

STB EX PARTE NO. 562

ACQUISITION OF RAIL LINES UNDER 49 U.S.C. 10901 AND
10902—ADVANCE NOTICE OF PROPOSED TRANSACTIONS

Decided September 2, 1997

The Board adopts amendment to its exemption procedures to provide rail employees who work on certain lines proposed to be transferred to a new owner or operator with 60-days' notice and information about the types and number of jobs expected to be available with the new operator.

BY THE BOARD:

By notice of proposed rulemaking (NPR) served on May 1, 1997, and published at 62 Fed. Reg. 23,742-44(1997), we sought public comments on our proposal to establish a 60-day notice period for certain transactions in which rail lines are transferred to a new owner or operator. General notice would be given by the acquiring entity to the seller's employees working on the line at issue as to whether the buyer intends to hire new employees, and what type and how many employees it intends to hire. The buyer would also have to provide basic, general information about the compensation available and how it would go about selecting its workforce. The 60-day period would run from the time the buyer certifies to the Board that it has posted this information and sent it to the unions to the time when the transaction may be consummated.

We proposed that the notice requirement would apply in (1) exemptions from 49 U.S.C. 10902 by Class II rail carriers and (2) exemptions or notices of exemptions from the requirements of 49 U.S.C. 10902 by Class III rail carriers or from the requirements of 49 U.S.C. 10901 by noncarriers, to acquire or operate rail lines or additional rail lines where the lines to be acquired or operated (together with an acquiring carrier's existing lines under section 10902)

would produce annual revenue exceeding \$5 million.¹ After reviewing the public comments, we have decided to adopt the proposed notice requirement. We believe that this requirement will facilitate the smooth implementation of line sale transactions that are in the public interest.

BACKGROUND

In the *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 803 (*ICCTA*), enacted on December 29, 1995, and effective on January 1, 1996, Congress established a new provision — 49 U.S.C. 10902 — that applies to the acquisition or operation of additional rail lines by Class II or Class III railroads. As enacted, subsection 10902(c) requires us to grant an application by a Class II or III rail carrier "unless the Board finds that such activities are inconsistent with the public convenience and necessity." The new provision mandates that we require a Class II rail carrier to provide a "fair and equitable" arrangement for adversely affected railroad employees, consisting of a maximum of 1 year of severance pay, defined as the employee's earnings during the 12 months preceding the application filing date. Under the new law, we may not require labor protection for acquisitions by Class III rail carriers. *See*, 49 U.S.C. 10902(d). We may approve the requested certificate as filed or may include conditions (other than labor protection conditions) we find necessary in the public interest. *See*, 49 U.S.C. 10902(c).

The criteria for approving a transaction under section 10902 are substantially the same as those found in section 10901, which requires that we approve noncarrier acquisitions and operations unless they are inconsistent with the public interest. Noncarriers proposing acquisitions under section 10901 may take advantage of a class exemption found in 49 CFR 1150.31-35. *See, Class Exemption — Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), 4 I.C.C.2d 309 (1988), 4 I.C.C.2d 822 (1988). A similar class exemption may be used for acquisitions by Class III rail carriers proposing transactions covered by section 10902. *See, Class Exemp. for Acq. or Oper. Under 49 U.S.C. 10902*, 1 S.T.B. 95 (1996). Class II carrier acquisitions under

¹ Acquisitions under 49 U.S.C. 10902 by Class III rail carriers and acquisitions under 49 U.S.C. 10901 by noncarriers are both subject to our class exemption procedures. *See*, 49 CFR 1150, Subparts D and E. We clarify that our use of the term "acquisition" in this decision and in these rules is in its broadest sense to include all forms of transactions for the transfer of, or right to operate over, a rail line under these two statutes.

section 10902 may also be pursued under the exemption procedures of 49 CFR part 1121.

In one recent proceeding,² rail labor requested a 90-day notice period before a particular transaction sought to be exempted from section 10902 could become effective. Although we determined there that affected employees had already been afforded at least that amount of notice, we found that labor had made some valid arguments in favor of more notice in these cases in general. Thus, we announced that we would seek public comment on a proposed requirement that Class II railroads provide a minimum of 60 days' notice in future proceedings under section 10902. We also proposed to amend our existing class exemption rules so that a similar 60-day notice period is afforded in all transactions involving acquisitions under section 10902 by Class III carriers or under 49 U.S.C. 10901 by noncarriers, that would result in the acquiring entity becoming a carrier with annual revenues in excess of \$5 million. Our notice of proposed rulemaking proposing these changes was issued on May 1, 1997.

PUBLIC COMMENTS

Comments in support of our proposal were submitted by the Transportation Trades Department of the AFL-CIO (TTD);³ Joseph C. Szabo, Illinois Legislative Director for United Transportation Union (IL-UTU); UTU Missouri State Legislative Board; UTU Missouri Local 1216; seven United States Senators;⁴ 23 United States Congressmen;⁵ New Jersey state senator John Adler;

² See, *Wisconsin Central Ltd. — Acquisition Exemption — Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served April 17, 1997) (*WCL Exemption*), appeals pending in D.C. Cir. Nos. 97-1384 and 1387, *Association of American Railroads, et al. v. STB*. In *WCL Exemption*, we adopted procedures for implementing the labor protection required by subsection 10902(d).

³ TTD consists of the following rail unions: American Train Dispatchers Department; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen & Oilers, SEIU; Sheet Metal Workers International Association; Transportation • Communications International Union; Transport Workers Union of America; United Transportation Union.

⁴ Senators Kent Conrad (ND), Byron Dorgan (ND), Richard Durbin (IL), Tom Harkin (IA), Frank Lautenberg (NJ), Jack Reed (RI), and Arlen Specter (PA) submitted supporting comments.
(continued...)

and New Jersey state representative Sean Dalton. Comments in opposition were filed by the Association of American Railroads (AAR), the American Short Line Railroad Association (ASLRA), Regional Railroads of America (RRA), Wisconsin Central Ltd. (WCL), Minnesota Commercial Railway Company (MCR), a coalition of 38 short line railroads, and Congressmen Spencer T. Bachus, III (AL), Bob Clement (TN), and Ed Whitfield (KY).

TTD maintains that our authority to oversee and implement line sale transactions under sections 10901 and 10902 gives us the jurisdiction to promulgate the proposed notice requirement. TTD argues that the notice requirement is merely an unburdensome procedure to be observed to qualify under our exemption rules, rather than a substantive obligation on the purchasing carrier. TTD indicates that the notice will give employees the opportunity to adjust to a new situation and make informed choices concerning alternative employment opportunities. Although TTD supports the proposed 60-day advance notice requirement, it contends that all transactions under sections 10901 and 10902, not just those above the \$5 million threshold, should be subject to the rule. In addition to requiring notice to the selling carriers' workers, TTD argues that the buying carriers' employees should be given notice because they may be directly affected by a line sale. Finally, TTD maintains that the notice should contain more specific information as to work descriptions, job rules and qualification requirements, rates of pay, and lines to be transferred.

IL-UTU recommends that, in addition to requiring the 60-day notice to be served on the national offices of the employees' unions and posted at the affected employees' workplace, carriers should also be required to serve the notice on us. IL-UTU maintains that we should require significantly broader notice of line sales to potentially interested persons.

⁴(...continued)

Senators Dorgan, Reed, and Specter also request that the NPR's proposed limitation to transactions exceeding \$5 million not be imposed.

⁵ Members of Congress supporting the proposal include: Thomas Allen (ME), John Baldacci (ME), Earl Blumenauer (OR), Corrine Brown (FL), William Coyne (PA), Peter DeFazio (OR), Mike Doyle (PA), Phil English (PA), Bob Filner (CA), Martin Frost (TX), Tony Hall (OH), Ron Klink (PA), Nick Lampson (TX), William Lipinski (IL), Frank Mascara (PA), Robert Menendez (NJ), John Murtha (PA), James Oberstar (MN), Bill Pascrell, Jr. (NJ), David Price (NC), Ciro Rodriguez (TX), James Traficant, Jr. (OH), and Robert Wise, Jr. (WV). These Congressmen also support the position that there be no financial threshold to transactions qualifying for the notice.

The opponents of the notice requirement maintain that the proposed rule is contrary to Congressional policy favoring the sale of lines that may otherwise be abandoned without burdening the new operators with undue delay or costs. They assert that our present class exemption procedures facilitating such transactions have worked well since 1980, and that the rail unions have failed to show any harm that would justify the additional regulatory burden of the 60-day notice requirement. The opponents disagree with our statement in the NPR that the proposal is merely procedural, and argue that the proposed notice requirement is substantive labor protection expressly prohibited by sections 10901 and 10902, as enacted by Congress in *ICCTA*. In this regard, these commenters also assert that the proposal is contrary to recent Congressional intent. They indicate that, in the debate preceding *ICCTA*, both Houses of Congress considered imposing a 60-day notice provision on all line acquisitions under the new section 10902. Despite the strong support for the rule by rail labor, however, *ICCTA* was enacted without the notice requirement. They maintain that we should not administratively impose a provision considered and rejected by Congress less than 2 years ago.

The opponents also argue that the Worker Adjustment and Retraining Notification Act (Pub. L. No. 100-379) (1988)(WARN) does not support the proposal because, by its terms, WARN applies only to businesses with 100 or more employees, and only to plant closings or mass layoffs involving at least 50 employees. Accordingly, opponents maintain that, because almost all line acquisitions by Class II or Class III carriers involve substantially fewer employees, WARN would not apply to the vast majority of transactions.

Finally, ASLRA contends that, rather than applying the notice requirement to transactions involving Class III railroads where the combined annual revenues exceed \$5 million, we should not apply it to any Class III railroad. Distinguishing between transactions involving larger and smaller Class III carriers is, in its view, contrary to the will of Congress as expressed in the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (SBREFA). For purposes of SBREFA, a small entity involved in line-haul railroading is one with fewer than 1500 employees and one involved in switching and terminal services is one with fewer than 500 employees. ASLRA points out that almost none of the American short line and regional railroads exceed those levels of employment, and it implies that we must apply the SBREFA employment standards in determining which transactions to subject to the notification requirement.

DISCUSSION AND CONCLUSIONS

We have decided to adopt the proposal to amend our exemption procedures so as to make available more information to employees, and thus to their local communities, that may be affected by line sale transactions. Specifically, we are requiring the buyer in these transactions to give notice of its general intentions in hiring a work force 60 days before consummating a transaction authorized under our exemption procedures.

Today, most if not all line sale transactions are accomplished under one of our class exemption procedures. We recognize that these procedures have been very successful in reducing regulatory barriers to new entry, which has been important in restructuring a large number of rail lines that have been inefficient and unsustainable in the hands of the major railroads. New entrants have made extensive use of these procedures to preserve valuable rail service for shippers and communities, and at the same time, have preserved many jobs for rail labor that might otherwise have been lost.

Despite this success, rail labor has often been critical of our expedited procedures and about the lack of basic information concerning these line sale transactions that is available to the employees that have been working on the line to be sold. The time frames in which our exemption procedures permit transactions to be consummated now are very brief, sometimes as short as 7 days. New carriers are understandably anxious to hire a crew and get their new operations up and running as soon as possible. This usually means, however, that employees on the lines that have been sold are forced to make career choices — such as whether they will accept employment on the new carrier or retain whatever rights they have to exercise seniority or later be reemployed on the seller's lines — in a very short period of time.

Moreover, when confronted with the prospect of a line sale, and lacking any information about employment prospects on the buyer's lines, employees and the communities in which they live often assume the worst. Indeed, lack of information and the time to evaluate it may prompt railroad employees and local communities to oppose transactions that, if they had better information, they would not otherwise oppose. Moreover, in cases where substantial opposition is mounted, we have frequently stayed transactions to permit issues raised by rail labor and community interests to be resolved. Accordingly, we are making better information available to employees and thus to communities that will be

affected by proposed line sale transactions, and giving them more time to absorb it.⁶

As we stated in our NPR, we have the jurisdiction to consider the proposal. The notice requirement does not impose substantive labor protection that we are statutorily prohibited from imposing on noncarrier and Class III line acquisitions under our class exemptions. Instead, the notice requirement merely amends our exemption procedures to ensure that transactions we have authorized will be implemented without disruption. Our exemption procedures permit line sale transactions to be processed and consummated extremely rapidly. This expedited exemption process has generally been very beneficial and consistent with our statutory responsibilities. Based on our experience, however, we believe it is appropriate to amend our fast track procedures slightly to mandate some additional notice to employees and thus also to communities affected by these transactions; as a quid quo pro for using these procedures, buyers will now be required to give some general notice of their intentions in hiring a work force 60 days before they consummate.

The additional notice we are requiring should not be burdensome; nor is it labor protection. Buyers are merely required to set forth their plans and intentions, which they are free to determine at their own discretion. Unlike the situation where we impose labor protective conditions, buyers are not required to hire any of the seller's employees, nor are they required to protect their pay with displacement allowances, or to make payments to employees they do not hire.

AAR notes that notice has always been considered a substantive part of our *New York Dock* labor protective conditions. While this may be true, the notice at issue here serves a different purpose from the notice in *New York Dock*. Notice under those procedures triggers an obligation for both the carrier and its employees to negotiate an agreement to implement a transaction within a certain

⁶ While we would be expanding for some transactions the minimum 7-day notice period that is currently required, our current rules already provide for at least 35 days' notice when the class exemption procedures are invoked by a noncarrier that would become a Class II, or larger, carrier (annual revenues roughly in excess of \$20 million) by virtue of the proposed acquisition (*see*, 49 CFR 1150.35) and when the class exemption procedures are invoked by a Class III carrier that would become a Class II, or larger, carrier by virtue of its proposed acquisition (*see*, 49 CFR 1150.45). There have also been many instances when buyers, especially in larger transactions, have voluntarily provided more notice and more information than we required to be provided to interested parties, including labor.

period of time. If the parties do not reach agreement, then either party may request binding arbitration to break the impasse. The notice requirement we are imposing here is informational, and it does not trigger any other legal obligations.

The coalition of various shortlines has questioned our authority to impose any requirements on the buyer concerning the seller's employees with whom the buyer has no prior relationship. Our authority to impose obligations on the buyer derives from the fact that it is seeking to invoke our procedures to gain approval of a transaction. The buyer's obligation to the seller's employees is an informational one, and does not go beyond that limited purpose. Indeed, this is the same kind of informational requirement that the Interstate Commerce Commission imposed upon buyers in line sales under former 49 U.S.C. 11343.⁷

Nor is our action here contrary to the intent of Congress. While the opponents note that a 60-day notice requirement was rejected by the conferees prior to enactment of *ICCTA*, they point to no specific record or legislative history indicating a Congressional intent that we should not consider and impose such a requirement as a part of our exemption procedures if we find that appropriate. The numerous comments we have received from members of both Houses of Congress in support of the proposed rule would indicate otherwise. On the whole, we do not find a clear expression of Congressional intent on this issue. We also disagree with the claims that our action conflicts with *WARN*. We are not relying on *WARN* to provide authority for our action here because, as indicated above, our jurisdiction is not governed by that Act. The reference to *WARN* in the notice was limited to consideration of and guidance as to the length of the notice period (that is, 60 days).

We indicated that new carriers buying or leasing lines often extend offers of employment to employees working on the lines acquired, and we have no reason to believe that this practice will not continue. Employees affected by those transactions will often have to choose whether or not to accept employment with the new carrier. In addition, employees in section 10901 transactions will, in many instances, have to move to new positions on their present employer or may have to seek new employment altogether. Under the circumstances, to facilitate the implementation of these transactions, we find that 60-days' advance notice involving larger transactions would assist employees

⁷ See, *Wilmington Terminal*, 6 I.C.C.2d 799, 815 (1990), *aff'd*, *Railway Labor Exec. Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

who are confronted with major adjustments and decisions relating to their livelihoods. We believe that, especially since employees are not accorded any statutory protection from the effects of the transaction except where the purchase is by a Class II carrier, 60-days' notice is a reasonable period of time in which directly affected employees may be asked to make decisions or take actions. Similarly, communities affected by a proposed line sale may need to make adjustments, and the notice we are requiring should aid them in doing so.

As we preliminarily concluded in *WCL Exemption* and the NPR, individual employee notice will not be required. Rather, we believe it is sufficient to require the acquiring entity⁸ to post the notice at the workplace, as well as submit it to the national offices of the labor unions, of the employees assigned to or working on the affected line(s). While TTD favors a requirement that notice also be specifically given to employees of the buying carrier, to the extent that these employees desire or need this information, we find that they would have sufficient access to any pertinent information through the notice we are requiring to be given to employees of the seller. We agree with WCL's requested clarification that, if there are no union employees working on the affected line(s), posting the notice at the employees' workplace will satisfy the notice requirement. If there are no union employees on the line, no useful purpose would be served by requiring that national unions be notified. Lastly, we will not require that the notice be served on us, as sought by IL-UTU, because IL-UTU has failed to persuade us that this expanded notification is necessary.

With regard to the contents of the notice, TTD maintains that the notice should contain specific information as to work descriptions, job rules and qualification requirements, rates of pay, and lines to be transferred. We believe that it will be sufficient that the notice disclose, in general terms, the types and numbers of jobs expected to be available, the terms of employment and principles of selection, and the lines that are to be transferred.

We recognize that, after the acquirer has provided the requisite notice of the transaction, its specific employment needs and circumstances may change prior to consummation. We will require that good faith notice be provided, although we do not anticipate becoming involved in disputes over specific details of the notice given. We expect that our notice requirement will provide parties an

⁸ Consistent with our existing rules, the acquiring party is responsible for the advance notice to affected employees.

opportunity to share available information to their mutual benefit. Too much involvement from the Board in the details of the notice would likely discourage, rather than encourage, the dissemination of information that is useful to employees and the local community.

As previously explained, the notice requirement should not unduly burden or delay line acquisitions subject to the rule, nor should it burden small businesses. The acquisitions of larger lines under both sections 10901 and 10902 are already subject to prior notice periods of 35 days pursuant to our regulations at 49 CFR 1150.35 and 1150.45, respectively. Moreover, in a number of those transactions, the ICC or the Board has been persuaded to stay the effect of the notices based upon concerns expressed by employee interests, thereby effectively providing for notice periods that were sometimes longer than those adopted here.⁹ The application of a 60-day notice period for these transactions would have little effect on the way they have been treated to date, and indeed may permit the carriers, their employees, and local communities to reconcile their differences prior to consummation without resorting to our intervention and subsequent court review. We recognize that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time. *See WCL Exemption. See also, Wisconsin Central Ltd.--Acquisition Exemption--Tomahawk Railway, Limited Partnership*, STB Finance Docket No. 33358 (STB served July 16, 1997).

As proposed, the 60-day notice requirement will be limited to transactions in which the acquiring Class III carrier or noncarrier will earn annual revenues in excess of \$5 million as a result of the acquisition. While a number of commenters support elimination of the \$5 million threshold, we view the use of this threshold as providing a balance between the goals of providing for notice and a period of adjustment in transactions that will have the greatest effect on employees and their local communities while affecting the smallest number of carriers and transactions. We indicated in the NPR that 78% of the total number

⁹ See, e.g., *New England Central Railroad, Inc. — Acquisition and Operation Exemption — Lines Between East Alburgh, VT and New London, CT*, Finance Docket No. 32432 (ICC served December 9, 1994); *Indiana and Ohio Railway Company — Acquisition Exemption — Lines of the Grand Trunk Western Railroad, Inc.*, STB Finance Docket No. 33180 (STB served February 3, 1997); and *I&M Rail Link, LLC — Acquisition and Operation Exemption — Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway*, STB Finance Docket No. 33326 (STB served April 2, 1997).

of freight railroads have annual revenues under \$5 million, but employ fewer than 3% of the total number of rail freight employees; see, "Selected Statistics — U.S. Freight Railroads by Revenue Range," *Profiles of U.S. Railroads - 1996 Edition* (Association of American Railroads). Thus, the majority of transactions involving the creation of, or purchases by, Class III railroads should not be affected by this notice requirement, but the \$5 million limit should embrace the transactions that affect significant numbers of rail freight employees, and, hence, the communities in which they reside.¹⁰

In our NPR, we preliminarily concluded that the proposed rules, if adopted, would not have a significant effect on a substantial number of small entities. Having reviewed the comments, we affirm our preliminary conclusion. Our adoption of final rules marginally increases the notice requirement of the acquiring carrier or entity, but the smallest carriers and entities are not subject to the increased notice requirement, and individuals and entities affected by line transfers would benefit from our adoption of a standard notice period prior to consummation of the sale.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Chairman Morgan, *commenting*:

As the Board's decision points out, our exemption procedures allow line sale transactions that are in the public interest to be processed and consummated rapidly. The larger line sale transactions, however, may affect significant numbers of employees working on these lines, and the communities in which they live. As part of using the expedited procedures, I believe that requiring buyers to give general, informational notice of their intentions in hiring a work force 60 days before they consummate the covered transactions is both fair and

¹⁰ ASLRA contends that the current threshold between a Class III and a Class II carrier (approximately \$20 million in annual operating revenue) is a sufficient limit for application of the rule. ALSRA also argues that the rule conflicts with SBREFA, which requires federal agencies, when considering additional regulation, to pay special attention to the effect of the regulation on small businesses. SBREFA does not require agencies to adopt its definitions of small business in promulgating their own regulations. We believe that establishing the limit at the Class II threshold would exclude too many transactions from coverage. Moreover, we have given special attention to small businesses. By retaining the \$5 million threshold, we are excluding the vast majority of small railroads and small transactions from application of the notice requirement, while including the majority of affected employees and their communities.

appropriate. Indeed, the informational notice requirement being adopted here should help ensure the smooth implementation of transactions that are in the public interest, to the benefit of the carriers, the affected employees on the lines, and their communities.

Also, I do not believe that the informational notice requirement will burden small businesses. As explained in our decision, the \$5 million threshold for acquisitions by new entrants or Class III railroads will exclude most small railroads and small transactions from application of the requirement, while embracing the transactions that affect the greatest number of rail employees and the communities in which they live.

It is ordered:

1. Final regulations implementing the notice requirement are adopted as set forth in the Appendix to this decision, and notice will be published in the *Federal Register* on September 10, 1997.
2. This decision is effective on October 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen. Chairman Morgan commented with a separate expression.

APPENDIX

The Board amends title 49, chapter X, parts 1121 and 1150 of the Code of Federal Regulations, as follows:

PART 1121--RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

2. Section 1121.4 is amended by adding a new paragraph (h) to read as follows:

§ 1121.4 Procedures.

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

PART 1150--CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

§ 1150.32 Procedures and relevant dates--transactions that involve creation of Class III carriers.

(e) If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

§ 1150.35 Procedures and relevant dates--transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

§ 1150.42 Procedures and relevant dates for small line acquisitions.

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

§ 1150.45 Procedures and relevant dates--transactions under section 10902 that involve creation of Class I or II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).
