

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

§ 1152.20 Notice of intent to abandon or discontinue service.

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

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

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

- (i) Significant users of the line;
- (ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance. (For the purposes of this section “states directly affected” are those in which any part of the line sought to be abandoned is located).
- (iii) The Public Service Commission (or equivalent agency) in these states;
- (iv) The designated state agency in these states;
- (v) The State Cooperative Extension Service in these states;
- (vi) The U.S. Department of Transportation (Federal Railroad Administration);
- (vii) Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program);
- (viii) The U.S. Department of Interior (Recreation Resources Assistance Division, National Park Service);
- (ix) The U.S. Railroad Retirement Board;
- (x) The National Railroad Passenger Corporation (“Amtrak”) (if Amtrak operates over the involved line);
- (xi) The U.S. Department of Agriculture, Chief of the Forest Service; and
- (xii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line.

(3) *Posting.* Applicant must post a copy of its Notice of Intent at each

agency station and terminal on the line to be abandoned. (If there are no agency stations on the line, the Notice of Intent should be posted at any agency station through which business for the involved line is received or forwarded.)

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

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

(2) The Notice must be posted and fully published within the 30-day period prior to the filing of the application; and

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

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

[61 FR 67883, Dec. 24, 1996, as amended at 68 FR 67810, Dec. 4, 2003]

§ 1152.21 Form of notice.

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

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

Notice of Intent To Abandon or To Discontinue Service

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, DC 20423, an application for permission for the abandonment of (the discontinuance of service on), a line of railroad known as ____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes), a distance of ____ miles, in [County(ies), State(s)]. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location). The reason(s) for the proposed abandonment (or discontinuance) is (are) ____ (explain briefly and clearly why the proposed action is being undertaken by the

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applicant). Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date).

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

- (1) Protestant's name, address and business.
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents; and
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.
- (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported

by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

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

- (i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;
- (ii) Environmental impact;
- (iii) Impact on rural and community development;
- (iv) Recommended provisions for protection of the interests of employees;
- (v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and
- (vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.

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

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

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

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

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB _____ (Sub-No. _____) and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The

original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

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

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

[75 FR 30712, June 2, 2010]

§ 1152.22 Contents of application.

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

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

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

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

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

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

(6) Detailed statement of reasons for filing application.

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

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

(b) *Condition of properties.* The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1