agreements) may be set forth in the following format:

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES

Current Location	.....
Jobs Classification	.....
Jobs Transferred to	.....
Jobs Abolished	.....
Jobs Created	.....
Year	.....

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

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

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

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

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

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

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

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

[47 FR 9844, Mar. 8, 1982. Redesignated at 47 FR 49592, Nov. 1, 1982, and amended at 50 FR 15751, Apr. 22, 1985; 56 FR 41806, Aug. 3, 1991; 57 FR 28641, June 26, 1992; 58 FR 63104, Nov. 30, 1993; 62 FR 9717, Mar. 4, 1997; 64 FR 53269, Oct. 1, 1999; 66 FR 32587, June 15, 2001]

§ 1180.7 Market analyses.

(a) For *major* and *significant* transactions, applicants shall submit impact analyses (exhibit 12) describing the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition with respect to freight surface transportation in the regions affected and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study of the implications of those data, and a description of the resulting likely effects of the proposed transaction on the transportation alternatives that would be available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on

markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the relevance of the markets and issues analyzed and the validity of their methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that would be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).

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

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

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

(3) Actual and projected market shares of revenues and traffic volumes for major interregional or corridor flows by major commodity group. Origin/destination areas should be defined at relevant levels of aggregation for the commodity group in question. The data should be broken down by mode and (for the railroad portion) by single-line and interline routings (showing gateways used);

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

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

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

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

(8) If necessary, an explanation as to how the lack of reliable and consistent data has limited applicants' ability to satisfy any of the requirements in this paragraph (b).

(c) For *significant* transactions, specific regulations on impact analyses are not provided so that the parties

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

[66 FR 32588, June 15, 2001]

§1180.8 Operational data.

(a) Applications for *major* transactions must include a full-system operating plan—incorporating any prospective operations in Canada and Mexico—from which they must demonstrate how the proposed transaction would affect operations within regions of the United States and on a nationwide basis. As part of the environmental review process, applicants shall submit:

(1) A Safety Integration Plan, prepared in consultation with the Federal Railroad Administration, to ensure that safe operations would be maintained throughout the merger implementation process.

(2) Information on what measures they plan to take to address potentially blocked crossings as a result of merger-related changes in operations or increases in rail traffic.

(b) For *major* and *significant* transactions: Operating plan (exhibit 13). Submit a summary of the proposed operating plan changes, based on the impact analyses, that will result from the transaction, and their anticipated timing, allowing for any time required to complete rehabilitation, upgrading, yard construction, or other major operational changes following consummation of the proposed transaction. The plan should make clear the gains in service, operating efficiencies, and other benefits anticipated from the merger. The plan should include:

(1) The patterns of service on the properties, including the proposed principal routes, proposed consolidations of main-line operations, and the anticipated traffic density and general categories of traffic (including numbers of trains) on all main and secondary lines in the system. Identify all yards expected to have an increase in activity greater than 20 percent. Changes in operations may be summarized in a *pro forma* density chart.

(2) If commuter or other passenger services are operated over the lines of applicant carriers, detail any impacts anticipated on such services, including delays which may be occasioned because a line is scheduled to handle increased traffic due to route consolidations.

(3) The anticipated equipment requirements of the proposed system, including locomotives, rolling stock by type, and maintenance-of-way equipment; plans for acquisition and retirement of equipment; projected improvements in equipment utilization and their relation to operating changes; and how these will lead to the financial and service benefits described in the summary.

(4) A description of the effect of any deferred maintenance or delayed capital improvements on any road or equipment properties involved, the schedule for eliminating such deferrals, details of general system rehabilitation including rehabilitation relating to the transaction (including proposed yard and terminal modifications), and how these activities will lead to the service improvements or operating economies anticipated from the transaction.

(5) Density charts (exhibit 14). Gross ton-mile traffic density charts shall be filed for applicant carriers containing a map geographically showing those lines handling 1 million gross ton-miles per mile road or more per year and respective densities, expressed in gross ton-miles per year, in each direction, in segments of such lines between