

List of Subjects**49 CFR Part 365**

Administrative practice and procedures, Brokers, Buses, Freight forwarders, Highways and roads, Motor carriers.

49 CFR Part 372

Buses, Commercial zones, Freight forwarders, Highway and roads, Motor carriers.

49 CFR Part 373

Buses, Highways and roads, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 374

Baggage liability, Buses, Civil rights, Discrimination, Freight forwarders, Handicapped, Highways and roads, Motor carrier.

49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

Issued on: May 14, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, as set forth below:

PART 365—[AMENDED]

1. The authority citation for 49 CFR part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.48.

1a. The authority citation for subpart D is removed.

PART 372—[AMENDED]

2. The authority citation for 49 CFR part 372 continues to read as follows:

Authority: 49 U.S.C. 13504 and 13506; 49 CFR 1.48.

2a. The authority citations for subparts A, B, and C are removed.

PART 373—[AMENDED]

3. The authority citation for part 373 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14706; 49 CFR 1.48.

3a. The authority citations for subparts A and B are removed.

PART 374—[AMENDED]

4. The authority citation for part 374 continues to read as follows:

Authority: 49 U.S.C. 13301 and 14101; 49 CFR 1.48.

4a. The authority citations for subparts A, B, C, and D are removed.

PART 377—[AMENDED]

5. The authority citation for 49 CFR part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701–13702, 13706, 13707, and 14101; 49 CFR 1.48.

5a. The authority citations for subparts A and B are removed.

[FR Doc. 98–13436 Filed 5–21–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Parts 1152 and 1155**

[STB Ex Parte No. 566]

Rail Service Continuation Subsidy Standards

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the Code of Federal Regulations rules concerning standards for determining subsidies for the continuation of rail service on rail properties not transferred to Consolidated Rail Corporation (Conrail) under the Final System Plan pursuant to the Regional Rail Reorganization Act of 1973. It is also amending the regulations concerning offers of financial assistance to provide rules for the purchase or subsidization of rail lines that have been continuously subsidized since the inception of the Final System Plan.

EFFECTIVE DATE: June 21, 1998.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served and published in the **Federal Register** on August 8, 1997 (62 FR 42734), the Board proposed to remove the regulations at 49 CFR part 1155 that concern subsidy standards for certain rail lines of railroads in reorganization not included in the Final System Plan, described *infra*. The NPR noted that these regulations are based, at least partially, on statutes that are still in effect. 45 U.S.C. 744 (c) and (d). Under the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA),¹

¹ Effective January 1, 1996, the ICCTA abolished the Interstate Commerce Commission and established the Board within the Department of

however, the Rail Services Planning Office (RSPO), the statutory body that developed the regulations, has been abolished. See repealed 49 U.S.C. 10361–64. Moreover, the Board has in place analogous offer of financial assistance (OFA) regulations providing national subsidy standards. 49 CFR 1152.27. Finally, the NPR stated that the regional subsidy regime at 45 U.S.C. 744, which applies to “rail service on rail properties of a railroad in reorganization,” may be outdated and may apply only to a limited number of situations. Accordingly, we instituted this proceeding to determine whether these regulations may be eliminated in light of the national OFA standards, whether portions of the part 1155 regulations could be transferred to the national standards, or whether they have a continuing vitality and should be retained.

After considering the record, we will eliminate the part 1155 rules and modify the national OFA rules at 1152.27. Because the part 1155 rules have only limited applicability, it is unnecessary to maintain these detailed regulations. However, to provide an opportunity for rail service continuation and to deal with abandonments of lines that are still being subsidized, we are modifying our national OFA regulations at 49 CFR 1152.27 to require that the line owner give notice of the abandonment or discontinuance to enable interested persons to purchase or subsidize the line.

Background

Our NPR gave a detailed background for the part 1155 regulations and will be repeated only as necessary. The part 1155 rules were based on the Regional Rail Reorganization Act of 1973, Public Law 93–236, 87 Stat. 985, 45 U.S.C. 701 *et seq.* (3R Act), as amended by the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Public Law 94–210, 90 Stat. 127. In response to the bankruptcy of the Penn Central Transportation Company and seven other major railroads in the Northeast and Midwest,² the 3R Act provided for the development and ultimate approval by Congress of a Final System Plan (Plan) for the redesign of rail services in

Transportation. Section 204(a) of the ICCTA provides that “[t]he Board shall promptly rescind all regulations established by the [Interstate Commerce Commission] that are based on provisions of law repealed and not substantively reenacted by this Act.”

² The Lehigh Valley Railroad Company, the Central Railroad of New Jersey, the Ann Arbor Railroad Company, the Lehigh and Hudson Valley Railroad Company, the Boston and Maine Corporation, the Erie Lackawanna Railway Company, and the Reading Railroad.

the region. Lines that could not be operated profitably and were not considered essential to the rail transportation system would not be included in the Plan. The 3R Act's Plan created Conrail as a for-profit corporation to reorganize the bankrupt rail services in the region.

Section 304 of the 3R Act permitted the summary discontinuance of service over those lines not included in the Plan without Interstate Commerce Commission (ICC or Commission) approval if 60 days' notice was given and certain parties were notified. Beginning 120 days after such discontinuance, the summary abandonment of a line was allowed if 30 days' notice was given and the parties were notified. The 3R Act, in effect, authorized the discontinuance and abandonment of the lines not included in the Plan; ICC approval was not needed.³ However, section 304(c)(2) of the 3R Act (codified at 45 U.S.C. 744(c)(2)(A)) stated that an abandonment or discontinuance could not be carried out if a shipper, or public authority, or any responsible person offered a rail service continuation subsidy.⁴ The 4R Act amended the 3R Act by adding a new section 45 U.S.C. 744(d) which specified that a "designated operator" would be the rail carrier conducting operations when a subsidizer guaranteed payment.⁵ Although not needing ICC authority to operate or abandon, the designated operators were common carriers.⁶

The use of the subsidy is limited to rail service and rail properties of a

railroad in reorganization⁷ in the region⁸ that are not included in the Plan. 45 U.S.C. 744(a). Moreover, the subsidy must be made within 2 years of the effective date of the Plan⁹ or within "2 years after the date on which the final rail service continuation payment is received, whichever is later * * *." 45 U.S.C. 744(c)(1).

The 3R Act, as amended by the 4R Act, also created RSPO¹⁰ which was authorized to issue standards for defining the subsidy-related terms "revenue attributable to rail properties," "avoidable costs of providing service," "a reasonable return on the value," and "reasonable management fee" found in section 304. Section 205(d)(6).¹¹ Subsequently, the ICC issued regulations that are now codified at 49 CFR 1155. The regulations define the terms noted above (revenue attributable, avoidable costs, return on value, reasonable management fee) for determining the subsidy payment for the continuation of train service over lines not included in the Plan. The regulations are largely self-executing with little role provided for the ICC.¹²

⁷ A "railroad in reorganization" is defined at 45 U.S.C. 702(16) as a railroad which is subject to a bankruptcy proceeding and which has not been determined by a court to be reorganizable or not subject to reorganization pursuant to this chapter as prescribed in section 717(b) of this title. A "bankruptcy proceeding" includes a proceeding pursuant to section 77 of the Bankruptcy Act and an equity receivership or equivalent proceeding * * *.

⁸ "Region" is defined at 45 U.S.C. 702(17) as "the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business in the aforementioned jurisdictions (as determined by [ICC] order) * * *."

⁹ The Plan was submitted to Congress on July 26, 1975. It was approved when neither the House of Representatives nor the Senate objected to it. The Plan was formally approved in section 601(e) of the 4R Act.

¹⁰ RSPO was established as "an office in the Interstate Commerce Commission." Former 49 U.S.C. 10361. In resolving the issue of whether final orders or regulations of RSPO were to be considered orders or regulations of the ICC, the court held that "[a]lthough Congress gave to the RSPO final administrative responsibility for certain determinations, we conclude that the RSPO is sufficiently part of the ICC so that its orders are to be considered orders of the ICC for purposes of the Hobbs Act." *Southeastern Pennsylvania Transp. Auth. v. I.C.C.*, 644 F.2d 238, 240, n.3 (3d Cir. 1981).

¹¹ The language of section 205 pertaining to RSPO was eventually codified at 49 U.S.C. 10361-64.

¹² However, under 49 CFR 1155.3(a), a carrier giving notice of intent to discontinue service shall submit an "Estimate of Subsidy Payment" to, *inter alia*, RSPO. Under 49 CFR 1155.4(c), a party desiring an interpretation of the standards can file a petition with RSPO. Under § 1155.9, if the parties cannot agree on certain issues, the matter could be arbitrated. The ICC was not directly involved in reviewing disputes.

The 4R Act also instituted the national OFA procedures. It allowed an abandonment to be postponed for up to 6 months if a financially responsible person offered to purchase or subsidize the line. Section 802. (This provision was originally codified at 49 U.S.C. 1a(6)(a) and subsequently recodified without substantive change at former 49 U.S.C. 10905.) In essence, the regional subsidy provision of 45 U.S.C. 744 was expanded to apply to all carriers. In November 1976, the ICC promulgated regulations that were predicated on the part 1155 regulations, although, due to factual and statutory differences, there were certain variations. The OFA rules are now found at 49 CFR 1152.27.¹³

The ICCTA was the latest legislative action applicable to these regulations. There was no change to 45 U.S.C. 744(c). The changes to section 744(d) do not affect part 1155. The RSPO statutes—49 U.S.C. 10361-64—were repealed. Former 49 U.S.C. 10905 was modified and is now found at 49 U.S.C. 10904, but the changes there do not affect our analysis.

In our NPR, we stated that we were reexamining part 1155 because of the changes made by the ICCTA, the availability of our national subsidy standards, and the likelihood that few situations fall within the regional subsidy framework. Comments were filed by the Association of American Railroads (AAR) and the Delaware Valley Railway Company, Inc. (DV).

Comments of the Parties

The AAR, in its brief comment, supports the removal of part 1155, arguing that rules "are of marginal, if any, utility * * *."

DV is a Class III short line railroad.¹⁴ It has operated over a rail line owned by a subsidiary of the Reading Company, the corporate successor of the bankrupt Reading Railroad Company. DV expresses its belief that the regional standards "substantially duplicate the National OFA standards," and supports removal of the part 1155 regional regulations because of the availability of the national OFA standards. It claims that, to keep separate regulations applicable to only a few lines and

¹³ The Staggers Rail Act of 1980, Public Law 96-448, 94 Stat. 1895, further revised former 49 U.S.C. 10905. Section 402. The 6-month negotiating period was shortened and, when a carrier and shipper could not agree to terms, the ICC upon request would set, and the carrier was bound by, the purchase or subsidy price.

¹⁴ DV is involved in a pending proceeding in which relief is sought, *inter alia*, under 49 CFR part 1155. *RailAmerica, Inc., and the Delaware Valley Railway Company, Petition to Set Subsidy Terms Under 45 U.S.C. 744(c) and 49 CFR Part 1155*, STB Finance Docket No. 33285.

³ See *Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions* 49 CFR 1120A, Finance Docket No. 28990F (ICC served July 16, 1981) at 9-10 (footnote omitted): "A rail line which was approved for abandonment under the Final System Plan * * * but over which operations were continued by a [designated operator], comes within the meaning of abandoned or authorized for abandonment * * *."

⁴ This subsidy "covers the difference between the revenue attributable to such rail properties and the avoidable costs of providing service on such properties plus a reasonable return on the value of such rail properties * * *."

⁵ The subsidy payment was now defined at section 744(d) as "the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties, together with a reasonable management fee as determined by [RSPO]." (Emphasis supplied.)

⁶ See *Application Proc.-Construct, Acq. Or Oper. R. Lines*, 365 I.C.C. 516, 523 (1982) and *Exemption of Certain Designated Operators from Section 11343*, 361 I.C.C. 379 (1979), *aff'd in part and remanded in part sub nom. McGinness v. ICC*, 662 F.2d 853 (D.C. Cir. 1981). See also 49 CFR 1150.16: "Although the designated operator will not be required to seek and obtain authority from the Board either to commence or terminate operations, the designated operator is a common carrier by railroad subject to all other provisions of 49 U.S.C. Subtitle IV."

another standard for all other lines, would cause "unnecessary, wasteful, potentially inconsistent, and duplicative regulation." It seeks to amend the national OFA standards to handle the few situations that would still fall under the regional standards.

In response to the question of whether there are any "railroads in reorganization," DV claims that the Reading Company, while "concededly not a railroad in reorganization under that [3R Act] statute, is a successor to a railroad in reorganization and should be subject to the provisions of 49 CFR part 1155 on that basis."¹⁵ It argues that Congress did not intend that carriers could avoid regulatory oversight by reorganizing themselves, and that the Board should focus on the rail property and rail service at issue and not the status of the owning entity.¹⁶

Discussion and Conclusions

Because of the changes in the ICCTA and the fact that there appear to be few lines being operated under the regional subsidy regime, we will remove the more than 30 pages of regulations at part 1155. While technically there may no longer be any 3R Act railroads in reorganization, there appear to be a few lines that have been continuously subsidized under 49 U.S.C. 744, and these lines require special procedures. Therefore, we are issuing regulations at 49 CFR 1152.27(n) that would provide for summary abandonment and discontinuance on notice by the carrier owning the line, and that would allow for the opportunity to subsidize and purchase lines under the national OFA rules.

As noted, *supra*, these lines were effectively approved for abandonment and discontinuance under section 744, and, for those lines that have been continually subsidized, we do not believe that the approval to abandon or discontinue has been removed. Accordingly, Board authorization is not needed for cessation of service. Lines of railroad in the Northeast that were not included in the Plan and are no longer being subsidized under section 744 but continue to be operated are common carrier lines subject to the regular

abandonment and national OFA regime of the Interstate Commerce Act.

The commenters generally support the removal of part 1155 (with DV also seeking a concomitant modification of the national OFA rules). Moreover, the record indicates that the regulations appear to be unnecessary. They were determined and issued by an office (RSPO) that has been abolished by the ICCTA.¹⁷ Under former 49 U.S.C. 10362(b)(7), RSPO was to "maintain, and from time to time revise and republish * * * standards for determining the revenue attributable to the rail properties, the avoidable costs of providing transportation, a reasonable return on value, and a reasonable management fee * * *." As noted, this section, as well as RSPO, has been abolished. There are, however, parallel sections in force—45 U.S.C. 744(c) and (d)—that pertain to subsidies for the continuation of rail freight service. Even here, however, support for the subsidy regulations is uncertain, because section 744(d)(1) and (d)(2) refer to laws repealed by the ICCTA.¹⁸

Even if the ICCTA does not mandate the removal of the regulations, there appears to be little need for the subsidy rules, because of the availability of the national standards and because the circumstances and conditions that the regional standards were to address have largely expired. Under 45 U.S.C. 744(a)(1) and (c)(1), the regional subsidy program applies to a "rail service on rail properties of a railroad in reorganization" and is not available "after 2 years from the effective date of the [Plan] or more than two years after the last rail service continuation payment is received, whichever is later * * *." There may not be any railroads in reorganization as defined by the statute. In *Consolidated Rail Corp. v. Reading Co.*, 654 F. Supp. 1318, 1323 (Sp. Ct. RRA 1987) (*Reading*), a case arose that involved whether personal injury claims could be brought against Conrail and National Railroad Passenger Corporation pursuant to section 709(b) of the 3R Act (45 U.S.C. 797h(b)). That section provided for assumption by

Conrail of personal injury claims against "a railroad in reorganization." The court looked at the definition of railroad in reorganization (45 U.S.C. 702(16)), *supra*, and stated that certain predecessor railroads of Conrail were not railroads in reorganization because they were no longer "subject to a bankruptcy proceeding." These carriers had undergone reorganization, final consummation orders had been entered, and the carriers had been discharged in bankruptcy.¹⁹ The court found that "[w]here, as is the case here, the definition of a statutory term is clear and unequivocal it is controlling." *Id.* (citations omitted.)

As a consequence of *Reading*, there will, at a minimum, be no new lines that can be added to the regional subsidy regime. This does not, however, end our inquiry. There appears to be at least one line that has been subsidized since the enactment of the regional subsidy program. Such lines have already been approved for abandonment and discontinuance. Moreover, it can be argued that these lines still fall within the ambit of section 744. Under these circumstances, we believe that the best approach will be to eliminate part 1155, but modify the OFA regulations for situations involving lines that are still being subsidized under the regional standards.

The notice periods will follow the basic regime of section 744. Summary discontinuance of service without Board approval may be effected if 60 days' notice is given by the owner of the line and certain parties are notified.²⁰ Beginning 120 days thereafter, the summary abandonment of a line is allowed if 30 days' notice is given and the parties are notified.

We are requiring the owner of the line, and not the designated operator, to provide the notice that triggers the OFA process. We are retaining the provision by which a designated operator may terminate service in accordance with the terms of its agreement and is only required to give notice of termination of service to the shippers on the line. 49 CFR 1150.11. No time period is specified for the notice. We hope that

¹⁵ DV claims it involves "one of the few instances, if not the last instance, of rail service provided over railroad property owned by the successor to a bankrupt railroad not transferred to Conrail or another rail carrier under the [Plan]." [Footnote omitted.]

¹⁶ These concerns are moot, because we are finding that the abandonment and discontinuance of lines still being subsidized will fall under the special national OFA standards at 49 CFR 1152.27(n). Formerly subsidized lines that are being abandoned or discontinued will come under the regular OFA rules at section 1152.27.

¹⁷ We note that the regulations assign continuing responsibilities to the abolished office (issuing interpretations, receiving estimates of subsidy payments).

¹⁸ Under 45 U.S.C. 744(d)(1), the defunct RSPO is to determine the terms a subsidizer is to pay a designated operator. Section 744(d)(1) states that the terms "revenue attributable," "avoidable costs," and "reasonable management fee" are to be determined by "the Office," defined at 45 U.S.C. 702(12) as RSPO.

Moreover, under 45 U.S.C. 744(d)(2), the term "reasonable return on value" is to be developed according to the standards of 205(d)(6) of the 3R Act, which, as noted, was codified at the now repealed RSPO statute, 49 U.S.C. 10362.

¹⁹ The court noted (*Id.* at 1323, n.2) the following consummation dates: Erie Lackawanna, Inc. (November 30, 1982); Reading Co. (December 31, 1980); Penn Central Transportation Co. (October 24, 1978); Lehigh Valley Railroad Co. (September 1, 1982); and the Central of New Jersey (September 14, 1979). We note that despite this ruling, section 797h(b) has not been removed.

²⁰ Notice shall be to the Board, governor and transportation agencies and the government of each political subdivision of each state in which such rail properties are located and to each shipper who has used the rail service during the previous 12 months.

the designated operator and line owner will coordinate the giving of notice so that there will be no break in service. We recognize, however, that under our present "designated operator" rules, it is possible that the operator could terminate service before the notice period has expired. This eventuality is a natural outcome of such subsidy regimes where service is tied specifically to an agreement. Nevertheless, given the specified time periods and the ability of the Board to set terms and conditions under the national standards, we expect that any breaks in service would be of short duration.

The New OFA Rules

We are modifying 49 CFR 1152.27 by adding a new paragraph (n). Abandonment or discontinuance notice must be given, affording interested persons an opportunity to purchase or subsidize the line under our national OFA standards.²¹ The applicable time limits will run from the date of the notice as the Board does not approve the cessation of service for these lines.

We will generally apply the national OFA standards applicable to class exemptions found at 49 CFR 1152.27 to these summary abandonments and discontinuances.²² For example, a party may discontinue²³ or abandon service on a line of railroad formerly in reorganization that was not included in the Plan on 60 days' notice and, beginning 120 days after discontinuance, on 30 days' notice, respectively. Notice of summary abandonment or discontinuance will be published by the Board in the **Federal Register** within 20 days of filing. 49 CFR 1152.27(b)(2)(ii). Expressions of intent to file an offer must be filed no later than 10 days after the **Federal Register** publication. Paragraph (c)(2)(i) of section 1152.27. An offer must be filed within 30 days of the **Federal Register**

publication. Paragraphs (b)(2)(ii) and (c)(2)(ii)(B) of section 1152.27.

The Board will review offers to determine if a financially responsible person has offered assistance. If this criterion is met, the Board will postpone the effective date of the summary abandonment (but not the discontinuance)²⁴ within 35 days of the **Federal Register** publication. Paragraph (e)(2) of § 1152.27. If the carrier and financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of the compensation. This request must be filed within 30 days after the offer of purchase or subsidy is made, and the Board will issue a decision within 30 days after the request is due. Paragraphs (g)(1) and (h)(1) of § 1152.27.

Lines of the former railroads in reorganization under the 3R Act are under Board jurisdiction insofar as the institution of new rail service is involved. See *Delaware and Hudson Ry. Co.—Modified Cert. Of PC&N*, 363 I.C.C. 808 (1981) (holding that where a line had formally been operated under subsidy and was later abandoned, the carrier was required to file an application under former 49 U.S.C. 10901 to operate the line). Thus, in those instances, any future abandonment or discontinuance would be subject to the abandonment and OFA procedures of 49 U.S.C. 10903–04.

The Board concludes that the removal of the rule and the addition of the new rule will not have a significant effect on a substantial number of small entities. It appears that the eliminated, as well as the new, rule does not apply to many situations. In those situations where the rule changes are applicable, they are consistent with the new statutory framework. Moreover, there should not be any significant change from current practice under the new rules.

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

List of Subjects

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, Public land-grants, Public lands-rights-of-way,

Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 1155

Railroads, Uniform System of Accounts.

Decided: May 13, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

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

1. The authority citation for part 1152 is revised to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

2. In § 1152.27, paragraph (n) is added to read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(n) *Special provisions for summary discontinuance and abandonment of lines not part of the Final System Plan.* (1) Board authorization is not needed for the cessation of service on a line of railroad formerly in reorganization that was not included in the Final System Plan (Plan) under the Regional Rail Reorganization Act of 1973, 45 U.S.C. 701 *et seq.*, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, if the line has been continuously subsidized since the inception of the Plan. To provide an opportunity for rail service continuation through offers of financial assistance, however, the owner of the line must give not less than 60 days' notice of a discontinuance, and beginning 120 days after discontinuance, not less than 30 days' notice of abandonment. Designated operators need only comply with the notice requirements of § 1150.11 of this title. In instances of discontinuance by a designated operator, the line owner is not obligated to operate the line. Notice is to be sent by the line owner to the Board, the governor and transportation agencies and the government of each political subdivision of each state in which such rail properties are located and to each shipper who has used the rail service

²¹ Under the statute, the standards for subsidizing lines are the same for both the national OFA (49 U.S.C. 10904(f)(1)(C)) and regional subsidy (45 U.S.C. 744(c)(2)): the difference between the revenue attributable to the line and the avoidable costs of providing service plus a reasonable return on the value of the line. The regional standards also provide that designated operators are to receive a reasonable management fee discussed *infra*. Unlike section 744, however, the national OFA statute provides that the standard for purchasing a line is its fair market value. This standard will be used in processing offers under section 1152.27(n).

²² The one significant difference is that we are incorporating into new section 1152.27(n)(2) the reasonable management fee standard for designated operators (4½ %) from section 1155.7(o).

²³ As noted, the owner of the lines gives the notice that triggers the OFA process for discontinuances. The designated operator follows the notice requirements of 49 CFR 1150.11.

²⁴ We cannot postpone the effective date of the discontinuance because, under our rules, designated operators need only comply with the notice requirements of 49 CFR 1150.11, and, in instances of discontinuance, the line owner is not obligated to operate the line.

during the previous 12 months. The Board will generally apply the OFA procedures in this section (49 CFR 1152.27) for class exemptions to summary abandonment and discontinuance notices (except that the Board will not postpone the effective date of a summary discontinuance). For example, notice of summary abandonment or discontinuance will be published by the Board in the **Federal Register** within 20 days of filing. Paragraph (b)(2)(ii) of this section. Expressions of intent to file an offer must be filed no later than 10 days after the **Federal Register** publication. Paragraph (c)(2)(i) of this section. An offer must be filed within 30 days of the

Federal Register publication. Paragraphs (b)(2)(ii) and (c)(2)(ii)(B) of this section. The Board will review offers to determine if a financially responsible person has offered assistance. If this criterion is met, the Board will postpone the effective date of the summary abandonment (but not the discontinuance) within 35 days of the **Federal Register** publication. Paragraph (e)(2) of this section. If the carrier and financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of the compensation. This request must be filed within 30 days after the offer of purchase or subsidy is

made, and the Board will issue a decision within 30 days after the request is due. Paragraphs (g)(1) and (h)(1) of this section.

(2) Where a designated operator is being used, it shall be paid a reasonable management fee. If the parties cannot agree on this fee, it shall be four and one-half percent of the total annual revenues attributable to the branch.

PART 1155—[REMOVED]

3. Part 1155 is removed.

[FR Doc. 98-13592 Filed 5-21-98; 8:45 am]

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