 37, and 39, respectively.

[20] For one exception, notices of intent to participate, we will not require the filing of electronic copies.

[21] The NPR will set forth our specific proposals for changes in our rail merger regulations.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8374 Filed 4–5–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the vernal pool fairy shrimp (*Branchinecta lynchi*) and the vernal pool tadpole shrimp (*Lepidurus packardi*) from the Federal list of threatened and endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. We find that the petition, other information the petitioner specifically requested we evaluate, and additional information available in our files did not present substantial scientific or commercial information indicating that delisting of the vernal pool fairy shrimp and vernal pool tadpole shrimp may be warranted.

DATES: The finding announced in this document was made on March 30, 2000.

ADDRESSES: Submit any data, information, comments, or questions concerning this petition to the Field Supervisor; Sacramento Fish and Wildlife Office; 2800 Cottage Way, Room W–2605; Sacramento, California 95825. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kyle Merriam or Karen Miller at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at 916/414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we will commence a status review of the involved species.

On February 29, 1996, we received a petition, dated the same day, to delist the vernal pool fairy shrimp (*Branchinecta lynchi*) and the vernal pool tadpole shrimp (*Lepidurus packardi*). The petition was submitted by the Fairy Shrimp Study Group (petitioner), consisting of the California Chamber of Commerce, Granite Construction, Teichert Aggregates, Sares-Regis Group, the California Cattlemen's Association, the Western Growers Association, and the California Farm Bureau Federation.

In a letter dated March 8, 1996, we notified the petitioner that a response would be delayed due to lack of funds and continuing resolutions in effect from November 14, 1995, to January 26, 1996, resulting in suspension of the listing program and reassignment of listing personnel to other activities. A moratorium on listing activities, and the consequent backlog at the time the moratorium was lifted, further delayed us from responding to the delisting petition.

On October 22, 1997, the petitioner filed a case in Federal court (Court) challenging our failure to address the delisting petition (*Fairy Shrimp Study Group* v. *Babbitt*, case number 1:97CV02481). Most of the issues discussed by the petitioner were included in a lawsuit filed by the Building Industry Association challenging the listing of the vernal pool crustaceans (*Building Industry Association* v. *Babbitt*, 979 F Supp. 893 (1997)), and were addressed by the Court in that case. The Court found that we had correctly determined the status of the vernal pool crustaceans as endangered and threatened and stated that (1) decisions to review petitions are not subject to judicial review; (2) we had used the best available information in our decision to list the vernal pool crustaceans; (3) the plaintiffs had been provided adequate notice of the concept of vernal pool complexes and vernal pool populations; and (4) we had not violated our Interagency Cooperative Policy for Peer Review in Endangered Species Activities (59 FR 34270).

In a settlement with the petitioner reached on October 26, 1999, we agreed to evaluate the best scientific and commercial information available as of that date. The data and information evaluated were to include relevant geographic information on the location of vernal pools and fairy shrimp, including information generated in section 7 consultations since February 29, 1996.

On September 19, 1994, we published the final rule to list the vernal pool fairy shrimp and vernal pool tadpole shrimp as threatened and endangered, respectively, in the **Federal Register** (59 FR 48136). The vernal pool fairy shrimp and vernal pool tadpole shrimp are crustacean species endemic to vernal pool habitats in California and southwestern Oregon. Both of these fresh-water crustaceans are about the size of a dime and live brief lives within vernal pools, seasonal wetlands that fill with water during fall and winter rains. These species were listed as a result of significant threats to their vernal pool habitats by a variety of human-caused activities, primarily urban development and conversion of land to agricultural use.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

The petition asserts that delisting of the vernal pool fairy shrimp and vernal pool tadpole shrimp is warranted because the original data used for classification of the vernal pool crustaceans as threatened and endangered were in error. The petition contends the listing was erroneous for four general reasons: (1) The original data and studies supporting the listing, including the original petitions to list the species, had fatal problems; (2) original information relied upon was not subjected to independent peer review; (3) new studies indicate that California has widespread vernal pool habitat that it is under little or no threat; and (4) the original listing information did not correctly establish the threats to the species and their vernal pool habitat.

We do not agree with the petitioner's assertion that the original data and studies supporting the listing, including the original petitions to list the species, had fatal problems. The petitions and information accompanying or cited in them fulfilled the requirements as set