

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Parts 1105 and 1152**

[STB Ex Parte No. 537]

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The ICC Termination Act of 1995 revised the law governing applications by rail carriers to abandon or discontinue service over lines of railroad and related offers of financial assistance that would continue rail service after approval of abandonment or discontinuance by the Surface Transportation Board (Board). The Board now revises part 1152 to implement the changes and update the pertinent regulations, and to streamline the abandonment and discontinuance processes consistent with the new law. While making a number of changes, both substantive and conforming, the Board has not undertaken a comprehensive revision or rewrite of all of the existing regulations at part 1152 in this proceeding. The Board also is making conforming changes to the environmental rules at part 1105.

EFFECTIVE DATE: The rules are effective January 23, 1997.

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SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides that proceedings and applications pending before the ICC on January 1, 1996, insofar as they involve functions retained by the ICCTA, including abandonment proceedings and applications, shall be decided under the law in effect prior to January 1, 1996. Abandonment applications and proceedings filed on or after January 1, 1996, shall be decided under the law as revised in the ICCTA. Under section 204(a), regulations, including those at 49 CFR part 1152, issued by the ICC and effective as of January 1, 1996, shall remain in effect "until modified,

terminated, superseded, set aside, or revoked in accordance with law by the Board * * *."

On March 15, 1996, we served a Notice of Proposed Rulemaking (NPR) in this proceeding, published at 61 FR 11174 (March 19, 1996). In that notice, we proposed to revise part 1152 to implement the changes brought about by the ICCTA and to streamline and update the regulations. Included in the proposed revisions were deletions of obsolete references. We stated that, while we were not proposing major revisions at this time to our environmental rules at 49 CFR part 1105, or our National Trails System Act (Trails Act) rules at 49 CFR 1152.29, we were proposing some notice and timing changes to those regulations in this proceeding, because the changes were directly related to our efforts to streamline and improve the abandonment process. For the same reason, we proposed some conforming changes to our procedures for handling abandonments exempted as a class, and petitions for individual abandonment exemptions, to reflect statutory changes resulting from the ICCTA.

Comments in response to the NPR were received from various categories of entities. The Association of American Railroads (AAR) filed on behalf of its member railroads. The Rails to Trails Conservancy (RTC) filed as an advocate of trail use/rail banking. Comments were filed by the National Association of Reversionary Property Owners (NARPO), which is a nationwide organization with members interested in reversionary and other property rights. In addition, comments were filed by: (1) Numerous Federal, state, and local government agencies and entities; (2) labor unions; (3) trade associations; and (4) a large number of individual landowners and institutions representing landowners. Basically, the commenters, while expressing certain reservations and having questions concerning certain sections, embrace the changes and revisions to the abandonment regulations that we have proposed.

Before addressing the specific comments, some matters bear repeating from the NPR. We continue to view the ICCTA as reform legislation and thus our effort has been to reform and streamline the existing rules and process. As we stated in the NPR, our goal has been to revise part 1152 to meet the letter and spirit of the ICCTA and to update the regulations to improve notice to the public and ensure ample opportunity for full public participation early in our proceedings. We continue to believe that this will result in a

timely, expeditious resolution of abandonment cases and allow all interested parties to participate fully. We emphasize, however, that the purpose of this rulemaking proceeding is to implement the changes mandated by the ICCTA along with conforming amendments; we have not attempted to conduct a comprehensive revision or rewrite of all of the existing regulations at part 1152. Also, we note that the parties themselves in their comments have not suggested a wholesale "cleanup" of these regulations.

We now turn to the major issues raised by the commenting parties.¹

1. *Uniform schedule.* In the NPR, we proposed a new time schedule for processing abandonment applications:

- Day 0—Application filed, including applicant's case in chief.
- Day 10—Due date for oral hearing requests.
- Day 15—Due date for Board decision on oral hearing requests.
- Day 20—Due date for Notice of Application to be published in the Federal Register.
- Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.
- Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
- Day 110—Due date for service of decision on the merits.
- Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

We also stated that we viewed the notice of intent requirement as an important early warning of proposed abandonments and intended to retain its use. Accordingly, an applicant would be required to file with the Board a notice of intent to abandon a line no more than 30 days and no less than 15 days before the application is filed. In addition, we proposed to update the list of entities due to receive the notice, including the addition of RTC and NARPO, to provide the earliest possible notice that a particular right-of-way might be used as a trail.

Although several parties raised concerns about the time frames in their comments, we find no reason to alter the proposed time frames. We continue to believe that the schedule we had

¹ All comments have been carefully considered. Due to the large number of filings, however, not every specific issue raised by the commenters will be discussed here.

proposed will allow for full public participation and timely resolution, thus benefiting all interested parties. For instance, some commenters urged that the notice of intent be submitted up to 120 days before the filing of the application. While that would obviously allow additional time for parties to gather information and formulate strategy for offers of financial assistance (OFAs), trail use, etc., it would also unnecessarily delay many proceedings and has no statutory basis.² Moreover, the shorter time frame we proposed is in keeping with the spirit of the ICCTA, which (in section 10904) establishes a 4-month deadline after an application is filed for the submission of OFAs. Also, as stated in the NPR, the 110-day outer limit for the Board to issue a final decision is just that—a maximum time frame. In some instances, the Board will be able to render a final decision well before the 110th day.

NARPO and RTC both oppose our proposal to include them in the list of entities due to receive the notice of intent. Since notice to these organizations apparently would not further our goal of achieving the earliest possible notice that a particular right-of-way might be used as a trail (and neither expresses willingness or ability to take on notification responsibilities to persons interested in, or potentially interested in, trails), we will not include this requirement in our final rules.

Contrary to the position of RTC and NARPO, the Transportation Trades Department of the AFL-CIO requests that carriers provide this advance notice to the duly certified labor organizations that represent employees on the affected rail line. The request is reasonable and we will include these organizations on the list of entities to receive the notice of intent.

A number of individuals, presumably adjoining property owners or their supporters, argue that applicants should be required to provide actual notice to each adjoining landowner when filing for abandonment or when a trail condition is requested. However, actual notice has not been shown to be feasible or necessary to ensure that affected landowners and other interested parties receive adequate notice. Our current procedures ensure extensive notice to the public of proposed abandonments and the possibility that the right-of-way may be used as a trail. A notice of every abandonment proposal is published in

the Federal Register. A local newspaper notice also must be published in every abandonment case in each county affected. Furthermore, local public hearings on trail use proposals typically are held and there is usually widespread local publicity. Also, landowners can contact the Board, the railroad, or the trail group for information on particular abandonment or trail use plans.

Moreover, it would be difficult to identify, locate and individually identify each landowner along a line proposed for abandonment and/or trail use. Hundreds if not thousands of landowners could potentially be interested in a single line. More importantly, no available source provides readily ascertainable information on the chain of title, the names and addresses of current landowners, the nature of their property interests, and the circumstances, if any, that might trigger a reversion in a particular state. Thus, there simply is no practical way to name and locate all of the landowners that might have a reversionary interest in a railroad right-of-way, as the ICC concluded in *Rail Abandonments—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures*, Ex Parte No. 274 (Sub-No. 13) (ICC served May 26, 1989, Feb. 21, 1990, and July 28, 1994), 1994 decision *aff'd mem.* 70 F.3d 638 (D.C. Cir. 1995), *cert. denied*, 116 U.S. 1323 (1996).

While we will not require actual notice to landowners, we will make other changes to facilitate and improve notice to the public. For example, RTC recommends that the newspaper and Federal Register notices we require should specifically alert the public of the possibility that, following the abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use, and advise how the public may participate in the Board proceeding (pro or con). We agree with RTC. As RTC states, newspaper notice and Federal Register notice containing this information will give adequate notice to the public of the Board's abandonment proceedings and ensure that interested parties can take such action as they deem appropriate, if they wish to participate.

In the NPR, we also proposed to change the environmental rules by amending 49 CFR 1105.7 and 1105.8 to require railroads to serve their environmental and/or historic reports on the required agencies at least 20 days prior to filing their case in chief with the Board. Also, we proposed that railroads, in order to facilitate identification of lines proposed for abandonment, be required to identify

those lines by United States Postal Service Zip Codes. We will adopt both changes. The earlier distribution of environmental and historic reports will expedite the environmental review process (by giving participating agencies additional lead time to conduct their analysis) without being unduly burdensome on the railroads. While comments on the use of Zip Codes were mixed, the use of Zip Codes is a means to provide notice to the public that a line near them has been proposed to be abandoned. Therefore, we will require use of Zip Codes in the final rules.

Finally, the Department of the Army has requested that the Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) continue to receive a copy of abandonment notices. It states that MTMCTEA is responsible for maintaining a rail network for national defense purposes and that MTMCTEA must receive notice to determine if the line designated for abandonment is an essential element in the rail network.

We have retained MTMCTEA on the list of agencies on which notices must be served. See §§ 1152.20(a)(2) (requiring service of notice of intent on MTMCTEA) and 1152.50(d)(1). We have also assured that MTMCTEA will receive copies of petitions for exemption in new § 1152.60(d).

2. Federal Register Publication. Commenters overwhelmingly supported our proposal to publish a notice of an abandonment application or a petition for an individual exemption in the Federal Register 20 days after the application or petition is filed.³ Accordingly, we will adopt that proposal in our final rules. The Federal Register notice will describe the proposal, advise the public about the due dates for offers of financial assistance and requests for public use and trail use conditions, and explain how to participate (pro or con) in the Board's proceeding. Abandonment applicants and petitioners will be required to file draft Federal Register notices that can be used to announce the filing.

RTC argues that, in addition, we should continue our current practice of publishing another Federal Register notice when, and if, the abandonment authority is granted. We disagree. Because there will be Federal Register notice and newspaper notice at the beginning of the process specifically advising the public as to how to

² Rather, section 10903(a)(3)(E) requires merely that a rail carrier certify to the Board with its application that the carrier has satisfied the notice requirements of section 10903(a)(3) (A)—(D) within the most recent 30-day period prior to the filing date of the application.

³ We proposed no changes for the publication of Federal Register notices for the procedural timing of abandonments covered by the class exemption embraced in subpart F.

participate (pro or con), any interested person can become a party or can ask to be put on the service list of a proceeding and thus receive copies of all subsequent decisions in the case.⁴ Moreover, Federal Register notice is extremely costly; we lack the financial and staff resources to publish multiple Federal Register notices in abandonment cases.

Also RTC suggests that we not use the term "must" in the portion of the draft Federal Register notice informing requesters of a public use condition or trail use condition that such requests are due within 45 days of the filing of the application, 40 days of the filing of a petition, or 10 days after the publication of a notice of exemption. RTC argues that the use of "must" will lead to claims by anti-trail groups that no late-filed requests should ever be granted. We have not made the suggested change. Trail use requests, like all other requests, need to be timely filed if at all possible so our uniform schedule can be met.⁵ Moreover, we will specifically retain our current policy of accepting filings after the due date when good cause is shown.

Finally, the comments received regarding changes to our rules for abandonments covered by the class exemption embraced in subpart F raise issues that are inappropriate for resolution on the current record. Accordingly, we will not attempt to change or modify our regulations concerning the class exemption at this time but reserve the right to address these issues further in a separate proceeding at a later date.

3. *System Diagram Maps.* The ICCTA retains the requirement that rail carriers prepare, file, and amend, as appropriate, system diagram maps (SDMs) that identify lines that are, or soon will be, the subject of an abandonment application. In the NPR we proposed several changes to part 1152 regarding SDMs to eliminate unnecessary regulatory and paperwork burdens. These changes include the following:

(1) Because of the potential burden on small carriers, we proposed to require only Class I and Class II railroads to prepare and file SDMs.

⁴ We note that the timing for Federal Register notices we are adopting for applications and petitions for exemption is similar to what has been done under the class exemption at subpart F for many years. Under the class exemption, as here, the only Federal Register notice is at the beginning of the process.

⁵ We see no reason why trail use requests cannot typically be filed on time. Filing a trail use request is not onerous. Moreover, a party can request a trail condition before there is an arrangement for interim trail use; the condition simply provides time to negotiate.

(2) In lieu of an annual filing of these maps, we proposed a one-time filing of a complete and current set of maps within 60 days of the effective date of these regulations. The carrier would decide when changes have been extensive enough to warrant the filing of a new, updated SDM, but the Board would retain the discretion to require an updated SDM if that became necessary.

(3) We proposed to require only 3 (instead of 6) copies whenever an SDM or an update is filed.

(4) We proposed to reject an abandonment application of a Class I or Class II railroad for a line that has not been identified on a SDM in category 1 for at least 30 days.

Many commenters expressed views on this subject. First, there was strong opposition to our excusing Class III carriers from filing SDMs. Commenters pointed out that Class III carriers now comprise a substantial portion of the rail network, both in numbers of carriers and length of track operated.⁶ Commenters (including several state agencies) argued that to excuse such a large portion of the rail network from these filing requirements would work a severe hardship upon parties opposing abandonments. Moreover, commenters argued that, because rail lines by statute may qualify for feeder line applications under 49 U.S.C. 10907 if they have been identified on an SDM, our proposal would in effect limit the use of the feeder line provisions for lines owned by Class III carriers.

Based on the comments, we have decided to continue to require Class III carriers to file the information normally found in an SDM. Because we recognize, however, that the extensive SDM filing requirements under our current rules could be unnecessarily burdensome on smaller entities, we will give Class III carriers the option of filing a map or filing only a narrative description of its lines as provided under § 1152.11.

A number of commenters also opposed our proposal to shorten the period of time that a carrier must identify a line in category 1 of its SDM before filing an application to abandon the line. Because the ICCTA deleted the 4-month requirement under the prior law, we proposed requiring that a carrier identify a line in category 1 at least 30 days prior to filing an abandonment application, believing that period to be adequate to meet the various parties' planning needs. A

⁶ According to the National Grain and Feed Association, as of 1994, there were 487 Class III carriers operating 25,999 miles of track. This was approximately 21 percent of the total track operated by Class I railroads (123,355 miles in 1994).

significant number of parties maintained that 30 days was too short a period of time to properly notify persons who might wish to file statements in opposition to an abandonment or for public agencies and shippers to prepare an OFA for the line or otherwise plan for alternative transportation. Many commenters supported retention of the 4-month period provided under prior law and implementing regulations.

We are persuaded by the comments that 30 days may be insufficient time for parties to properly oppose an abandonment or to make alternative service plans. At the same time, we continue to believe that 4 months is too long and unduly delays the overall process. Therefore, our final rules provide for rejection of any abandonment application for a line that has not been identified on an SDM⁷ in category 1 for at least 60 days. The additional time should be adequate to meet the planning needs of shippers and state and local governments while avoiding unnecessary delay.

Some commenters, including AAR, recommend that we eliminate categories (2), (3), and (4) from the SDM. We see no need to do so. By adopting a one-time filing requirement (unless extensive changes occur), we have already eliminated much of the extensive work and burdensome procedures required under our prior rules.

A number of parties have also argued that we should retain the prior requirement concerning the annual filing of updated maps or at least require updates on a specific, periodic basis. We believe these requirements would result in more burdens on the carriers than benefits to the shipping public. We emphasize that carriers must continue to file revisions when changing the category of a line, and must file updated SDMs as appropriate or when ordered by us.

MTMCTEA asks that it continue to receive updated copies of SDMs. We have provided copies of SDMs and updates to MTMCTEA in the past on an informal basis. As this procedure apparently has worked well, we will continue to provide the information to MTMCTEA as before.

4. *Summary application.* Absent meaningful opposition, we will finalize our intention to delete the "Summary Application" provisions. By doing so, we will have a uniform, streamlined process for all applications.

⁷ For Class III carriers, the term SDM shall include the filing of a narrative description without an actual map.

5. *Abandonment procedures for bankrupt railroads.* As part of our proposal to adopt a streamlined process appropriate for all applications, we preliminarily indicated in the NPR that no need existed to continue to have separate procedures in subpart E for bankrupt railroads. However, we did propose to include as special provisions for bankrupt railroads in the general abandonment procedures the requirements that abandonment applications filed by bankrupt railroads, and protests or other public responses to the applications, be filed with the bankruptcy court; that Board decisions or reports on abandonment applications by bankrupt railroads be filed with the bankruptcy court; and that special processing schedules would be established to meet court deadlines, so long as a reasonable period of time is allowed to obtain public responses and build a record in an abandonment application by a bankrupt railroad. The commenters either support, or fail to show harm from, these proposals, and we will adopt them as part of our final regulations.

6. *Due date for filing public use requests and trail use requests.* In the NPR, we proposed changes in due dates for these filings to further our goal of compiling a full record for disposition as early as possible. In abandonment applications, we proposed that trail use requests and public use requests be filed at the same time as protests and other written comments (within 45 days after the application is filed). An applicant would then be required to respond regarding willingness to negotiate for trail use within 15 days (or within 60 days after the application is filed). For abandonments covered by the class exemption at subpart F, we proposed to continue to require trail use/rail banking requests to be filed within 10 days after Federal Register publication of the exemption and public use requests to be filed within 20 days after Federal Register publication. For petitions for individual exemption, we proposed to require that trail use/rail banking requests and public use requests be filed within 20 days after Federal Register publication of the notice of the filing of the petition (40 days from the filing of the petition). For both class exemptions and petitions for exemption, we proposed to require the rail carrier to respond to trail use/rail banking requests within 10 days after the request is filed.

Commenters have for the most part agreed with our proposed rules, which we will adopt. Some have sought additional or more comprehensive changes to the regulations governing

public use and trail use conditions. We will not, however, address those requests here, because we did not set out in this proceeding to undertake a detailed re-examination of all aspects of our handling of public use and trail use requests. In short, our purpose in proposing to modify these due dates was to find a way to complete a full record as early as practicable to expedite and streamline the abandonment process.

Finally, several commenters suggest that we should undertake a "takings implication assessment" whenever we issue a trail condition, pursuant to Executive Order 12630, Governmental Actions And Interference With Constitutionally Protected Property Rights. See 53 FR 8859 (March 18, 1988). But, as the ICC had explained, the Executive Order applies only to executive agencies, and not to independent agencies like the ICC.⁸ The Executive Order does not apply to the Board, which was created as the successor agency to the ICC.⁹

7. *Notice of consummation.* To arrive at more definitive standards to be used in resolving the issue of when an abandonment has been consummated, or fully exercised, we proposed in the NPR to require that carriers file with the Board a notice of consummation, and to give conclusive effect to the filing of such notice.¹⁰ We did not propose a deadline for filing, or a penalty for failure to file. We indicated that, if no notice of consummation of abandonment had been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.

After considering the comments, we continue to believe that a notice of consummation requirement would help clarify the consummation issue and prevent consummation disputes from arising in the future. Several commenters, however, criticize our

⁸ *Burlington Northern Railroad Company—Aband. Exemption—In Skagit County, WA*, Docket No. AB-6 (Sub. No. 299X) (ICC served June 23, 1989).

⁹ While the Board is lodged within the Department of Transportation, just as the Federal Energy Regulatory Commission is lodged within the Department of Energy, the Board was created as an independent establishment of the United States Government. See 49 U.S.C. 703(a).

¹⁰ Until 1984, the ICC required a railroad to send the agency a letter confirming that it had consummated an abandonment within 1 year after the abandonment was authorized. Since then, some carriers have continued to send in these letters. Moreover, the courts have considered these letters in determining whether the line is still part of the interstate rail network, and thus available for interim trail use under 16 U.S.C. 1247(d), or public use under 49 U.S.C. 10905.

failure to include a filing deadline in our proposal, on grounds that it would leave the railroad free never to consummate an abandonment and thus would be unfair to adjoining landowners with a reversionary interest in the right-of-way. Based on the comments, we have decided to set a 1-year time limit by which time a railroad must exercise the authority to abandon and inform us that it has done so by sending us a consummation notice.¹¹ Accordingly, our final rules provide that, if after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation—and there are no legal or regulatory barriers to consummation (i.e., outstanding conditions, including Trails Act conditions)—the authority to abandon will automatically expire. That means that a new proceeding would have to be instituted if the railroad wanted to abandon the line.¹²

We reject the suggestion of some commenters that we should not adopt a notice of consummation requirement because the issue of when abandonment has been consummated has been settled by *Fritsch v. ICC*, 59 F.3d 248 (D.C. Cir. 1995), cert. denied, 116 S. Ct. 1262 (1996). In *Fritsch*, the court held that a public use condition imposed under former section 10906 (now 49 U.S.C. 10905) did not prevent consummation of the abandonment and the vesting of reversionary interests in the right-of-way in the circumstances of that case. The courts, however, have expressly declined to read *Fritsch* as holding that abandonment is necessarily triggered upon a showing of any single piece of

¹¹ Several parties suggest shorter time periods ranging from 30 to 180 days. AAR supports our initial decision to have no time period at all, noting that a railroad may have reason to delay consummation of an abandonment for a substantial period of time. We believe that a 1-year time period is appropriate. That time period ensures that the consummation issue will not be left open indefinitely. At the same time, it is long enough to give carriers that do not want to exercise their abandonment authority immediately time to hold open the possibility that new shippers will seek rail service or that the right-of-way could be used for interim recreational or conservation purposes under 16 U.S.C. 1247(d), or public use under 49 U.S.C. 10905.

¹² There is nothing inconsistent about this approach and our rules that permit states to acquire lines that have not been fully abandoned upon the mere filing of a notice. See 49 CFR 1150.22. If the line is acquired during the first year after we authorize abandonment, and before a notice of consummation is filed, the line has not been fully abandoned and can be acquired under our rules. After a year has passed, if there is no notice of consummation, the railroad's abandonment authority lapses, and the line cannot be abandoned (or acquired by a state or any one else) without further authority from us.

evidence indicative of an intent to abandon. See *Conrail v. STB*, 93 F.3d 793, 799 (D.C. Cir. 1996); *Birt v. STB*, 90 F.3d 580, 588 n.15 (D.C. Cir. 1996); *Grantwood Village v. Missouri Pacific RR*, 95 F.3d 654, 659 n.6 (8th Cir. 1996). Moreover, the court in *Fritsch* essentially viewed the railroad's letters to the ICC declaring that it had abandoned the line as conclusive evidence that abandonment had been consummated, therefore depriving the ICC of jurisdiction to impose a trail condition. See 59 F.3d at 253. Thus, our adoption of a notice of consummation requirement here will codify that portion of the court's ruling in *Fritsch* and prevent similar disputes from arising in the future.

Finally, the Oregon and Montana Departments of Transportation suggest that we require notices of consummation to be filed with the appropriate state agencies (DOT, Public Service Commission) as well as with us. We will grant that request, and require that the railroads file notices of consummation with the State Public Service Commission (or equivalent agency) in each state through which the line passes, because it will help keep the states apprised of the status of lines authorized to be abandoned and is not unduly burdensome.

8. *Certificate of abandonment.* Since the ICCTA does not specifically require that "certificates" be issued when abandonment applications are granted, in the NPR we proposed to dispense with the issuance of certificates and instead simply issue "decisions granting" an application. However, we proposed to continue to refer to "Certificates of Interim Trail Use or Abandonment" in the trail use context in part to distinguish an application proceeding from an exemption proceeding. We received a few comments regarding this issue but no commenter presents strong objections to our proposal. Because the term "certificate" is widely known in the trail use context, we will continue to use it for trail use purposes alone.

9. *Contents of the application.* In the NPR, we initially determined that applicants should be required to submit their entire case as part of the application. We then indicated that applicants must include all relevant workpapers and supporting documents with each application. AAR, in its comments, objects to the necessity of supplying all workpapers and supporting documents. It argues that this would be a step backward in our effort to streamline the application process. AAR explains that differences of opinion would arise concerning what

constitutes "workpapers" and that the gathering of all materials would be an unnecessary burden on applicants and produce copious documents with little practical use. We agree with the comments and emphasize that we did not intend to create a more burdensome process than exists today. We clarify that what we meant by the use of the word "all" was that we expect each applicant to submit sufficient (or all that the applicant believes is necessary) workpapers and supporting documents to present a complete or prima facie case. We will modify the regulations accordingly, but we emphasize that the burden is on the applicant to show that the proposed abandonment or discontinuance is in the public interest.

a. *Service data.* In the NPR we proposed to streamline the requirements for abandonment applications by excluding all branch line (line proposed for abandonment) service data for time periods prior to the Base Year period, with the exception of data on changes in train service. The current regulations require data for the 2 preceding calendar years and that portion of the current calendar year for which data are available.¹³

We also proposed changes to the service and traffic data required to be provided in three specific areas. First, we proposed that the carload data on the line would have to show only the total carloads for each commodity group. Second, we proposed that data pertaining to overhead or bridge traffic would have to be included only if the serving carrier would not retain this traffic after approval of the abandonment. Finally, we proposed that only changes in train service in the last 2 years (instead of the last 5 years) would need to be discussed.

A number of commenters raised concerns about the proposed exclusion of historic operational data in the application. Reasons for their concern vary but include: (1) Base Year data could be intentionally distorted; (2) historical calendar year evidence reflects trends in rail line profitability; (3) 1 or 2 years of data are inadequate to make a determination on the viability of a rail line; and (4) without the data from past periods, it will be difficult to determine if intentional downgrading has occurred.

¹³ As we stated in the NPR, this change had been proposed by the ICC in a notice of proposed rulemaking in *Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period*, Ex Parte No. 274 (Sub-No. 26) (ICC served Nov. 9, 1992), to reduce the reporting burden on the carriers. Comments were received but a final rule was never issued.

We do not entirely agree with the commenters that urge that there is a need for more historical data. Under our proposed rules, applicants would have to include and discuss changes in train service for the last 2 years. In addition, applicants would also be required to supply, under proposed § 1152.22(e)(2), a list of significant shippers and their tonnage and/or carload data for the last 2 calendar years and, under proposed § 1152.22(c)(4), total carloads by each commodity group on the line during the Base Year. This information should give protestants sufficient data to address alleged downgrading and the other concerns outlined above.

Nevertheless, in response to commenters and their concerns, we have decided to expand our traffic data requirements somewhat. Specifically, the data required for significant users under § 1152.22(e)(2) of our final rules will include the tonnage and carloads for each commodity group for the last 2 calendar years, any part of the current calendar year for which data are available, and the Base Year. In addition, we will require that the total tonnages and carloads for each commodity group originating and/or terminating on the line segment (not limited to significant users) be shown for the same time periods as those for the significant users. Consistent with these changes, we also will expand proposed § 1152.22(c)(4) to require inclusion of total tons and carloads by each commodity group on the line. With these changes, we believe that an application will contain sufficient service and traffic data to allow appropriate analysis of all issues relevant to service on the subject line.

b. *Financial data.* In the NPR, we proposed to exclude computations for the revenue and cost data developed for the branch line for the prior 2 calendar years and any portion of the current year. Revenue and cost data would be computed only for the Base Year, Forecast Year, and Subsidy Year.¹⁴

We also proposed to delete the requirements that the impact of the abandonment on the carrier's net railway operating income (NROI) for the past 2 calendar years be developed and that the impact on the NROI of other carriers operated under common control of the abandoning railroad be submitted. In addition, we proposed to delete the requirement that the railroad's balance sheet and income statements be filed.

Commenters voice concern regarding the absence of financial operating results in prior years and object to the

¹⁴ These changes also had been proposed in the ICC's rulemaking in Ex Parte No. 274 (Sub-No. 26).

proposal to delete the requirements concerning NROI and the filing of balance sheets and income statements. They make the same arguments against the elimination of these data as they make regarding the elimination of historic service data. Regarding common control, some commenters argue that the financial effect of abandonment by one "family" member affects another. Also, they argue that financial statements are needed because they show the overall financial condition of the applicant, which can be important in the Board's weighing of the evidence under its public convenience and necessity standard.

We do not believe that the benefits of requiring a carrier to submit all of these data justify the very real burden on the applicant of preparing the data. Profits or losses on a line segment in prior years typically do not provide a proper basis on which to judge the line's current and future financial viability. The Board's primary measures of financial condition are the operations in the Base Year and Forecast Year, which recognize the current and future financial viability of the line segment. Moreover, changes in traffic are in most instances the main cause of changes in operating results from a profit to a loss, and necessary traffic information is included in the data applicant is required to file. For these reasons, we will not make the requested changes to our proposal.

c. Other application changes. In the NPR, we proposed to delete the requirements that the carrier identify in detail the sources of alternate transportation available and describe its efforts to solicit traffic on the line. Instead, we proposed to require only a general description of alternative transportation sources. We also proposed that the carrier no longer be required to describe its efforts to solicit traffic on the branch line in every case, but that we would permit the carrier instead to provide a description of its efforts if it believes that the information would aid its case regarding protestants' claims of either potential increases in traffic or deliberate downgrading. Comments specifically addressing these points were unpersuasive. Accordingly, we will incorporate these changes in our final rules.

d. Summary. We will adopt in our final rules the modifications discussed in subparts a-c above. We believe that the information required to be provided in the application, along with information that the parties already have, or may readily obtain, will afford all interested parties a fair opportunity to analyze and present argument on

every issue relevant to the abandonment process that is related to the above data. Moreover, we remind applicants that the burden of proof in these proceedings remains on them, and that they may wish to provide additional data with their applications where doing so would help assure that they have met their burden regarding anticipated challenges such as, for example, challenges claiming deliberate downgrading of the line.

10. Offers of financial assistance. As discussed in the NPR, in addition to the time limits explained above, new 49 U.S.C. 10904 contains other changes in the way OFAs are handled. Initially, the Board need only find that the offeror is a financially responsible person before the negotiating process can begin. We proposed to revise the rules accordingly. Under new section 10904, the Board has 30 days, rather than 60 as before, from the date requested to issue a decision establishing the conditions and amount of compensation for the purchase or subsidy of the line. To meet the new deadline, we proposed to require the requesting party to submit its case in chief at the time it makes its request and to serve the other party(ies) with a copy by overnight mail. The other party(ies) would have 5 days from the date of filing to file a reply. As before, we proposed that our new rules would automatically stay the effective date of (or revoke as necessary for a class exemption) the underlying abandonment decision. We will adopt these changes in our final rules. The final rules also continue to provide that, if a request to set terms and conditions is not made to the Board, a decision making the underlying abandonment approval (or exemption) effective would be served within 10 days of the due date for making the request.

The statute now places a 1-year limit on operating subsidies imposed by the Board, unless otherwise mutually agreed by the parties. As a result, we proposed in the NPR that: (1) Subsidy agreements imposed by the Board would end after 1 year, and (2) beyond this period any subsidy would be strictly a contractual agreement between the carrier and the subsidizer without the involvement of the Board.

Also regarding subsidies, we proposed that the new rules continue to provide for interim financial status reports, as presently included in the abandonment regulations. However, with certain exceptions, the subsidizer's final responsibility would be limited to a maximum of 15% over the agreed-to amount of the operating subsidy. The exceptions would be: (1) If the subsidizer is notified of a higher amount

within the first 10 months of the agreement; and (2) the increase results from an expense that has been preapproved by the subsidizer. We explained in the NPR that we believed that the limitation is needed to provide a degree of certainty to a party that seeks to subsidize operation of a line approved for abandonment. Our final rules include all of these provisions.

We have considered the concern of some commenters regarding the shortening of the 120-day statutory period for submission of OFAs when an abandonment is granted by decision issued sooner than 110 days after the application is filed. (Our uniform schedule provides that in such cases the OFA will be due 10 days after service of the decision granting the application, which could be sooner than 4 months after the application is filed.) However, given our goal of expediting the process where possible, we have decided not to change our proposed Uniform Schedule. We recognize that 49 U.S.C. 10904(c) sets 4 months as the outer limit for the filing of OFAs. At the same time, we believe that the expanded notice that will be provided at the outset of abandonment proceedings under our new rules typically will allow adequate time for parties to consider filing an OFA, and marshal the funds necessary to do so, within the Uniform Time Frames, even if in some cases this results in something less than the full 120 day period to file an OFA. Accordingly, we do not read the statute to require that we delay in all cases abandonment proceedings that can be decided in less time than the full 110 days. However, in light of the time frames in 49 U.S.C. 10904(c), parties that can show that they would be materially prejudiced by having less than the full 4 months may petition the Board for the full time provided by the statute for application proceedings.¹⁵

In addition, RTC contends that we should retain the requirement that, in addition to being made by a financially responsible person, the offer must be "bona fide." RTC requests that we include such language in the regulations. We find no merit in RTC's request. New 49 U.S.C. 10904 clearly does not retain that aspect of the prior statute. Accordingly, we will not add such a requirement in our regulations. Our final rules adopt the changes proposed in the NPR.

11. Return on investment. In the NPR, we stated that we believed several problem areas existed with the rules for establishing return on investment. To address these issues, we proposed

¹⁵ Parties may seek relief under 49 CFR part 1117.

various changes regarding the determination of the net liquidation value (NLV) of road properties on the branch line, a component used in calculating return on investment. These proposed changes involved the inclusion of assets with negative net salvage values, adjustments to right-of-way land values, and the bases used to value right-of-way land.

Very few comments were received regarding these proposed changes. However, AAR has raised concerns about the proposed inclusion of negative salvage values for those assets where the cost of dismantling exceeds the value of the materials salvaged. There are three situations where this value has implications. These situations are: (1) Calculation of the operating and economic loss on the line, i.e., the merits of the application; (2) the continuation subsidy payment calculation; and (3) selling price in OFA purchase determinations.

Regarding the merits of the application, a negative return on value would distort the loss from operations being borne by the serving railroad. This could, according to AAR, result in the application being denied.

AAR also is concerned that inclusion of a negative NLV and a negative return on properties would reduce the subsidy amount below the operating loss being incurred by the serving carrier. Additionally, AAR states that in OFA proceedings a negative value for the properties could result in an artificially low value being placed on the assets that are to be purchased. This situation, it claims, would also reverse the burden of proof from the offeror to the railroad in proving the value of the line's assets.

In light of the concerns of AAR as to the potential implications of including both a negative NLV and calculating a negative return on value, we have made appropriate changes to our proposed regulations regarding the calculation of subsidy payments or purchase price in OFA proceedings.

First, to amplify what we said in the NPR, no asset on the branch line will have a negative value unless the railroad intends to remove the structure, or it is proven by protestants, that the structure must be dismantled to comply with a Federal law, state law, or a local ordinance.

Moreover, in assessing the merits of the application, if a negative value results for the composite NLV of all branch line properties, the negative value will be inserted in the submission of the Forecast Year revenue and cost data, Exhibit 1 to the application. However, the return on value will be calculated at zero. This will allow the

Board to compare the loss from operations with the negative opportunity cost of the railroad. The cost to the railroad for dismantling the structure(s) is recognized by the Board as a one time expense whereas the operating loss will reoccur each year, if nothing changes.

We will amend § 1152.34 of the proposed regulations to include changes in developing the NLV of road property and the return on value requested by AAR. Under our final rules, in calculating a continuation subsidy payment, assets with negative value will be handled in the following manner. Any individual asset with a negative value will be valued at zero. The balance of the assets will have their NLV calculated in the normal manner. A continuation subsidy must recognize the line segment as a going concern and a return should be earned by the railroad on those assets with value. Under no circumstances will the subsidy payment be less than the loss from operations incurred by the railroad from providing service on the line.

With regard to OFAs to purchase a line segment, the NLV of the line's assets will be determined in the same manner as that used in calculating continuation subsidy payments.

Finally, AAR favors the use of the comparable sales method for valuing real estate. We reject that approach, as the ICC did in the past. Accordingly, the proposed rules will be adopted concerning this issue.

12. *Holding gains and losses.* In the NPR, we proposed the use of the Gross Domestic Product as a replacement for the Gross National Product used in estimating holding gains and losses (computed for freight cars, locomotives, and road property accounts). We suggested this change to bring our rules in line with the current measures used at the U.S. Department of Commerce, Bureau of Economic Analysis. Commenters generally approve of this modification, and we will include it in our final regulations.

13. *Appendix listing of carriers and AB numbers.* In the NPR, we proposed to delete the Appendix to part 1152 that lists carriers and their assigned AB numbers. We preliminarily concluded that the list serves no useful purpose, noting that interested persons could instead contact the Board's Office of the Secretary if they have a need to ascertain a particular carrier's assigned AB number.

The lack of comments regarding this change confirms our preliminary conclusion that the listing does not continue to serve a useful purpose.

Accordingly, it will be deleted from part 1152 as proposed.

14. *Filing fees.* Several commenters address the issue of filing fees. However, we will not address those comments here as fees issues were considered and resolved by the Board in *Regulations Governing Fees for Service*, 1 S.T.B. 179 (1996).

Small Entities

In the NPR, we sought comments on our preliminary conclusion that these regulations, if adopted, would not have effects on small entities that should be considered in a regulatory flexibility analysis. No comments provided information showing that there would be significant effects on small entities. Accordingly, the Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. They should result in streamlining, improving, and updating the abandonment process while ensuring the opportunity for full public participation in our proceedings.

Environmental Finding

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

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, Public lands-grants, Public lands rights-of-way, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

Decided: December 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1105 and 1152 of the Code of Federal Regulations are amended as follows:

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

1. The authority citation for part 1105 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and

6362(b); and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, and 10903-10905.

2. Section 1105.7 is amended as follows:

a. In paragraph (a), after the words "must submit" add the words "to the Board";

b. In paragraph (a), after the words "notice of exemption" add the words "except as provided in paragraph (b) for abandonments and discontinuances";

c. Paragraph (b), introductory text is revised;

d. In paragraph (b)(11) the last sentence is removed;

e. Paragraph (c), first sentence, after the words "to the agencies listed" add the words "and within the time period specified";

f. In paragraph (c) the third sentence is removed.

The revision to the introductory text in paragraph (b) reads as follows:

§ 1105.7 Environmental reports.

* * * * *

(b) At least 20 days prior to the filing with the Board of a notice of exemption, petition for exemption, or an application for abandonment or discontinuance, the applicant must serve copies of the Environmental Report on:

* * * * *

3. In § 1105.8, paragraph (c) is revised to read as follows:

§ 1105.8 Historic Reports.

* * * * *

(c) *Distribution.* The applicant must send the Historic Report to the appropriate State Historic Preservation Officer(s), preferably at least 60 days in advance of filing the application, petition, or notice, but not later than 20 days prior to filing with the Board.

* * * * *

§ 1105.12 [Amended]

4. Section 1105.12, the appendix, is amended as follows:

a. In the first paragraph of the sample newspaper notice for out-of-service abandonment exemptions after the words "(station name)," add the following words: "which traverses through United States Postal Service ZIP Codes (ZIP Codes)."

b. In the first paragraph of the sample newspaper notice for petitions for abandonment exemptions, after the words "(station name)," add the following words: "which traverses through United States Postal Service ZIP Codes (ZIP Codes)."

5. Part 1152 is revised to read as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

Subpart A—General

Sec.

1152.1 Purpose and scope.

1152.2 Definitions.

Subpart B—System Diagram

1152.10 System diagram map.

1152.11 Description of lines to accompany the system diagram map or information to be contained in the narrative.

1152.12 Filing and publication.

1152.13 Amendment of the system diagram map or narrative.

1152.14 Availability of data.

1152.15 Reservation of jurisdiction.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use

1152.20 Notice of intent to abandon or discontinue service.

1152.21 Form of notice.

1152.22 Contents of application.

1152.23 [Reserved]

1152.24 Filing and service of application.

1152.25 Participation in abandonment or discontinuance proceedings.

1152.26 Board determination under 49 U.S.C. 10903.

1152.27 Financial assistance procedures.

1152.28 Public use procedures.

1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

1152.30 General.

1152.31 Revenue and income attributable to branch lines.

1152.32 Calculation of avoidable costs.

1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

1152.34 Return on investment.

1152.35 [Reserved]

1152.36 Submission of revenue and cost data.

1152.37 Financial status reports.

Subpart E—[Reserved]

Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

1152.50 Exempt abandonments and discontinuances of service and trackage rights.

Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10502 Exemption Procedure

1152.60 Special rules.

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903-10905, and 11161.

Subpart A—General

§ 1152.1 Purpose and scope.

(a) 49 U.S.C. 10903 *et seq.* governs abandonment of rail lines and discontinuance of rail service by common carriers. Section 10903(d) provides that no line of railroad may be abandoned and no rail service discontinued unless the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance.

(b) Part 1152 contains regulations governing abandonment of, and discontinuance of service over, rail lines. This part also sets forth procedures for providing financial assistance to assure continued rail freight service under 49 U.S.C. 10904, for acquiring rail lines for alternate public use under 49 U.S.C. 10905, and for acquiring or using a rail right-of-way for interim trail use and rail banking.

§ 1152.2 Definitions.

Unless otherwise provided in the text of the regulations, the following definitions apply in this part:

(a) *Account* means an account in the Board's Uniform System of Accounts for Railroad Companies (49 CFR part 1201).

(b) *Act* means the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 803), as amended.

(c) *Base Year* means the latest 12-month period, ending no earlier than 6 months prior to the filing of the abandonment or discontinuance application, for which data have been collected at the branch level as prescribed in § 1152.30(b).

(d) *Board* means the Surface Transportation Board.

(e) *Branch* means a segment of line for which an application for abandonment or discontinuance, pursuant to 49 U.S.C. 10903, has been filed.

(f) *Carrier* means a railroad company or the trustee or trustees of a railroad company subject to regulation under 49 U.S.C., Subtitle IV, chapter 105.

(g) *Designated state agency* means the instrumentality created by a state or designated by appropriate authority to administer or coordinate its state rail plan.

(h) *Forecast Year* means the 12-month period, beginning with the first day of the month in which the application is filed with the Board, for which future revenues and costs are estimated.

(i) *Form R-1* means the railroad's annual report filed with the Board in accordance with the requirements of 49 U.S.C. 11145.

(j) *Offeror* means a shipper, a state, the United States, a local or regional transportation authority, or any

financially responsible person offering rail service continuation assistance under 49 U.S.C. 10904.

(k) *URCS* means the Uniform Railroad Costing System.

(l) *Significant user* means: (1) Each of the 10 rail patrons which originated and/or received the largest number of carloads (or each patron if there are less than 10); and

(2) Any other rail patron which originated and/or received 50 or more carloads, on the line proposed for abandonment or discontinuance, during the 12-month period preceding the month in which notice is given of the abandonment or discontinuance application.

(m) *Subsidy year* means any 12-month period for which a subsidy agreement has been negotiated and is in operation.

Subpart B—System Diagram

§ 1152.10 System diagram map.

(a) Each carrier shall prepare a diagram of its rail system on a map, designating all lines in its system by the categories established in paragraph (b) of this section. A Class III carrier shall either prepare the aforementioned map of its rail system or file only a narrative description of its lines that provides all of the information required in this subpart.

(b) All lines in each carrier's rail system shall be separated into the following categories:

(1) All lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board;

(2) All lines or portions of lines which are potentially subject to abandonment, defined as those which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues;

(3) All lines or portions of lines for which an abandonment or discontinuance application is pending before the Board on the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board;

(4) All lines or portions of lines which are being operated under the rail service continuation provisions of 49 U.S.C. 10904 (and former 49 U.S.C. 10905) on the date upon which the diagram or narrative, or any amended diagram or narrative, is filed with the Board; and

(5) All other lines or portions of lines which the carrier owns and operates, directly or indirectly.

(c) The system diagram map shall be color-coded to show the 5 categories of lines as follows:

(1) Red shall designate those lines described in § 1152.10(b)(1);

(2) Green shall designate those lines described in § 1152.10(b)(2);

(3) Yellow shall designate those lines described in § 1152.10(b)(3);

(4) Brown shall designate those lines described in § 1152.10(b)(4); and

(5) Black or dark blue shall designate those lines described in § 1152.10(b)(5).

(d) The system diagram map shall also identify, and shall be drawn to a scale sufficient to depict clearly, the location of:

(1) All state boundary lines;

(2) Boundaries of every county in which is situated a rail line owned or operated by the carrier which is listed in categories 1 thru 4 (§ 1152.10(b)(1) thru (4));

(3) Every Standard Metropolitan Statistical Area (SMSA) any portion of which is located within 5 air miles of a rail line owned or operated by the carrier; and

(4) Every city outside an SMSA which has a population of 5,000 or more persons (according to the latest published United States census reports) and which has any portion located within 5 air miles of a rail line owned or operated by the carrier. A series of interrelated maps may be used where the system serves a very large or congested area. An explanation of the interrelationship must be furnished.

§ 1152.11 Description of lines to accompany the system diagram map or information to be contained in the narrative.

Each carrier required to file a system diagram map or narrative shall list and describe, separately by category and within each category by state, all lines or portions of lines identified on its system diagram map or to be included in its narrative as falling within categories 1 thru 3 (§ 1152.10(b)(1) thru (3)) as follows:

(a) Carrier's designation for each line (for example, the Zanesville Secondary Track);

(b) State or states in which each line is located;

(c) County or counties in which each line is located;

(d) Mileposts delineating each line or portion of line; and

(e) Agency or terminal stations located on each line or portion of line with milepost designations.

§ 1152.12 Filing and publication.

(a) Each carrier required to file a system diagram map or a narrative shall file with the Board three copies of a complete and up-dated color-coded system diagram map or narrative (identified by its "AB number") and the accompanying line descriptions in conformance with the filing and publication requirements of this section. If a revised map or narrative is filed, the line descriptions for the lines which were revised must be filed.

(b) The color-coded system diagram map or narrative, any amendments, and accompanying line descriptions shall be served upon the Governor, the public service commission (or equivalent agency) and the designated state agency of each state within which the carrier operates or owns a line of railroad.

(c) The carrier shall: (1) Publish in a newspaper of general circulation in each county containing category 1 through 3 lines or lines being revised, a notice containing:

(i) A black-and-white copy of the system diagram map (or a portion of the map clearly depicting its lines in that county); and

(ii) A description of each line (in the case of Class III carriers only the line description is required);

(2) Post a copy of the newspaper notice:

(i) In each agency station or terminal on each line in categories 1 through 3 and on each line which has been revised; or

(ii) If there is no agency station on the line, at any station through which business for the line is received or forwarded;

(3) Furnish, at reasonable cost, upon request of any interested person, a copy of its system diagram map (either color-coded or black-and-white) or narrative; and

(4) Notify interested persons of this availability through its publication in the appropriate county newspaper.

(d) Each carrier required to file a system diagram map or narrative shall file with the Board an affidavit of service and publication stating the date each was accomplished. A copy of each newspaper notice published shall be attached to the affidavit. The effective date of the filing of the initial system diagram map or narrative and each amended system diagram map or narrative as required in paragraph (a) of this section shall be deemed to be the date upon which the Board receives the affidavit required in this paragraph.

(e) The Board shall require republication of the notice if it is found to be inadequate.

§ 1152.13 Amendment of the system diagram map or narrative.

(a) Each carrier shall be responsible for maintaining the continuing accuracy of its system diagram map and the accompanying line descriptions or narrative. Amendments may be filed at any time and will be subject to all carrier filing and publication requirements of § 1152.12.

(b) By March 24, 1997, each carrier shall file with the Board a revised and updated color-coded system diagram map and line descriptions or narrative which shall be subject to the filing and publication requirements of § 1152.12. Thereafter, each carrier shall file amendments as line designations change and update its map or narrative, as appropriate. Also, each carrier shall file an updated or amended map or narrative upon order of the Board. Each new rail carrier shall comply with the requirements of this subsection within 60 days after it becomes a carrier.

(c) The Board will reject an abandonment or discontinuance application filed by a rail carrier if any part of the application includes a line that has not been identified and described, by amendment or otherwise, on the carrier's system diagram map or narrative, as appropriate, as a line in category 1 (§ 1152.10(b)(1)) for at least 60 days.

§ 1152.14 Availability of data.

Each carrier shall provide to the designated state agency, upon request, information concerning the net liquidation value (as defined in § 1152.34(c)) of any line placed in category 1 (§ 1152.10(b)(1)) on its system diagram map or narrative together with a description of such a line and any appurtenant facilities and of their condition.

§ 1152.15 Reservation of jurisdiction.

49 U.S.C. 10903(c)(1) authorizes the Board, at its discretion, to provide for designation of lines as "potentially subject to abandonment" under standards which vary by region of the United States, by railroad, or by group of railroads. The Board expressly reserves the right to adopt such varying standards in the future.

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use**§ 1152.20 Notice of intent to abandon or discontinue service.**

(a) *Filing and publication requirements.* An applicant shall give Notice of Intent to file an abandonment or discontinuance application by

complying with the following procedures:

(1) *Filing.* Applicant must serve its Notice of Intent on the Board, by certified letter, in the format prescribed in § 1152.21. The Notice shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) Significant users of the line;
(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance;
(iii) The Public Service Commission (or equivalent agency) in these states;
(iv) The designated state agency in these states;

(v) The State Cooperative Extension Service in these states;

(vi) The U.S. Department of Transportation (Federal Railroad Administration);

(vii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

(viii) The U.S. Department of Interior (Recreation Resources Assistance Division, National Park Service);

(ix) The U.S. Railroad Retirement Board;

(x) The National Railroad Passenger Corporation ("Amtrak") (if Amtrak operates over the involved line);

(xi) The headquarters of the Railroad Labor Executives' Association;

(xii) The U.S. Department of Agriculture, Chief of the Forest Service; and

(xiii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line. For purposes of this subsection "directly affected states" are those in which any part of a line sought to be abandoned is located.

(3) *Posting.* Applicant must post a copy of its Notice of Intent at each agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.)

(4) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.

(b) *Time limits.* (1) The Notice of Intent must be served at least 15 days, but not more than 30 days, prior to the filing of the abandonment application;

(2) The Notice must be posted and fully published within the 30-day

period prior to the filing of the application; and

(3) The Notice must be filed with the Board either concurrently with service or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant must also submit the Environmental and Historic Reports described at §§ 1105.7 and 1105.8 at least 20 days prior to filing an application.

§ 1152.21 Form of notice.

The Notice of Intent to abandon or to discontinue service shall be in the following form:

STB No. AB _____ (Sub-No. _____)
Notice of Intent to Abandon or to
Discontinue Service

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the abandonment of (the discontinuance of service on), a line of railroad known as _____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes), a distance of _____ miles, in [County(ies), State(s)].

The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The reason(s) for the proposed abandonment (or discontinuance) is (are) _____ (explain briefly and clearly why the proposed action is being undertaken by the applicant). Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

The application will include the applicant's entire case for abandonment (or discontinuance) (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance but who

do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB _____ (Sub-No. _____) and must be filed with the

Secretary, Surface Transportation Board, Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Board) at each agency station or terminal on the line proposed to be abandoned or discontinued [if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded (insert name, address, location, and business hours)]. The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies

or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

§ 1152.22 Contents of application.

Applications for the abandonment of railroad lines or the discontinuance of rail service shall contain the following information, including workpapers and supporting documents, and each paragraph (a) through (j) of this section shall be attested to by a person having personal knowledge of the matters contained therein:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Relief sought (abandonment of line or discontinuance of service).

(4) Detailed map of the subject line on a sheet not larger than 8×10½ inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the rail line to be abandoned or over which service is to be discontinued and its relation to other rail lines in the area, highways, water routes, and population centers.

(5) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative, in compliance with §§ 1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map or included in the narrative in category 1 in accordance with § 1152.10(b)(1). A copy of the line description which accompanies the system diagram map shall also be submitted.

(6) Detailed statement of reasons for filing application.

(7) Name, title, and address of representative of applicant to whom correspondence should be sent.

(8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

(b) *Condition of properties.* The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed,

and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be filed with the application.

(c) *Service provided.* Description of the service performed on the line during the Base Year (as defined by § 1152.2(c)), including the actual:

(1) Number of trains operated and their frequency.

(2) Miles of track operated (include main line and all railroad-owned sidings).

(3) Average number of locomotive units operated.

(4) Total tonnage and carloads by each commodity group on the line.

(5) Overhead or bridge traffic by carload commodity group that will not be retained by the carrier.

(6) Average crew size.

(7) Level of maintenance.

(8) Any important changes in train service undertaken in the 2 calendar years immediately preceding the filing of the application.

(9) Reasons for decline in traffic, if any, in the best judgment of applicant.

(d) *Revenue and cost data.* (1) Computation of the revenues attributable and avoidable costs for the line to be abandoned for the Base Year (as defined by § 1152.2(c) and to the extent such branch level data are available), in accordance with the methodology prescribed in §§ 1152.31 through 1152.33, as applicable, and submitted in the form called for in § 1152.36, as Exhibit 1.

(2) The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the Forecast Year (as defined in § 1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast Year column including an explanation of the rationale and key assumptions used to determine the Forecast Year amounts.

(3) The carrier shall also compute an "Estimated Subsidy Payment" for the Base Year in the form called for in Exhibit 1 and an alternate payment to reflect:

(i) Increases or decreases in attributable revenues and avoidable costs projected for the subsidy year; and

(ii) An estimate, in reasonable detail, of the cash income tax reductions, Federal and state, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance

to comply with minimum Federal Railroad Administration class 1 safety standards, shall be stated with particularity.

(e) *Rural and community impact.* (1) The name and population (identify source and date of figures) of each community in which a station on the line is located.

(2) Identification of significant users, as defined in § 1152.2(l), by name, address, principal commodity, and by tonnage and carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application, for that part of the current year for which information is available, and for the Base Year. In addition, the total tonnage and carloads for each commodity group originating and/or terminating on the line segment shall also be shown for the same time periods as those of the significant users.

(3) General description of the alternate sources of transportation service (rail, motor, water, air) available, and the highway network in the proximate area.

(4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

(f) *Environmental impact.* The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with §§ 1105.7 and 1105.8. If certain information required by the environmental regulations duplicates information required elsewhere in the application, the environmental information requirements may be met by a specific reference to the location of the information elsewhere in the application.

(g) *Passenger service.* If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to the Rail Passenger Service Act. (45 U.S.C. 501 *et seq.*)

(h) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(i) *Draft Federal Register Notice.* The applicant shall submit a draft notice of

its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the Federal Register within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth below:

STB No. AB-_____ (Sub-No. _____)
Notice of Application to Abandon or to
Discontinue Service

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for the abandonment of (the discontinuance of service on) a line of railroad known as _____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), a distance of _____ miles, in [County(ies), State(s)]. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location) and traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes.

The line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (or discontinuance) (case in chief) was filed with the application.

This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests (including the protestant's entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-____ (Sub-No. ____) and should be filed with the Secretary, Surface Transportation Board (Board), Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address).

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of

comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

(j) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the carrier having knowledge of the facts and matters relied upon.

Verification

State of _____ ss.

County of _____

_____, (Name of affiant) makes oath and says that (s)he is the _____ (title of affiant) of the _____ (name of applicant) applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in STB AB-____ (Sub-No. ____); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me _____ in and for the State and County above named, this ____ day of ____, 19__.

My commission expires _____

§ 1152.23 [Reserved]

§ 1152.24 Filing and service of application.

(a) An original and 10 copies of applications, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin, shall be filed with the Secretary of the Surface Transportation Board, Washington, DC 20423. The original shall bear the date and signature and shall be complete in itself; the signature may be stamped or typed and the notarial seal may be omitted on the copies. A check or money order payable to the Surface Transportation Board must also be submitted to cover the applicable filing fee. If the applicant carrier is in bankruptcy, the application shall also be filed on the bankruptcy court.

(b) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirement of § 1152.20. The affidavit shall include the dates of service, posting, and publication of the notice.

(c) When the application is filed with the Board, the applicant shall serve, by first class mail, a copy on the Governor, the Public Service Commission (or equivalent agency), and the designated state agency of each state in which any part of the line of railroad sought to be

abandoned or discontinued is situated. A copy of the application will be available for public inspection, on or after the date the abandonment application is filed with the Board, at each agency station or terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded). A certificate of service shall be promptly filed with the Board.

(d) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a written comment or protest upon request. A certificate of service shall promptly be filed with the Board.

(e)(1) The Board shall reject any abandonment or discontinuance application which does not substantially conform to the regulations in this subpart C regarding notice, form, and content, or which applies to a line which has not properly been published on the carrier's system diagram map (or included in a narrative in the case of a Class III carrier), in conformance with the regulations of subpart B of this part.

(2) Upon the filing of an abandonment or discontinuance application, the Board will review the application and determine whether it conforms with all applicable regulations. If the application is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order (which order will be administratively final) within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the Federal Register by the Board within 20 days of the filing of the application.

(3) If the application is rejected, a revised application may be submitted, and the Board will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted within 60 days of the order rejecting the incomplete or improper application need not be subjected to new notice and publication under § 1152.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(4) The resubmission of an abandonment or discontinuance application shall be considered a de novo filing for the purposes of computation of the time period for filing an offer of financial assistance under 49

U.S.C. 10904, and for other time periods prescribed in the regulations contained in this part (49 CFR part 1152), provided, that a resubmitted application is deemed complete and proper.

(5) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection under paragraphs (e) (1) and (2) of this section.

(f) As provided in § 1152.29(e)(2), rail carriers authorized to abandon a line under 49 U.S.C. 10903 must file with the Board a notice that abandonment has been consummated.

§ 1152.25 Participation in abandonment or discontinuance proceedings.

(a) *Public participation.* (1) *Protests and comments.* Interested persons may become parties to an abandonment or discontinuance proceeding by filing written comments or protests with the Board. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must be included in these filings. Persons who may oppose the abandonment or discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest. Protests shall include all evidence and argument in support of protestant's position (protestant's case in chief). Protests must contain the following information:

(i) Protestant's name, address and business.

(ii) A statement describing protestant's interest in the proceeding including:

(A) A description of protestant's use of the line;

(B) If protestant does not use the line, information concerning the group or public interest it represents; and

(C) If protestant's interest is limited to the retention of service over a portion of

the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(iii) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)).

(iv) Any rebuttal of material submitted by applicant.

(v) Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules).

(2) *Additional information.* In addition to the information required in paragraph (a) (1) of this section, a commenting party or protestant may provide a statement of position and a summary of evidence regarding:

(i) Intent to offer financial assistance under 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) A request for a public use condition under 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

(3) *Feeder line application for all or part of the line subject to the abandonment application.* In addition to the information required in paragraphs (a)(1) and (2) of this section, a commenting party or protestant must provide information that:

(i) The protestant filed a feeder line application under 49 U.S.C. 10907 (or former 49 U.S.C. 10910);

(ii) The feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application;

(iii) The feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and

(iv) The feeder line application is pending before the Board.

(b) *Employee or employee representative participation.* Employees or their representatives may file protests or comments to an application. However, because the Board will impose employee protective conditions under 49 U.S.C. 10903(b)(2) if an

application is granted, employees and their representatives need not file comments or protests seeking this protection.

(c) *Filing and service of written comments, protests, along with evidence and argument, and replies.* (1) Written comments and protests, as well as public use and trail use requests, shall be filed with the Board (the Secretary, Surface Transportation Board, Washington, DC 20423) within 45 days of the filing with the Board of an abandonment or discontinuance application.

(2) An original and 10 copies of each written comment or protest shall be filed with the Board.

(3) A copy of each written comment or protest shall be served on applicant or its representative at the time of filing with the Board. If the applicant carrier is in bankruptcy, each comment or protest shall also be filed on the Bankruptcy Court. Each filing shall contain a certificate of service.

(4) Replies or rebuttal to written comments and protests shall be filed and served by applicants no later than 60 days after the filing of the application. An original and 10 copies of such replies shall be filed with the Board.

(d) *Time limits.* (1) Pleadings, requests or other papers or documents (including any comments or protests and any appeal from a Board decision) required or permitted to be filed under this part must be received for filing at the Board's Offices at Washington, DC within the time limits, if any, for such filing. The date of receipt at the Board and not the date of deposit in the mail is determinative, provided, however, that if such document is mailed by certified, registered, or express mail, postmarked at least 3 days prior to the due date, it will be accepted as timely filed.

(2) In computing any time period prescribed or allowed by this part, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

(3) Any filing under this part which falls due on a Saturday, Sunday, or a legal holiday in the District of Columbia, may be filed at the Board by the end of the next day which is neither a Saturday, Sunday, nor a holiday, except as indicated in paragraph (d)(4) of this section. A half holiday shall not be considered as a holiday.

(4) Offers of financial assistance made pursuant to § 1152.27(c) must be filed on or before their statutory or regulatory due date as computed in paragraph (d)(2) of this section, regardless of whether that date is a Saturday, Sunday,

or a legal holiday in the District of Columbia.

(5) The Board will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.

(6) *Oral Hearings:* (i) If the Board decides to hold an oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements in the proceeding. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

(ii) In addition to that contained in the application, the submission of written evidence prior to the commencement of the hearing shall be established by the Board.

(iii) Post hearing legal briefs shall be due 10 days after the close of the oral hearing, or at an earlier date if established at the hearing by the hearing officer.

(e) *Appellate procedures.* (1) *Scope of rule.* Except as specifically indicated below, these appellate procedures are to be followed in abandonment and discontinuance proceedings in lieu of the general procedures at 49 CFR 1115. Appeals of initial decisions of the Director of the Office of Proceedings determining:

(i) Whether offers of financial assistance satisfy the standard of 49 U.S.C. 10904(d) for purposes of instituting negotiations or, in exemption proceedings, for purposes of partial revocation and instituting negotiations;

(ii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10502 and 49 CFR part 1152 subpart F for the purpose of imposing public use conditions under the criteria in 49 CFR 1152.28 and/or conditions limiting salvage of the rail properties for environmental and historic preservation purposes; and

(iii) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903 (and abandonment exemption proceedings), issued pursuant to delegations of authority at 49 CFR 1011.8(c) (4) and (5), will be acted on by the entire Board as set forth at 49 CFR 1011.2(a)(7). An original and 10 copies of all appeals, and replies to appeals, under this section must be filed with the Board.

(2) *Appeals criteria.* Appeals to the Board's decision in abandonment or discontinuance proceedings will not be entertained. Those decisions are administratively final upon the date they are served.

(i) Parties seeking further administrative action may file a petition

to reopen the proceeding under paragraph (e)(4) of this section. If an abandonment or discontinuance is granted and a party wishes the Board to have the opportunity to consider a petition to reopen before the abandonment or discontinuance authorization becomes effective, it must file its petition within 15 days after the administratively final decision is served together with a request for a stay of effectiveness under paragraph (e)(7) of this section. If such a petition to reopen and stay request is received within that 15-day period, any replies to the petition to reopen must be filed no later than 25 days after the date the decision is served, and any reply to the stay request must reach the Board no later than 5 days after the stay request is filed.

(ii) The Board will grant a petition to reopen only upon a showing that the action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Form.* A petition to reopen and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(4) *Petitions to reopen administratively final actions.* A person may file a petition to reopen any administratively final action of the Board. A petition to reopen shall state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. An original and 10 copies of such petitions must be filed with the Board.

(5) *Judicial review.* (i) Parties may seek judicial review of a Board action in an abandonment or discontinuance proceeding on the day the action of the Board becomes final.

(ii) If a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Board will act upon the petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(6) *Petitions to vacate.* In the event of procedural defects (such as the loss of a properly filed protest, the failure of the applicant to afford the public the requisite notice of its proposed abandonment, etc.), the Board will entertain petitions to vacate the abandonment or discontinuance authorization. An original and 10 copies of these petitions to vacate must be filed with the Board.

(7) *Petitions to stay.* (i) The filing of a petition to reopen shall not stay the effect of a prior action. An original and

10 copies of any petitions to stay must be filed with the Board.

(ii) A petition to reopen an administratively final action may be accompanied by a petition for a stay of the effectiveness of the abandonment or discontinuance. As provided in paragraph (e)(2) of this section, a petition to reopen must be accompanied by a stay request if the party wishes the Board to have the opportunity to consider the petition to reopen before the abandonment or discontinuance authorization becomes final.

(iii) A party may petition for a stay of the effectiveness of abandonment or discontinuance authorization pending a request for judicial review. The reasons for the desired relief shall be stated in the petition, and the petition shall be filed not less than 15 days prior to the effective date of the abandonment authorization. No reply need be filed. If a party elects to file a reply, the reply must reach the Board no later than 5 days after the petition is filed.

§ 1152.26 Board determination under 49 U.S.C. 10903.

(a) The following schedule shall govern the process for Board consideration and decisions in abandonment and discontinuance application proceedings from the time the application is filed until the time of the Board's decision on the merits:

- Day 0—Application filed, including applicant's case in chief.
- Day 10—Due date for oral hearing requests.
- Day 15—Due date for Board decision on oral hearing requests.
- Day 20—Due date for Notice of Application to be published in the Federal Register.
- Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.
- Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
- Day 110—Due date for service of decision on the merits.
- Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

(b) If an application for abandonment or discontinuance is filed by a bankrupt railroad, the Board shall base its decision (Report to the Bankruptcy Court) on the application and any responses to the application that are filed. In each such instance, the Board shall establish a reasonable period of

time for filing responses to the application so that public input can be included in the Board's decision (Report) and so that the Board will be able to meet a deadline imposed or requested by the Bankruptcy Court.

§ 1152.27 Financial assistance procedures.

(a) *Provision of information.* An applicant must provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service, and concurrently to the Board, the following:

(1)(i) *In an application or petition for exemption proceeding,* an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(ii) *In a class exemption proceeding,* either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards (49 CFR part 213).

(b) *Federal Register notice.* (1) *Abandonment and discontinuance applications.* The Federal Register publication, which gives notice of the filing of the application 20 days after the application is filed, will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10904 and these regulations as they relate to abandonment and discontinuance applications. Offers of financial assistance will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner.

(2) *Exemption proceedings.* (i) If a petition for individual exemption from the prior approval requirements of 49 U.S.C. 10903 is filed with the Board for abandonment or discontinuance of a line of railroad, the Board will publish notice of the petition in the Federal Register within 20 days of the filing of the petition. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49 U.S.C. 10904 and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner.

(ii) If a notice of exemption is filed under the class exemption, the Board will publish notice of the exemption in the Federal Register within 20 days of filing. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under 49 U.S.C. 10904 and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due no later than 30 days after the date of the Federal Register publication giving notice of the exemption.

(c) *Submission of financial assistance offer.* (1) *Abandonment and discontinuance applications and petitions for exemption.* (i) *Service and filing.* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance application or exemption proceeding. The offer must be filed concurrently with the Secretary, Surface Transportation Board, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application or petition for exemption. Once a decision is served granting an application or petition for exemption, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after service of the Board decision granting the application or petition for exemption. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant or petitioner has failed to

provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application or petition, the Board will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Board within 5 days after service of the decision granting the application or petition for exemption. Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after service of the decision granting the application or petition for exemption. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Board will issue a decision on petitions within 15 days after service of the decision granting the application or petition for exemption.

(ii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must:

(A) Identify the line, or the portion of the line, in question;

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations; governmental entities will be presumed to be financially responsible; and

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

(2) *Class exemption proceedings.* (i) *Expression of intent to file offer.* Persons with a potential interest in providing financial assistance must, no later than 10 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, submit to the carrier and the Board a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase). Such submissions are subject to the filing requirements of § 1152.25(d)(1) through (d)(3). Submission of a formal expression of intent under this subsection will automatically stay the effective date of the notice of exemption under the class exemption for 40 days (normally, this will be 10 days beyond the date stated in the Federal Register publication).

(ii) *Service and filing.* An offeror must serve its offer of assistance on the carrier that instituted the exempt filing as well

as all other parties to the proceeding. The offer must be filed concurrently with the Secretary, Surface Transportation Board, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the notice of exemption. Once a notice of exemption is published in the Federal Register, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25 (d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the notice of exemption, the Board will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Board within 25 days after publication in the Federal Register (described in paragraph (b)(2)(ii) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after the publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Board will issue a decision on petitions to toll the offer period within 35 days after publication.

(D) Upon receipt of a formal expression of intent to file an offer under paragraph (c)(2)(i) of this section, the rail carrier applicant may advise the Board and the potential offeror that additional time is needed to develop the information required under paragraph (a) of this section. Applicant shall expressly indicate the amount of time it considers necessary (not to exceed 60 days) to develop and submit the required information to the potential offeror. For the duration of the time period so indicated by the applicant, the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Board action.

(iii) *Contents of offer.* The offeror shall set forth its offer in detail. The offer must meet the requirements of paragraph (c)(1)(ii) of this section.

(d) *Access to documents.* Upon receipt by the carrier of a written comment under § 1152.25 or a formal expression of intent under paragraph (c)(2)(i) of this section indicating an intent to offer financial assistance, or upon receipt by the carrier of an offer of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 (§ 1152.36) or, if an exemption proceeding, those documents that would have been used in preparing Exhibit 1 had an abandonment or discontinuance application been filed, or other records, reports, and data in the possession of the carrier seeking the exemption that provide comparable data. These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) *Review of offers.* (1) *Abandonment and discontinuance applications.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will issue a decision postponing the effective date of the authorization for abandonment or discontinuance. This decision will be issued within 15 days of the service of the decision granting the application (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section, or within 5 days after expiration of the 120 day (4 month) period described in 49 U.S.C. 10904, if that occurs first). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

(2) *Exemption proceedings.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will postpone the effective date either of the decision granting a petition for individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to 49 U.S.C. 10904. The decision to postpone and partially revoke will be issued within 15 days of the service date of a

decision granting a petition for exemption, or within 35 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) or (c)(2)(ii) (C) or (D) of this section). Under the delegation of authority at § 1011.8, the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

(f) *Agreement on financial assistance.* (1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Board will postpone the effective date of the abandonment or discontinuance. If a decision granting a petition for individual exemption, or a notice of exemption, has been issued, the Board will postpone the effective date of the decision or notice of exemption. The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Board will approve the transaction and dismiss the application for abandonment or discontinuance, or the petition for exemption or notice of exemption. Board approval is not required under 49 U.S.C. 10901, 10902, or 11323 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(a).

(g) *Failure to reach agreement on financial assistance.* (1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of compensation. This request must be filed with the Board within 30 days after the offer is made and served concurrently by overnight mail on all parties to the proceeding. The request must be accompanied by the appropriate fee, codified at 49 CFR 1002.2(f)(26). Replies will be due 5 days later.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made

to the Board to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Board will serve a decision vacating the prior decision, which postponed the effective date of the decision granting the application, the decision granting the exemption, or the notice of exemption and, which, if applicable, partially revoked either the decision granting the exemption or (in the case of a class exemption) the notice of exemption. The Board will issue the decision to vacate within 10 days of the due date for requesting the Board to set the conditions and amount of compensation, and the Board will make the decision to vacate effective on its date of service.

(h) *Request to establish conditions and compensation for financial assistance.* (1) If the Board is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Board will issue a decision within 30 days after the request is due.

(2) If the applicant receives multiple offers of financial assistance, requests to establish conditions and compensation will not be permitted before the applicant selects the offeror with whom it wishes to transact business. (See paragraph (l)(1) of this section.)

(3) A party requesting the Board to establish conditions and compensation for financial assistance must, within the time period set forth in paragraph (h)(4) of this section, provide its case in chief, including reasons why its estimates are correct and the other negotiating party's estimates are incorrect, points of agreement and points of disagreement between the negotiating parties, and evidence substantiating these allegations. The offeror has the burden of proof as to all issues in dispute.

(4) The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 35 days after the offer is made. No rebuttal evidence will be permitted and evidence and information submitted after these dates will be rejected.

(5) If requested, the Board will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line. Under 49 U.S.C. 10904(f)(4)(B), no subsidy arrangement approved under section 10904 shall remain in effect for more than one year unless mutually agreed by the parties.

(6) If requested, the Board will determine the price and other terms of

sale. The Board will not set a price below the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals constitutional minimum value which is the greater of the net liquidation value of the line or the going concern value of the line. The constitutional minimum value is computed without regard to labor protection costs.

(7) Within 10 days of the service date of the Board's decision, the offeror must accept or reject the Board's terms and conditions with a written notification to the Board and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Board, the Board's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Board with a timely written notification, the Board will serve, within 20 days after the service date of the Board decision setting the terms and conditions, a decision vacating the prior decision, which postponed the effective date of either the decision granting the application or exemption or the notice of exemption, and which, if applicable, partially revoked the exemption or (in the case of a class exemption) the notice of exemption (unless other offers are being considered under paragraph (l) of this section). The decision to vacate will be effective on its date of service.

(i) *Substitution of purchasers and disposition after sale.* (1) Prior to the consummation of a purchase under this section, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the Board has determined either:

(i) The original offeror has guaranteed the financial responsibility of its affiliate; or

(ii) The affiliate has demonstrated financial responsibility in its own right.

(2) Except as provided in paragraph (i)(3) of this section, a purchaser under this section may not:

(i) Transfer the line or discontinue service over the line prior to the end of the second year after consummation of the original sale under these provisions; or

(ii) Transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.

(3) Paragraph (i)(2) of this section does not preclude a purchaser under this section from transferring the line to a corporate affiliate following the consummation of the original sale. Prior Board approval of the affiliate's

acquisition and operation, however, is required under 49 U.S.C. 10901, 10902, or 11323. A corporate affiliate acquiring a line under this section is prohibited from discontinuing service over the line or transferring the line to a party that is not a corporate affiliate during the time periods prescribed in paragraph (i)(2) of this section.

(j) *Discontinuance of subsidy.* A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement in a situation where the 1-year time limit of 49 U.S.C. 10904(f)(4)(B) has not yet run, the carrier may by filing a request with the Board and serving the request on all parties to the abandonment or exemption proceeding obtain a decision vacating the decision postponing the effective date of either the decision granting the application, or petition for individual exemption, or the notice of exemption. The Board will issue a decision to vacate within 10 days after the filing and service of the request. This decision to vacate will be effective on its service date.

(k) *Default on agreement.* If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Board of that default. Upon notification, the Board will take appropriate action.

(l) *Multiple offers of financial assistance.* (1) If an applicant receives more than one offer to purchase or subsidize the line from offerors found to be financially responsible, the applicant must select the offeror from those with whom it wishes to transact business. In abandonment and discontinuance application and petition for exemption proceedings within 25 days after service of the decision granting the application or petition for exemption, and in class exemption proceedings within 45 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, the railroad must:

(i) File a written notification of its selection with the Board; and

(ii) Serve a copy of the notification on all parties to the proceeding.

(2)(i) *Abandonment and discontinuance applications and petitions for exemption.* If the applicant has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy

agreement or request the Board to establish the conditions and amount of compensation within 40 days after the service date of the decision granting the application or petition for exemption. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 50 days of the service date of the decision granting the application or petition for exemption and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision authorizing abandonment or discontinuance within 60 days of the service date of the decision granting the application or petition for exemption. This decision will be effective on the date of service.

(ii) *Class exemption proceedings.* If the carrier seeking the exemption has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Board to establish the conditions and amount of compensation within 60 days after the Federal Register publication described in paragraph (b)(2)(i) of this section. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 60-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 70 days of the Federal Register publication described in paragraph (b)(2)(i) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision vacating the decision postponing the effective date of the notice of exemption within 80 days of the Federal Register publication described in paragraph (b)(2)(i) of this section. The decision to vacate will be effective on the date of service.

(3) If the Board has established the conditions and amount of compensation, and the original offer is withdrawn under paragraph (h)(7) of

this section, any other offeror found to be financially responsible may accept the Board's decision within 20 days after the service date of the Board's decision setting terms and conditions. If the decision is accepted by another such offeror, the Board will require the applicant to accept the terms incorporated in the Board's decision.

(m) *Additional time for filing.* Notwithstanding the deadlines previously set forth in part 1152 for filing an offer of financial assistance, parties that can show that they would be materially prejudiced by having less than the full 4 months for filing an offer of financial assistance provided in 49 U.S.C. 10904(c) for application proceedings may seek relief under 49 CFR part 1117.

§ 1152.28 Public use procedures.

(a)(1) If the Board finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Board will determine if the involved rail properties are appropriate for use for other public purposes.

(2) A request for a public use condition under 49 U.S.C. 10905 must be in writing and set forth:

- (i) The condition sought;
- (ii) The public importance of the condition;
- (iii) The period of time for which the condition would be effective (up to the statutory maximum of 180 days); and
- (iv) Justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(3) For applications filed under part 1152, subpart C, a request for a public use condition must be filed not more than 45 days after the application is filed. A decision on the public use request will be issued by the Board or the Director of the Office of Proceedings prior to the effective date of the abandonment. For abandonment exemptions under part 1152, subpart F or exemptions granted on the basis of an individual petition for exemption filed under 49 U.S.C. 10502, a request for a public use condition must be filed not more than 20 days from the date of publication of the notice of exemption in the Federal Register in the case of class exemptions under subpart F of this part, or not more than 20 days from the date of publication of notice of the filing of the petition for individual exemption in the Federal Register.

(b) If the Board finds that the rail properties are appropriate for use for other public purposes, the railroad may dispose of the rail properties only under the conditions described in the Board's decision. The conditions imposed by

the Board may include a prohibition against the disposal of the rail assets for a period of not more than 180 days from the effective date of the decision authorizing the abandonment or discontinuance, unless the properties have first been offered, on reasonable terms, for sale for public purposes. This period will run concurrently with any other postponements. Jurisdiction to impose such conditions expires after 180 days from the effective date of the decision authorizing the abandonment or discontinuance.

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d), it must file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment/request or petition must include:

(1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used;

(2) A statement indicating the user's willingness to assume full responsibility: for managing the right-of-way; for any legal liability arising out of the use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and for the payment of all taxes assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the user's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29, _____ (Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by _____ (Railroad) and operated by _____ (Railroad). The property, known as _____ (Name of Branch Line), extends from railroad milepost _____ near _____ (Station Name), to railroad

milepost _____, near _____ (Station name), a distance of _____ miles in [County(ies), (State(s))]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB- _____ (Sub-No. _____).

A map of the property depicting the right-of-way is attached.

_____ (Interim Trail User) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

(b)(1) In abandonment application proceedings under 49 U.S.C. 10903, interim trail use statements are due within the 45-day protest and comment period following the date the abandonment application is filed. See § 1152.25(c). The applicant carrier's response notifying the Board whether and with whom it intends to negotiate a trail use agreement is due within 15 days after the close of the protest and comment period (i.e., 60 days after the abandonment application is filed).

(i) In every proceeding where a Trails Act request is made, the Board will determine whether the Trails Act is applicable.

(ii) If the Trails Act is not applicable because of failure to comply with § 1152.29(a), or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Board of its intention to negotiate, a decision on the merits will be issued and no Certificate of Interim Trail Use or Abandonment will be issued. If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Board will issue a CITU.

(2) In exemption proceedings, a petition containing an interim trail use statement is due within 10 days after the date the notice of exemption is published in the Federal Register in the case of a class exemption and within 20 days after publication in the Federal Register of the notice of filing of a petition for exemption in the case of a petition for exemption. When an interim trail use comment(s) or petition(s) is filed in an exemption proceeding, the railroad's reply to the Board (indicating whether and with whom it intends to negotiate an agreement) is due within 10 days after the date a petition requesting interim trail use is filed.

(3) Late-filed trail use statements must be supported by a statement showing good cause for late filing.

(c) *Regular and NERSA abandonment proceedings.* (1) If continued rail service

does not occur pursuant to 49 U.S.C. 10904 and § 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail user for that portion of the right-of-way to be covered by the agreement. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued (10 days after issuance in NERSA proceedings); and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The CITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the CITU and request that it be vacated on a specified date. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

- (i) The abandonment applicant;
- (ii) The owner of the right-of-way; and
- (iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the CITU will be vacated accordingly.

(d) *Exempt abandonment proceedings.* (1) If continued rail service does not occur under 49 U.S.C. 10904 and § 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail user for the portion of the right-of-way to be covered by the agreement. The NITU will: permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service, and subject to the user continuing to meet the financial obligations for the right-of-way. The NITU will also provide that, if the user intends to terminate trail use, it must send the Board a copy of the NITU and request that it be vacated on a specific date. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

- (i) The abandonment exemption applicant;
- (ii) The owner of the right-of-way; and
- (iii) The current trail user.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under 49 U.S.C. 10901 and 49 CFR part 1150, or exempted under 49 U.S.C. 10502, then the NITU will be vacated accordingly.

(e)(1) Where late-filed trail use statements are accepted, the Director (or designee) will telephone the railroad to determine whether abandonment has been consummated and, if not, whether the railroad is willing to negotiate an interim trail use agreement. The railroad shall confirm, in writing, its response, within 5 days. If abandonment has been consummated, the trail use request will be dismissed. If abandonment has not been consummated but the railroad refuses to negotiate, then trail use will be denied. If abandonment has not been consummated and the railroad is willing to negotiate, the abandonment proceeding will be reopened, the abandonment decision granting an application, petition for exemption or notice of exemption will be vacated, and an appropriate CITU or NITU will be issued. The effective date of the CITU or NITU will be the same date as the vacated decision or notice.

(2) A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the

service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. Copies of the railroad's notice of consummation shall be filed with the Secretary of the Board. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes.

(f)(1) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

- (i) A copy of the extant CITU or NITU; and
- (ii) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

(2) The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Board will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

(g) In proceedings where a timely trail use statement is filed, but due to either the railroad's indication of its unwillingness to negotiate interim trail use agreement, or its failure to timely notify the Board of its willingness to negotiate, a decision authorizing abandonment or an exemption notice or decision is issued instead of a CITU or NITU, and subsequently the railroad and trail use proponent nevertheless determine to negotiate an interim trail use agreement under the Trails Act, then the railroad and trail use proponent must file a joint pleading requesting that an appropriate CITU or NITU be issued. If the abandonment has not been consummated, the Board will reopen the proceeding, vacate the outstanding decision or notice (or portion thereof), and issue an appropriate CITU or NITU that will permit the parties to negotiate for a

period agreed to by the parties in their joint filing, but not to exceed 180 days, at the end of which, the CITU or NITU will convert into a decision or notice permitting abandonment.

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

§ 1152.30 General.

(a) *Contents of subpart.* (1) 49 U.S.C. 10904 directs the Board to determine the extent to which the avoidable costs of providing rail service plus a reasonable return on the value of the line exceed the revenues attributable to the line. This subpart contains the methodology for such determinations and the standards necessary for application of those terms in the context of a particular proceeding. Such data will be used in reaching the Board's findings on the merits of an abandonment or discontinuance proceeding and in making the necessary financial assistance determinations.

(2) This subpart also sets forth a method by which the carrier may establish its Forecast Year estimates and Estimated Subsidy Payment to be included in its application (§ 1152.22(d) of this part). Furthermore, an offeror of financial assistance may use this method to formulate a subsidy offer and/or Proposed Subsidy Payment under 49 U.S.C. 10904 and § 1152.27 of subpart C of this part.

(b) *Data collection.* The owning or operating carrier shall establish a system to collect at branch level the data necessary to compute the base year data and the final subsidy payment. The collection and compilation of such data shall be in accordance with the Branch Line Accounting System (49 CFR part 1201).

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement is concluded, the final payment will be adjusted to reflect the actual revenues derived, avoidable costs incurred, and value of the properties used in the subsidy year.

(2) Where an adjustment results in an increase in the Estimated Subsidy Payment upon which the financial assistance agreement is based, the amount of such increase is limited to 15 percent of the estimated payment. However, if the railroad notifies the subsidizer that the estimate will be exceeded by more than 15 percent in one of the Financial Status Reports (§ 1152.37) issued during the first 10 months of the subsidy year or the increase results from an expense preapproved by the subsidizer, the adjusted amount shall be included in the final payment.

§ 1152.31 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101—Freight.* The revenue assigned under this account shall be the actual revenues, including transit revenues, accruing to the railroad, derived from waybills and other source documents, for all traffic that:

- (1) Originates and terminates on the branch;
- (2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and

(3) Originates or terminates on the branch and is handled on another carrier. All traffic that is received or forwarded through interchange at a point on the branch, including ferry operations, shall be considered as originating or terminating on the branch. The revenues of all other bridge or overhead traffic that will not be retained by the carrier shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system, provided, however, that the parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment.

(b) *Account 104—Switching; Account 105—Water transfers; Account 106—Demurrage; Account 110—Incidental; Account 121—Joint Facility-Credit; Account 122—Joint Facility-Debt; Account 506—Revenues from Properties Used in Other Than Carrier Operations; Account 510—Miscellaneous Rent Income; Account 519—Miscellaneous Income.* The revenues assigned under these accounts shall be the actual revenues accruing to the railroad that are directly attributable to the branch.

(c) *Chart For Revenue Accounts.*

Revenue account title	Account No.
Freight	101
Switching	104
Water transfers	105
Demurrage	106
Incidental	110
Joint facility-credit	121
Joint facility-debt	122
Revenues from property used in other than carrier operations, less expenses.	506, 534
Miscellaneous rent income	510

Revenue account title	Account No.
Miscellaneous income	519

§ 1152.32 Calculation of avoidable costs.

This section defines: which cost elements are eligible for inclusion in the calculation of avoidable costs; the conditions under which certain cost elements become eligible for inclusion; and the basis of apportioning those cost elements which are not assigned to the branch on an actual expense basis. The avoidable costs of providing freight

service on a branch shall be the total of the costs assigned to the branch in accordance with this section. The avoidable costs of providing freight service on a branch shall be just and reasonable, and shall not exceed those necessary for an honest and efficient operation. Those expenses apportioned under this section shall be derived from the latest Form R-1 Annual Report for Class I railroads filed with the Board prior to the conclusion of the subsidy year, and company records for all non-Class I railroads, and assigned to the

branch according to the procedures set forth in § 1152.33 of these regulations. When the term "Actual" is specified as the basis for assigning an expense, it shall mean that the only costs which can be assigned to the account are those costs which are incurred solely as a result of the continuation of rail freight service on the branch. The accounts in the following charts, which list only the "freight-only" account numbers, shall include the portion of common expenses that have been apportioned to freight service.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
(a) Maintenance of way and structures:		
(1) Administration: Track:		
Salaries and wages	11-13-02	Actual.
Materials	21-13-02	Do.
Purchased services	41-13-02	Do.
Other expenses	61-13-02	Do.
Bridges and buildings		
Salaries and wages	11-13-03	Do.
Materials	21-13-03	Do.
Purchased services	41-13-03	Do.
Other expenses	61-13-03	Do.
Signals		
Salaries and wages	11-13-04	Do.
Materials	21-13-04	Do.
Purchased services	41-13-04	Do.
Other expenses	61-13-04	Do.
Communications		
Salaries and wages	11-13-05	Do.
Materials	21-13-05	Do.
Purchased services	41-13-05	Do.
Other expenses	61-13-05	Do.
Other		
Salaries and wages	11-13-06	Do.
Materials	21-13-06	Do.
Purchased services	41-13-06	Do.
Other expenses	61-13-06	Do.
(2) Repair maintenance and other roadway—running:		
Salaries and wages	11-11-10	Do.
Materials	21-11-10	Do.
Repairs by others—DR	39-11-10	Do.
Repairs for others—CR	40-11-10	Do.
Purchased services	41-11-10	Do.
Other expenses	61-11-10	Do.
Roadway—switching		
Salaries and wages	11-12-10	Do.
Materials	21-12-10	Do.
Repairs by others—DR	39-12-10	Do.
Repairs for others—CR	40-12-10	Do.
Purchased services	41-12-10	Do.
Other expenses	61-12-10	Do.
Tunnels and subways—running		
Salaries and wages	11-11-11	Do.
Materials	21-11-11	Do.
Repairs by others—DR	39-11-11	Do.
Repairs for others—CR	40-11-11	Do.
Purchased services	41-11-11	Do.
Other expenses	61-11-11	Do.
Tunnels and subways—switching		
Salaries and wages	11-12-11	Do.
Materials	21-12-11	Do.
Repairs by others—DR	39-12-11	Do.
Repairs for others—CR	40-12-11	Do.
Purchased services	41-12-11	Do.
Other expenses	61-12-11	Do.
Bridges and culverts—running		
Salaries and wages	11-11-12	Do.
Materials	21-11-12	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs by others—DR	39-11-12	Do.
Repairs for others—CR	40-11-12	Do.
Purchased services	41-11-12	Do.
Other expenses	61-11-12	Do.
Bridges and culverts—switching		
Salaries and wages	11-12-12	Do.
Materials	21-12-12	Do.
Repairs by others—DR	39-12-12	Do.
Repairs for others—CR	40-12-12	Do.
Purchased services	41-12-12	Do.
Other expenses	61-12-12	Do.
Ties—running—material	21-11-13	Do.
Ties—switching—material	21-12-13	Do.
Rails—running—material	21-11-14	Do.
Rails—switching—material	21-12-14	Do.
Other track material—running—material	21-11-15	Do.
Other track material—switching—material	21-12-15	Do.
Ballast—running—material	21-11-16	Do.
Ballast—switching—material	21-12-16	Do.
Track laying and surfacing—running		
Salaries and wages	11-11-17	Do.
Materials	21-11-17	Do.
Repairs by others—DR	39-11-17	Do.
Repairs for others—CR	40-11-17	Do.
Purchased services	41-11-17	Do.
Other expenses	61-11-17	Do.
Track laying and surfacing—switching		
Salaries and wages	11-12-17	Do.
Materials	21-12-17	Do.
Repairs by others—DR	39-12-17	Do.
Repairs for others—CR	40-12-17	Do.
Purchased services	41-12-17	Do.
Other expenses	61-12-17	Do.
Road property damaged—running		
Salaries and wages	11-11-48	Do.
Materials	21-11-48	Do.
Repairs by others—DR	39-11-48	Do.
Repairs for others—CR	40-11-48	Do.
Purchased services	41-11-48	Do.
Other expenses	61-11-48	Do.
Road property damaged—switching		
Salaries and wages	11-12-48	Do.
Materials	21-12-48	Do.
Repairs by others—DR	39-12-48	Do.
Repairs for others—CR	40-12-48	Do.
Purchased services	41-12-48	Do.
Other Expenses	61-12-48	Do.
Road property damaged—other		
Salaries and wages	1-13-48	Do.
Materials	21-13-48	Do.
Repairs by others—DR	39-13-48	Do.
Repairs for others—CR	40-13-48	Do.
Purchased services	41-13-48	Do.
Other expenses	61-13-48	Do.
Signals and interlockers—running		
Salaries and wages	11-11-19	Do.
Materials	21-11-19	Do.
Repairs by others—DR	39-11-19	Do.
Repairs for others—CR	40-11-19	Do.
Purchased services	41-11-19	Do.
Other expenses	61-11-19	Do.
Signals and interlockers—switching		
Salaries and wages	11-12-19	Do.
Materials	21-12-19	Do.
Repairs by others—DR	39-12-19	Do.
Repairs for others—CR	40-12-19	Do.
Purchased services	41-12-19	Do.
Other expenses	61-12-19	Do.
Communications systems		
Salaries and wages	11-13-20	Do.
Materials	21-13-20	Do.
Repairs by others—DR	39-13-20	Do.
Repairs for others—CR	40-13-20	Do.
Purchased services	41-13-20	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other expenses	61-13-20	Do.
Electric power systems		
Salaries and wages	11-13-21	Do.
Materials	21-13-21	Do.
Repairs by others—DR	39-13-21	Do.
Repairs for others—CR	40-13-21	Do.
Purchased services	41-13-21	Do.
Other expenses	61-13-21	Do.
Highway grade crossings—running		
Salaries and wages	11-11-22	Do.
Materials	21-11-22	Do.
Repairs by others—DR	39-11-22	Do.
Repairs for others—CR	40-11-22	Do.
Purchased services	41-11-22	Do.
Other expenses	61-11-22	Do.
Highway grade crossings—switching		
Salaries and wages	11-12-22	Do.
Materials	21-12-22	Do.
Repairs by others—DR	39-12-22	Do.
Repairs for others—CR	40-12-22	Do.
Purchased services	41-12-22	Do.
Other expenses	61-12-22	Do.
Station and office buildings		
Salaries and wages	11-13-23	Do.
Materials	21-13-23	Do.
Repairs by others—DR	39-13-23	Do.
Repairs for others—CR	40-13-23	Do.
Purchased services	41-13-23	Do.
Other expenses	61-13-23	Do.
Station buildings—locomotives		
Salaries and wages	11-13-24	Do.
Materials	21-13-24	Do.
Repairs by others—DR	39-13-24	Do.
Repairs for others—CR	40-13-24	Do.
Purchased services	41-13-24	Do.
Other expenses	61-13-24	Do.
Shop buildings—freight cars		
Salaries and wages	11-13-25	Do.
Materials	21-13-25	Do.
Repairs by others—DR	39-13-25	Do.
Repairs for others—CR	40-13-25	Do.
Purchased services	41-13-25	Do.
Other expenses	61-13-25	Do.
Shop buildings—other equipment		
Salaries and wages	11-13-26	Do.
Materials	21-13-26	Do.
Repairs by others—DR	39-13-26	Do.
Repairs for others—CR	40-13-26	Do.
Purchased services	41-13-26	Do.
Other expenses	61-13-26	Do.
Locomotive servicing facilities		
Salaries and wages	11-13-27	Do.
Materials	21-13-27	Do.
Repairs by others—DR	39-13-27	Do.
Repairs for others—CR	40-13-27	Do.
Purchased services	41-13-27	Do.
Other expenses	61-13-27	Do.
Miscellaneous buildings and structures		
Salaries and wages	11-13-28	Do.
Materials	21-13-28	Do.
Repairs by others—DR	39-13-28	Do.
Repairs for others—CR	40-13-28	Do.
Purchased services	41-13-28	Do.
Other expenses	61-13-28	Do.
Coal terminals		
Salaries and wages	11-13-29	Do.
Materials	21-13-29	Do.
Repairs by others—DR	39-13-29	Do.
Repairs for others—CR	40-13-29	Do.
Purchased services	41-13-29	Do.
Other expenses	61-13-29	Do.
Ore terminals		
Salaries and wages	11-13-30	Do.
Materials	21-13-30	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs by others—DR	39-13-30	Do.
Repairs for others—CR	40-13-30	Do.
Purchased services	41-13-30	Do.
Other expenses	61-13-30	Do.
TOFC/COFC terminals		
Salaries and wages	11-13-31	Do.
Materials	21-13-31	Do.
Repairs by others—DR	39-13-31	Do.
Repairs for others—CR	40-13-31	Do.
Purchased services	41-13-21	Do.
Other expenses	61-13-31	Do.
Other marine terminals		
Salaries and wages	11-13-32	Do.
Materials	21-13-32	Do.
Repairs by others—DR	39-13-32	Do.
Repairs for others—CR	40-13-32	Do.
Purchased services	41-13-32	Do.
Other expenses	61-13-32	Do.
Motor vehicle loading and distribution facilities		
Salaries and wages	11-13-33	Do.
Materials	21-13-33	Do.
Repairs by others—DR	39-13-33	Do.
Repairs for others—CR	40-13-33	Do.
Purchased services	41-13-33	Do.
Other expenses	61-13-33	Do.
Facilities for other specialized service operations		
Salaries and wages	11-13-35	Do.
Materials	21-13-35	Do.
Repairs by others—DR	39-13-35	Do.
Repairs for others—CR	40-13-35	Do.
Purchased services	41-13-35	Do.
Other expenses	61-13-35	Do.
Roadway machines		
Salaries and wages	11-13-36	Daily repair costs per GMA, for each type of machine used on the branch line sec. 1152.33(a)(1).
Materials	21-13-36	Do.
Repairs by others—DR	39-13-36	Do.
Repairs for others—CR	40-13-36	Do.
Purchased services	41-13-36	Do.
Other expenses	61-13-36	Do.
Small tools and supplies		
Other expenses	11-13-37	Assign supplies on the daily costs per GMA, for each type of machine used on the branch; small tool assign to maintenance of way 11- 11/12-10 through 17, and 48, sec. 1152.33(a)(2).
Materials	21-13-37	Do.
Repairs by others—DR	39-13-37	Do.
Repairs for others—CR	40-13-37	Do.
Purchased services	41-13-37	Do.
Other expenses	61-13-37	Do.
Snow removal		
Salaries and wages	11-13-38	Actual.
Materials	21-13-38	Do.
Repairs by others—DR	39-13-38	Do.
Repairs for others—CR	40-13-38	Do.
Purchased Services	41-13-38	Do.
Other expenses	61-13-38	Do.
Fringe benefits—running	12-11-00	11-11-XX, sec. 1152.33(a)(3)(i).
Fringe benefits—switching	12-12-00	11-12-XX, sec. 1152.33(a)(3)(ii).
Fringe benefits—other	12-13-00	11-13-XX, sec. 1152.33(a)(3)(iii).
Casualties and insurance—running		
Other casualties	52-11-00	Actual.
Insurance	53-11-00	Do.
Casualties and insurance—switching		
Other casualties	52-12-00	Do.
Insurance	53-12-00	Do.
Lease rentals—debit—running	31-11-00	Do.
Lease rentals—debit—switching	31-12-00	Do.
Lease rentals—debit—other	31-13-00	Do.
Lease rentals—credit—running	32-11-00	Do.
Lease rentals—credit—switching	32-12-00	Do.
Lease rentals—credit—other	32-13-00	Do.
Joint facility rent—debit—running	33-11-00	Do.
Joint facility rent—debit—switching	33-12-00	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Casualties and insurance—other		
Other casualties	52-13-00	Do.
Insurance	53-13-00	Do.
Joint facility—debit—other	33-13-00	Do.
Joint facility rent—credit—running	34-11-00	Do.
Joint facility rent—credit—switching	34-12-00	Do.
Joint facility rent—credit—other	34-13-00	Do.
Other rents—debit—running	35-11-00	Do.
Other rents—debit—switching	35-12-00	Do.
Other rents—debit—other	35-13-00	Do.
Other rents—credit—running	36-11-00	Do.
Other rents—credit—switching	36-12-00	Do.
Other rents—credit—other	36-13-00	Do.
Depreciation—running	62-11-00	Do.
Depreciation—switching	62-12-00	Do.
Depreciation—other	62-13-00	Do.
Joint facility—debit—running	37-11-00	Do.
Joint facility—debit—switching	37-12-00	Do.
Joint facility—debit—other	37-13-00	Do.
Joint facility—credit—running	38-11-00	Do.
Joint facility—credit—switching	38-12-00	Do.
Joint facility—credit—other	38-13-00	Do.
Dismantling retired road property—running		
Salaries and wages	11-11-39	Do.
Materials	21-11-39	Do.
Purchased services	41-11-39	Do.
Other expenses	61-11-39	Do.
Dismantling retired road property—switching		
Salaries and wages	11-12-39	Do.
Materials	21-12-39	Do.
Purchased services	41-12-39	Do.
Other expenses	61-12-39	Do.
Dismantling retired road property—other		
Salaries and wages	11-13-39	Do.
Materials	21-13-39	Do.
Purchased services	41-13-39	Do.
Other expenses	61-13-39	Do.
Other—running		
Salaries and wages	11-11-99	Do.
Materials	21-11-99	Do.
Purchased services	41-11-99	Do.
Other expenses	61-11-99	Do.
Other—switching		
Salaries and wages	11-12-99	Do.
Materials	21-12-99	Do.
Purchased Services	41-12-99	Do.
Other Expenses	61-12-99	Do.
Other—other		
Salaries and wages	11-13-99	Do.
Materials	21-13-99	Do.
Purchased services	41-13-99	Do.
Other expenses	61-13-99	Do.
(b) Maintenance of equipment:		
(1) Locomotives: Administration		
Salaries and wages	11-21-01	Do.
Materials	21-21-01	Do.
Purchased services	41-21-01	Do.
Other expenses	61-21-01	Do.
Repairs and maintenance		
Salaries and wages	11-21-41	Road diesel and road electric locomotive gross ton miles. Yard diesel and yard electric locomotive unit hours, § 1152.33(b)(1).
Materials	21-21-41	Do.
Repairs by others—DR	39-21-41	Do.
Repairs for others—CR	40-21-41	Do.
Purchased services	41-21-41	Do.
Other expenses	61-21-41	Do.
Machinery repair		
Salaries and wages	11-21-40	Actual.
Materials	21-21-40	Do.
Repairs by others—DR	39-21-40	Do.
Repairs for others—CR	40-21-40	Do.
Purchased services	41-21-40	Do.
Other expenses	61-21-40	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Equipment damaged		
Salaries and wages	11-21-48	Do.
Materials	21-21-48	Do.
Repairs by others—DR	39-21-48	Do.
Repairs for others—CR	40-21-48	Do.
Purchased services	41-21-48	Do.
Other expenses	61-21-48	Do.
Equipment damaged		
Fringe benefits	12-21-00	11-21-XX, sec. 1152.33(b)(3)(i).
Other casualties and insurance		
Other casualties	52-21-00	Actual.
Insurance	53-21-00	Do.
Lease rentals—debit	31-21-00	Do.
Lease rentals—credit	32-21-00	Do.
Joint facility rent—debit	33-21-00	Do.
Joint facility rent—credit	34-21-00	Do.
Other rents—debit	35-21-00	Do.
Other rents—credit	36-21-00	Do.
Joint facility—debit	37-21-00	Do.
Joint facility—credit	38-21-00	Do.
Depreciation	62-21-00	All locomotives, locomotive unit hours, sec. 1152.33(b)(2).
Dismantling retired property		
Salaries and wages	11-21-39	Actual.
Materials	21-21-39	Do.
Purchased services	41-21-39	Do.
Other expenses	61-21-39	Do.
Other		
Salaries and wages	11-21-99	Do.
Materials	21-21-99	Do.
Purchased services	41-21-99	Do.
Other expenses	61-21-99	Do.
(2) Freight cars: Administration:		
Salaries and wages	11-22-01	Do.
Materials	21-22-01	Do.
Purchased services	41-22-01	Do.
Other expenses	61-22-01	Do.
Machinery repair		
Salaries and wages	11-22-40	Do.
Materials	21-22-40	Do.
Repairs by others—DR	39-22-40	Do.
Repairs for others—CR	40-22-40	Do.
Purchased services	41-22-40	Do.
Other expenses	61-22-40	Do.
Equipment damage		
Salaries and wages	11-22-48	Do.
Materials	21-22-48	Do.
Repairs by others—DR	39-22-48	Do.
Repairs for others—CR	40-22-48	Do.
Purchased services	41-22-48	Do.
Other expenses	61-22-48	Do.
Fringe benefits	12-22-00	11-22-XX, sec. 1152.33-(b)(3)(iii).
Other casualties and insurance		
Other casualties	52-22-00	Actual.
Insurance	53-22-00	Do.
Joint facility rent—DR	33-22-00	Do.
Joint facility rent—CR	34-22-00	Do.
Joint facility—DR	37-22-00	Do.
Joint facility—CR	38-22-00	Do.
Dismantling retired property		
Salaries and wages	11-22-39	Do.
Materials	21-22-39	Do.
Purchased services	41-22-39	Do.
Other expenses	61-22-39	Do.
Other		
Salaries and wages	11-22-99	Do.
Materials	21-22-99	Do.
Purchased services	41-22-99	Do.
Other expenses	61-22-99	Do.
Freight car costs per day and per mile:		
Repair and maintenance		
Salaries and wages	11-22-42	These accounts are used to develop the cost per car day and per car mile for each type of car, sec. 1152.32(g).
Materials	21-22-42	Do.
Repairs by others—DR	39-22-42	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Repairs for others—CR	40-22-42	Do.
Purchased services	41-22-42	Do.
Other expenses	61-22-42	Do.
Lease rentals—DR	31-22-00	
Lease rentals—CR	32-22-00	
Depreciation	62-22-00	
Other rents—DR	35-22-00	
Other rents—CR	36-22-00	
(3) Other equipment: Administration		
Salaries and wages	11-23-01	Actual.
Materials	21-23-01	Do.
Purchased services	41-23-01	Do.
Other expenses	61-23-01	Do.
Repair and maintenance: Trucks, trailers and containers—revenue service		
Salaries and wages	11-23-43	Do.
Materials	21-23-43	Do.
Repairs by others—DR	39-23-43	Do.
Repairs for others—CR	40-23-43	Do.
Purchased services	41-23-43	Do.
Other expenses	61-23-43	Do.
Floating equipment—revenue service		
Salaries and wages	11-23-44	Do.
Materials	21-23-44	Do.
Repairs by others—DR	39-23-44	Do.
Repairs for others—CR	40-23-44	Do.
Purchased services	41-23-44	Do.
Other expenses	61-23-44	Do.
Computer and data processing		
Salaries and wages	11-23-46	Do.
Materials	21-23-46	Do.
Repairs by others—DR	39-23-46	Do.
Repairs for others—CR	40-23-46	Do.
Purchased services	41-23-46	Do.
Other expenses	61-23-46	Do.
Machinery		
Salaries and wages	11-23-40	Do.
Materials	21-23-40	Do.
Repairs by others—DR	39-23-40	Do.
Repairs for others—CR	40-23-40	Do.
Purchased services	41-23-40	Do.
Other expenses	61-23-40	Do.
Work and other non revenue equipment		
Salaries and wages	11-23-47	Do.
Materials	21-23-47	Do.
Repairs by others—DR	39-23-47	Do.
Repairs for others—CR	40-23-47	Do.
Purchased services	41-23-47	Do.
Other expenses	61-23-47	Do.
Equipment damaged		
Salaries and wages	11-23-48	Do.
Materials	21-23-48	Do.
Repairs by others—DR	39-23-48	Do.
Repairs for others—CR	40-23-48	Do.
Purchased services	41-23-48	Do.
Other expenses	61-23-48	Do.
Fringe benefits	12-23-00	11-23-XX, sec. 1152.33(b)(3)(ii).
Other casualties and insurance		
Other casualties	52-23-00	Actual.
Insurance	53-23-00	Do.
Lease rentals—DR	31-23-00	Do.
Lease rentals—CR	32-23-00	Do.
Joint facility rent—DR	33-23-00	Do.
Joint facility rent—CR	34-23-00	Do.
Other rents—DR	35-23-00	Do.
Other rents—CR	36-23-00	Do.
Depreciation	62-23-00	Do.
Joint facility—DR	37-23-00	Do.
Joint facility—CR	38-23-00	Do.
Dismantling retired property		
Salaries and wages	11-23-39	Do.
Materials	21-23-39	Do.
Purchased services	41-23-39	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other expenses	61-23-39	Do.
Other		
Salaries and wages	11-23-99	Do.
Materials	21-23-99	Do.
Purchased services	41-23-99	Do.
Other expenses	61-23-99	Do.
(c) Transportation:		
(1) Train operations: Administration:		
Salaries and wages	11-31-01	Do.
Materials	21-31-01	Do.
Purchased services	41-31-01	Do.
Other expenses	61-31-01	Do.
Engine crews		
Salaries and wages	11-31-56	Do.
Materials	21-31-56	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	41-31-56	Actual.
Other expenses	61-31-56	Do.
Train crews		
Salaries and wages	11-31-57	Do.
Materials	21-31-57	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	41-31-57	Actual.
Other expenses	61-31-57	Do.
Dispatching trains		
Salaries and wages	11-31-58	Do.
Materials	21-31-58	Do.
Purchased services	41-31-58	Do.
Other expenses	61-31-58	Do.
Operating signals and interlockers		
Salaries and wages	11-31-59	Do.
Materials	21-31-59	Do.
Purchased services	41-31-59	Do.
Other expenses	61-31-59	Do.
Operating drawbridges		
Salaries and wages	11-31-60	Do.
Materials	21-31-60	Do.
Purchased services	41-31-60	Do.
Other expenses	61-31-60	Do.
Highway crossing protection		
Salaries and wages	11-31-61	Do.
Materials	21-31-61	Do.
Purchased services	41-31-61	Do.
Other expenses	61-31-61	Do.
Train and inspection and lubrication		
Salaries and wages	11-31-62	Train hours, Sec. 1152.33(c)(1)(i).
Materials	21-31-62	Do.
Purchased services	41-31-62	Actual.
Other expenses	61-31-62	Do.
Locomotive fuel		
Salaries and wages	11-31-67	Diesel locomotive unit hours, Sec. 1152.33(c)(1)(ii).
Materials	21-31-67	Do.
Purchased services	41-31-67	Do.
Other expenses	61-31-67	Do.
Electric power purchased or produced for motive power		
Salaries and wages	11-31-68	Electric locomotive unit hours, sec. 1152.33(c)(1)(iii).
Materials	21-31-68	Do.
Purchased services	41-31-68	Do.
Other expenses	61-31-68	Do.
Servicing locomotives		
Salaries and wages	11-31-69	Locomotive unit miles, sec. 1152.33(c)(1)(iv).
Materials	21-31-69	Do.
Purchased services	41-31-69	Do.
Other expenses	61-31-69	Do.
Freight lost or damaged—solely related	51-31-00	Actual.
Clearing wrecks		
Salaries and wages	11-31-63	Do.
Materials	21-31-63	Do.
Purchased services	41-31-63	Do.
Other expenses	61-31-63	Do.
Fringe benefits	12-31-00	11-31-XX, sec. 1152.33 (c)(4)(i).
Other casualties and insurance		
Other casualties	52-31-00	Actual.
Insurance	53-31-00	Do.
Joint facility—DR	37-31-00	Do.
Joint facility—CR	38-31-00	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Other		
Salaries and wages	11-31-99	Do.
Materials	21-31-99	Do.
Purchased services	41-31-99	Do.
Other expenses	61-31-99	Do.
(2) Yard operations: Administration:		
Salaries and wages	11-32-01	Do.
Materials	21-32-01	Do.
Purchased services	41-32-01	Do.
Other expenses	61-32-01	Do.
Switch crews		
Salaries and wages	11-32-64	Do.
Materials	21-32-64	Locomotive unit hours, sec. 1152.33(c)(2)(i)
Purchased services	41-32-64	Actual.
Other expenses	61-32-64	Do.
Controlling operations		
Salaries and wages	11-32-65	Do.
Materials	21-32-65	Do.
Purchased services	41-32-65	Do.
Other expenses	61-32-65	Do.
Yard and terminal clerical		
Salaries and wages	11-32-66	Do.
Materials	21-32-66	Do.
Purchased services	41-32-66	Do.
Other expenses	61-32-66	Do.
Operating switches, signals, retarders and humps		
Salaries and wages	11-32-59	Do.
Materials	21-32-59	Do.
Purchased services	41-32-59	Do.
Other expenses	61-32-59	Do.
Locomotive fuel		
Salaries and wages	11-32-67	Diesel loco motive unit hours, sec. 1152.33(c)(2)(ii)
Materials	21-32-67	Do.
Purchased services	41-32-67	Do.
Other expenses	61-32-67	Do.
Electric power purchased or produced for motive power		
Salaries and wages	11-32-68	Electric locomotive unit hours, sec. 1152.33(c)(2)(iii).
Materials	21-32-68	Do.
Purchased services	41-32-68	Do.
Other expenses	61-32-68	Do.
Servicing locomotives		
Salaries and wages	11-32-69	Locomotive unit hours, sec. 1152.33(c)(2)(i).
Materials	21-32-69	Do.
Purchased services	41-32-69	Do.
Other expenses	61-32-69	Do.
Freight lost or damaged—solely related	51-32-00	Actual.
Clearing wrecks		
Salaries and wages	11-32-63	Do.
Materials	21-32-63	Do.
Purchased services	41-32-63	Do.
Other expenses	61-32-63	Do.
Fringe benefits	12-32-00	11-32-XX, sec. 1152.33(c)(4)(ii).
Other casualties and insurance		
Other casualties	52-32-00	Actual.
Insurance	53-32-00	Do.
Joint facility—DR	37-32-00	Do.
Joint facility—CR	38-32-00	Do.
Other		
Salaries and wages	11-32-99	Do.
Materials	21-32-99	Do.
Purchased services	41-32-99	Do.
Other expenses	61-32-99	Do.
(3) Train and yard operations common:		
Cleaning car interiors		
Salaries and wages	11-33-70	Do.
Materials	21-33-70	Do.
Purchased services	41-33-70	Do.
Adjusting and transferring loads		
Salaries and wages	11-33-71	Do.
Materials	21-33-71	Do.
Purchased services	41-33-71	Do.
Carloading devices and grain doors		
Salaries and wages	11-33-72	Do.
Materials	21-33-72	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Purchased services	41-33-72	Do.
Freight lost or damaged—all other	51-33-00	Do.
Fringe benefits	12-33-00	11-33-XX, sec. 1152.33(c)(4)(iii).
(4) Specialized service operations: Administration:		
Salaries and wages	11-34-01	Actual.
Materials	21-34-01	Do.
Purchased services	41-34-01	Do.
Other expenses	61-34-01	Do.
Pick-up and delivery, marine line haul, and rail substitute service		
Salaries and wages	11-34-73	Do.
Materials	21-34-73	Do.
Purchased services	41-34-73	Do.
Other expenses	61-34-73	Do.
Loading and unloading and local marine		
Salaries and wages	11-34-74	Do.
Materials	21-34-74	Do.
Purchased services	41-34-74	Do.
Other expenses	61-34-74	Do.
Protective services		
Salaries and wages	11-34-75	Do.
Materials	21-34-75	Do.
Purchased services	41-34-75	Do.
Other expenses	61-34-75	Do.
Freight lost or damaged—Solely related	51-34-00	Do.
Fringe benefits	12-34-00	11-34-XX, sec. 1152.33(c)(4)(iv).
Casualties and insurance		
Other casualties	52-34-00	Actual.
Insurance	53-34-00	Do.
Joint facility—DR	37-34-00	Do.
Joint facility—CR	38-34-00	Do.
Other		
Salaries and wages	11-34-99	Do.
Materials	21-34-99	Do.
Purchased services	41-34-99	Do.
Other expenses	61-34-99	Do.
(5) Administrative support operations: Administration :		
Salaries and wages	11-35-01	Do.
Materials	21-35-01	Do.
Purchased services	41-35-01	Do.
Other expenses	61-35-01	Do.
Employees performing clerical and accounting functions		
Salaries and wages	11-35-76	Do.
Materials	21-35-76	Do.
Purchased services	41-35-76	Do.
Other expenses	61-35-76	Do.
Communication systems operation		
Salaries and wages	11-35-77	Do.
Materials	21-35-77	Do.
Purchased services	41-35-77	Do.
Other expenses	61-35-77	Do.
Loss and damage claims processing		
Salaries and wages	11-35-78	Number of claims, sec. 1152.33(c)(3)(i).
Materials	21-35-78	Do.
Purchased services	41-35-78	Do.
Other expenses	61-35-78	Do.
Fringe benefits	12-35-00	11-35-XX, sec. 1152.33(c)(4)(v).
Joint facility—DR	37-35-00	Actual.
Joint facility—CR	38-35-00	Do.
Casualties and insurance.		
Other casualties	52-35-00	Do.
Insurance	53-35-00	Do.
Other		
Salaries and wages	11-35-99	Do.
Materials	21-35-99	Do.
Purchased services	41-35-99	Do.
Other expenses	61-35-99	Do.
(d) General Administrative Officers—general administration:		
Salaries and wages	11-61-01	Do.
Materials	21-61-01	Do.
Purchased services	41-61-01	Do.
Other expenses	61-61-01	Do.
Accounting, auditing and finance		
Salaries and wages	11-61-86	Do.

Operating expense group and accounts	Account No.	Basis of assignment to on-branch costs
Materials	21-61-86	Do.
Purchased services	41-61-86	Do.
Other expenses	61-61-86	Do.
Management services and data processing		
Salaries and wages	11-61-87	Do.
Materials	21-61-87	Do.
Purchased services	41-61-87	Do.
Other expenses	61-61-87	Do.
Marketing:		
Salaries and wages	11-61-88	Do.
Materials	21-61-88	Do.
Purchased services	41-61-88	Do.
Other expenses	61-61-88	Do.
Sales		
Salaries and wages	11-61-89	Do.
Materials	21-61-89	Do.
Purchased services	41-61-89	Do.
Other expenses	61-61-89	Do.
Industrial development		
Salaries and wages	11-61-90	Do.
Materials	21-61-90	Do.
Purchased services	41-61-90	Do.
Other expenses	61-61-90	Do.
Personnel and labor relations		
Salaries and wages	11-61-91	Do.
Materials	21-61-91	Do.
Purchased services	41-61-91	Do.
Other expenses	61-61-91	Do.
Legal and secretarial		
Salaries and wages	11-61-92	Do.
Materials	21-61-92	Do.
Purchased services	41-61-92	Do.
Other expenses	61-61-92	Do.
Public relations and advertising		
Salaries and wages	11-61-93	Do.
Materials	21-61-93	Do.
Purchased services	41-61-93	Do.
Other expenses	61-61-93	Do.
Research and development		
Salaries and wages	11-61-94	Do.
Materials	21-61-94	Do.
Purchased services	41-61-94	Do.
Other expenses	61-61-94	Do.
Fringe benefits	12-61-00	11-61-XX, sec. 1152.33(d)(1).
Casualties and insurance		
Other casualties	52-61-00	Actual
Insurance	53-61-00	Do.
Writedown of uncollectible accounts	63-61-00	Do.
Other taxes except on corporate income or payroll	65-61-00	Do.
Joint facility—DR	37-61-00	Do.
Joint facility—CR	38-61-00	Do.
Other		
Salaries and wages	11-61-99	Do.
Materials	21-61-99	Do.
Purchased services	41-61-99	Do.
Other expenses	61-61-99	Do.

(e) *Deadheading, taxi, and hotel costs.* The costs assigned under this subsection shall be the actual costs incurred as a result of providing service to the branch line for deadheading, taxi, and hotel costs. The amounts included under this subsection shall not be included under other subsections of these regulations.

(f) *Overhead movement costs.* The costs assigned under this subsection shall be the actual costs incurred in moving over any other rail line solely to

reach and provide service to the branch. The amounts shown under this subsection shall not be included under other subsections of these regulations.

(g) *Freight car costs.* For Class I railroads, the on-segment costs for time-mileage freight cars shall be calculated on the basis of the carrier's average cost per day and per mile. Those freight cars that are rented on a straight mileage basis are to be costed on the carrier's average cost per mile for each type of car rented on this basis. No costs are to

be included in the calculation for private line (shipper owned) or other cars for which the railroad does not make payments. The cost per day and per mile shall be calculated separately for each type of car specified in Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges*, 362 I.C.C. 884 (1980). The freight car costs shall be separated between "return on value-freight cars" and "freight car costs other than return on freight cars". The costs assigned to a line under this subsection

are to be derived from the accounts listed below.

Operating expense group— Repair and maintenance	Account No.
Salaries and wages	11-22-42
Materials	21-22-42
Repairs by others—DR	39-22-42
Repairs for others—CR	40-22-42
Purchased services	41-22-42
Other expenses	61-22-42
Lease rentals—DR	31-22-00
Lease rentals—CR	32-22-00
Depreciation	
Other rents—DR	35-22-00
Other rents—CR	36-22-00

The system total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation. Freight car costs shall not include depreciation as determined in Account No. 62-22-00. Freight car depreciation shall be calculated in the manner set forth in paragraph (g)(3)(i) of this section. The system total receipts and payments for the hire of time-mileage cars, and the basic data used in the development of the car-day and car-mile factors, shall be taken from the carrier's latest Form R-1 and company records. The specific steps to complete the calculation are as follows:

- (1) The total system car days by car type shall be calculated by:
 - (i) Averaging the carrier's freight car ownership at the beginning and end of the year (Form R-1, schedule 710, columns (b) and (k));
 - (ii) Multiplying the average by the standard active number of car days (346) as developed in ICC Docket No. 31358;
 - (iii) Subtracting car days on foreign lines (source: Company records); and
 - (iv) Adding the foreign car days on home line (source: Company records). This procedure shall be followed for each car type specified in Ex Parte No. 334, *supra*.
- (2) The total railroad car miles shall be calculated by adding the loaded car miles for the railroad owned and leased cars (R-1, Schedule 755) to empty car miles for the railroad owned or leased cars (R-1, Schedule 755). The total car miles, loaded and empty, shall be calculated for each car type specified in Ex Parte No. 334, *supra*.
- (3) The cost per car day shall be calculated for each type of time-mileage car by adding 50 percent of total freight car repair costs for each type (Form R-1, schedule 415, column (b)), and 60 percent of the depreciation shall be developed as follows:

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car using the most recent purchase of this type by the railroad indexed to the midpoint of the year or a price quote from the manufacturer. This unit price shall be applied to the average number of this type of car owned by the carrier during the year. The current value developed for each car type is then multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Board or company records.

(ii) Add 100 percent of the return on investment. Return on investment shall be determined by multiplying the current value of each type of car, developed in paragraph (g)(3)(i) of this section, by 1 minus the ratio of accumulated depreciation to the total original cost investment. This will determine the net current value for each type of car. The net current value for each type of car shall then be multiplied by the nominal rate of return calculated in § 1152.34(d) to obtain nominal return on investment for each type of car. The total return on investment shall then be calculated by deducting the projected holding gain (loss) for the forecast and/or subsidy year from the nominal return on investment for each type of car. In any instance where the holding gain is not specifically determined for freight cars, the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used. The total return on investment for each type of car shall then be divided by total car-days for each car-type developed in paragraph (g)(1) of this section.

(iii) To the amounts for repairs and depreciation, add the time portion of the railroad's payment for hire of time-mileage freight cars (Form R-1, schedule 414, column (g)), and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (Form R-1, schedule 414, column (d)). The total of these costs is divided by the total car days for each type developed in paragraph (g)(1) of this section.

(4) The cost per mile shall be calculated for each type of time-mileage car as follows. First, add:

- (i) 50 percent of the total freight train car repair cost for each car type (Form R-1, schedule 415, column (b));
- (ii) 40 percent of the total depreciation costs for each car type developed in paragraph (g)(3)(i) of this section; and
- (iii) The mileage portion of the carrier's payments for the hire of time-mileage freight cars (Form R-1, schedule 414, column (f)).

Second, subtract the mileage portion of the carrier's receipts for hire of time-mileage freight cars (Form R-1, schedule 414, column (c)). Finally, divide the result by the total car-miles for each car-type developed in paragraph (g)(2) of this section.

(5) The costs per car day and per car mile developed in paragraphs (g) (3) and (4) of this section shall be applied to the total car days and total car miles for each car type accumulated on the line segment for all traffic originated and/or terminated on the segment plus those freight cars that bridge the line segment which are attributed to time-mileage freight train cars. The on-segment costs for freight cars rented on a straight mileage basis shall be the railroad's total payments for mileage cars (Form R-1, schedule 414, column (e)) for each car type divided by the total miles on which the charges were based.

(6) For Class II and III railroads, the on-segment costs for time-mileage and straight mileage freight cars shall be calculated in the same manner prescribed for Class I railroads, using the latest data available.

(h) *Return on investment—locomotive (line)*. The return on investment shall be calculated for each type of classification of locomotive that is actually used to provide service to the line segment. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line segment shall be based on the most recent purchase of that particular type and size locomotive by the carrier, indexed to the midpoint of the forecast and/or subsidy year, or on an amount quoted by the manufacturer. The amount must be substantiated. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by applicant-carrier, as shown by company records.

(2) The current nominal cost of capital shall be used in the calculation of return on investment for locomotives and shall be calculated as provided in § 1152.34(d).

(3) The return on investment for each category or type of locomotive shall be the nominal return less the holding gain (loss). The nominal return is calculated by multiplying the replacement cost determined in paragraph (h)(1) of this section by the nominal rate of return determined in paragraph (h)(2) of this section. The holding gain (loss) shall be the gain (loss) projected to occur during the forecast and/or subsidy year. In any instance where the holding gain is not specifically determined for locomotives,

the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used.

(4) The return on investment for each type of locomotive shall be assigned to the line segment on a ratio of the locomotive unit hours on the segment to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives; yard diesel; yard-other; road diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used to serve the segment, as developed in paragraph (h)(4)(i) of this section, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (h)(4)(ii) of this section.

(5) The cost assigned to the segment for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (h)(3) of this section by the ratio(s) developed in paragraph (h)(4) of this section.

(i) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those states that subject the railroad to a revenue tax.

(j) *Property taxes (Line).* (1) The assigned costs under this subsection shall be the net systemwide property tax savings resulting from the abandonment, calculated as set out below, if the applicant-carrier intends subsequently to sell or otherwise dispose of the abandoned properties. If the applicant-carrier expresses an intent to dispose of the properties, it will be presumed that the properties will ultimately be sold or otherwise disposed of after abandonment. Protestants may rebut this presumption by showing that it would be financially beneficial to retain ownership of the property for investment purposes.

(2) In states where a true *ad valorem* tax is levied on real property (such as track, land, buildings, and other facilities), applicant must affirm that the *ad valorem* method applies and must substantiate the amount of property taxes levied against the property on the line segment.

(3) In states where the *ad valorem* method is not employed, applicant must describe the applicable property tax

methodology if it is claiming the local property tax as an avoidable cost of operations. Additionally, it must substantiate with evidence and computations the actual statewide tax savings attributable to the abandonment.

(4) Any property tax properly substantiated under paragraphs (f)(2) or (3) of this section shall be presumed to represent systemwide savings to the carrier. Protestants may rebut this presumption by presenting evidence:

(i) That property taxes in those states where the carrier operates that are not involved in the abandonment will increase significantly because of reassessments attributable to the abandonment; or

(ii) That a significantly higher property tax will be levied against a retained portion of the abandoned property. If applicant does not refute protestant's evidence, it may claim avoidable property taxes only if, and to the extent, it proves systemwide property tax savings.

(5) In states where real property taxes are assessed and levied against the owner of the property but the tax on rolling stock is assessed to the railroad operating the service on the basis of a formula of a statewide valuation of property, the tax on rolling stock attributable to each line segment shall be determined as follows:

(i) Using ratio of the cost of equipment (as used in the formula) to the total of all property costs (as used in formula);

(ii) Apply that ratio to the total state assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each line segment on the basis of car and locomotive unit miles on the segment to total car and locomotive unit miles in the state; and

(iv) Apply the appropriate tax rate or rates to the allocated assessment thus determined.

(k) *Administrative costs.* The costs assigned under this account shall be the actual costs directly attributable to the administration of the subsidy program or at the option of the carrier, one percent of the total annual revenues attributed to the branch shall be allowable to cover all costs of administering the subsidy program. Either method may be used, but not both.

(l) *Casualty reserve account.* The costs assigned under this account shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability

under those accounts that are used to record any costs incurred by the railroad as a result of an accident.

(m) *Rehabilitation.* (1) For abandonment purposes the applicant carrier shall project the amounts necessary to permit efficient operations over the line segment. The carrier shall indicate the level of FRA class safety standard to be attained with the amount of expenditure. See 49 CFR part 213. Applicant, in making its projection of rehabilitation costs, shall give consideration to:

(i) The cost to attain the lowest operationally feasible track level;

(ii) The cost to attain the rehabilitation level resulting in the lowest operating and rehabilitation expenditures; or

(iii) The cost to attain the rehabilitation level resulting in the lowest loss, or highest profit, from operations.

(2) For subsidy purposes rehabilitation costs shall not be included unless:

(i) The track fails to meet minimum Federal Railroad Administrative class 1 safety standards (49 CFR part 213), in which case the railroad will furnish, with the abandonment application, a detailed estimate of the costs to rehabilitate the track to the minimum level; or

(ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(n) *Off-branch costs.* The off-branch costs developed in this section shall be separated between "off-branch costs other than return on freight cars" and "return on value-freight cars". The off-branch costs shall be developed in the following manner:

(1) Terminal costs, line-haul costs, interchange costs, and modified terminal costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying the variable unit costs to the service units attributed to the branch line's traffic for the time periods specified in § 1152.22(d) of this part.

(2) The procedure for determining the off-branch costs shall be based upon the URCS cost formula. This formula shall be applied to the latest Annual Report Form R-1 filed by the railroad, with two exceptions. First, the amount used in the formula for freight car depreciation shall be calculated using the procedure discussed in paragraph (g)(3)(iii) of this section applied to the average total car fleet of the railroad. Second, the return on investment in freight cars shall be computed using the procedure set forth

in paragraph (g)(3)(ii) of this section. In addition, the application of URCS shall include the use of the nominal cost of capital for all return on investment determinations.

(3) *The Class I Procedure:* A Class I railroad shall calculate its off-branch costs using the Class I procedure as set forth below in this paragraph.

(i) The unit costs developed by applying URCS in the manner specified in paragraph (n)(2) of this section shall be applied to the service characteristics of each movement of traffic that is attributed to the branch line. This application shall result in the total off-branch cost associated with this traffic for normal terminal handlings, line-haul mileage, and interchange events.

(ii) The modified terminal cost per carload shall be calculated separately for each type of freight car and applied to each car that is attributed to the branch line. The modified terminal cost shall consist of clerical costs, two days of freight car cost, and an inter-intra train switching cost (locomotive engine minute cost only). The clerical cost and inter-intra train switching cost shall be calculated from unit costs developed within the individual URCS application.

(A) The unit costs for the clerical cost per carload calculation are located in URCS Worktable E1, Part 1: Line 106, columns 1, 2, and 3; line 107, column 1; line 108, column 1; line 109, column 1; and line 110, column 1.

(B) The inter-intra train switching cost shall be calculated by multiplying the total switch engine minute cost from URCS Worktable E1, Part 1, line 111, columns 1, 2, and 3 by the total minutes specified in the next sentence. The total minutes specified in this sentence shall equal the sum of:

(1) The minutes per switch event from Worktable E2, Part 1, line 118, column 29; and

(2) The product of the minutes per switch event from Worktable E2, Part 1, line 118, column 29 and the ratio of loaded to total car miles for the particular type of freight car being costed.

(C) The freight car cost shall be the car ownership costs per car day for 2 days developed in accordance with the procedures set forth in paragraph (g)(3) of this section for the type of freight car being costed.

(iii) For a Class I railroad, the total costs calculated using the procedures set forth in paragraphs (n)(3)(i) and (n)(3)(ii) of this section shall constitute the off-branch costs attributable to the branch line's traffic.

(4) A Class II or Class III railroad shall calculate its off-branch costs using any one of three different procedures. *The*

Class I Procedure: A Class II or Class III railroad may calculate its off-branch costs using the Class I procedure set forth in paragraph (n)(3) of this section, if the necessary data are available from the railroad's own records. If the data necessary to complete the Class I procedure set forth in paragraph (n)(3) of this section are not available from the railroad's own records, the Class II or Class III railroad shall calculate its off-branch costs using either one of the following procedures based on the latest regional URCS data and the railroad's own records. *The Class II/III Simplified Costing Procedure:* A Class II or Class III railroad may calculate its off-branch costs using the Class I procedure set forth in paragraph (n)(3) of this section, with regional URCS data of the Class I railroads used in lieu of individual URCS data of the Class II or Class III railroad. Costs developed through the use of the Class II/III simplified costing procedure shall enjoy a rebuttable presumption of correctness. *The Class II/III Standard Costing Procedure:* A Class II or Class III railroad may calculate its off-branch costs using the Class II/III standard costing procedure set forth in paragraphs (n)(4)(i) through (n)(4)(xiv) of this section. Costs developed through the use of the Class II/III standard costing procedure shall be given preference over costs developed through the use of the Class II/III simplified costing procedure. The Class II/III standard costing procedure is set forth in paragraphs (n)(4)(i) through (n)(4)(xiv) of this section.

(i) The Class II or Class III railroad shall first determine which URCS regional application will be used based on its geographical location. The railroad's total estimated system variable expenses are calculated by multiplying its total operating expenses by the ratio of variable expenses to total expenses; this ratio is located in Worktable D8, Part 6, line 615, column 1 of the URCS printout for the appropriate region. If a railroad has passenger and freight service, the freight portion of the total estimated system variable expenses shall be calculated by multiplying the total estimated system variable expenses, calculated as above, by the ratio of freight related operating expenses to total railway operating expenses.

(ii) The total number of revenue carload terminal handlings, as determined from the railroad's records, shall be calculated as the sum of:

(A) Originated and terminated (local) revenue carloads multiplied by 2; plus
(B) Interchanged and either originated or terminated (interline) revenue carloads.

(iii) The total number of revenue carload interchange handlings, as determined from the railroad's records, shall be calculated as the sum of:

(A) Bridge (interchange to interchange) revenue carloads multiplied by 2; plus

(B) Revenue carloads that are interchanged and either originated or terminated (interline).

(iv) The system average shipment weight per car, as determined from the railroad's records, shall be calculated by dividing:

(A) Ton-miles-revenue freight by
(B) Loaded freight car miles.

(v) The system average loaded car miles per car, as determined from the railroad's records, shall be calculated by dividing:

(A) Revenue ton-miles by
(B) Revenue tons.

(vi) The railroad shall complete a URCS Phase III "Movement Costing Program" based on the application of URCS data for the appropriate region. The following data shall be inputs to the Phase III program application.

(A) The carrier code, either "REG 4" or "REG 7", shall correspond to the appropriate region.

(B) The type of shipment shall be designated as "OD" in order for the movement to be costed as an interline movement.

(C) The distance shall be the system average loaded car miles per car as developed in paragraph (n)(4)(v) of this section.

(D) The type of freight car shall be identified as a Box, General Service Equipped, which has an input user code of "3". If all of the traffic on the branch line is transported in a single type of car, and it is not a Box, General Service Equipped, the code for that type of car may be substituted.

(E) The number of freight cars shall be "1".

(F) The car ownership factor shall be designated as "R" for railroad owned cars unless all of the branch line traffic is moved in privately owned cars, in which case the code "P" for privately owned cars would be the input.

(G) The program requires a loss and damage input. The code "48", representing the average of all commodities, shall be used.

(H) The input for shipment weight shall be the system average shipment weight per car developed in paragraph (n)(4)(iv) of this section.

(I) The input for type of movement shall be "1", representing an individual car movement.

(vii) The ratios employed to separate the total estimated system variable expenses, as determined in paragraph

(n)(4)(i) of this section, among terminal, interchange, and line-haul operations shall be based on the procedures outlined in this paragraph (n)(4)(vii). This separation shall reflect the variable costs resulting from the application of the URCS Phase III program based on the input factors specified in paragraph (n)(4)(vi) of this section. The ratios shall be calculated in the following manner:

(A) The terminal expenses calculated by the application of the Phase III program shall consist of the following:
(1) "Carload and Clerical Costs" shall be calculated as the sum of lines 256, 258, 260, 262, 264, 266, and 268.

(2) Switching expenses based on "Total SEM-Industry" shall be calculated by multiplying:

(i) The sum of lines 315, 317, and 319, by

(ii) Line 311.

(3) Car mile yard cost "CM(Y)-Industry" shall be calculated by multiplying:

(i) The sum of lines 426, 428, and 430, by

(ii) Line 422.

(4) Car day yard cost "CD(Y)-Industry" and "CD(Y)-L&UL" shall be calculated by multiplying:

(i) The sum of lines 452, 454, and 456, by

(ii) The sum of lines 446 and 450.

(5) The expenses for accessorial services for railroad owned cars shall be calculated as the sum of:

(i) The product of line 422 and the sum of lines 464, 466, and 468; plus

(ii) The product of the sum of lines 446 and 450 and the sum of lines 476, 478, and 480.

(B) The interchange expenses calculated by the application of the Phase III program shall consist of the following:

(1) Switching expenses based on "Total SEM-Interchange" shall be calculated by multiplying

(i) The sum of lines 315, 317, and 319, by

(ii) Line 312.

(2) Car mile cost in interchange "CM(Y)-Interchange" shall be calculated by multiplying:

(i) The sum of lines 426, 428, and 430, by

(ii) Line 423.

(3) Car day cost in interchange "CD(Y)-Interchange (L&E)" shall be calculated by multiplying:

(i) The sum of lines 452, 454, and 456, by

(ii) Line 447.

(4) The expenses for accessorial services for railroad owned cars shall be calculated as the sum of:

(i) The product of line 423 and the sum of lines 464, 466, and 468; plus

(ii) The product of line 447 and the sum of lines 476, 478, and 480.

(C) The line-haul expenses resulting from the application of the Phase III program shall be calculated by subtracting the sum of:

(1) The terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section, and

(2) The interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section, from

(3) The total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(D) The ratio for terminal expenses shall be calculated by dividing the terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(E) The ratio for interchange expenses shall be calculated by dividing the interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(F) The ratio for line-haul expenses shall be calculated by dividing the line-haul expenses as determined in paragraph (n)(4)(vii)(C) of this section by the total variable cost excluding loss and damage as calculated in the Phase III program at line 696.

(viii) The railroad's total estimated system variable expenses shall be separated as follows:

(A) The total terminal variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for terminal expenses as determined in paragraph (n)(4)(vii)(D) of this section.

(B) The total interchange variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for interchange expenses as determined in paragraph (n)(4)(vii)(E) of this section.

(C) The total line-haul variable expenses shall be calculated by multiplying the total estimated system variable expenses as determined in paragraph (n)(4)(i) of this section by the ratio for line-haul expenses as determined in paragraph (n)(4)(vii)(F) of this section.

(ix) The railroad's unit costs shall be determined for terminal, interchange, and line-haul operations as follows:

(A) The terminal cost per carload shall be calculated by dividing the total terminal variable expenses as

determined in paragraph (n)(4)(viii)(A) of this section by the total number of revenue carload terminal handlings as determined in paragraph (n)(4)(ii) of this section.

(B) The interchange cost per carload shall be calculated by dividing the total interchange variable expenses as determined in paragraph (n)(4)(viii)(B) of this section by the total number of revenue carload interchange handlings as determined in paragraph (n)(4)(iii) of this section.

(C) The line-haul cost per car mile shall be calculated by dividing the total line-haul variable expenses as determined in paragraph (n)(4)(viii)(C) of this section by the total system freight car miles, loaded and empty, as determined from the railroad's records.

(x) The modified terminal cost per carload is a composite of costs developed in the Phase III program and costs determined in accordance with paragraph (g) of this section and this paragraph. The modified terminal cost per carload shall be calculated for each type of car as follows:

(A) The station clerical cost per carload shall be developed in the following manner:

(1) The station clerical expense ratio shall be calculated by dividing the total clerical cost (the sum of lines 256, 258, 260, 262, 264, 266, and 268) by the terminal expenses as determined in paragraph (n)(4)(vii)(A) of this section.

(2) The station clerical cost per carload shall be calculated by multiplying the terminal cost per carload as determined in paragraph (n)(4)(ix)(A) of this section by the station clerical expense ratio.

(B) The interchange switching cost per carload shall be developed in the following manner:

(1) The total interchange switching expense shall be calculated by multiplying the sum of lines 315, 317, and 319 by line 312.

(2) The interchange switching ratio shall be calculated by dividing the total interchange switching expense by the interchange expenses as determined in paragraph (n)(4)(vii)(B) of this section.

(3) The interchange switching cost per carload shall be calculated by multiplying the interchange cost per carload as determined in paragraph (n)(4)(ix)(B) of this section by the interchange switching ratio.

(C) The freight car cost element shall be the freight car cost per car day for 2 days as developed for each car type in paragraph (g)(3) of this section.

(D) The modified terminal cost per carload shall be the total of the costs developed in paragraphs (n)(4)(x)(A),

(n)(4)(x)(B), and (n)(4)(x)(C) of this section.

(xi) The terminal costs shall be calculated by multiplying the terminal cost per carload as determined in paragraph (n)(4)(ix)(A) of this section by the number of carloads that both:

(A) Originated or terminated on the branch, and

(B) Are local to the railroad serving the branch.

(xii) The interchange costs shall be calculated by multiplying the interchange cost per carload as determined in paragraph (n)(4)(ix)(B) of this section by the number of carloads that both:

(A) Originated or terminated on the branch; and

(B) Are received in or forwarded through interchange with other railroads.

(xiii) The line-haul costs shall be calculated by multiplying the line-haul cost per car mile as determined in paragraph (n)(4)(ix)(C) of this section by the total loaded and empty car miles generated on the railroad's system off the branch by cars that originated or terminated on the branch.

(xiv) The modified terminal costs shall be calculated by multiplying the modified terminal cost per carload as determined in paragraph (n)(4)(x)(D) of this section by the number of carloads that originated or terminated on the branch.

(o) *Locomotive depreciation.* The depreciation cost for locomotives used on the line shall be calculated using the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line will be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the year or on an amount quoted by the manufacturer.

(2) The depreciation rate that will be applied to the replacement cost shall be the carrier's component rate for each type of locomotive as reported in the latest Annual Report Form R-1 submitted to the Board or from the company records. Carriers using depreciation rates based on company records must explain why composite rates are inappropriate; provide a detailed explanation of the methodology used to compute the alternate depreciation rate; and demonstrate that these rates have been used consistently.

(3) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (o)(1) of this section by the rate from paragraph (o)(2) of this section.

(4) The depreciation expense for each type of locomotive shall be assigned to the line on the ratio of the hours incurred serving the line to the average system locomotive unit hours in service by each of the following categories of locomotives: yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the line shall be the same as that developed in paragraph (h)(4) of this section.

(5) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (o)(3) of this section by the ratio(s) developed in paragraph (o)(4) of this section.

(p) *Opportunity costs.* Applicant-carrier may, at its discretion, present evidence of its opportunity costs, if the assets engaged in the line proposed to be abandoned could be used more profitably in some other capacity.

Opportunity costs may be calculated in accordance with the methodology established in § 1152.34 of this part, or by using any other reasonable, fully explained method. Opportunity costs are not included as costs on Exhibit 1 described at § 1152.36. These costs should be submitted as a separate exhibit to the application.

(q) *Labor costs.* (1) The salaries, wages and fringe benefits of personnel exclusively assigned to the line segment shall be deemed attributable costs of the segment. The salaries, wages, and fringe benefits of personnel not exclusively assigned to the line segment shall be deemed attributable costs of the segment to the extent they are shown to be apportionable to the segment to be abandoned.

(2) These costs shall be deemed attributable notwithstanding any obligation of applicant to provide employee protection for employees after the abandonment.

§ 1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

The accounts specified under § 1152.32 (a), (b), (c), and (d) as having an assignment basis other than "Actual" shall be apportioned according to the rules contained in this section.

(a) *Maintenance of way and structures—(1) Roadway machines.* All accounts designated XX-13-36 shall be assigned to the branch on the basis of the average repair costs, for each type of machine, included in the daily rental fees charged by the operating railroad or as published by the General Manager's Association of Chicago (GMA), based on

the actual number of days each type of machine is used on the branch.

(2) *Small tools and supplies.* All accounts designated XX-13-37 shall be assigned to the branch as follows:

(i) The costs of supplies, consumed in the operation of roadway machines, shall be assigned to the branch on the basis of the average costs of supplies per day, included in the daily rental fees charged by the operating railroad or as published by the GMA, multiplied by the actual number of days that the machine is used on the branch;

(ii) The costs of small tools shall be assigned to the branch on the basis of the ratio that the branch amounts in Accounts 11-11-10 through 11-11-17 and 11-11-48, plus 11-12-10 through 11-12-17 and 11-12-48, bear to the railroad's system total for the same accounts.

(3) *Fringe benefits.* Fringe benefits shall be assigned to the branch separated between running, switching and other, on the ratio that the total branch salary and wages bear to the total system salaries and wages for each activity as follows:

(i) *Fringe benefits—Running, Account 12-11-00,* total of all 11-11-XX accounts branch to system;

(ii) *Fringe benefits—Switching, Account 12-12-00,* total of all 11-12-XX accounts branch to system; and

(iii) *Fringe benefits—Other, Account 12-13-00,* total of all 11-13-XX accounts branch to system.

(b) *Maintenance of equipment—(1) Locomotive repairs and maintenance.* All accounts designated XX-21-41 shall be separated between yard and road with a further separation between diesel and other (electric). The costs for these accounts for yard locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs for these accounts for road locomotives shall be assigned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service to the total system diesel and electric locomotive gross ton-miles in road service. The costs assigned under these accounts for specialized equipment devoted exclusively to branch line service shall be the actual costs for the specific equipment used.

(2) *Locomotive depreciation.* Locomotive depreciation shall be calculated and assigned in accordance with the procedures set forth in § 1152.32(o).

(3) *Fringe Benefits.* Fringe benefits for locomotives and other equipment shall be assigned to the branch on the ratio that the total branch salary and wages bear to the system total salaries and wages for each type of equipment as follows:

(i) *Locomotives—Account 12-21-00,* total of all 11-21-XX accounts branch to system.

(ii) *Other Equipment—Account 12-23-00,* total of all 11-23-XX accounts branch to system.

(iii) Fringe benefits for freight cars shall be calculated by first estimating the total in Account 11-22-42, Freight car repairs—salaries and wages, that is included in the total on branch costs for freight cars as determined from the car-day and car-mile cost calculations in § 1152.32(g) of these regulations. To this amount is added the branch totals in the balance of all 11-22-XX accounts. The ratio of this total branch account to the system total for all 11-22-XX accounts is applied to Account 12-22-00, Fringe Benefits—Freight Cars.

(c) *Transportation—(1) Train operations—(i) Engine Crews-Materials, Account 21-31-56; Train Crews-Materials, Account 21-31-57; Train Inspection and Lubrication-Salaries and Wages, Account 11-31-62; and Train Inspection and Lubrication-Materials, Account 21-31-62.* If the branch is served by a local/way or through train, the costs in these accounts shall be assigned to the branch on the weighted ratio of the loaded freight train cars on the branch to the total system loaded freight train cars, and the loaded and empty car-miles on the branch to the total system loaded and empty car-miles. This shall be calculated as follows:

(A) To determine the car-mile portion of these accounts:

(1) Multiply the total amounts in these accounts (from the R-1 Annual Report, Schedule 410) by 69 percent, which is the ratio of train-mile and running expenses;

(2) Divide the amount in paragraph (c)(1)(i)(A)(1) of this section by the total system loaded and empty car-miles;

(3) Multiply the car-mile unit cost factor from paragraph (c)(1)(i)(A)(2) of this section by the on-branch car-miles (loaded and empty).

(B) To determine the carload portion of these accounts:

(1) Multiply the total amounts in these accounts by 31 percent, which is the ratio of terminal expenses;

(2) Divide the amount in paragraph (c)(1)(i)(B)(1) of this section by the total system carloads; and

(3) Multiply the carload unit cost factor from paragraph (c)(1)(i)(B)(2) of this section by the on-branch carloads.

(C) To determine the total costs assignable to the branch for these accounts, add the amounts developed in paragraphs (c)(1)(i)(A)(3) and (c)(1)(i)(B)(3) of this section.

(ii) All accounts designated xx-31-67 shall be assigned to the branch in accordance with the following procedure. The dollar amounts used in the determination of locomotive fuel costs shall be based on data contained in the most recent publication issued by the General Managers Association (GMA) relating to the rental of locomotives. The total number of locomotive unit hours incurred by the locomotive(s) shall then be categorized according to the applicable GMA horsepower classification group. The fuel cost is derived from the Repairs and Supplies Expenses element of the locomotive rental rates published by the GMA. The fuel cost per locomotive unit hour shall be determined for each GMA horsepower classification group by multiplying the latest GMA fuel cost percentage by the Repairs and Supplies Expense per hour included in each group. The fuel cost update ratio is determined by using the indices for fuel from the Association of American Railroad's (AAR's) Railroad Cost Recovery Index (RCR). The indices shall be taken from the district to which the railroad is assigned by the Board. The index for the current period is divided by the index of the period representative of the GMA publication to develop the fuel update ratio. The fuel cost per locomotive unit hour developed for each GMA horsepower group shall be multiplied by the fuel update ratio to determine the fuel cost per locomotive hour for each horsepower group. The updated fuel cost per locomotive unit hour for each applicable GMA group shall be multiplied by the number of locomotive unit hours incurred in serving the branch by locomotives of that GMA horsepower classification group. The total cost developed under this procedure for each horsepower classification shall be the locomotive fuel cost assignable to the branch line.

(iii) *Electric power purchased or produced for motive power—*All accounts designated XX-31-68 shall be assigned to the branch on the ratio of road electric locomotive unit hours on the branch to the total system road electric locomotive unit hours.

(iv) *Servicing locomotives—*All accounts designated XX-31-69 shall be assigned to the branch on the ratio of road locomotive unit miles on the

branch to the total system road locomotive unit miles.

(2) *Yard operations—(i) Switch Crews—Materials, Account 21-32-64, and Servicing Locomotives,* all accounts designated XX-32-69. The costs for these accounts shall be assigned to the branch on the ratio of yard locomotive unit hours on the branch to the system total yard locomotive unit hours.

(ii) *Locomotive fuel—*All accounts designated XX-32-67 shall be assigned to the branch on the ratio of yard diesel locomotive unit hours on the branch to the total system yard diesel locomotive unit hours.

(iii) *Electric power purchased or produced for motive power—*All accounts designated XX-32-68 shall be assigned to the branch on the ratio of yard electric locomotive unit hours on the branch to the total system yard electric locomotive unit hours.

(3) *Administrative support operations—(i) Loss and damage claims processing—*All accounts designated XX-35-78 shall be assigned to the branch on the ratio of the number of claims processed for loss or damage occurring on the branch to the total number of claims processed by the railroad.

(ii) [Reserved]

(4) *Transportation fringe benefits.* Fringe benefits shall be assigned to the branch separated between train operations, yard operations, train and yard operations common, specialized service operations, and administrative support operations. The costs for each activity shall be assigned to the branch on the ratio that the total branch salary and wages bear to the total system salary and wages for each activity shown below.

(i) *Train Operations, Account 12-31-00,* total of all 11-31-XX accounts branch to system.

(ii) *Yard Operations, Account 12-32-00,* total of all 11-32-XX accounts branch to system.

(iii) *Train and Yard Operations Common, Account 12-33-00,* total of all 11-33-XX accounts branch to system.

(iv) *Specialized Service Operations, Account 12-34-00,* total of all 11-34-XX accounts branch to system.

(v) *Administrative Support, Account 12-35-00,* total of all 11-35-XX accounts branch to system.

(d) *General administrative.* (1) *Fringe Benefits, Account 12-61-00,* shall be assigned to the branch on the ratio that the total branch salary and wages in all 11-61-XX accounts bear to the system total salary and wages in all 11-61-XX accounts.

(2) [Reserved]

§ 1152.34 Return on investment.

Return on investment for road property shall be computed according to the procedures set forth in this section.

(a) [Reserved]

(b) [Reserved]

(c) *Return on investment—road properties.* Return on investment—road properties shall be computed according to the following procedures:

(1) The investment base to which the nominal return element shall apply shall be the sum of:

(i) The allowable working capital computed at 15 days on-branch cash avoidable costs (on branch avoidable costs less depreciation).

(ii) The amount of current income tax benefits resulting from abandonment of the line which would have been applicable to the period of the subsidy agreement. (Conversely, if the railroad would incur an income tax liability from abandonment, the liability should be deducted from the investment base.) This information is to be furnished by the railroad and subject to audit by the person offering the subsidy.

(iii) The net liquidation value for the highest and best use for non-rail purposes of the rail properties on the line to be subsidized which are used and required for performance of the services requested by the persons offering the subsidy. This value shall be determined by computing the current appraised market value of such properties for other than rail transportation purposes, less all costs of dismantling and disposition of improvements necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations. If rehabilitation has been performed along the line during a subsidy year and rehabilitation expenses have been paid by the subsidizer under 49 CFR 1152.32(m)(2), the investment base shall exclude the increment to the net liquidation value of the line caused by the rehabilitation project. For these purposes:

(A) In calculating the net liquidation values for the Forecast Year, no asset on the line shall be excluded from the determination of net liquidation value because it contributes negatively to that value, i.e., the removal costs exceed the market value after removal. All such assets shall be included in the net liquidation value determination if the carrier is required by law to remove them or if the carrier intends to remove

them, even if it is not required to do so. The parties shall fully support and explain the exclusion for net liquidation purposes of all assets having a negative salvage value.

(1) In calculating the net liquidation value of railroad properties for the purpose of determining the operating subsidy under an offer of financial assistance, any asset with a negative salvage value shall be included at a value of zero (0).

(2) Determination of the net liquidation value of rail properties for the purpose of purchasing the rail properties under an offer of financial assistance shall include any asset with a negative salvage value at a value of zero (0).

(B) All adjustments to the appraised fair market value of right-of-way land, including a downward adjustment to reflect an imputed real estate commission or selling expense, shall be fully supported and explained.

(C) Parties shall fully support and explain their use of unadjusted across-the-fence (ATF) values as a surrogate for the value of railroad right-of-way land, given that the physical and economic characteristics (grading and elevation) usually are different from those of surrounding parcels. All adjustments to ATF values to arrive at the right-of-way values shall also be supported and explained.

(2) [Reserved]

(d) *Reasonable return.* A rail carrier shall furnish to the Board, and to any financially responsible person considering making an offer of a rail service continuation payment, a substantiated statement showing its current nominal cost of capital. The railroad's nominal cost of capital shall be the current before tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and state income tax rates. This rate of return expressed as a percent, shall be calculated as follows:

(1) The railroad shall determine its permanent capital structure ratio for debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Board's latest Determination of Adequate Railroad Revenues will be used. However, if the debt-equity ratio for the railroad industry is used then the industry

average equity and debt rate from the Board's latest revenue adequacy finding must also be used in paragraphs (d)(2) and (d)(3) of this section.

(2) The current nominal cost of debt shall be determined by taking the average of all debt instruments (including bonds, equipment trust certificates, financial lease arrangements, et cetera) issued by the carrier in the most recent 12-month period. The debt cost calculated by this procedure is a before-tax rate and is not adjusted for inflation or income taxes.

(3) The current nominal after tax cost of equity shall be an amount equal to that which a prudent investor would expect to earn through investment in the market place. The current after tax nominal cost of equity is divided by 1 minus the combined statutory Federal and state income tax rates. This will develop the nominal cost of equity on a before tax basis.

(4) The current nominal before-tax cost of debt is multiplied by the current percentage of debt to total capital to obtain a weighted before-tax nominal cost of current debt.

(5) The current nominal before-tax cost of equity is multiplied by the current percentage of equity to total capital to obtain a weighted nominal before-tax cost of current equity.

(6) The results of paragraphs (d)(4) and (d)(5) of this section are added together to determine the current nominal cost of capital.

(e) *Holding gain (loss)-road properties.* The railroad shall determine the holding gain (loss) that is projected to occur during the forecast and/or subsidy year. In any instance where the holding gain is not specifically determined for road properties, the Gross Domestic Product deflator calculated by the U.S. Department of Commerce shall be used.

§ 1152.35 [Reserved]**§ 1152.36 Submission of revenue and cost data.**

The following information shall be submitted by applicant as Exhibit 1 to an abandonment or discontinuance application (§ 1152.22(d)) and shall be developed in accordance with the methodology established in §§ 1152.31 through 1152.35, as applicable. Such information, form and methodology shall also be used by an offeror of financial assistance to formulate a Proposed Subsidy Payment (§ 1152.27).

	Base year operations	Forecast year operations	Projected subsidy year operations
Revenues attributable for:			
1. Freight originated and/or terminated on branch			
2. Bridge traffic			
3. All other revenue and income			
4. Total revenues attributable (lines 1 through 3)			
Avoidable costs for:			
5. On-branch costs (lines 5a through 5k)			
a. Maintenance of way and structures			
b. Maintenance of equipment			
c. Transportation			
d. General administrative			
e. Deadheading, taxi, and hotel			
f. Overhead movement			
g. Freight car costs (other than return on freight cars)			
h. Return on value-locomotives			
i. Return on value-freight cars			
j. Revenue taxes			
k. Property taxes			
6. Off-branch costs			
a. Off-branch costs (other than return on freight cars)			
b. Return on value-freight cars			
7. Total avoidable costs (line 5 plus line 6)			
Subsidization costs for:			
8. Rehabilitation ¹			
9. Administration costs (subsidy year only) ²			
10. Casualty reserve account ²			
11. Total subsidization costs (lines 8 through 10)			
Return on value:			
12. Valuation of property (lines 12a through 12c)			
a. Working capital	XXXX.		
b. Income tax consequences	XXXX.		
c. Net liquidation value	XXXX.		
13. Nominal rate of return	XXXX.		
14. Nominal return on value (line 12 times line 13) ³	XXXX.		
15. Holding gain (loss)	XXXX.		
16. Total return on value (line 14 minus line 15) ³	XXXX.		
17. Avoidable loss from operations (line 4 minus line 7)			
18. Estimated forecast year loss from operations (line 4 minus lines 7 and 16)			
19. Estimated subsidy (line 4 minus lines 7, 11 and 16)			

¹ This projection shall be computed in accordance with § 1152.32(m).

² Omit in applications pursuant to §§ 1152.22 and 1152.23.

³ If the amount in line 12c is a negative for the "Forecast Year operations" insert "0" in this line.

§ 1152.37 Financial status reports.

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to the financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Significant deviations from the negotiated estimates must be explained. All data shall be developed in accordance with the methodology set forth in §§ 1152.31 through 1152.35. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues for:		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues (lines 1 through 3)		
Avoidable costs for:		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		

	Actual	Projected
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for:		
8. Rehabilitation		
9. Administrative costs		
10. Casualty		
11. Total subsidization costs (lines 8 through 10)		
Return on value:		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax consequences		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
Subsidy payment:		
15. Subsidy payment (line 4 minus lines 7, 11, and 14)		

Subpart E—[Reserved]

Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights

§ 1152.50 Exempt abandonments and discontinuances of service and trackage rights.

(a)(1) A proposed abandonment or discontinuance of service or trackage rights over a railroad line is exempt from the provisions of 49 U.S.C. 10903 if the criteria in this section are satisfied.

(2) Whenever the Board determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. 10903, whether under this section or on the basis of the merits of an individual petition, the provisions of §§ 1152.27, 1152.28, and 1152.29 as they relate to exemption proceedings shall be applicable.

(b) An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending), or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.

(c) The Board has found:

(1) That its prior review and approval of these abandonments and discontinuances is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and

(2) That these transactions are of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power. 49 U.S.C. 10502. A notice must be filed to use this class exemption. The procedures are set out in § 1152.50(d). This class exemption does not relieve a carrier of its statutory obligation to protect the interests of employees. 49 U.S.C. 10502(g) and 10903(b)(2). This also does not preclude a carrier from seeking an exemption of a specific abandonment or discontinuance that does not fall within this class.

(d) *Notice of exemption.* (1) At least 10 days prior to filing a notice of exemption with the Board, the railroad seeking the exemption must notify in writing:

(i) The Public Service Commission (or equivalent agency) in the state(s) where the line will be abandoned or the service or trackage rights discontinued;

(ii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);

(iii) The National Park Service, Recreation Resources Assistance Division; and

(iv) The U.S. Department of Agriculture, Chief of the Forest Service.

The notice shall name the railroad, describe the line involved, including United States Postal Service ZIP Codes, indicate that the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Board. The notice shall include the following statement "Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it."

(2) The railroad must file a verified notice using its appropriate

abandonment docket number and subnumber (followed by the letter "X") with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The notice shall include the proposed consummation date, the certification required in § 1152.50(b), the information required in §§ 1152.22(a) (1) through (4), (7) and (8), and (e)(5), the level of labor protection, and a certificate that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been complied with.

(3) The Board, through the Director of the Office of Proceedings, shall publish a notice in the Federal Register within 20 days after the filing of the notice of exemption. The notice shall include a statement to alert the public that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Petitions to stay the effective date of the notice on other than environmental or historic preservation grounds must be filed within 10 days of the publication. Petitions to stay the effective date of the notice on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the Board to consider and act on the petition before the notice becomes effective. Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions under 49 U.S.C. 10905 and 49 CFR 1152.28(a)(2) must be filed within 20 days after publication. Requests for a trail use condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be filed within 10 days after publication. The exemption will be effective 30 days after publication, unless stayed. If the notice of exemption contains false or misleading information, the use of the exemption is

void *ab initio* and the Board shall summarily reject the exemption notice.

(4) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Board, on its own motion, will stay the effective date of individual notices of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

(5) A notice or decision to all parties will be issued if use of the exemption is made subject to environmental, energy, historic preservation, public use and/or interim trail use and rail banking conditions.

(6) To address whether the standard labor protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), adequately protect affected employees, a petition for partial revocation of the exemption under 49 U.S.C. 10502(d) must be filed.

(e) *Consummation notice.* As provided in § 1152.29(e)(2), rail carriers that receive authority to abandon a line under § 1152.50 must file with the Board a notice that abandonment has been consummated.

Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances of Service or Trackage Rights Filed Under the 49 U.S.C. 10502 Exemption Procedure

§ 1152.60 Special rules.

(a) This section contains special rules applicable to any proceeding instituted under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line. General rules applicable to any proceeding filed under the 49 U.S.C. 10502 exemption procedure may be found at 49 CFR part 1121, but the rules in part 1152 control in case of any conflict with the general exemption rules. In the case of petitions for

exemption for abandonment, notice of the filing of the petition will be published in the Federal Register 20 days after the petition is filed. There will be no further Federal Register publication later if and when a petition is granted.

(b) Any petition filed under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line must be accompanied by a map that meets the requirements of § 1152.22(a)(4) of this part.

(c) A petitioner for an abandonment exemption shall submit, with its petition, a draft Federal Register notice of its petition according to the form prescribed below:

Draft Federal Register Notice. The petitioner shall submit a draft notice of its petition to be published by the Board within 20 days of the petition's filing with the Board. The petitioner must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The draft notice shall be in the form set forth below:

STB No. AB-____ (Sub-No.____)

Notice of Petition for Exemption to Abandon or to Discontinue Service

On (insert date petition was filed with the Board) (name of petitioner) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of (the discontinuance of service on) a line of railroad known as _____, extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes, a distance of _____ miles, in [County(ies), State(s)]. The line for which the abandonment (or discontinuance) exemption request was filed includes the stations of (list all stations on the line in order of milepost number, indicating milepost location).

The line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by (specify the appropriate conditions).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

(d) A petitioner for an abandonment exemption must serve a copy of the petition on the persons receiving notices of exemption under § 1152.50(d). The petition must include the following statement: "Based on information in our possession, the line (does) (does not) contain federally granted right-of-way. Any documentation in petitioner's possession will be made available promptly to those requesting it."

(e) As Provided in § 1152.29(e)(2), rail carriers that receive authority to abandon a line by individual exemption under 49 U.S.C. 10502 must file with the Board a notice that abandonment has been consummated.

[FR Doc. 96-32229 Filed 12-23-96; 8:45 am]

BILLING CODE 4915-00-P