

**SURFACE TRANSPORTATION BOARD PROPOSES 60-DAY NOTICE PERIOD FOR RAIL
EMPLOYEES ON LINES TO BE ACQUIRED BY MID-SIZED OR CERTAIN SMALL OR
NONCARRIER ENTITIES**

FOR RELEASE: i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½
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Thursday, May 1, 1997 i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½
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No. 97-31 i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½ i:½
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Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a Notice of Proposed Rulemaking (NPR) in which it is proposing to establish a 60-day, advance public notice period for the benefit of rail employees on railroad lines to be purchased by Class II and certain Class III railroads under a new statutory provision governing such purchases. The notice requirements would apply to certain noncarrier line acquisitions as well. In its April 17, 1997 decision in the case entitled Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company, STB Finance Docket No. 33116, the Board granted the Wisconsin Central Ltd.'s (WCL) acquisition of two rail lines under Section 10902 of Title 49, United States Code (49 U.S.C. 10902). In that decision, the Board also adopted standards and procedures for implementing the labor protection requirements of Section 10902, other than for a specific notice period for employees on the line being sold, which is the subject of the NPR issued today.

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Section 10902 is a new statutory provision governing purchases of rail lines by Class II carriers ("mid-sized" carriers such as WCL with earnings of between \$20 million and \$250 million) and Class III carriers ("small" carriers with earnings of \$20 million or less). Introduced by the ICC Termination Act of 1995, Section 10902 requires the Board, after receipt of an application from a Class II or III carrier, to issue a certificate authorizing the requested transaction "unless the Board finds that such activities are inconsistent with the public convenience and necessity." By its NPR the Board is seeking public comments on a proposed requirement that Class II railroads provide a minimum of 60 days' notice in future purchase transaction cases under 49 U.S.C. 10902. The Board also is proposing to amend existing class exemption rules (rules governing the exemption of a particular class of transactions from regulatory review) so that a similar 60-day notice period is given in transactions under Section 10902 by Class III carriers or under 49 U.S.C. 10901 by noncarriers that would result in the acquiring entity's becoming a carrier with

annual revenues in excess of \$5 million. In issuing the NPR, the Board believes that advance notice involving larger transactions will be beneficial to rail employees, who must decide whether to accept employment with the acquiring entity or move to new positions with their present carrier, or who may have to seek new employment altogether, and will ensure that these transactions being authorized by the Board will be implemented without disruption.

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In regard to the \$5 million threshold, the Board observes in the NPR that more than 78% of the total number of freight railroads have annual revenues under that level but employ fewer than 3% of the total number of rail freight employees, citing to Profiles of U.S. Railroads published by the Association of American Railroads.

Thus, the majority of transactions

involving the creation of, or purchase by, Class III railroads should not be affected by the proposed notice requirement, but the \$5 million threshold should embrace the transactions that affect significant numbers of rail freight employees.

The Board's NPR does not propose that advance notice be given to individual employees. Rather, the Board believes that requiring the posting of notice at affected lines and the submission of notice to the national offices of rail labor unions with employees on affected lines, setting forth the terms of employment and principles of employee selection to be followed by an acquiring carrier, should be sufficient. The Board also notes that the 60-day notice period standard for displaced workers established by the Worker Adjustment and Retraining Notification Act, Pub. L. No. 100-379 (August 4, 1988), seems to be a reasonable period of time during which employees "directly affected" by a proposed acquisition (those actually working on a line or lines at issue) may be asked to make decisions or to take actions.

The Board issued its NPR in the proceeding entitled Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions, STB Ex Parte No. 562, on May 1, 1997.

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