

(16) A certificate stating that the service requirements of § 1151.2(a) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

[48 FR 9654, Mar. 8, 1983, as amended at 56 FR 37862, Aug. 9, 1991]

§ 1151.4 Commission determination.

(a) The Commission shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Commission must find that:

(1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that adequate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Commission finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

(1) Either

(i) The public convenience and necessity require or permit the sale of line or line segment; or

(ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

(2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: This finding will not be required for applications filed after October 1, 1983).

(c) If the Commission finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Commission shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the

adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Commission to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Commission shall, pursuant to 49 U.S.C. 10705(a), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

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

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APPENDIX

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. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, and 11163.

SOURCE: 41 FR 48520, Nov. 4, 1976, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

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(a) provides that no line of railroad may be abandoned and no rail service discontinued unless the Commission has issued a certificate of public convenience and necessity authorizing the abandonment or discontinuance.

(b) Part 1152 contains regulations governing abandonment and discontinuance of service over rail lines. This part also sets forth procedures for

providing financial assistance to assure continued rail freight service and for acquisition of rail lines for alternate public use.

[48 FR 54236, Dec. 1, 1983]

§ 1152.2 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

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

(b) *Act* means the Interstate Commerce Act (49 U.S.C. 10101 *et seq.*) 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 has been collected at the branch level as prescribed in § 1152.30(b).

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

(e) *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.

(f) *Commission* means the Interstate Commerce Commission.

(g) *Designated state agency* means the instrumentality created by a State or designated by appropriate authority to administer or coordinate its state rail plan as required by 49 U.S.C. 1654(5)(j)(2), or regulations promulgated pursuant thereto.

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

(i) *Form R-1* means the railroad's annual report filed with the Commission 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. 10905.

(k) *Office* means the section of Rail Services Planning established by Section 205 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 715) as amended.

(l) *Rail Act* means the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (90 Stat. 31).

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

(n) *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.

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

(p) *GMA* means the General Managers Association of Chicago.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978; 45 FR 18008, Mar. 20, 1980. Redesignated and amended at 47 FR 49581, Nov. 1982; 48 FR 44828, Sept. 30, 1983; 48 FR 54236, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988; 56 FR 61387, Dec. 3, 1991]

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.

(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 any amended diagram, is filed with the Commission;

(2) All lines or portions of lines potentially subject to abandonment are 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 Commission on the date upon which the diagram, or any amended diagram, is filed with the Commission;

(4) All lines or portions of lines which are being operated under the rail service continuation provisions of 49 U.S.C. 10905 or of section 304(c)(2) of the Regional Rail Reorganization Act of 1973, as amended, on the date upon which the diagram, or any amended diagram, is filed with the Commission; 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 of which any portion is located within 5 air miles of a rail line owned or operated by the carrier. A series of interrelated maps may be utilized where the system serves a very large or

congested area. An explanation of the interrelationship must be furnished.

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978. Redesignated and amended at 47 FR 49581, Nov. 1, 1982; 48 FR 54236, Dec. 1, 1983]

§ 1152.11 Description of lines to accompany the system diagram map.

Each carrier 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 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 milestone designations.

§ 1152.12 Filing and publication.

(a) Each carrier shall file with the Commission six copies of its color-coded system diagram map (identified by its "AB number" as set forth in the appendix to this part) and the accompanying line descriptions. If a revised map is filed, the line descriptions for the lines which were revised must be filed.

(b) The color-coded system diagram map, any amendments of the map, 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 map clearly depicting its lines in that county); and (ii) a description of each line;

(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); and

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

(d) Each carrier shall file with the Commission 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 and each amended system diagram map as required in paragraph (a) of this section shall be deemed to be the date upon which the Commission receives the affidavit required in this paragraph.

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

[43 FR 30557, July 17, 1978, as amended at 43 FR 45588, Oct. 3, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54236, Dec. 1, 1983]

§ 1152.13 Amendment of the system diagram map.

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

(b) Every system diagram listing a line in category 2 (§ 1152.10(b)(2)) shall be revised annually. Each annual revision shall clearly reflect the carrier's decision whether to transfer each such line to category 1 or 5 (§ 1152.10(b)(1) or (5)) or to retain the line in category 2 for further study.

(c) By June 30 of each year, each carrier shall file with the Commission:

- (1) A revised and updated color-coded system diagram map and line descriptions which shall be subject to the filing and publication requirements of § 1152.12.

(2) A verified statement by a corporate officer having authority to so certify that no change has occurred in the categories of lines shown on its most recently filed system diagram map and accompanying descriptions.

(d) Under 49 U.S.C. 10904, the Commission is precluded from issuing a certificate of abandonment or discontinuance if the abandonment or discontinuance application is opposed by a significant user, a State, or a political subdivision of a State unless the line involved is identified and described on the system diagram map for at least 4 months prior to the filing of such application. The 4-month minimum notice period of section 10904(e)(3) will be deemed to have commenced only for a line or portion of a line which is designated on the carrier's system diagram map as a line in category 1 (§ 1152.10(b)(1)).

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 30557, July 17, 1978; 45 FR 18008, Mar. 20, 1980. Redesignated and amended at 47 FR 49581, Nov. 1, 1982; 48 FR 54236, Dec. 1, 1983]

§ 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 line description together with a description of such a line and any appurtenant facilities and of their condition.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982]

§ 1152.15 Reservation of jurisdiction.

49 U.S.C. 10904(e)(1) authorizes the Commission, at its discretion, to provide for designation of lines as "potentially subject to abandonment" under standards which vary by region of the Nation, by railroad, or by group of railroads. The Commission expressly reserves the right to adopt such varying standards in the future.

[41 FR 48520, Nov. 4, 1976. Redesignated and amended at 47 FR 49581, Nov. 1, 1982]

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public 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 Commission, 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 (Bureau of Outdoor Recreation) (Recreation Resources Assistance Division, National Park Service), and (Land Resources Division, National Park Service); (ix) the U.S. Railroad Retirement Board; (x) the Commission's Office of Special Counsel; (xi) the National Railroad Passenger Corporation ("Amtrak") (if Amtrak operates over the involved line); (xii) the headquarters of the Railroad Labor Executives' Association; and (xiii) the U.S. Department of Agriculture, Chief of the Forest Service. 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 Commission either concurrently with service or when the Notice is first published (whichever occurs first).

(c) *Historic site data.* When a carrier files a Notice of Intent, it must also submit the historic site data described at § 1105.7(c)(10). This information must be submitted to the Commission and to the State Historic Preservation Officer (as defined in 36 CFR 800.2(h)) of each State in which any part of the involved line is located.

[48 FR 54236, Dec. 1, 1983, and 49 FR 15088, Apr. 17, 1984, as amended at 55 FR 31600, Aug. 3, 1990; 56 FR 35835, July 29, 1991; 56 FR 36111, July 31, 1991; 56 FR 38175, Aug. 12, 1991]

§ 1152.21 Form of notice.

The notice of intent to abandon or to discontinue service shall be in the following form:

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 Commission) it intends to file with the Interstate Commerce Commission, Washington, D.C. 20423, an application for a certificate permitting 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 for which the abandonment (or discontinuance) application will be filed 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 in category 1 since (insert date).

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

Any interested person, after the application is filed on (insert date), is entitled to file with the Interstate Commerce Commission written comments concerning the proposed abandonment (or discontinuance) or protests to it.

Protests must contain 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).

(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.

(5) If an oral hearing is desired, a request for and reasons why an oral hearing is necessary.

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

(i) Intent to offer financial assistance;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Suitability of the properties for other public purposes;

(v) Recommended provisions for protection of the interests of employees; 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.

Written comments and protests will be considered by the Commission in determining whether an investigation is needed to assist in determining what disposition to make of the application. The Commission will automatically direct investigation if a protest is filed which demonstrates: (1) The protestant filed a feeder line application under 49 U.S.C. 10910; (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 Commission. If an investigation is conducted, the commenting party or protestant may participate in the proceeding as its interests may appear.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively in either oral hearing or through the submission of additional material in the form of verified statements. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests should indicate the proceeding designation No. AB_____ (Sub-No. _____) and should be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, no later than (insert the date 30 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Commission 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 2 copies of all comments or protests shall be filed with the Commission with a certificate of service.

If no protests are received within 30 days after the application is filed, the Commission will grant the abandonment (or discontinuance) request and issue a certificate which permits the abandonment (or discontinuance) to occur within 75 days after the application is filed.

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Commission decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10905 and 49 CFR 1152.27). 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 Interstate Commerce Commission's Office of Proceedings or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Commission's Section of Energy and Environment.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Commission) 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 (or environmental impact statement, if necessary) prepared by the Section of Energy and Environment 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 Energy and Environment. EA's 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 Commission's decision. A supplemental EA may be issued where appropriate.

[48 FR 54237, Dec. 1, 1983, as amended at 51 FR 16852, May 7, 1986; 55 FR 31600, Aug. 3, 1990; 56 FR 36111, July 31, 1991]

§ 1152.22 Contents of application.

Applications for certificates of public convenience and necessity permitting the abandonment of railroad lines or the discontinuance of rail service shall contain the following information and each paragraph (a) through (i) 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 the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be

discontinued is a part of any railroad system.

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

(5) Detailed map of the subject line on a sheet not larger than 8 x 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.

(6) 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, in compliance with §§1152.10 through 1152.13, and the date upon which such line was first listed on the system diagram map 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.

(7) Detailed statement of reasons for filing application.

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

(b) *Condition of properties.* (1) 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 I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service provided.* Description of the service performed on the line during each of the 2 calendar years immediately preceding the filing of the application, for that part of the current year for which information is available, and for the base year (as defined

by §1152.2(c)), if different, 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) Carload commodity group tonnage on the line.

(5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier).

(6) Average crew size.

(7) Level of maintenance.

(8) Any important changes in train service undertaken in the 5 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 is 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 same computation shall be made for the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available using data collected at the branch level to the extent available and otherwise allocating system revenues and expenses to the line. The basis for any such allocation shall be stated with particularity.

(3) 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.

(4) 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 I safety standards, shall be stated with particularity.

(5) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operating income for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(6) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for each of the 2 calendar years immediately preceding the filing of the application and for that part of the current year for which information is available.

(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(n), by name, address, principal commodity, and by tonnage and/or carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application and for that part of the current year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and na-

ture of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(5) Statement of whether the properties proposed to be abandoned are suitable 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. 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 49 U.S.C. 10908-10909 or the Rail Passenger Service Act. (45 U.S.C. 501 *et seq.*)

(h) *Financial statements.* (1) Carrier's general balance sheet as of the latest date available.

(2) Carrier's income statement for each of the 2 calendar years immediately preceding the filing of the application for abandonment or discontinuance and for that portion of the current year for which information is available.

(i) *Additional information.* The application shall submit such additional information to support its application as the Commission may require.

(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.

VERIFICATIONS

State of _____ ss.
 County of _____
 _____ (Name of affiant)
 makes oath and says that he is the
 _____ (Title of Affiant) of the
 _____ (Name of applicant) appli-
 cant herein; that he has been authorized by
 the applicant (or as appropriate, a court) to
 verify and file with the Interstate Commerce
 Commission the foregoing application in AB-
 _____ (Sub-No. _____); that he has carefully
 examined all of the statements in the appli-
 cation as well as the exhibits attached there-
 to and made a part thereof; that he has
 knowledge of the facts and matters relied
 upon in the application; and that all rep-
 resentations set forth therein are true and
 correct to the best of his knowledge, infor-
 mation, 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 _____

[41 FR 48520, Nov. 4, 1976, as amended at 42 FR 25327, May 17, 1977; 43 FR 30557, July 17, 1978; 43 FR 45588, Oct. 3, 1978; 46 FR 45348, Sept. 11, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 44828, Sept. 30, 1983; 48 FR 54237, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988; 54 FR 18517, May 1, 1989]

§ 1152.23 Summary application.

(a) If the applicant anticipates no substantial or material opposition to an application for abandonment or discontinuance, it may omit from the application the information required under §1152.22, except that required under paragraphs (a), (d)(3), (e), (f), and (i) of that section. All notice and publication requirements of §§1152.20, 1152.21, and 1152.22 must be followed for a summary application.

(b) A summary application must contain a certification that applicant is not aware of any substantial and material objection to the application.

(c) If an investigation is ordered to be conducted (§1152.26), of a summary application, the applicant must file the remainder of the information required in a standard long-form application under §1152.22 within 60 days of the service date of the Commission's order instituting the investigation. The actual date of filing of the application, as supplemented, for the purposes of complying with all statutory timetables,

shall be deemed to be the date upon which such additional complete information is received by the Commission.

(d) If the information necessary to complete a summary application which has been made the subject of an investigation is not received by the Commission within the 60 day period under paragraph (c) of this section, the summary application may not be refiled prior to 1 calendar year from the service date of the order of dismissal.

(e) A check or money order payable to the Interstate Commerce Commission must be submitted with the application to cover the applicable filing fee.

[41 FR 48520, Nov. 4, 1976. Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 48 FR 54238, Dec. 1, 1983; 49 FR 18494, May 1, 1984]

§ 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 Interstate Commerce Commission, 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 Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(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 Commission, 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, and on the Commission's Section of Rail Services Planning. A copy of the application will be available for public inspection, on or after the date the abandonment application is filed with the Commission, 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 Commission.

(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 petition to investigate upon request. A certificate of service shall promptly be filed with the Commission.

(e)(1) The Commission 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 in conformance with the regulations of subpart B of this part.

(2) Upon the filing of an abandonment or discontinuance application, the Commission 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 Commission 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.

(3) A revised application may be submitted, and the Commission 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 periods prescribed in 49 U.S.C. 10904, *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 Commission. 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 Commission. 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.

[41 FR 48520, Nov. 4, 1976. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 44828, Sept. 30, 1983; 48 FR 54238, Dec. 1, 1983; 49 FR 14955, Apr. 16, 1984; 53 FR 19302, May 27, 1988]

§ 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 Commission. 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).

(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) If an oral hearing is desired, a request for and reasons why an oral hearing is necessary.

(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;
- (ii) Environmental impact;
- (iii) Impact on rural and community development;
- (iv) Suitability of the properties for other public purposes;
- (v) Recommended provisions for protection of the interests of employees; 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) *Investigations.* (i) Based on the written comments and protests, the Commission will determine whether an investigation is needed to assist in determining what disposition to make of the application. The Commission will automatically direct investigation if a protest is filed which demonstrates:

- (A) The protestant filed a feeder line application under 49 U.S.C. 10910;
- (B) The feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application;
- (C) The feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and
- (D) The feeder line application is pending before the Commission.

(ii) If an investigation is conducted, parties filing written comments or protests may participate in the investigated proceeding. A party filing a protest should be prepared to actively participate either in modified procedure investigation (i.e. through the submission of written verified statements) or in oral hearing.

(b) *Employee or employee representative participation.* Employees or their representatives may file protests or comments to an application. However, since the Commission 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, and replies.* (1) Written comments and protests shall be filed with the Commission (the Secretary, Interstate Commerce Commission, Washington, DC 20423) within 30 days of the filing with the Commission of an abandonment or discontinuance application. Requests for public use conditions (see §1152.28(a)(3)) may be filed no later than 10 days after the date of publication in the FEDERAL REGISTER of the notice of findings that the public convenience and necessity require or permit the abandonment or discontinuance. The proposed date of filing of an abandonment or discontinuance application shall be included in the Notice of Intent required in §§1152.20 through 1152.21.

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

(3) A copy of each written comment or protest shall be served on applicant or its representative at the time of filing with the Commission. Each filing shall contain a certificate of service.

(4) Replies to written comments and protests will be considered by the Commission provided they are filed and served within 5 days of the due date of the pleadings they address. An original and 10 copies of such replies shall be filed with the Commission.

(d) *Time limits.* (1) Pleadings, requests or other papers or documents (including any comments or protests and any appeal from a Commission decision) required or permitted to be filed under this part must be received for filing at the Commission's Offices at Washington, DC within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails 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 Commission 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 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 Commission will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.

(6) Modified procedure: (i) If the Commission decides to institute an investigation under the modified procedure, the following time limits shall govern the submission of evidence:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served;

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served; and

(C) Applicant's reply verified statements due no later than 55 days after the date the decision instituting an investigation is served.

(ii) Under the schedule established in paragraph (d)(6)(i) of this section, parties shall not be permitted to file motions to strike all or part of any evidence submitted.

(7) Oral Hearings: (i) If the Commission decides to institute an investigation through oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements pursuant to paragraph (d)(7)(ii) of this section. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

(ii) The following time limits shall govern the submission of written evidence prior to the commencement of the hearing:

(A) Applicant's initial verified statements due no later than 15 days after the date the decision instituting an investigation is served; and

(B) Protestant's verified statements due no later than 40 days after the date the decision instituting an investigation is served. Any rebuttal evidence by applicant shall be received in the form of testimony at the oral hearing.

(iii) Post hearing legal briefs shall be due 20 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 to designate protested abandonment proceedings for investigation (including action on requests for oral hearing);

(ii) Whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations;

(iii) Whether partially to revoke or to reopen abandonment exemptions authorized, respectively, under 49 U.S.C. 10505 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

(iv) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903-04 (and abandonment exemption proceedings) as set forth in 49 CFR 1011.8(c)(4) and (5) will be acted on by the entire Commission as set forth at 49 CFR 1011.2(a)(8).

An original and 10 copies of all appeals, and replies to appeals, under this section should be filed with the Commission.

(2) *Appeals criteria*. (i) Appeals to the initial decision in non-protested proceedings or non-investigated (protested) proceedings will not be entertained. Those decisions are administratively final upon the date they are served.

(A) In a protested but not investigated proceeding, parties seeking further administrative action may file a petition to reopen the proceeding under paragraph (e)(6) of this section. If an abandonment or discontinuance is granted and a party wishes the Commission to consider a petition to reopen before the abandonment or discontinuance certificate becomes effective, it must file its petition within 15 days after the administratively final decision is served (together with any necessary request for a stay of the certificate's effectiveness). If a petition is received within that 15 day period, any replies to the petition must be filed no later than 25 days after the date the decision is served. The Commission will then announce whether it will grant the petition (and reopen the proceeding) by the 120th day after the application was filed (the last date upon which the certificate could become effective).

(B) In a proceeding that is not protested, since the Commission is required to authorize abandonment or discontinuance, the only subsequent pleadings permitted are petitions to vacate the certificate filed under paragraph (e)(8) of this section.

(ii) In investigated proceedings, the Commission may hear appeals in its discretion, if it finds that either:

(A) The action (if taken by an administrative law judge, an employee board, or a division) involves a matter of general transportation importance, or

(B) The action would be affected materially because of new evidence, changed circumstances, or material error.

(3) *Time limits.* (i) Any appeal from the initial decision in an investigated proceeding shall be filed no later than 20 days after the date the initial decision is served.

(ii) The Commission will announce whether it will hear an appeal filed under paragraph (e)(3)(i) of this section within 30 days after the date the initial decision is served. If the Commission decides to hear the appeal, other parties will be afforded 15 days from the date of service of the decision to file replies to the appeals.

(iii) In order to exhaust its administrative remedies, a party must file an appeal under paragraph (e)(3)(i) of this

section from the initial decision in an investigated proceeding no later than 20 days after the date the initial decision is served before seeking judicial review. In the event an appeal is timely filed, administratively final action for the purposes of this rule is deemed to occur when the Commission (A) issues its decision not to hear the appeal, (B) fails to issue such a decision within 30 days after the date the initial decision was served, or (C) hears the appeal and issues a decision on the appeal. If the Commission decides to hear the appeal, the decision to hear the appeal will operate as an automatic stay and no certificate will be issued until the Commission has acted on the appeal.

(4) *Form.* An appeal and any reply shall not exceed 30 pages in length, including the index of subject matter, argument, and appendices or other attachments.

(5) To the extent that an appeal requests further hearing, rehearing, reargument, or reconsideration, the appeal shall state in detail the nature of the relief requested and the reasons therefor. When a party seeks an opportunity to introduce evidence, the appeal must state briefly the evidence, explain why it is not cumulative, and explain why it was not previously adduced.

(6) Petitions to reopen administratively final actions: Except as provided for in paragraph (e)(2)(i)(B) of this section, a person may file a petition to reopen any administratively final action of the Commission. 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 should be filed with the Commission.

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

(ii) If an appeal or a petition seeking reopening is filed under this section, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its

pendency unless action might interfere with the court's jurisdiction.

(8) Petitions to vacate certificates: 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 Commission will entertain petitions to vacate certificates in these abandonment or discontinuance proceedings. An original and 10 copies of these petitions to vacate should be filed with the Commission.

(9) *Petitions to stay.* (i) The filing of an appeal shall not stay the effect of a prior action. An original and 10 copies of any petitions to stay should be filed with the Commission.

(ii) If an appeal is filed in an investigated proceeding, under paragraph (e)(2)(ii) of this section, a petition to stay is unnecessary and inappropriate. A certificate will not have been issued at that time and, if the Commission decides to hear the appeal, will not be issued until the Commission has acted upon the appeal. Therefore, there is no action requiring a stay.

(iii) A petition to reopen an administratively final action in a protested but non-investigated proceeding may be accompanied by a petition for a stay of the effectiveness of a certificate of abandonment or discontinuance, which permits the abandonment or discontinuance to occur prior to 120 days after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed. The petitions may seek postponement of the effectiveness of the certificate only until the 120th day after the application is filed, when effectiveness is required by law (49 U.S.C. 10904(c)(2)).

(iv) A party may petition for a stay of the effectiveness of a certificate of abandonment or discontinuance 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 10 days prior to the effective date of the certificate. No reply need be filed. If a party elects to file a reply, the reply must reach the

Commission no later than 5 days after the petition is filed.

[46 FR 45348, Sept. 11, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 47 FR 49582, Nov. 1, 1982; 48 FR 54238, Dec. 1, 1983; 49 FR 15087, Apr. 17, 1984; 51 FR 16852, May 7, 1986; 51 FR 21559, June 13, 1986; 53 FR 3401, Feb. 5, 1988; 53 FR 19302, May 27, 1988; 57 FR 13049, Apr. 15, 1992]

§ 1152.26 Commission determination and certification under 49 U.S.C. 10904.

(a) If no protests to an application are filed under §1152.25, the Commission shall (1) find that the public convenience and necessity require or permit the abandonment or discontinuance, and (2) no later than 45 days after the application is filed, issue a certificate which permits the abandonment or discontinuance to occur within 75 days after the application is filed.

(b) Upon receipt of a protest to an application under §1152.25, the Commission shall, no later than 45 days after the application is filed, determine whether an investigation is needed to assist in determining what disposition to make of the application.

(1) If no investigation is instituted, the Commission shall issue a decision no later than 75 days after the date the application is filed. If the Commission finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance, it shall issue a certificate no later than 90 days after the application is filed permitting the abandonment or discontinuance to occur no later than 120 days after the application is filed (unless the financial assistance procedures provided for in §1152.27 have not been concluded).

(2) If the Commission decides to institute an investigation, the investigation shall be completed no later than 135 days, and an initial decision issued no later than 165 days, after the date the application is filed.

(i) The initial decision following an investigation shall become the final decision of the Commission unless, during the 30 days following the initial decision, the Commission decides to hear appeals in accordance with the criteria set forth in §1152.25(e)(2)(ii).

(ii) If an initial decision following an investigation is appealed, and considered by the Commission in its discretion, the Commission shall issue a final decision no later than 255 days after the date the application is filed.

(iii) Whenever the Commission finds, following an investigation, that the present or future public convenience and necessity require or permit the abandonment or discontinuance, the Commission will issue a certificate no later than 15 days following the final decision, permitting the abandonment or discontinuance to occur no later than 75 days following issuance of the final decision (unless the financial assistance procedures provided for in § 1152.27 have not been concluded).

(3) A copy of the decision instituting an investigation of an abandonment or discontinuance application shall be served on the carrier which owns or operates the line of railroad or its representative. Copies of the decision shall also be served by the Commission on all parties which filed written comments and on all persons upon which copies of the application are required to be served under § 1152.24(c).

[46 FR 45350, Sept. 11, 1981; 46 FR 48216, Oct. 1, 1981. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54238, Dec. 1, 1983]

§ 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 Commission, the following:

(1)(i) *In an application 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 an 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 I Safety Standards (49 CFR part 213).

(b) *Federal Register notice.* (1) *Abandonment and discontinuance applications.* If the Commission finds that the present or future public convenience and necessity permit or require the proposed abandonment or discontinuance, the Commission will publish these findings in the FEDERAL REGISTER concurrently with the service of the decision. The FEDERAL REGISTER publication will serve as notice to persons intending to offer financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations as they relate to abandonment and discontinuance applications.

(2) *Exemption proceedings.* If the Commission exempts a proposed abandonment of a line of railroad from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the Commission will publish notice of this action in the FEDERAL REGISTER. The FEDERAL REGISTER publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service under 49 U.S.C. 10905 and these regulations as they relate to exempt abandonments and discontinuances.

(c) *Submission of financial assistance offer—(1) Abandonment and discontinuance applications.* (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 proceeding. The offer must be filed concurrently with the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application. Once notice of the abandonment findings is published in the FEDERAL REGISTER, however, the Commission 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 the FEDERAL REGISTER publication described in paragraph (b) 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 application, the Commission 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 Commission within 5 days after publication in the FEDERAL REGISTER (described in paragraph (b) 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 10 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 Commission will issue a decision on petitions within 15 days after publication.

(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;

(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) *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) of this section submit to the carrier and the Commission 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 either of the decision granting an individual exemption or 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, Interstate Commerce Commission, Washington, DC 20423.

(A) An offer may be filed and served at any time after the filing of the exemption petition or notice of exemption. Once notice of exemption is published in the FEDERAL REGISTER, however, the Commission 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) 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 exemption petition or notice of exemption, the Commission 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 Commission within 25 days after publication in the FEDERAL REGISTER (described in paragraph (b)(2) 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 Commission 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, applicant may advise the Commission 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 applicant the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Commission 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).

(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 whatever records, reports, and other data in the possession of the carrier seeking the exemp-

tion which provide data comparable to that which would have been utilized in preparing an Exhibit 1. 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 Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line, or

(ii) The acquisition cost of all or any portion of the line.

If these criteria are met, the Commission will issue a decision postponing the issuance of a certificate of abandonment or, if a certificate has been issued, postponing the effective date of the certificate. This decision will be issued within 15 days of the FEDERAL REGISTER publication described in paragraph (b) of this section (or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) 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. 10905(d) for purposes of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

(2) *Exemption proceedings.* The Commission will review each offer submitted to determine if the offeror is a financially responsible person offering assistance which is likely to cover:

(i) The difference between the revenues attributable to the line and the avoidable cost of providing freight service on the line plus a reasonable return on the value of the line; or

(ii) The acquisition cost of all or any portion of the line.

If these criteria are met, the Commission will postpone the effective date either of the decision granting an 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. 10905. The decision to postpone and partially revoke will be issued within 35 days of the FEDERAL REGISTER publication described in paragraph (b) of this section (or five days after the offer is filed if the time for filing has been tolled under paragraph (c)(2)(ii)(C) or (c)(2)(ii)(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. 10905(d) for purposes of partial revocation and negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10905(d) for purposes of partial revocation and negotiations will be acted upon by the entire Commission pursuant to the rule set forth at 49 CFR 1011.2(a)(8).

(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 Commission will postpone the issuance of a certificate authorizing the abandonment or discontinuance. If a certificate, decision granting an individual exemption, or notice of exemption has been issued, the Commission will postpone the effective date of the certificate, 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 Commission will approve the transaction and dismiss the application for abandonment or discontinuance, or the petition for exemption or notice of exemption. Commission approval is not required under 49 U.S.C. 10901 or 11343 for the parties to consummate the transaction or for the purchaser to institute serv-

ice 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 Commission to establish the conditions and amount of compensation. This request must be filed with the Commission within 30 days after the offer is made and served concurrently on all parties to the proceeding.

(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 Commission to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Commission will serve either:

(i) A certificate authorizing the abandonment or discontinuance within 10 days after the date the request to set conditions and amount of compensation was due (unless an appeal is being heard under §1152.25(e)), or

(ii) A decision vacating the prior decision, which postponed the effective date of either the decision granting the exemption or the notice of exemption and partially revoked either the decision granting the exemption or (in the case of a class exemption) the notice of exemption.

The certificate or decision to vacate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the date the request to set conditions and compensation was due (unless an appeal is being heard under §1152.25(e)).

(h) *Request to establish conditions and compensation for financial assistance.*

(1) If the Commission is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Commission will issue a decision within 60 days after the request is due (i.e., within 90 days after the offer is made).

(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 Commission to establish conditions and compensation for financial assistance must provide with the request, a narrative indicating the status of the negotiations between the parties and the likelihood of voluntary settlement prior to the issuance of a Commission decision setting terms. The party filing the request must also, within the time period set forth in paragraph (h)(4) of this section, provide 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 50 days after the offer is made. The offeror may submit rebuttal evidence within 60 days after the offer is made. Evidence and information submitted after these dates may be rejected.

(5) If requested, the Commission 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.

(6) If requested, the Commission will determine the price and other terms of sale. The Commission 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 Commission's decision, the offeror must accept or reject the Commission's terms and conditions with a written notification to the Commission and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Commission, the Com-

mission's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Commission with a timely written notification, the Commission will serve, within 20 days after the service date of the Commission decision setting the terms and conditions, either

(i) A certificate authorizing the abandonment or discontinuance (unless other offers are being considered under paragraph (l) of this section and unless an appeal is being heard under § 1152.25(e)), or

(ii) A decision vacating the prior decision, which postponed the effective date of either the decision granting the exemption or the notice of exemption and 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 certificate or decision to vacate will be effective on its date of service. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 20 days after the service date of the Commission decision setting the terms and conditions (unless other offers are being considered under paragraph (l) of this section or an appeal is being heard under § 1152.25(e)).

(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 Commission 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 Commission approval of the affiliate's acquisition and operation, however, is required under 49 U.S.C. 10901 or 11343. 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, the carrier may by filing a request with the Commission and serving the request on all parties to the abandonment or exemption proceeding obtain

(1) A certificate authorizing abandonment or discontinuance of service or

(2) A decision vacating the decision postponing the effective date of either the decision granting the exemption or the notice of exemption.

The Commission will issue a certificate or decision to vacate within 10 days after the filing and service of the request. This certificate or decision to vacate will be effective immediately. If a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 10 days after the filing and service of the request.

(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 Commission of that default. Upon notification, the Commission 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, the applicant must select the offeror with whom it wishes to transact business. In abandonment and discontinuance application proceedings within 25 days after the FEDERAL REGISTER publication described in paragraph (b)(1) of this section and in exemption proceedings within 45 days after the FEDERAL REGISTER publication described in paragraph (b)(2) of this section, applicant must:

(i) File a written notification of its selection with the Commission, and

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

(2)(i) *Abandonment and discontinuance applications.* If the applicant has received multiple offers of financial assistance 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 Commission to establish the conditions and amount of compensation within 40 days after the FEDERAL REGISTER publication described in paragraph (b)(1) of this section. The request 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 Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 50 days of the FEDERAL REGISTER publication described in paragraph (b)(1) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a certificate authorizing abandonment or discontinuance within 60 days of the FEDERAL REGISTER publication described in paragraph (b)(1) of this section (unless an appeal is being heard under §1152.25(e)). This certificate will be effective immediately. If no other request is filed and a certificate was issued but its effective date was postponed under paragraph (e) of this section, the certificate will become effective 60 days after the FEDERAL REGISTER publication described in paragraph (b)(1) of this section (unless an appeal is being heard under §1152.25(e)).

(ii) *Exemption proceedings.* If the carrier seeking the exemption has received multiple offers of financial assistance 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 Commission to establish the conditions and amount of compensation within 60 days after the FEDERAL REGISTER publication described in paragraph (b)(2) of this section. The request 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 Commission has not been requested to establish the conditions and amount of compensation, any other offeror may request the Commission to establish the conditions and amount of compensation. This request must be filed at the Commission within 70 days of the FEDERAL REGISTER publication described in paragraph (b)(2) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Commission will issue a decision vacating the decision postponing the effective date of either the decision granting exemption or (in the case of a class exemption) the notice of exemption within 80 days of the FEDERAL REGISTER publication described in paragraph (b)(2) of this section. The decision to vacate will be effective immediately.

(3) If the Commission has established the conditions and amount of compensation, and the original offer is withdrawn under paragraph (h)(7) of this section, any other offeror may accept the Commission's decision. If the decision is accepted by another offeror, the Commission will require the applicant to accept the terms incorporated in the Commission's decision.

[48 FR 55129, Dec. 9, 1983, as amended at 50 FR 36432, Sept. 6, 1985; 51 FR 2505, Jan. 17, 1986; 52 FR 48440, Dec. 22, 1987]

§ 1152.28 Public use procedures.

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

(2) A request for a public use condition under 49 U.S.C. 10906 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; 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 10 days from the date of publication of the notice of findings in the FEDERAL REGISTER. A decision on the public use request will be issued by 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 filed under 49 U.S.C. 10505, 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.

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

[48 FR 54238, Dec. 1, 1983, as amended at 49 FR 15087, Apr. 17, 1984; 57 FR 13049, Apr. 15, 1992]

§ 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 (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment 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 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. 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 Commission.

(b)(1) In regular (regulated) abandonment proceedings under 49 U.S.C. 10903-04, interim trail use statements are due within the 30-day protest and comment period following the date the abandonment application is filed. See § 1152.25(c).

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

(ii) In a nonprotested proceeding, when a timely trail use statement is filed, the Commission, by the 35th day after the abandonment application is filed, will issue a decision that either:

(A) Finds that the Trails Act is not applicable because of failure to comply with the provisions of § 1152.29(a); or

(B) Finds that the Trails Act is applicable and directs the carrier to notify the Commission, within 5 days, about whether it intends to negotiate an agreement.

If the Trails Act is not applicable, or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Commission of its intention to negotiate, the public convenience and necessity will be found to require or permit abandonment, and a certificate of abandonment will be issued pursuant to § 1152.26(a). If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Commission will issue a Certificate of Interim Trail Use or Abandonment by the 45th day after the application is filed.

(iii) In a protested but noninvestigated proceeding, when a timely trail use statement is filed, the initial decision determining that no investigation will be undertaken, which is issued

within 45 days after the application is filed, will include a finding that either:

(A) The Trails Act is not applicable because of failure to comply with the provisions of § 1152.29(a); or

(B) The Trails Act is applicable, and directing the carrier to notify the Commission within 10 days about whether it intends to negotiate an agreement.

If the Trails Act is not applicable, or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Commission of its intention to negotiate, a decision on the merits will be issued under § 1152.26(b)(1). If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Commission will issue a Certificate of Interim Trail Use or Abandonment by the 75th day after the application is filed.

(2) In exemption proceedings, a petition containing an interim trail use statement are due within 10 days after the date the Notice of Exemption is published in the FEDERAL REGISTER.

(3) If the regular abandonment or exemption request is investigated, comments will be accepted at any time during the time provided for making evidentiary filings in the investigation.

(4) In Conrail abandonment proceedings under NERSA, interim trail use statements are due within 60 days after the date that Conrail's abandonment application is filed.

(5) When an interim trail use comment(s) or petition(s) is filed, the railroad must submit a reply to the Commission within 10 days after the date the Commission issues a Notice of Findings in regular abandonment proceedings, and within 10 days after the date a petition requesting interim trail use is filed in an exemption or NERSA proceeding indicating whether and with whom it intends to negotiate an agreement.

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

(7) In proceedings where a Trails Act request is made, the Commission will determine whether the Trails Act is applicable.

(c) *Regular and NERSA abandonment proceedings.* (1) If continued rail service does not occur pursuant to § 1152.27, and

a railroad intends to enter into an interim trail use/rail banking agreement, then the Commission will issue a Certificate of Interim Trail Use or Abandonment (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 tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Commission order, 30 days after the date it is issued (10 days after issuance in Conrail proceedings); 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 CITU 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 CITU will also indicate that, if the user intends to terminate trail use, it must send the Commission a copy of the CITU and request that it be vacated on a specified date. The Commission will reopen the abandonment proceeding, vacate the CITU, and issue an effective abandonment certificate for the involved portion of the right-of-way. Copies of the abandonment certificate 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. 10505, then the CITU will be vacated accordingly.

(d) *Exempt abandonment proceedings.*

(1) If a railroad intends to enter into an interim trail use/rail banking agreement, then the Commission 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 tariffs, and salvage track and materials, consistent with interim trail use

and rail banking, 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 indicate that if the user intends to terminate trail use, it must send the Commission a copy of the NITU and request that it be vacated on a specific date. The Commission will reopen the exemption proceeding, vacate the NITU, and reissue a Notice of Exemption for that portion of the right-of-way. Copies of the reissued Notice of Exemption will be sent to:

- (i) The abandonment exemption applicant;
- (ii) The owner of the right-of-way; and
- (iii) The 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. 10505, then the NITU will be vacated accordingly.

(e) 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 certificate of abandonment decision granting an 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 certificate, decision, or notice.

(f) When a trail user intends to terminate trail use and another person in-

tends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

(1) A copy of the extant CITU or NITU; and

(2) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Commission 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 Commission of its willingness to negotiate, a certificate of 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. The Commission will reopen the proceeding, vacate the outstanding certificate, 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 certificate, decision, or notice permitting abandonment.

[51 FR 16852, May 7, 1986, as amended at 52 FR 46774, Dec. 10, 1987]

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

SOURCE: 43 FR 7624, Feb. 24, 1978, unless otherwise noted. Redesignated at 47 FR 49581, Nov. 1, 1982.

§ 1152.30 General.

(a) *Contents of subpart.* (1) 49 U.S.C. 10905 directs the Commission 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. Section 205(e)(1)(B) of the Regional Rail Reorganization Act of 1973, as amended, directs the Office to publish standards for determining the “avoidable costs of providing rail freight service”, as that phrase is used in section 10905. 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 Commission’s findings on the merits of an abandonment of 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. 10905 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) established by the Office pursuant to section 205(e)(1)(a) of the Regional Rail Reorganization Act of 1973, as amended.

(c) *Final payment of financial assistance.* (1) When a financial assistance agreement is concluded and rail service continued thereunder, the final annual 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 in excess of 15 percent of

the estimated payment shall be treated as a carryover avoidable cost in the subsequent subsidy year. 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 ten 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 annual payment.

[41 FR 48520, Nov. 4, 1976, as amended at 43 FR 7625, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 47 FR 49582, Nov. 1, 1982; 48 FR 54238, Dec. 1, 1983; 53 FR 49667, Dec. 9, 1988]

§ 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 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.

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(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) *Conversion Chart For Revenue Accounts*

Revenue account title	Previous account No.	Present account No.
Freight	101,109	101
Switching	110	104
Water transfers	113	105
Demurrage	137	106
Incidental	130, 132, 133, 135, 138, 139, 141, 142, 143	110
Joint facility-credit	151	121
Joint facility-debt	152	122
Revenues from property used in other than carrier operations, less expenses	502, 511	506, 534
Miscellaneous rent income	510	510
Miscellaneous income	519	519

[43 FR 7624, Feb. 24, 1978, Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 56 FR 61387, Dec. 3, 1991]

§ 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 or Form R-2 of the railroad filed with the ICC prior to the conclusion of the subsidy year, 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	Previous account No.	Present account No.	Basis of assignment to on-branch costs
(a) Maintenance of way and structures			
(1) Administration:			
Track			
Salaries and wages	201	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	201	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	201	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	201	11-13-05	Do.
Materials		21-13-05	Do.
Purchased services		41-13-05	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other expenses		61–13–05	Do.
Other			
Salaries and wages	201	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	202	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	202	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	206	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	206	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	208–210	11–11–12	Do.
Materials		21–11–12	Do.
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	208–210	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	212	21–11–13	Do.
Ties—switching—material	212	21–12–13	Do.
Rails—running—material	214	21–11–14	Do.
Rails—switching—material	214	21–12–14	Do.
Other track material—running—material	216	21–11–15	Do.
Other track material—switching—material	216	21–12–15	Do.
Ballast—running—material	218	21–11–16	Do.
Ballast—switching—material	218	21–12–16	Do.
Track laying and surfacing—running			
Salaries and wages	220	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	220	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.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Purchased services		41-12-17	Do.
Other expenses		61-12-17	Do.
Road property damaged—running			
Salaries and wages	202-220, 249	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	202-220, 249	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	221, 227-247	11-13-48	Do.
Materials	253, 257	21-13-48	Do.
Repairs by others—DR	265, 269	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	249	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	249	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	247	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.
Other expenses		61-13-20	Do.
Electric power systems			
Salaries and wages	253, 257, 304	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	273	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	273	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	227	11-13-23	Do.
Materials		21-13-23	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
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	235, 253	11–13–24	Do.
Materials	and 257	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	235, 253	11–13–25	Do.
Materials	and 257	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	235, 253	11–13–26	Do.
Materials	and 257	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	231, 233	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	221, 229, 239,	11–13–28	Do.
Materials	265, 304	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	243	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	243	11–13–30	Do.
Materials		21–13–30	Do.
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	244	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		41–13–31	Do.
Other expenses		61–13–31	Do.
Other marine terminals			
Salaries and wages	241	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.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Motor vehicle loading and distribution facilities			
Salaries and wages	227	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	227, 237	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	269	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			
Salaries and wages			
Materials			
Repairs by others—DR			
Repairs for others—CR			
Purchased services			
Other expenses	271	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	272	11-13-38	Actual.
		21-13-38	Do.
		39-13-38	Do.
		40-13-38	Do.
		41-13-38	Do.
		61-13-38	Do.
Fringe benefits—running	277, 457	12-11-00	11-11-XX, sec. 1152.33(a)(3)(i).
Fringe benefits—switching	277, 457	12-12-00	11-12-XX, sec. 1152.33(a)(3)(ii).
Fringe benefits—other	277, 457	12-13-00	11-13-XX, sec. 1152.33(a)(3)(iii).
Casualties and insurance—running			
Other casualties	274	52-11-00	Actual.
Insurance	275	53-11-00	Do.
Casualties and insurance—switching			
Other casualties	274	52-12-00	Do.
Insurance	275	53-12-00	Do.
Lease rentals—debit—running	542	31-11-00	Do.
Lease rentals—debit—switching	542	31-12-00	Do.
Lease rentals—debit—other	542	31-13-00	Do.
Lease rentals—credit—running	509	32-11-00	Do.
Lease rentals—credit—switching	509	32-12-00	Do.
Lease rentals—credit—other	509	32-13-00	Do.
Joint facility rent—debit—running	541	33-11-00	Do.
Joint facility rent—debit—switching	541	33-12-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Casualties and insurance—other			
Other casualties	274, 420	52–13–00	Do.
Insurance	275	53–13–00	Do.
Joint facility—debit—other	541	33–13–00	Do.
Joint facility rent—credit—running	508	34–11–00	Do.
Joint facility rent—credit—switching	508	34–12–00	Do.
Joint facility rent—credit—other	508	34–13–00	Do.
Other rents—debit—running	543	35–11–00	Do.
Other rents—debit—switching	543	35–12–00	Do.
Other rents—debit—other	543	35–13–00	Do.
Other rents—credit—running	510	36–11–00	Do.
Other rents—credit—switching	510	36–12–00	Do.
Other rents—credit—other	510	36–13–00	Do.
Depreciation—running	266	62–11–00	Do.
Depreciation—switching	266	62–12–00	Do.
Depreciation—other	266, 305	62–13–00	Do.
Joint facility—debit—running	278	37–11–00	Do.
Joint facility—debit—switching	278	37–12–00	Do.
Joint facility—debit—other	278	37–13–00	Do.
Joint facility—credit—running	279	38–11–00	Do.
Joint facility—credit—switching	279	38–12–00	Do.
Joint facility—credit—other	279	38–13–00	Do.
Dismantling retired road property—running			
Salaries and wages	270	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	270	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	270, 306	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	281–282, 274	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	281–282, 274	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	281–282, 274	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	301	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	311	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.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Purchased services		41-21-41	Do.
Other expenses		61-21-41	Do.
Machinery repair			
Salaries and wages	302	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.
Equipment damaged			
Salaries and wages	311	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	335, 457	12-21-00	11-21-XX, sec. 1152.33(b)(3)(i).
Other casualties and insurance			
Other casualties	332	52-21-00	Actual.
Insurance	333	53-21-00	Do.
Lease rentals—debit	537	31-21-00	Do.
Lease rentals—credit	504	32-21-00	Do.
Joint facility rent—debit	541	33-21-00	Do.
Joint facility rent—credit	508	34-21-00	Do.
Other rents—debit	537	35-21-00	Do.
Other rents—credit	504	36-21-00	Do.
Joint facility—debit	336	37-21-00	Do.
Joint facility—credit	337	38-21-00	Do.
Depreciation	331, 305	62-21-00	All locomotives, locomotive unit hours, sec. 1152.33(b)(2).
Dismantling retired property			
Salaries and wages	306, 329	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	339, 332	11-21-99	Do.
Materials	339	21-21-99	Do.
Purchased services	339	41-21-99	Do.
Other expenses	339, 332	61-21-99	Do.
(2) Freight cars:			
Administration			
Salaries and wages	301	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	302	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	314	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	335, 457	12-22-00	11-22-XX, sec. 1152.33-(b)(3)(iii).
Other casualties and insurance			
Other casualties	332	52-22-00	Actual.
Insurance	333	53-22-00	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Joint facility rent—DR	541	33–22–00	Do.
Joint facility rent—CR	508	34–22–00	Do.
Joint facility—DR	336	37–22–00	Do.
Joint facility—CR	337	38–22–00	Do.
Dismantling retired property			
Salaries and wages	306, 329	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	330, 339, 332	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	314	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	
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	536	31–22–00	
Lease rentals—CR	503	32–22–00	
Depreciation	331, 305	62–22–00	
Other rents—DR	536	35–22–00	
Other rents—CR	503	36–22–00	
(3) Other equipment:			
Administration			
Salaries and wages	301	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	318	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	323	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	(¹)	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	302	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	326, 328	11–23–47	Do.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
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	318, 323, 326, 328	11-23-48	Do.
Materials		21-23-48	Do.
Repairs by others—DR		39-23-48	Do.
Repairs for others—CR		40-23-38	Do.
Purchased services		41-23-48	Do.
Other expenses		61-23-48	Do.
Equipment damaged			
Fringe benefits	335, 457	12-23-00	11-23-XX, sec. 1152.33(b)(3)(ii).
Other casualties and insurance			
Other casualties	332	52-23-00	Actual.
Insurance	333	53-23-00	Do.
Lease rentals—DR	539, 540	31-23-00	Do.
Lease rentals—CR	506, 507	32-23-00	Do.
Joint facility rent—DR	541	33-23-00	Do.
Joint facility rent—CR	508	34-23-00	Do.
Other rents—DR	539, 540	35-23-00	Do.
Other rents—CR	506, 507	36-23-00	Do.
Depreciation	331, 305	62-23-00	Do.
Joint facility—DR	336	37-23-00	Do.
Joint facility—CR	337	38-23-00	Do.
Dismantling retired property			
Salaries and wages	306, 329	11-23-39	Do.
Materials		21-23-39	Do.
Purchased services		41-23-39	Do.
Other expenses		61-23-39	Do.
Other			
Salaries and wages	339, 332	11-23-99	Do.
Materials	339	21-23-99	Do.
Purchased services	339	41-23-99	Do.
Other expenses	339, 332	61-23-99	Do.
(c) Transportation			
(1) Train operations:			
Administration			
Salaries and wages	371	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	392	11-31-56	Do.
Materials	402	21-31-56	Train hours, sec. 1152.33(c)(1)(i).
Purchased services	402	41-31-56	Actual.
Other expenses	402	61-31-56	Do.
Train crews			
Salaries and wages	401	11-31-57	Do.
Materials	402	21-31-57	Trains hours, sec. 1152.33(c)(1)(i).
Purchased services	402	41-31-57	Actual.
Other expenses	402	61-31-57	Do.
Dispatching trains			
Salaries and wages	372	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	404	11-31-59	Do.
Materials		21-31-59	Do.
Purchased services		41-31-59	Do.
Other expenses		61-31-59	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Operating drawbridges			
Salaries and wages	406	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	405	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	314, 402, 311	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			
Materials			
Purchased services			
Other expenses	394	11–31–671–31–6741–31–6761–31–67	Diesel locomotive unit hours, Sec. 1152.33(c)(1)(ii).
Electric power purchased or produced for motive power			
Salaries and wages	395, 445	11–31–68	Electric locomotive unit hours, sec. 1152.33(c)(1)(iii).
Materials	395, 445	21–31–68	Do.
Purchased services	395, 396, 445	41–31–68	Do.
Other expenses	395, 445	61–31–68	Do.
Servicing locomotives			
Salaries and wages	400	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	418, 419	51–31–00	Actual.
Clearing wrecks			
Salaries and wages	415	11–31–63	Do.
Materials		21–31–63	Do.
Purchased services		41–31–63	Do.
Other expenses		61–31–63	Do.
Fringe benefits	409, 457	12–31–00	11–31–XX, sec. 1152.33(c)(4)(i).
Other casualties and insurance			
Other casualties	416, 417, 420	52–31–00	Actual.
Insurance	414	53–31–00	Do.
Joint facility—DR	412	37–31–00	Do.
Joint facility—CR	413	38–31–00	Do.
Other			
Salaries and wages	402, 411, 420	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	371	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	378, 380	11–32–64	Do.
Materials	389	21–32–64	Locomotive unit hours, sec. 1152.33(c)(2)(i).
Purchased services	389	41–32–64	Actual.
Other expenses	389	61–32–64	Do.
Controlling operations			
Salaries and wages	377	11–32–65	Do.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials	389	21-32-65	Do.
Purchased services	389	41-32-65	Do.
Other expenses	389	61-32-65	Do.
Yard and terminal clerical			
Salaries and wages	377	11-32-66	Actual.
Materials	389	21-32-66	Do.
Purchased services	389	41-32-66	Do.
Other expenses	389	61-32-66	Do.
Operating switches, signals, retarders and humps			
Salaries and wages	379	11-32-59	Do.
Materials	389	21-32-59	Do.
Purchased services	389	41-32-59	Do.
Other expenses	389	61-32-59	Do.
Locomotive fuel			
Salaries and wages	382	11-32-67	Diesel locomotive 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	383, 445	11-32-68	Electric locomotive unit hours, sec. 1152.33(c)(2)(iii).
Materials	383, 445	21-32-68	Do.
Purchased services	383, 384, 445	41-32-68	Do.
Other expenses	383, 445	61-32-68	Do.
Servicing locomotives			
Salaries and wages	388	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	418, 419	51-32-00	Actual.
Clearing wrecks			
Salaries and wages	415	11-32-63	Do.
Materials		21-32-63	Do.
Purchased services		41-32-63	Do.
Other expenses		61-32-63	Do.
Fringe benefits	409, 457	12-32-00	11-32-XX, sec. 1152.33-(c)(4)(ii).
Other casualties and insurance			
Other casualties	416, 420	52-32-00	Actual.
Insurance	414	53-32-00	Do.
Joint facility—DR	390, 412	37-32-00	Do.
Joint facility—CR	391, 413	38-32-00	Do.
Other			
Salaries and wages	411, 420	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	402	11-33-70	Do.
Materials		21-33-70	Do.
Purchased services		41-33-70	Do.
Adjusting and transferring loads			
Salaries and wages	373, 402	11-33-71	Do.
Materials	376, 402	21-33-71	Do.
Purchased services	376, 402	41-33-71	Do.
Carloading devices and grain doors			
Salaries and wages	402	11-33-72	Do.
Materials		21-33-72	Do.
Purchased services		41-33-72	Do.
Freight lost or damaged—all other	418, 419	51-33-00	Do.
Fringe benefits	409	12-33-00	11-33-XX, sec. 1152.33(c)(4)(iii).

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
(4) Specialized service operations:			
Administration			
Salaries and wages	371, 408, 443	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	408, 421, 422	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	375, 408, 421	11–34–74	Do.
Materials	422 and 443	21–34–74	Do.
Purchased services		41–34–74	Do.
Other expenses		61–34–74	Do.
Protective services			
Salaries and wages	402, 421, 422, 443	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	418, 419	51–34–00	Do.
Fringe benefits	409, 457, 449	12–34–00	11–34–XX, sec. 1152.33-(c)(4)(iv).
Casualties and insurance			
Other casualties	416, 420	52–34–00	Actual.
Insurance	414	53–34–00	Do.
Joint facility—DR	412, 447	37–34–00	Do.
Joint facility—CR	413, 448	38–34–00	Do.
Other			
Salaries and wages	411, 442, 446, 420	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	371	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	373	11–35–76	Do.
Materials	376	21–35–76	Do.
Purchased services	376	41–35–76	Do.
Other expenses	376	61–35–76	Do.
Communication systems operation			
Salaries and wages	373, 407	11–35–77	Do.
Materials	376, 407	21–35–77	Do.
Purchased services	376, 407	41–35–77	Do.
Other expenses	376, 407	61–35–77	Do.
Loss and damage claims processing			
Salaries and wages	418, 419	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	409, 457	12–35–00	11–35–XX, sec. 1152.33-(c)(4)(v).
Joint facility—DR	412, 447	37–35–00	Actual.
Joint facility—CR	413, 448	38–35–00	Do.
Casualties and insurance			
Other casualties	416, 420	52–35–00	Do.
Insurance	414	53–35–00	Do.

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Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Other			
Salaries and wages	411, 420	11-35-99	Do.
Materials	411	21-35-99	Do.
Purchased services	411	41-35-99	Do.
Other expenses	411, 420	61-35-99	Do.
(d) General Administrative			
Officers—general administration			
Salaries and wages	351, 451, 452	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	452, 451	11-61-86	Do.
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	452, 451	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	352	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	352	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	356, 452, 451	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	452, 451	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	452, 454, 274	11-61-92	Do.
Materials	332 and 420	21-61-92	Do.
Purchased services		41-61-92	Do.
Other expenses		61-61-92	Do.
Public relations and advertising			
Salaries and wages	353, 354	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	(¹)	11-61-94	Do.
Materials		21-61-94	Do.
Purchased services		41-61-94	Do.
Other expenses		61-61-94	Do.
Fringe benefits	359, 456, 457	12-61-00	11-61-XX, sec. 1152.33(d)(1).
Casualties and insurance			
Other casualties	None	52-61-00	Actual
Insurance	357, 455	53-61-00	Do.
Writedown of uncollectible accounts	706, 707	63-61-00	Do.
Other taxes except on corporate income or payroll	532	65-61-00	Do.
Joint facility—DR	461	37-61-00	Do.
Joint facility—CR	462	38-61-00	Do.
Other			
Salaries and wages	355, 360, 460	11-61-99	Do.

Operating expense group and accounts	Previous account No.	Present account No.	Basis of assignment to on-branch costs
Materials	351, 451, 452	21-61-99	Do.
Purchased services	and 453	41-61-99	Do.
Other expenses		61-61-99	Do.

¹ Various accounts.

(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 overhead in order to 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

Operating expense group—Repair and maintenance	Account No.
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 the present "Rail Form A" apportionment factors (i.e., 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 Commission 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. 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, and 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)). Then, 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 subsidy year, or 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 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 gain (loss) projected to occur during the forecast and/or subsidy year.

(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 State-wide 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-carrier, 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 does not meet minimum Federal Railroad Administrative Class I 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 set forth in this paragraph (n)(3).

(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 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 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 two 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 an 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 two 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 para-

graph (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 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 Commission 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.

[43 FR 7625, Feb. 24, 1978, as amended at 43 FR 10564, Mar. 14, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 48 FR 54239, Dec. 1, 1983; 50 FR 31592, Aug. 5, 1985; 52 FR 2706, Jan. 26, 1987; 54 FR 18517, May 1, 1989; 54 FR 26046, June 21, 1989; 54 FR 27795, June 30, 1989; 56 FR 61387, Dec. 3, 1991]

§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 (the ratio of train-mile and running expenses from Rail Form A),

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

(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 (the ratio of terminal expenses from Rail Form A),

(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 of which the railroad is assigned by the Commission. 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]

[43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982 and amended at 48 FR 54241, Dec. 1, 1983; 52 FR 2709, Jan. 26, 1987]

§ 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 regula-

tions. If rehabilitation has been performed along the line during any 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.

(d) Reasonable return. A rail carrier shall furnish to the Commission, and to any financially responsible person considering making a 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 Commission'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 Commission'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 arrangement, 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

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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) 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.

[52 FR 2709, Jan. 26, 1987, as amended at 53 FR 45766, Nov. 14, 1988; 53 FR 49667, Dec. 9, 1988; 54 FR 18518, May 1, 1989]

§ 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

	Base year operations	Forecast year operations	Projected subsidy year operations
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).	XXXX .....	.....	.....
15. Holding gain (loss)	XXXX .....	.....	.....
16. Total return on value (line 14 minus 15).	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).	.....	.....	.....

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

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

[53 FR 49668, Dec. 9, 1988, as amended at 54 FR 18518, May 1, 1989]

§ 1152.37 Financial status reports.

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to a 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. Unless the parties agree otherwise, the last Financial Status Report issued within the first ten months of the subsidy period will be the basis for negotiating the financial assistance agreement for the subsequent subsidy year. The year-end report will be the basis of the subsidy payment adjustment. 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.		
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.		

	Actual	Projected
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).		

[43 FR 7624, Feb. 24, 1978. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 54 FR 18519, May 1, 1989]

Subpart E—Abandonment Procedures for Bankrupt Railroads

§ 1152.40 Filing and service requirements.

(a) The application for abandonment shall be filed with the Commission at the same time the proposal to abandon is presented to the Bankruptcy Court.

(b) An original and 10 copies of the application, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin shall be filed with the Secretary of the Interstate Commerce Commission, Washington, DC 20423. The original shall bear the date and signature of the officer or other person authorized to file the application, 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 Interstate Commerce Commission must also be submitted to cover the applicable filing fee.

(c) Service. Concurrent with the filing of an application with the Commission, a copy of the application shall be served on all parties entitled to receive notice under §1152.20.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 19302, May 27, 1988]

§ 1152.41 Contents of the application.

Applications filed by bankrupt railroads concerning the abandonment of railroad lines or the discontinuance of rail service shall contain the following information and each paragraphs (a) through (i) 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 the Interstate Commerce Act.

(3) Whether the carrier which owns or operates the line of railroad to be abandoned or over which service is to be discontinued is a part of any railroad system.

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

(5) Detailed map of the subject line on a sheet not larger than 8 x 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.

(6) Detailed statement of reasons for filing application.

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

(8) A statement that a response to the application may be submitted to the Commission within 30 days, and must conform to § 1152.42.

(9) Certificate of service.

(b) *Condition of properties.* (1) 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 I safety standards). The bases for the estimates shall be stated with particularity, and workpapers shall be made available upon request of the Commission or any interested persons.

(2) Statement whether the line, or any portion of line, could be operated profitably if necessary deferred maintenance and rehabilitation were performed.

(c) *Service provided.* Describe service performed on the line during the most recent full calendar year for which information is available, and that part of

the current year for which information is available. This should include:

(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) Carload commodity group tonnage on the line;

(5) Overhead or bridge traffic by carload commodity group tonnage (include detailed information on overhead or bridge traffic to be retained by the carrier);

(6) Average crew size;

(7) Level of maintenance;

(8) Any important changes in train service undertaken in the 5 calendar years immediately preceding the filing of the application; and

(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, avoidable costs and reasonable return on value for the line to be abandoned for the most recent full calendar year (to the extent such branch level data is available), in accordance with the methodology prescribed in § 1152.36, as Exhibit 1.

(2) If the line to be abandoned or over which service is to be discontinued is less than the entire mileage owned or operated by the carrier, a detailed statement showing the effect of the proposed abandonment or discontinuance on its net railway operating income for the calendar year immediately preceding the filing of the application and for that part of the current year for which information is available.

(3) If the line to be abandoned or over which service to be discontinued is operated as a part of a system under common control and management, a detailed statement showing the effect of the proposed abandonment or discontinuance on the net railway operating income of the other individual members of the system for the calendar year immediately preceding the filing of the application and for that part of the current year for which information is available.

(e) *Service area.* (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(n), by name, address, principal commodity, and by tonnage and/or carloads for that part of the current year and the previous calendar year for which information is available.

(3) Detailed description of the alternate sources of transportation service (rail, motor, water, air) available, including a detailed description and nature of operations, and the highway network in the proximate area.

(4) Statement of efforts which have been made to continue service through solicitation of additional traffic, and the sale or subsidy of the line and the results of those efforts.

(f) *Environmental and energy impact.* The applicant shall submit as a part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with 49 CFR part 1106 and §1105.12(b) and (c). If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference to the location of the required information elsewhere in the abandonment or discontinuance application. Environment information should not be submitted for those cases covered by the Milwaukee Railroad Restructuring Act, Pub. L. 96-101 (1979).

(g) *Passenger service.* If passenger service is provided on the line, submit a statement of whether appropriate steps have been taken for discontinuance pursuant to 49 U.S.C. 10908 and 10909.

(h) All testimony considered necessary to support the proposal shall be filed with the application in the form of verified statements.

(i) *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 he is the _____ (Title of Affiant) of the _____ (Name of applicant) applicant herein; that he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Interstate Commerce Commission the foregoing application in AB- _____ (Sub-No. _____); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that 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 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 _____

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 49668, Dec. 9, 1988]

§ 1152.42 Responses to the application.

(a) *Filing.* The original and 10 copies of responses to the application shall be filed with the Commission within 30 days of the filing of the application. A copy of each response shall be concurrently served on the carrier and Bankruptcy Court. A certificate of service shall accompany the response.

(b) *Verification.* Each response shall be verified.

State of _____ ss. County of _____ (Name of affiant) makes oath and says that he has been authorized to verify and file with the Interstate Commerce Commission the foregoing response in AB-_____ (Sub-No. _____), that he has carefully examined all of the statements in the response; that he has knowledge of the facts and matters relied upon; and that all representations set forth are true and correct to the best of his 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 _____

(c) *Warning.* The Commission will not consider untimely, unserved, or unverified responses.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982, and amended at 53 FR 19302, May 27, 1988]

§ 1152.43 Report of the Commission.

The Commission, or designee thereof, shall prepare a report for the Bankruptcy Court within the time allotted by the Court pursuant to 11 U.S.C. 1170. The Commission report shall rely on the application and responses.

[44 FR 73106, Dec. 17, 1979. Redesignated at 47 FR 49581, Nov. 1, 1982]

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. 10903-10905 if the criteria designated in this section are satisfied.

(2) Whenever the Commission determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. 10903-10905, whether under this section or on the basis of the merits of an individual petition, the provisions of § 1152.27 and § 1152.28 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 Commission 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 Commission 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. 10101a; 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. 10505.

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. 10505(g)(2) 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 Commission, 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, (iv) the National Park Service, Land Resources Division, and (v) the U.S. Department of Agriculture,

Chief of the Forest Service. The notice shall name the railroad, describe the line involved, indicate the exemption procedure is being used, and include the approximate date that the notice of exemption will be filed with the Commission. 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 Commission 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 (5) 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 Commission, 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. 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 Commission 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. 10906 and 49 CFR 1152.28(a)(2) must be filed within 20 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

Commission shall summarily reject the exemption notice.

(4) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Commission, 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 request to implement interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 should be filed with the Commission and served on the railroad within 10 days of publication of the notice of exemption in the FEDERAL REGISTER. 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. 10505(d) must be filed.

(e) *Abandonment petitions for exemption.* Whenever a petitioner intends to seek abandonment authority through a petition for exemption, a copy of the petition shall be served upon 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."

[49 FR 17003, Apr. 23, 1984, as amended at 50 FR 8335, Mar. 1, 1985; 50 FR 24649, June 12, 1985; 51 FR 197, Jan. 3, 1986; 51 FR 16853, May 7, 1986; 51 FR 42098, Nov. 21, 1986; 52 FR 46775, Dec. 10, 1987; 52 FR 48443, Dec. 22, 1987; 54 FR 9823, Mar. 8, 1989; 55 FR 31600, 31601, Aug. 3, 1990; 56 FR 32337, July 16, 1991; 56 FR 35835, July 29, 1991; 57 FR 13049, Apr. 15, 1992]

Subpart G—Special Rules Applicable to Petitions for Abandonments or Discontinuances Of Service Or Trackage Rights Filed Under the 49 U.S.C. 10505 Exemption Procedure

§ 1152.60 Special rules.

(a) This section contains special rules applicable to any proceeding filed under the 49 U.S.C. 10505 exemption procedure wherein is sought 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 49 U.S.C. 10505 exemption procedure may be found in 49 CFR part 1121.

(b) Any petition filed under the 49 U.S.C. 10505 exemption procedure wherein is sought 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)(5) of this part.

[56 FR 32337, July 16, 1991, as amended at 56 FR 46392, Sept. 12, 1991]

APPENDIX

AB No.	Name of Carrier
1	Chicago & North Western Transportation Co.
2	Louisville & Nashville RR. Co.
3	Missouri Pacific RR. Co.
4	Cadillac & Lake City Ry. (debtor).
5	Penn Central Transportation Co. (debtor).
6	Burlington Northern, Inc.
7	Chicago, Milwaukee, St. Paul & Pacific Ry. Co.
8	Denver & Rio Grande Western RR. Co.
9	St. Louis-San Francisco Ry. Co.
10	Norfolk & Western Ry. Co.
11	Chicago & Eastern Illinois RR.
12	Southern Pacific Transportation Co.
13	Holton Inter-Urban Ry. Co.
14	Northwestern Pacific RR. Co.
15	Petaluma & Santa Rosa RR. Co.
16	San Diego & Arizona Eastern Ry. Co.
17	Visalia Electric RR. Co.
18	The Chesapeake & Ohio Ry. Co.
19	The Baltimore & Ohio RR. Co.
20	The Texas & Pacific Ry. Co.
21	Abilene & Southern Ry. Co.
22	Texas-New Mexico Ry. Co.
23	Texas Pacific-Missouri Pacific Terminal RR. of New Orleans.
24	Fort Worth Belt Railway Co.
25	The Weatherford Mineral Wells & Northwestern Ry. Co.
26	Southern Ry. Co.
27	The Alabama Great Southern RR. Co.
28	Central of Georgia RR. Co.
29	The Cincinnati, New Orleans & Texas Pacific RR. Co.
30	Georgia Southern & Florida Ry. Co.
31	Grand Trunk Western RR. Co.

APPENDIX—Continued

AB No.	Name of Carrier
32	Boston & Maine Corp. (debtor).
33	Union Pacific RR. Co.
34	St. Joseph & Grand Island RR. Co.
35	Los Angeles & Salt Lake RR. Co.
36	Oregon Short Line RR. Co.
37	Oregon-Washington Railroad & Navigation Co.
38	Pennsylvania & Atlantic RR. Co.
39	St. Louis Southwestern Ry. Co.
40	St. Louis Southwestern Ry. Co. of Texas.
41	Flint Hills Ry., Inc.
42	Aroostook Valley RR. Co.
43	Illinois Central Gulf RR. Co.
44	Lehigh Valley RR. Co. (debtor).
45	Albany Port District Commission.
46	Chicago, Rock Island & Pacific RR. Co.
47	Duluth Union Depot and Transfer Co.
48	Erie Lackawanna Ry. Co.
49	The Ann Arbor RR. Co.
50	Reading Co. (debtor).
51	Oregon Electric Ry. Co.
52	The Atchison, Topeka & Santa Fe Ry. Co.
53	The Kansas & Missouri Railway and Terminal Co.
54	Georgia RR.: The Western Ry. of Alabama; Atlanta & West Point RR. Co.; Milledgeville Ry. Co.; Georgia Railroad & Banking Co.
55	Seaboard Coast Line RR. Co.
56	The City of Maryville & The Maryville Housing Authority.
57	Soo Line RR. Co.
58	Reader RR.
59	Chattahoochee Valley Ry. Co.
60	Morehead & North Fork RR. Co.
61	Spokane, Portland & Seattle Ry. Co.
62	Marquette, Tomahawk & Western RR. Co.
63	Midway RR. Co.
64	Chattanooga Station Co.
65	St. Johnsbury & Lamoille County RR. Co.
66	Minneapolis, Anoka & Cuyuna Range RR. Co.
67	West Pittston-Exeter RR. Co.
68	Lake Superior & Ishpeming RR. Co.
69	Western Maryland Ry. Co. and (The Baltimore and Cumberland Valley RR.)
70	Florida East Coast Ry. Co.
71	The Baltimore & Annapolis RR. Co.
72	Sacramento Northern Ry.
73	Cincinnati Union Terminal Co.
74	Pennsylvania-Reading Seashore Lines.
75	Richmond Terminal Co.
76	Texas Central RR. Co.
77	Bangor & Aroostook RR. Co.
78	Fonda, Johnstown & Gloversville RR. Co.
79	Central RR. Co. of New Jersey.
80	Allentown Terminal RR. Co.
81	Norwood & St. Lawrence RR. Co.
82	The Marianna & Blountstown RR.
83	Maine Central RR. Co.
84	Illinois Terminal RR. Co.
85	The Union Terminal Co.
86	Cheswick and Harmar RR. Co.
87	Susquehanna Connecting RR. Co.
88	Bessemer & Lake Erie RR. Co.
89	Alameda Belt Line.
90	Caton & Loudon Ry. Co.
91	Central Illinois Light Co.
92	The Salt Lake City Union Depot & RR. Co.
93	Peoria Terminal Co.
94	El Paso Union Passenger Depot Co.
95	Hollis & Eastern RR. Co.
96	Bellefonte Central RR. Co.
97	The Texas Mexican Ry. Co.
98	Claremont & Concord Ry. Co.

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APPENDIX—Continued

APPENDIX—Continued

AB No.	Name of Carrier
99	Arkansas Western Ry. Co.
100	The General State Authority (Commonwealth of Pennsylvania).
101	Duluth, Missabe & Iron Range Ry. Co.
102	Missouri-Kansas-Texas RR. Co.
103	Kansas City Southern Ry. Co.
104	East Tennessee & Western North Carolina RR. Co.
105	Western Pacific RR. Co.
106	The Colorado & Wyoming Ry. Co.
107	Kalamazoo, Allegan & Grand Rapids RR. Co.
108	Texas Export RR. Co.
109	Quanah, Acme & Pacific Ry. Co.
110	Nezperce RR. Co.
111	Detroit, Toledo & Ironton RR. Co.
112	Great Plains Ry. Co.
113	Edgemoor & Manetta RR.
114	Clarendon & Pittsford RR. Co.
115	Lehigh & New England Ry. Co.
116	City of Hillsboro (for Oregon Electric Ry.).
117	Elgin, Joliet & Eastern Ry. Co.
118	Albany Passenger Terminal Co.
119	The Fort Worth & Denver Ry. Co.
120	Chicago & Western Indiana RR. Co.
121	Spokane International RR.
122	Terminal RR. Association of St. Louis.
123	Chicago Produce Terminal Co.
124	Waterloo RR. Co.
125	Norfolk Southern Ry. Co.
126	Wellsville, Addison & Galetton RR. Co.
127	Central Iowa Transportation Cooperative.
128	East Washington RR. Co.
129	Twin Branch RR. Co.
130	Cotton-Plant Fargo Ry. Co.
131	Yakima Valley Transportation Co.
132	The Akron & Barberton Belt RR. Co.
133	Warren and Quachita Valley Ry. Co.
134	State of Vermont (Agency of Transportation, Dept. of Rail, Waterway & Motor Carriers).
135	Condon, Kingria & Southern RR. Co.
136	Chicago South Shore & South Belt RR. Co.
137	Augusta RR. Co.
138	McCloud River RR. Co.
139	Providence & Worcester RR. Co.
140	Hoboken Shore RR. Co.
141	Kanawha Central RR. Co.
142	New Orleans Lower Coast RR. Co.
143	Jacksonville Terminal Co.
144	Tidewater Southern Ry. Co.
145	Carrollton RR. Co.
146	Columbia Newberry & Laurens RR. Co.
147	Gainesville-Midland RR. Co.
148	Durham & Southern RR. Co.
149	Winston-Salem Southbound RR. Co.
150	Highpoint Thomasville and Denton RR. Co.
151	Haysi RR. Co.
152	Clinchfield RR. Co.
153	Mount Hood Ry. Co.
154	Texas, Oklahoma & Eastern RR. Co.
155	DeQueen and Eastern RR. Co.
156	Delaware & Hudson Ry. Co.
157	Richmond, Frederick, Potomac RR. Co.
158	Pittsburgh & Lake Erie RR. Co.
159	Monongahela Ry. Co.
160	Montour RR. Co.
161	Pittsburgh, Chartiers & Youghiogheny RR. Co.
162	Youngstown & Southern RR. Co.
163	Raritan River RR. Co.
164	Texas South Eastern RR. Co.
165	East Troy Municipal RR. Co.
166	Vermont Ry. Co.
167	Conrail (Consolidated Rail Corp.)

AB No.	Name of Carrier
168	Lake Erie & Eastern RR. Co.
169	Toledo, Angola & Western RR. Co.
170	Sunset Ry. Co.
171	Fairport, Painesville & Eastern Ry. Co.
172	Fort Wayne Union Ry. Co.
173	Detroit, Toledo Shore Line RR. Co.
174	Central Vermont Ry. Co.
175	Duluth, Winnipeg & Pacific RR. Co.
176	Valley & Siletz RR. Co.
177	Minnesota, Dakota & Western Ry. Co.
178	Hillsdale County Ry. Co.
179	The Apache Ry. Co.
180	The Lowville & Beaver RR. Co.
181	East Camden & Highland RR. Co.
182	The Youngstown and Northern RR. Co.
183	Union RR. Co.
184	McKeesport Connecting RR. Co.
185	The Lake Terminal RR. Co.
186	The Newburgh & South Shore Ry. Co.
187	Northampton & Bath RR. Co.
188	Johnstown & Stony Creek RR. Co.
189	Connellsville & Monongahela Ry. Co.
190	Carbon County Ry. Co.
191	Colorado Southern Ry. Co.
192	Birmingham Southern RR. Co.
193	Canton RR. Co.
194	Grafton & Upton RR. Co.
195	The Mobile & Gulf RR. Co.
196	Atlanta & Saint Andrews Bay Ry. Co.
197	Cedar Rapids and Iowa Ry. Co.
198	Chicago & Illinois Midland Ry. Co.
199	The Long Island RR. Co.
200	Escanaba & Lake Superior RR. Co.
201	Minneapolis Northfield & Southern Ry. Co.
202	Montpelier & Barre RR. Co.
203	Mississippi Ry. Co.
204	Cape Fear Ry. Co.
205	Washington, Idaho & Montana RR. Co.
206	The Louisiana & Pine Bluff Ry. Co.
207	Arkansas & Louisiana Missouri Ry. Co.
208	Wolfeboro Rail Road Co., Inc.
209	Brooklyn Eastern District Terminal
210	New York, Susquehanna & Western RR. Co.
211	Rahway Valley RR. Co.
212	Kansas City Public RR.
213	Canadian Pacific
214	Vanderburg County RR. Co.
215	New Jersey, Indiana, Illinois RR. Co.
216	Norfolk & Franklin & Danville Ry. Co.
217	South Brooklyn Ry. Co.
218	Livonia, Avon & Lakeville RR. Co.
219	New York Dock Ry. Co.
220	Skaneateles Short Line RR. Co.
221	Toole Valley Ry. Co.
222	San Francisco Belt RR.
223	Narragansett Pier RR. Co. Inc.
224	Port Authority of New York & New Jersey.
225	Portland Traction Co.
226	The Toledo Terminal RR. Co. (Toledo RR.).
227	Wheeling & Lake Erie Ry. Co.—WLE.
228	Chelatchie Prairie Railroad, Inc.—CR.
229	Praire Central Ry. Co.
230	Washington County RR. Co.
231	Staten Island Railroad Corporation—SIRC.
232	Kansas Southwestern Ry. Co.
233	Fresno Interurban Ry. Co.
234	Prairie Trunk Ry. Co.
235	Butte Anaconda Pacific Ry. Co.
236	Camas Prairie RR. Co.
237	Pend Orville Valley RR., Inc.
238	Port Everglades Ry.
239	Sierra RR. Co.

APPENDIX—Continued

AB No.	Name of Carrier
240	Cambria and Indiana, RR. Co.
241	Arcata and Mad River RR. Co.
242	Maryland and Pennsylvania RR. Co.
243	Virginia Blue Ridge Ry.
244	Oklahoma, Kansas and Texas RR. Co.
245	Oregon, Pacific and Eastern RR. Co.
246	Yreka Western RR. Co.
247	Alabama Southern RR. Co., Inc.
248	Boivar Southern RR. Co.
249	The Mobile & Gulf RR. Co.
250	Cadiz RR. Co.
251	Louisiana Midland Ry. Co.
252	Northern Missouri RR. Co.
252	Bear Creek Mainline RR.
254	Providence & Worcester RR. Co.
255	Frankport & Cincinnati RR.
256	Ottumwa Connecting RR.
257	Sand Springs Ry. Co.
258	Central California Traction Co.
259	Vermont Ry. Inc.
260	Rarus Ry. Corp.
261	Staten Island Rapid Transit Operating Authority.
262	Norfolk and Portsmouth Belt Line RR. Co.
263	Staten Island Ry. Corp.
264	Vermont & Massachusetts RR. Co.
265	State of Vermont and Vermont Ry., Inc.
266	California Western RR. Co.
267	Vandalia RR. Co.
268	Portland Terminal Co.
269	Iowa Terminal RR. Co.
270	Sumpter & Choctaw Ry. Co.
271	Chicago & Illinois Midland Ry. Co.
272	Morristown & Erie Ry. Inc. 273
273	Camino, Placerville & Lake Tahoe RR. Co.
274	Chesapeake Western Ry.
275	Fourteen—Eleven Corp.
276	Nashville and Ashland City RR.
277	West Virginia Northern RR. Inc.
278	The Eastern Shore RR. Inc.
279	Canadian National Railway Company.
280	Hillsboro & Northeastern Railway Company.
281	Texas North Western Railway Company.
282	Graham County Railway.
283	Ware Shoals Railroad Company.
284	Iowa Northern Railroad Company.
285	The Nevada Northern Railway Company; Los Angeles Department of Water and Power d/b/a Nevada Northern Railway Company.
286	The New York, Susquehanna and Western Railway Corporation.
287	The Port Huron and Detroit Railroad Company.
288	Franklin County Railroad Corporation.
289	Central Railroad Company of Indianapolis, Inc.
290	Norfolk and Western Railway Company; Norfolk Southern Railway Company; Southern Railway Company; The Alabama Great Southern Railroad Company; Carolina and Northwestern Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; Central of Georgia Railroad Company; The Georgia Midland Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; Southern Railway—Carolina Division; Tennessee Railway Company; Wabash Railroad Company; The Wheeling and Lake Erie Railway Company; Woodstock & Blocton Railway Company.
291	Andalusia & Conecuh Railroad Company.
292	Alabama & Florida Railroad Company, Inc.
293	Detroit & Mackinac Railway Company.
294	Gulf & Mississippi Railroad Corporation.

APPENDIX—Continued

AB No.	Name of Carrier
295	The Indiana Railroad Company.
296	The Robeson County Railroad Corporation.
297	Columbus & Greenville Railway Co.
298	Iowa Southern Railroad Company.
299	Oregon & Northwestern Railroad Co.
300	Chicago Rail Link.
301	SouthRail Corporation.
302	Chicago, Missouri & Western Railroad Company.
303	Wisconsin Central Ltd.
304	MidLouisiana Rail Corporation.
305	Nicholas, Fayette & Greenbrier Railroad Company.
306	Kewash Railroad, Inc.
307	Wyoming and Colorado Railroad Company, Inc.
308	Central Michigan Railway Company.
309	Cimarron River Valley Railway Company.
310	Utah Railway Company.
311	White River Park Development Commission.
312	South Carolina Central Railroad Company, Inc.
313	The Southeastern Pennsylvania Transportation Authority.
314	Chicago, Central & Pacific Railroad Company.
315	Texas Central Railroad Company.
316	Angelina and Neches River Railroad Company.
317	Indiana Harbor Belt Railroad Company.
318	Louisiana & Delta Railroad, Inc.
319	Florida Central Railroad Company, Inc.
320	Upper Merion & Plymouth Railroad Company.
321	Kansas City Public Service Freight Operation.
322	NRUC Corporation (St. Lawrence Railroad Division).
323	Ogdensburg Bridge and Port Authority.
324	Arkansas and Missouri Railroad Company, Inc.
325	Florida Midland Railroad Company, Inc.
326	Washington Central Railroad Company, Inc.
327	St. Joseph Terminal Railroad Company.
328	Community Improvement Corporation.
329	Cedar Valley Railroad Company.
330	Otter Tail Valley Railroad Company, Inc.
331	Bi-State Development Agency of the Missouri-Illinois Metropolitan District.
332	The Bloomer Line.
333	Unity Railways Company.
334	Crosbyton Railroad Company.
335	KCT Railway Corporation.
336	Indiana Hi-Rail Corporation.
337	Dakota, Minnesota & Eastern Railroad Corporation.
338	Oregon, California & Eastern Railway Company, Inc.
339	The Port of Tillamook Bay.
340	Lenawee County Railroad Company.
341	The Southwestern Railroad Company, Inc.
342	Buffalo Creek & Gauley Railroad Co.

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PART 1155—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

Sec.
1155.1 Purpose of the standards.