GM unsuccessfully argued in its original petition that the test points at issue were intended to measure illumination of overhead signs and did not represent areas of the beam pattern that illuminate the road surface. GM also contended that a general ''rule of thumb'' implied that a 25% difference in light intensity is not significant to motor vehicle safety. The 25% rule of thumb cited by GM in its original petition has been applied to the observation of signal lamps, and not reflected light from lower beam headlamps.

In the notice denying GM's first application, the agency stated that the photometric minima above the horizon were added to headlighting performance requirements in the 1993 final rule for the purpose of ensuring that headlamps would sufficiently illuminate overhead signs. Because States were choosing to use retroreflectorized overhead signs rather than the more expensive self-illuminated ones, there was an increasing need for illumination of overhead signs. Without any test point minima specified, some manufacturers were designing headlamps that provided very little light above the horizontal. These photometric minima were established through a rulemaking proceeding. As part of that rulemaking, research by the Federal Highway Administration (FHWA) linking required sign detection distances needed to initiate proper motorist reactions to the overhead signs was considered. Based on this research, the FHWA had proposed photometric minima approximately double those that were established. In the final rule published January 12, 1993 [58 FR 3856], the agency indicated that the rulemaking addresses a safety issue, a conclusion also supported by the Society of Automotive Engineers (SAE) Beam Pattern Task Force. Specifically, SAE J1383 ''Performance Requirements for Motor Vehicles Headlamps'' was modified in June of 1990 to include the same photometric minima (the SAE document lists minima for inclusive test zones instead of just test points) adopted by this agency in the 1993 final rule.

In its appeal, GM stated the following to support its petition:

GM recently obtained and tested twenty-one pairs of headlamps from used 1999 Regal and Century vehicles built between August 1998 and March 1999. The 42 headlamps all exceed the minimum photometric requirements of FMVSS 108. This was true for the sign illumination test points as well as all other test points. The weathering of the lenses over the past two to three years accounts for this change in performance.

Because overhead sign illumination is affected by the output of both headlamps, GM asked two independent lighting research experts to analyze overhead sign illumination based on the test results of [a separate] ten pairs of [new, unused] headlamps. Their report shows that the combined sum of the illumination from any combination of two of those headlamps exceeds twice the minimum illumination from each headlamp required by FMVSS 108. The system light output, therefore, exceeds the implicit functional requirement of the standard.

GM concluded that the new data indicate that customers driving these vehicles are and have been experiencing no less than the amount of overhead sign illumination that FMVSS 108 requires. On this basis, GM argued the noncompliance is inconsequential and thus, GM requested NHTSA to reverse its earlier decision.

Advocates restated its previous opposition to granting the application. In its view, the issue is not whether the lamps eventually came into compliance, but whether they were compliant at the time of manufacture and sale. It asserts that GM's rationale is mooted by GM's own admission that the lamps were noncompliant at the time of manufacture. Advocates concludes that adoption of such a stance by the agency would render compliance with a standard contingent upon fortuitous, later in-service conditions.

After considering the arguments presented by GM, the comment of Advocates, and other relevant facts in this proceeding, we have decided to deny GM's appeal.

First, we believe that GM's argument about changed performance of the headlamps due to two or three years of weathering of the lenses is not relevant to whether the noncompliance is inconsequential to motor vehicle safety. Just as the issue of whether a vehicle complies, or does not comply, with a safety standard is determined based on the performance of the vehicle when it is new, the issue of whether a noncompliance is inconsequential to motor vehicle safety is determined based on the performance of the vehicle when it is new. However, we will consider the current performance of these headlamps in the context of whether it is appropriate to require GM to replace all of the noncompliant lamps.

Second, we do not accept GM's argument about combining values for the sign light test points on a set of lamps. GM did not present any evidence that sign light at a right side test point complements the light from a left side test point in the real world. The consultants cited by GM do not address this issue. Their report assumes that the lateral offset of the two lamps from each other is relatively small in relation to the distances at which traffic signs are typically viewed. Consequently, the report assumes that a given traffic sign will be located at only slightly different horizontal angles in relation to the left and right headlamp. However, GM did not present any data to justify this assumption in a real world testing environment, or to demonstrate that light from the right hand lamp is complementary to the intensities for sign light test points of a left hand lamp. Furthermore, the agency previously rejected the argument that other lamps can compensate for noncompliant lamps, in a denial of an inconsequentiality petition filed by Nissan in 1997.

In that denial [62 FR 63416], NHTSA rejected Nissan's argument that a bright Center High Mounted Stop Lamp (CHMSL) can compensate for a noncompliant stop lamp. The agency found that the Nissan noncompliance could lead drivers following the subject vehicles to mistake the dim stop lamps as tail lamps, increasing the risk of a crash.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, GM's appeal is hereby denied.

Authority: (49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 5, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–500 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.022 (2.2%) as the measure of average change in railroad productivity for the 1998–2002 (5-year) period. The current value of 1.9% was developed for the 1997 to 2001 period.

DATES: Comments are due 15 day after the date of this decision.

EFFECTIVE DATE: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, call, or pick up in person from the Board's contractor, ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7878. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

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

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 6, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 04–547 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–855 (Sub–No. 1X), and AB–847 (Sub–No. 2X)]

A & R Line, Inc.—Abandonment Exemption—in Cass and Pulaski Counties, IN; Toledo, Peoria & Western Railway Corporation—Discontinuance of Service, Exemption—in Cass and Pulaski Counties, IN

AGENCY: Surface Transportation Board.

ACTION: Notice to the Parties.

SUMMARY: The Surface Transportation Board's Section of Environmental Analysis is correcting the environmental assessment (EA) served on September 29, 2003. The correct length of the line sought to be abandoned and discontinued is 21 miles. All other information in the EA remains unchanged.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, (202) 565–1554. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On September 29, 2003, the section of Environmental Analysis (SEA) served an environmental assessment (EA), which described the length of the line sought to be abandoned and discontinued as 15.9 miles. On December 23, 2003, Counsel for A&R Line, Inc., and the Toledo, Peoria & Western Railway Corporation (carriers) filed a ''Motion to Amend the Pleadings and Decisions and Hold Offer of Financial Assistance Process in Abeyance.'' [1] Included in the motion was a request for the Board to amend the pleadings and decisions to reflect the correct length of the line as 21 miles. According to the carriers, the pleadings contained incorrect information pertaining to the total mileage involved in this proceeding, and this misstatement of the mileage occurred because there are currently two milepost designations, Milepost 5.1W and Milepost 0.0, for the same location. Therefore, the EA should have stated that the line runs from Milepost 0.0, near Kenneth, to Milepost 21.0W, near Winamac, for a total distance of 21 miles. SEA considered the impact that the abandonment and discontinuance would have on the area between Kenneth and Winamac, which covered the full 21 miles of the line. Therefore, all other information in the EA remains unchanged.

Please correct your copies accordingly.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 6, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 04–548 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board is currently considering the motion.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 175X)]

Illinois Central Railroad Company—Abandonment Exemption—in Mobile County, AL

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.03-mile line of railroad between milepost 3.67 and milepost 4.7 in Prichard, Mobile County, AL. The line traverses United States Postal Service Zip Code 36610.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 11, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).