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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

STB Docket Ex Parte No. 712

JAN 10 2012

Part of
Public Record

IMPROVING REGULATION AND REGULATORY REVIEW

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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January 10, 2012

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Introduction

By Order served October 12, 2011, the Surface Transportation Board (“Board” or “STB”) requested interested parties to identify existing STB regulations and reporting requirements that are “outmoded, ineffective, insufficient, or excessively burdensome . . .” and to propose which regulations or requirements should be “modified, streamlined, expanded, or repealed.” The Board took such action to facilitate its review of existing regulations in response to President Obama’s Executive Order 13579,¹ which asked independent agencies to retrospectively analyze their regulations and provide a plan to periodically reassess and streamline those regulations. The STB also requested comments from interested parties on an appropriate time frame for conducting the next retrospective review of its regulations.

The AAR, on behalf of its member freight railroads, hereby submits the following comments in response to the Board’s Order. At the outset, the AAR appreciates the opportunity to identify changes in regulation that would contribute to expedited and more efficient regulatory processes. As discussed below, there are six general areas of STB regulatory requirements

¹ 76 Fed. Reg. 41,587-88 (July 14, 2011).

where the AAR believes significant changes would lessen the burden, from both a time and cost perspective, on the parties involved while still achieving regulatory objectives. Those areas involve abandonments, environmental and historical reviews, rate proceedings, revenue adequacy determinations, general procedural and filing requirements, and R-1 reporting requirements. Regulatory requirements that are obsolete as a result of past legislative changes are also identified below.²

Preliminary Statement Regarding the Scope of Party Comments

The Board issued a decision on December 21, 2011, in this proceeding ruling on AAR's request for clarification regarding the scope of comments in this proceeding. The Board stated that it "will consider comments on the existing and proposed regulations involved in the 12 proceedings cited in AAR's petition for clarification." Based on NIT League's opposition to AAR's request, and in particular on NIT League's assertion that "restricting the scope of this proceeding, as requested by the AAR, would deprive the Board of fresh perspectives and ideas that may have developed since the Board received comments in those other proceedings," AAR anticipates that NIT League and perhaps other shipper interests may submit in this proceeding comments addressed to regulatory provisions at issue in various prior or pending Board proceedings, such as Ex Parte No. 705, *Competition in the Railroad Industry*, Ex Parte No. 707, *Demurrage Liability*, or other proceedings referenced in AAR's petition for clarification.

It is not necessary at this time for AAR to reiterate in these comments the positions AAR has taken and the arguments in support of them in the various proceedings referenced in AAR's

² While many of the proposed regulatory changes suggested by the AAR may require a formal change to Board rules or an exemption from a statutory requirement, the suggestions in these Comments are not intended as either a Petition for Rulemaking pursuant to 49 C.F.R. § 1110.2 or a Petition for Exemption pursuant to 49 U.S.C. § 10502(b). Any proposed exemption or rulemaking action the Board may deem appropriate in response to the AAR's Comments may be effected by the Board on its own initiative under the relevant statute and regulations.

petition for clarification. For example, AAR and its members have explained in considerable detail in Ex Parte No. 705 why no change in the Board's competition policies would be appropriate and why changes advocated by some shipper interests would, in fact, be counter-productive. Moreover, given the extensive airing of the issues regarding competition policy in Ex Parte No. 705, there is no reason to believe that "fresh perspectives and ideas" that shippers might offer now in this proceeding would add anything of substance to the record that has already been created in that proceeding. Accordingly, AAR will not burden the record here by anticipating and addressing any positions that the shippers might take on the issues embraced in the other proceedings identified in AAR's petition for clarification. AAR urges the Board to base any further action it may take in any of those dockets on the records that were created in those dockets.

Unnecessary or Burdensome Regulatory and Reporting Requirements

I. Abandonment Procedures

A. System Diagram Map

The Board's regulations at 49 C.F.R. §§ 1152.10-1152.15 require the preparation and filing of system diagram maps by rail carriers containing information relating to lines subject to potential abandonment by the rail carrier. The maps, containing information specified by the regulations, must be filed with the Board, served upon state governors and relevant state agencies, and published in local newspapers where lines that are candidates for abandonments are located. These system diagram map requirements have ceased to serve any useful purpose. Most abandonments now are effected through an exemption proceeding that do not reference or require the map filing or publication. Accordingly, the requirement in 49 C.F.R. §§ 1152.10-13 to prepare, file, and publish system diagram maps as a predicate to an abandonment should be eliminated. A rail carrier could continue to prepare and publish the system diagram map if it

chose to do so. However, in place of the map, a railroad could be required instead to post and maintain on its website up-to-date information comparable to what would be required on a system diagram map. The Board's regulations at 49 C.F.R. § 1152.10 already provide that a Class III carrier may, in lieu of a map, file only a "narrative description of its lines that provides all of the information required [on the map]." (To the extent that the publication and submission of a system diagram map to the Board may be required by 49 U.S.C. § 10903, the Board should exempt the railroads from that explicit requirement pursuant to 49 U.S.C. § 10502 (b).)

B. Expiration of Abandonment Authority

The Board's regulations at 49 C.F.R. § 1152.29(e)(2) provide that authority to consummate an abandonment expires one year after authorization, unless a legal or regulatory barrier to consummation exists. In that case the notice of consummation must be filed within 60 days of the barrier's removal. Typically, the barriers to consummation are conditions precedent to commencing salvage (environmental or historic preservation), and salvage is difficult to commence and complete in the 60 days that follow the removal of the barrier. The result is that carriers often must petition the Board for one or more extensions while salvage is being completed. A grace period of one year rather than the existing 60 days should be provided.

C. Offers of Financial Assistance

The Board should change its offer of financial assistance ("OFA") procedures at 49 C.F.R. § 1152.27. Currently, the financial capacity of offerors is subject to minimal scrutiny under the Board's regulations. The Board should amend its regulations to require information at the outset to ensure that an offeror can provide the represented financial support. Options that the Board should consider are to require an earnest money escrow or deposit at the time of the offer, a certification from a financial institution or a certified public accountant of the offeror's

financial position, or a representation from the offeror that it has not previously made an offer (or some specific number of offers) under the OFA process that it was unable to consummate.

D. Notice of Exemption

The Board's regulations at 49 C.F.R. § 1152.50 provide for a streamlined exemption process for the abandonment of lines that have had no local traffic for two years. This process has worked well to expedite the abandonment process where there is no public interest in maintaining the rail line and, accordingly, to reduce the costs associated with the abandonment. The Board should expand its Notice of Exemption procedures to create an exemption that would also apply to any line that has carried 100 or fewer revenue carloads in a prior 12 month period. Under this *de minimis* exemption, the Board would reserve its authority to require a full abandonment proceeding by revoking the exemption upon receipt of a bona fide protest to the abandonment.

E. Replies to Protests

In the context of abandonments subject to the notice of exemption process, the Board's regulations at 49 C.F.R. § 1152.60 do not provide for replies by a rail carrier to responses to petitions for abandonments. A rail carrier, if it chooses to respond, must file a petition to do so. The Board should modify its rules at 49 C.F.R. § 1152.60 to allow timely replies to responses to petitions for abandonments in order to build a better record in such proceedings.

F. Historic Reporting

Current STB regulations do not allow abandonment and track salvage to proceed if the "Section 106" historical review process has not been completed. This places an added cost on the abandoning rail carrier that is not allowed to realize the value of the track salvage in a timely manner. The STB should modify its abandonment procedures to allow consummation of the

abandonment and track salvage operations to proceed pending completion of the Section 106 process provided that no structures are removed until the historical review process is complete. Under such a process, the rail carrier would not incur the opportunity costs associated with having to leave track in place for an indeterminate period.

II. Environmental and Historical Review Process

The Board's regulations at 49 C.F.R. § 1105.10 establish procedures for the environmental review process in Board proceedings and describes the role of consulting agencies. The Board should modify 49 C.F.R. § 1105.10 to make clear that, any consulting federal, state, or local agency should be held to set deadlines for supplying responses to environmental inquiries and that absent a timely response, the consulting agency shall be deemed to concur or have no objection. Moreover, any consulting agency requesting Board-imposed mitigation or other remedial action should be required to provide specific justification for each such request.

Regulations for the Board's historical review process are at 49 C.F.R. § 1105.8. Under the regulations, State Historical Preservation Officers ("SHPO") are accorded the opportunity to provide input in Board proceedings. The Board's regulations should be amended to require the SHPO to provide input to the Board within a specific time period (*e.g.*, 60 days). If input is not received by that time, it should be deemed that the SHPO has no objection. The State Historic Preservation process has caused substantial delays in proceedings in the past because there is no specific deadline for SHPO input.

III. Rate Cases

A. Market Dominance

Under the Board's current rules, product and geographic competition are not to be used as evidence of a rail carrier's lack of market dominance in rate proceedings. *Market Dominance*

Determinations—Product & Geographic Competition, 3 S.T.B. 937, 950 (1998), *petition for review denied*, *Ass'n of Am. R.R. v. STB*, 306 F.3d 1108, 1108-09 (D.C. Cir. 2002). This Board position is inconsistent with the realities of the market place for rail transportation. While the Board may be concerned with the perceived length of time and evidentiary requirements associated with determining product and geographic competition, those concerns should not preclude the Board from considering all of the relevant facts when determining whether there is or is not effective competition for the issue traffic. Indeed, some modest additional effort at the market dominance stage of the case would reduce overall regulatory burdens by eliminating unnecessary rate reasonableness proceedings. The Board should revise its rules to establish reasonable time limits so that product and geographic competition can be considered in rate reasonableness cases, including Simplified Stand Alone Cost (“SSAC”) cases and Three Benchmark cases (“3-B”).

The Board should also revise its rate reasonableness rules to manage the early resolution of market dominance in rate cases by allowing a party the option of bifurcation into separate market dominance and rate reasonableness phases in cases where the party can show that there is a meaningful threshold question regarding the carrier’s market dominance. Substantial savings of time and expense can be realized through bifurcation. *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, STB Docket No. 42110 (case settled shortly after hearing on market dominance issues but only after submission of full stand-alone cost record.) The Board has recently bifurcated rate cases into separate market dominance and rate reasonableness phases. *Total Petrochemicals USA, Inc. v. CSX Transp., Inc.*, STB Docket No. 42121, at 1 (STB served Apr. 5, 2011); *M&G Polymers USA, LLC v. CSX Transp., Inc. & the S.C. Central R.R. Co.*, STB Docket No. 42123, at 3 (STB served May 6, 2011).

B. Presentation of Evidence

Under the Board's current rules in rate cases, counsel and consultants have substantial latitude in presenting factual evidence. *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, STB Ex Parte 347 (Sub-No. 3), at 2-3 (STB served Mar. 12, 2001). In fact, such evidence has been accepted by the Board if the offeror simply appends a footnote to the "evidence" in an otherwise legal argument saying: "Mr. X is the sponsor of this section." To ensure that there is an individual willing to attest to the accuracy of specific factual assertions, the Board should change its practice regarding the presentation of evidence in rate cases and require the submission of verified statements signed by the person sponsoring factual information.

In that same vein, the Board should specifically prohibit the introduction of evidence by new expert witnesses/consultants by the complainant at the rebuttal stage in Stand Alone Cost ("SAC") cases. Reliance at the rebuttal stage on new experts whose opinions could and should have been advanced on opening so that defendants would have an opportunity to address them is inconsistent with the complainant's burden to establish a prima facie case on opening. In the alternative, the Board should authorize the carrier to respond to any evidence offered by a new expert witness on rebuttal without requiring the carrier to move for leave to file a surreply.

Lastly, the Board should consider a change to its rules relating to the use of rail traffic movement evidence in 3-B proceedings. The Board's rules should be modified to allow, as an option, a rail carrier to use the full last 12 months of carrier's traffic data for purposes of selecting the comparison group, not only the waybill sample. The defendant carrier would be required to make the traffic data available to the complaining shipper on a costed basis, so that both parties could draw comparable movements from that data. Allowing the use of the most

recent twelve months of traffic data will promote the objective in 3-B cases to compare R/VC ratios on the issue traffic movements with *current* R/VC ratios on comparable movements.

C. Cross-Over Traffic

The Board's rules relating to the use of cross-over traffic in SAC cases need to be modified. The Board could take an important step toward eliminating waste and improving its existing regulations by eliminating or substantially curtailing the use of cross-over traffic in SAC cases. Cross-over traffic has been accepted by the agency as a simplifying device. However, over time in a series of decisions expanding the concept, the STB has allowed complainants increasingly broad discretion to select "cross-over" traffic to include in SARR traffic groups. Today, the analysis of cross-over traffic has become one of the most complex and cumbersome areas of a SAC presentation. Moreover, complainants' increasing reliance on cross-over traffic has caused the SAC test to become increasingly detached from its core theoretical purpose: to identify any existing cross-subsidies or inefficiencies that result in the issue traffic paying for facilities from which it derives no benefit. What began as a modest addition to the SARR traffic base has become the predominant portion of assumed SARR traffic to the point that cross-over traffic now routinely constitutes the overwhelming majority of SARR traffic in SAC cases.³ Eliminating cross-over traffic and returning to the original principles of SAC would enable a more straightforward and theoretically sound SAC analysis by identifying the full costs associated with traffic that shares facilities with the issue traffic.

³ See, e.g., *Duke Energy Corp. v. CSX Transp., Inc.*, 7 S.T.B. 402, 422 (2004) (noting that "almost 90%" of SARR traffic group was cross-over traffic); *Western Fuels Ass'n, Inc. & Basin Elec. Power Coop. v. BNSF Ry. Co.*, STB Docket No. 42088, at 5-6, 12 (STB served Feb. 18, 2009); *Arizona Elec. Power Coop., Inc. v. BNSF Ry. Co. & Union Pac. R.R. Co.*, STB Docket No. 42113, at 23-24 (STB served Nov. 22, 2011).

Cross-over traffic was not originally contemplated by *Coal Rate Guidelines*, which posited that the complainant would assume 100% of the defendant railroad's responsibilities as to traffic selected for the SARR and would build all facilities necessary to replace the defendant's service for that traffic. The Board explained in *Major Issues in Rail Rate Cases*, Ex Parte No. 657 (Sub-No. 1), at 31 (STB served Oct. 30, 2006) ("Major Issues"), that "it is clear that the concept of cross-over traffic was not contemplated by the ICC when it adopted *Guidelines*."

Despite the theoretical incongruence of allowing a SAC complainant to claim revenues from traffic for which it chose not to replicate the full stand-alone costs, the ICC adopted cross-over traffic as a mechanism to "allow shippers to make effective cases . . . using smaller hypothetical SARRs than would otherwise be required." *Bituminous Coal – Hiawatha, UT to Moapa, NV* ("Nevada Power"), 10 I.C.C. 2d 259, 280 (1994) (Chairman McDonald, commenting). The Board has similarly recognized that "the use of cross-over traffic is nothing more than a simplifying device." *Major Issues*, at 32.

While cross-over traffic was adopted to simplify SAC cases, it has proven to be anything but simplifying. Instead, cross-over traffic tends to transform the SAC analysis from an assessment of the costs of serving traffic without inefficiencies or cross-subsidies into a process that allows for the artificial inflation of SARR revenues by claiming portions of the revenue for cross-over traffic while pushing most costs of serving that cross-over traffic onto the incumbent. As an example, Complainants have presented SAC evidence for stand-alone networks that supposedly would handle millions of carloads of general freight traffic without operating a single classification yard and that would earn tens of millions in revenues from intermodal traffic

without building a single intermodal facility.⁴ The involved process that is necessary to fairly allocate revenues in situations where complainants replicate a mere fraction of the real operations and facilities needed to handle cross-over traffic is anything but “simplifying.” Whatever the ICC intended when it first allowed cross-over traffic, today the tail of cross-over traffic is wagging the dog of the stand alone cost test.

IV. Revenue Adequacy Proceedings

The Board should use replacement cost in its annual revenue adequacy determinations. There is broad consensus that replacement costs constitute an economically superior measure of the value of a carrier’s assets than depreciated book costs. They therefore provide a superior basis for complying with the statutory mandate that the Board calculate revenue adequacy each year for each Class I rail carrier.

V. General Procedural and Filing Requirements

A. E-Filing and Service

The Board should move away from requiring any paper filings and should facilitate e-filing to the fullest extent possible. The Board’s paper filing rules at 49 C.F.R. § 1104 (*e.g.*, §§ 1104.1(e)(3) and 1104.3) are outmoded and wasteful, especially the requirement for an original as well as ten paper copies of filings.⁵ In that regard, the Board should improve its capacity to accept electronic forms of payment so that more filings can be submitted under the agency’s e-

⁴ See Reply Evidence of CSX Transp., Inc. at I-1, *Seminole Elec. Coop., Inc. v. CSX Transp., Inc.*, STB Docket No. 42110 (filed Jan. 19, 2010); *Arizona Elec. Power Coop., Inc. v. BNSF Ry. Co. & Union Pac. R.R. Co.*, STB Docket No. 42113, at 23-24 (STB served Nov. 22, 2011).

⁵ The burden of filing paper copies is even more consequential in cases where there are protective orders that result in the filing of both public and highly confidential versions of pleadings and evidence.

filing system, thereby reducing administrative costs, overnight shipping, and courier costs. This would also make the process more accessible to small railroads and shippers.

With respect to service of filed pleadings upon other parties, the Board's current rule at 49 C.F.R. § 1104.12 provides that pleadings made by e-filings at the Board can be served on others parties via e-mail, but only if e-mail service is acceptable. The Board should modify the regulations to make e-mail service acceptable for all e-filings, or at least in declaratory actions involving numerous parties and in rulemaking proceedings where the Board has required service on other parties.

Consistent with the proposed requirement for filing and service of pleadings electronically, 49 C.F.R. § 1105.7 and 8 should be modified to allow for environmental and historic reports and draft and final environmental impact statements and environmental assessments (§ 1105.10(a)(3) and (b)) to be served electronically instead of by the traditional paper format. Also, the Board should allow for electronic notification in 49 C.F.R. § 1034.1(a) for temporary authority to divert or reroute traffic.

B. "Verified" Notices of Exemption

Notices of exemption should not need to be verified. The verification that currently must be attached to a verified notice of exemption (such as those at 49 C.F.R. §§ 1150.31, 1150.41, 1152.50, and 1180.2(d)) serves no essential purpose. To the extent that any information in the exemption is determined to be incorrect, there is an automatic "self-correcting" process in place. Unlike in the context of verified statements containing factual information, if there is incorrect information in an exemption notice, the exemption is considered *void ab initio* under the Board's rules.

C. Exemption for Agricultural Contract Summaries

The provision requiring filing of Agricultural Contract Summaries (49 C.F.R. § 1313.2) is burdensome and unnecessary. The board should grant an exemption from the underlying statutory provision (49 U.S.C. §10709(d)), so that carriers and the Board staff no longer need to commit resources to this activity.

D. Procedural Schedules

Under 49 C.F.R. § 1114.31(a), a motion to compel responses to interrogatories and written deposition questions must be filed within 10 days after the response is due, but the parties would often like additional time to negotiate before filing motions. Under the current rule, if that negotiation expands beyond 10 days, there is a possibility that the Board would find a subsequent motion to be untimely. The Board should modify its rules to provide for an automatic tolling of the 10-day period if the parties agree to toll the rule while they negotiate.

Additionally, the Board should amend its rules at 49 C.F.R. § 1111 to specify that the procedural schedule in complaint proceedings will include final briefs to be filed simultaneously at the end of the submission of evidence. The Board has previously explained that “a single round of simultaneous briefs will, without further delaying the proceeding, allow each party to set forth its position on key issues in light of the full record, and identify issues that have been narrowed or are no longer in dispute.” *Public Service of Colorado D/B/A Xcel Energy v. The Burlington Northern and Santa Fe Ry. Co.*, STB Docket No. 42057, at 1 (STB served Aug. 8, 2003); *Duke Energy Corp. v. Norfolk Southern Ry. Co.*, *Duke Energy Corp. v. CSX Transportation, Inc.*, *Carolina Power & Light Co. v. Norfolk Southern Ry. Co.*, STB Docket Nos. 42069, 42070, 42072, at 2 (STB served Dec. 13, 2002) (same).

E. Factual Presentations

The Board should amend 49 C.F.R. §§ 1103.11 and 1104.4, which sets the ethical standard for appearances before the Board, to allow for sanctions similar to those available under Rule 11 of the Federal Rules of Civil Procedure. The Board has suggested in the past that it is guided by the principles of Rule 11. *See Norfolk Southern Ry. Co.—Abandonment Exemption—in Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub No. 293X), at 1 (STB served Nov. 6, 2007) (“As a general matter, the Board’s Rules of Practice direct “*all persons* appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States.” 49 C.F.R. § 1103.11(emphasis supplied).”). By presenting a pleading to a federal court (and by extension, to the Board), “an attorney or unrepresented party is certifying that to the best of the person’s knowledge, information and belief, formed after an inquiry reasonable under the circumstances,” the document “is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Fed. R. Civ. P. 11(b)(1). The Board should amend its regulations to make clear its power to issue sanctions in conformance with Rule 11.

F. Waybill Data

The Board should make it clear at 49 C.F.R. § 1244.9 that a railroad is entitled to receive a copy of the Board’s costed waybill data covering traffic that was originated, terminated or bridged by that railroad regardless of whether the data are related to a specific proceeding.

G. Emergency Service Orders

The Board should hold a hearing pursuant to 49 C.F.R. § 1146 before issuing an emergency service order to establish that no alternative service is available. In cases where time is of the essence, the hearing could be telephonic.

VI. Accounting and Reporting Requirements

A. Railroad Annual Report Form R-1

Class I rail carriers are required to file annual reports in accordance with Railroad Annual Report Form R-1 ("R-1") pursuant to 49 C.F.R. § 1241.11. The Board should review and modernize the instructions, materials, and processes associated with the filing of R-1s to make the system more "user friendly" and reduce the time and expense of filings. Actions taken by the Board to improve the R-1 materials and processes should include: (1) providing an explanation of the purpose and a more detailed description of the R-1 Schedules; (2) updating the estimate of hours of preparation to reflect the actual amount of time spent by rail carriers in preparing the R-1s; (3) updating the units of property descriptions (both in the R-1s and in the Board's accounting, record keeping, and reporting regulations at 49 C.F.R. §§ 1201-1253); (4) adopting ASC 410, Asset Retirement and Environmental Obligations (which would allow railroads to stop keeping separate books for those adjustments and would also align the required reporting with GAAP), and (5) enabling more robust electronic submissions of R-1s with standard software.

The Board should also review the R-1 Schedules and eliminate the reporting requirements for those Schedules which contain data not used or usable to support the Board's regulatory objectives or which is not used for purposes of the Board's Uniform Rail Costing System ("URCS"). The following Schedules meet these criteria and should be eliminated from the R-1:

- a. Schedule 220 Retained Earnings
- b. Schedule 339 Accrued Liability -- Leased Property
- c. Schedule 340 Depreciated Base and Rates – Improvements to Road and Equipment Leased from Others
- d. Schedule 342 Accumulated Depreciation – Improvements to Road and Equipment Leased from Others
- e. Schedule 350 Depreciation Base and Rates – Road and Equipment Leased to Others
- f. Schedule 351 Accumulated Depreciation – Road and Equipment Leased to Others
- g. Schedule 416 Supporting Schedule – Road
- h. Schedule 418 Supporting Schedule – Capital Leases
- i. Schedule 460 Items in Selected Income and Retained Earnings Accounts for the Year
- j. Schedule 501 Guarantees and Suretyships
- k. Schedule 502 Compensating Balances and Short-Term Borrowing Arrangements
- l. Schedule 710S Unit Cost of Equipment Installed During the Year

In addition to those Schedules which should be eliminated, the following Schedules should be updated and modified to reflect current Generally Accepted Accounting Principles (“GAAP”) or to harmonize R-1 reporting requirements:

- a. Schedule 200 Comparative Statement of Financial Position – Add a separate line for “Accumulated Other Comprehensive Earnings” to conform to GAAP
- b. Schedule 210 Results of Operations – Change the description in Line 41 to “Amortization of Premium or Discount on Funded Debt” to reflect that premium amortization is included in interest expense
- c. Schedule 412 Way and Structures – Add a separate line for (44) Shop Machinery to reconcile the amortization expenses and depreciation for road accounts required in Schedules 335 and 412.
- d. Schedule 415 Supporting Schedule – Equipment – Combine owned and capitalized leases in the Schedule and eliminate Lines 38-40 pertaining to Machinery because the data is not in, and therefore does not support. Schedule 410, Equipment Accounts.
- e. Schedule 450, Analysis of Taxes – eliminate line 7, Supplemental Annuities. This tax was phased out in 2002.
- f. Schedule 755 Railroad Operating Statistics – Eliminate Line 89 (Cabooses Miles) because there has been a significant reduction in the use of cabooses by reporting rail carriers.

B. Quarterly Report of Railroad Employees, Service, and Compensation

Pursuant to 49 C.F.R. § 1245.2, Class I railroads are required to file an Annual Report of Railroad Employees, Service, and Compensation. The rail carriers are also required to file quarterly reports "...until further ordered." The information necessary to meet the Board's regulatory objectives can be and is provided by the railroads in the Annual Reports. There is no need to incur the time and costs of preparing and submitting quarterly reports and that regulatory requirement should be eliminated.

C. Instructions for Property Accounts

In order to update and streamline the Board's instructions for property accounts at 49 C.F.R. § 1201: (1) the Board should eliminate references to pooling of interest treatment at 49 C.F.R. § 1201, 2-15 (b) (1) – (3); and (2) the Board should eliminate thresholds on capitalization and need for prior consultation each year with the STB on minimum capitalization levels set forth at 49 C.F.R. § 1201, 2-2.

VII. Obsolete Provisions

The following STB regulations should be eliminated or modified to the extent they are obsolete and no longer relevant to the Board's regulatory objectives:

- a. Procedures in Informal Proceedings before Employee Boards (49 C.F.R. § 1118). This provision is obsolete.
- b. Exemption from filing requirements for international joint through rates (49 C.F.R. § 1039.21). Statutory filing requirements are no longer applicable to railroads.
- c. Exemption for long haul/short haul movements (49 C.F.R. § 1039.12). The statutory long haul/short haul prohibition no longer exists.
- d. Requirement for publication of rates and service terms for agricultural products and fertilizer (49 C.F.R. § 1300.5). This provision is obsolete.
- e. Practitioner exams (49 C.F.R. § 1103.3). The provision should be deleted which provides for the exam to be taken in any city where the Board has an office because the Board has no offices other than in DC.

Proposed Retrospective Review Intervals

The Board has requested that commenting parties “suggest an appropriate time frame for conducting the next retrospective review of the agency’s regulations and reporting requirements.” Given that an important focus of the proceeding is on rules that have been in effect for a sufficient period of time for the affected parties to gain experience with them, AAR suggests that a period of five years before the next retrospective review would be appropriate.

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