

**Surface Transportation Board, DOT**

**§ 1152.50**

**§ 1152.37 Financial status reports.**

Within 30 days after the end of each quarter of the subsidy year, each carrier which is party to the financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Signifi-

cant deviations from the negotiated estimates must be explained. All data shall be developed in accordance with the methodology set forth in §§1152.31 through 1152.35. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues for:		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenues (lines 1 through 3)		
Avoidable costs for:		
5. On-branch costs (lines 5a through 5j)		
a. Maintenance of way and structures		
b. Maintenance of equipment		
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Subsidization costs for:		
8. Rehabilitation		
9. Administrative costs		
10. Casualty		
11. Total subsidization costs (lines 8 through 10)		
Return on value:		
12. Valuation of property (lines 12a through 12c)		
a. Working capital		
b. Income tax consequences		
c. Net liquidation value		
13. Rate of return		
14. Total return on value (line 12 times line 13)		
Subsidy payment:		
15. Subsidy payment (line 4 minus lines 7, 11, and 14)		

**Subpart E [Reserved]**

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

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

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

(2) Whenever the Board determines a proposed abandonment to be exempt from the requirements of 49 U.S.C.

10903, whether under this section or on the basis of the merits of an individual petition, the provisions of §§1152.27, 1152.28, and 1152.29 as they relate to exemption proceedings shall be applicable.

(b) An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least 2 years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or

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any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending), or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.

(c) The Board has found:

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

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

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

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

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

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

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

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

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road's possession will be made available promptly to those requesting it."

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

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

(4) In out-of-service rail line exemption proceedings under 49 CFR 1152.50, the Board, on its own motion, will stay the effective date of individual notices

of exemption when an informed decision on pending environmental and historic preservation issues cannot be made prior to the date that the exemption authority would otherwise become effective.

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

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

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

[61 FR 67883, Dec. 24, 1996, as amended at 62 FR 34670, June 27, 1997]

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

#### § 1152.60 Special rules.

(a) This section contains special rules applicable to any proceeding instituted under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line. General rules applicable to any proceeding filed under the 49 U.S.C. 10502 exemption procedure may be found at 49 CFR part 1121, but the rules in part 1152 control in case of any conflict with the general exemption rules. In the case of petitions for exemption for abandonment, notice of the filing of the petition will be published by the Board, through the Director of the Office of Proceedings, in the FEDERAL REGISTER 20 days after the petition is filed. There will be no further FEDERAL REGISTER publication later if and when a petition is granted.

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

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

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

STB No. AB-\_\_\_\_\_ (Sub-No. \_\_\_\_\_)

Notice of Petition for Exemption To  
Abandon or To Discontinue Service

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

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

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

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

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

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