§ 1180.10 Service assurance plans.

For major transactions: Applicants must submit a Service Assurance Plan, which, in concert with the operating plan requirements, identifies the precise steps to be taken by applicants to ensure that projected service levels would be attainable and that key elements of the operating plan would improve service. The plan shall describe with reasonable precision how operating plan efficiencies would 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 and how instances of degraded service might be mitigated. Like the Operating Plan on which it is based, the Service Assurance Plan must be a full-system plan encompassing:

(a) Integration of operations. Based on the operating plan, and using appropriate benchmarks, applicants must develop a Service Assurance Plan describing how the proposed transaction would result in improved service levels and how and where service might be degraded. This description should be a precise route level review, but not a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and changes, 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 or changes in service terms that might affect 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 applicant carriers, applicants must describe definitively how they would continue to facilitate these operations so as to fulfill existing performance agreements for those services. Whether or not the passenger services are operated over lines of applicants or applicants’ operations are on the lines of passenger agencies, applicants must establish operating protocols ensuring effective communications with Amtrak.

The forecast should reflect only changes anticipated to result from the proposed transaction. Forecasts are not required to reflect general economic conditions unrelated to the proposed transaction.

The pro forma balance sheets (exhibit 16), pro forma income statements (exhibit 17), and sources and application of funds (exhibit 18) shall cover the same years.

The Board will incorporate by reference the current balance sheets and income statements of Class I railroads which are on file with the Board. Class II and Class III railroads, and non-carrier entities shall submit balance sheets (exhibit 20) and income statements (exhibit 21) covering a period ending within 6 months before the application is filed.

The forecast should reflect only changes anticipated to result from the proposed transaction. Forecasts are not required to reflect general economic conditions unrelated to the proposed transaction.

With the operating plan, and using appropriate benchmarks, applicants must develop a Service Assurance Plan describing how the proposed transaction would result in improved service levels and how and where service might be degraded. The description should be a precise route level review, but not a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and changes, 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 or changes in service terms that might affect their operations, including operations involving major gateways.

The pro forma balance sheets (exhibit 16), pro forma income statements (exhibit 17), and sources and application of funds (exhibit 18) shall cover the same years.

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and/or regional rail passenger operators 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 would be changed or revised and how these revisions would affect service to customers. As part of this analysis, applicants must furnish dwell time benchmarks for each facility described in this paragraph, and estimate what the expected dwell time would 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 time frames for resolution. Applicants must also develop a capital improvement plan (to support the operating plan) for timely funding and completion of 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 is vitally important to service, 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 the adequacy of those systems to ensure 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, telephone numbers, or communication mode.

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

(h) Training. Applicants must establish a plan for providing 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 (e.g., crew van service), as well as training for other employees in functions that would be affected by the acquisition.

(i) Contingency plans for merger-related service disruptions. To address potential disruptions of service that could 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 would be in place to promptly restore adequate service levels. Applicants must also provide for the establishment of problem resolution teams and describe the specific procedures to be utilized for problem resolution.

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

(k) Benchmarking. Specific benchmarking requirements may vary with the transaction. The minimum for benchmarking will be the 12 monthly periods immediately preceding the filing date of the notice of intent to file.
§ 1180.11 Transnational and other informational requirements.

(a) For applicants whose systems include operations in Canada or Mexico, applicants must explain how cooperation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems.

(b) All applicants must assess whether any restrictions or preferences under foreign or domestic law or policies could affect their commercial decisions, and discuss any ownership restrictions applicable to them.

[66 FR 32589, June 15, 2001]

Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

§ 1180.20 Procedures.

(a) Transactions under 11 U.S.C. 1172, for the transfer or operation of lines of bankrupt railroads under a plan of reorganization are governed by the following procedures:

(1) If the buyer or operator is not a carrier, the Notice of Exemption procedures in subpart D of part 1150 of this title.

(2) If the buyer or operator is a carrier, either:

(i) The application procedures in subpart A of this part; or,

(ii) The procedures in part 1121 of this title for a petition to exempt the transaction from prior approval requirements of 49 U.S.C. 11323 et seq.

(b) The Board will establish or modify its existing procedures and deadlines as necessary in each proceeding to comply with appropriate orders of the Bankruptcy Court.

(c) Under 11 U.S.C. 1172(c)(1), the Board is required to provide affected employees with adequate protection. The Board will impose the minimum...