53304 SERVICE DATE – NOVEMBER 24, 2026
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 777

PETITION FOR RULEMAKING TO CONSIDER AMENDMENTS TO
REGULATIONS GOVERNING INTERIM USE OF RIGHTS-OF-WAY AS TRAILS
(49 CFR PART 1152)

Decided: November 20, 2026

AGENCY: Surface Transportation Board (the Board or STB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Board partially grants a petition for rulemaking and proposes amendments to its regulations implementing section 208 of the National Trails System Act Amendments of 1983 to streamline the railbanking process. Under the proposal, the Board would no longer issue Notices or Certificates of Interim Trail Use during trail-use negotiations. Only after an agreement is reached would the Board issue an order authorizing transfer to the trail sponsor. Abandonment authority would no longer be prerequisite to railbanking. The Board would also confirm that by authorizing transfer the Board is not exercising any power of eminent domain or authorizing a taking.

DATES: Comments are due by January 8, 2027. Replies are due February 8, 2027.

ADDRESSES: All filings must be submitted to the Surface Transportation Board either via e-filing on the Board's website, https://www.stb.gov/proceedings-actions/e-filing, or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. Filings will be posted to the Board's website and need not be served on other commenters or any other party to the proceedings.

FOR FURTHER INFORMATION CONTACT: John Rackson at (202) 929-2676. If you require accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: In a joint petition for rulemaking filed on December 20, 2024, the U.S. Department of the Interior (DOI) and the U.S. Department of Justice's Energy and Natural Resources Division (DOJ) petitioned the Board to open a rulemaking proceeding to

consider potential amendments to the Board's regulations implementing section 208 of the National Trails System Act Amendments of 1983 (the Trails Act).[1] (Pet. for Rulemaking 1.)

The petition proposes amendments that for the first time would, among other things, allow parties to obtain railbanking authority via the Board's discontinuance-of-service procedures.[2] (Pet. for Rulemaking 2, 13-17, 27-30.) In response to the petition, the Board received comments from the Association of American Railroads (AAR), the American Short Line and Regional Railroad Association (ASLRRA),[3] the National Association of Reversionary Property Owners (NARPO), Meghan S. Largent[4] (Largent), Kotis Holdings LLC (Kotis Holdings), the Lassen Land and Trail Trust (Lassen), and the Rails to Trails Conservancy (RTC). On August 8, 2025, DOJ and DOI filed a joint motion to withdraw DOI as a petitioner in this proceeding.[5] On the same date, DOJ submitted a further filing concerning its rulemaking petition, reiterating its request that the Board initiate a rulemaking to consider DOJ's proposed reforms, and responding to stakeholder comments. (Further Filing 1.)

In light of the rulemaking petition, the Board has undertaken a critical review of its Trails Act regulations and now proposes a suite of amendments to simplify its processes, better align them with the Trails Act's text, and reduce their regulatory footprint in the congressionally mandated railbanking process. Although the Board's proposal shares some similarities with the proposal in DOJ's rulemaking petition in certain respects, the Board's proposal here overall presents a more comprehensive reform approach. Accordingly, the Board grants the petition to the extent set forth below and invites public comments on the Board's proposal.

BACKGROUND

The Trails Act was enacted in 1968 to create a nationwide system of recreational trails. In 1983, Congress added a rail section, codified at 16 U.S.C. 1247(d), "to preserve for possible future railroad use rights-of-way not currently in service and to allow interim use of the land as recreational trails." Preseault v. ICC, 494 U.S. 1, 6 (1990). Through a process commonly known as "railbanking," the Trails Act allows a rail carrier to transfer (or railbank) its interests in a right-of-way that is no longer needed for rail service, and that the rail carrier might otherwise remove from the Board's jurisdiction (i.e., abandon), to a trail sponsor for use in the "interim" as a trail,

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[1] Although DOJ and certain commenters refer to the Trails Act, as amended in 1983, as the "Trails Act Amendments," this notice will refer to it as the Trails Act, consistent with the Board's practice.

[2] Discontinuance allows a railroad to cease common carrier service on a line. Unlike abandoned lines, lines over which a carrier has only discontinued service remain subject to the Board's jurisdiction and part of the interstate rail network. See 49 CFR 1152.50, 1152.60.

[3] AAR and ASLRRA filed joint comments.

[4] Ms. Largent states that she is an attorney writing on behalf of landowners who could be impacted by the proposed rule changes.

[5] Because the Board will grant this motion, see infra p. 7, this decision refers to DOJ as the only petitioner.

with the rail carrier retaining the ability to reactivate rail service in the future. Specifically, the Trails Act provides that "in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter [i.e., as a trail], if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. 1247(d). The Trails Act also provides a limited role for the Board. It requires that "[if] a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter [i.e., as a trail], and shall not permit abandonment or discontinuance inconsistent or disruptive of such use." Id.

Regulatory Framework. Two core principles pertaining to the Board's administration of the Trails Act have emerged through judicial and agency precedent. First, the Trails Act applies only to voluntary transfers of rights-of-way. Nat'l Wildlife Fed. v. ICC, 850 F.2d 694, 696, 698 (D.C. Cir. 1988). It does not permit the Board to force interim trail use/railbanking upon an unwilling rail carrier. Id. Second, the Board's role under the Trails Act is "essentially ministerial." Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990). "[B]y the plain terms of the statute," the Board "has little, if any, discretion to forestall a voluntary agreement" effecting the transfer or conveyance of a right-of-way from a rail carrier to a potential trail sponsor for trail use. Id.; see also Citizens Against Rails-to-Trails v. Surface Transp. Bd., 267 F.3d 1144, 1151, 1152 (D.C. Cir. 2001). Accordingly, the Board does not have discretion to decide whether interim trail use is desirable for a particular line. Rail Abans.—Use of Rights-of-Way as Trails—Suppl. Procs. (Suppl. Procs.), 4 I.C.C.2d 152, 156 (1987). And while the Trails Act contemplates that a line transferred under the Trails Act will in fact be used as a trail, CSX Transp., Inc.—Aban. Exemption—in Pinellas Cnty., Fla. AB 55 (Sub-No. 794X), slip op. at 10 (STB served Nov. 14, 2023), the Board is not involved in determining the type or level of trail use for a particular right of way, CSX Transp., Inc.—Aban. Exemption—in Monroe & Owen Cntys., Ind., AB 55 (Sub-No. 514X), slip op. at 2 (STB served Sept. 30, 1997).

The ICC adopted regulations implementing the Trails Act in 1986. See Rail Abans.—Use of Rights-of-Way as Trails (49 CFR Parts 1105 and 1152) (1986 Rules), 2 I.C.C.2d 591 (1986). As discussed below, railbanking under the Board's regulations has involved a two-stage process: an initial period for negotiation between the carrier and the potential trail sponsor (which may be extended), followed by entry into an agreement between those parties that provides for interim trail use/railbanking subject to potential reconstruction and reactivation of the right-of-way for rail service. Only lines authorized for abandonment have been eligible for interim trail use/railbanking. 1986 Rules, 2 I.C.C.2d at 614; see also Suppl. Procs., 4 I.C.C.2d at 159 ("In order for lines to be eligible for trail use under [16 U.S.C.] 1247(d), the Commission will have already approved the line for abandonment under [49 U.S.C.] 10903 (or freed it from the need for approval under [49 U.S.C.] 1050[2])."); 49 CFR 1152.29(c), (d).

Specifically, during an abandonment proceeding, a prospective trail sponsor can invoke the Trails Act by filing a request with the Board within specified timeframes. 49 CFR

1152.29(a), (b). Consistent with the Trails Act, the Board's regulations require that the prospective trail sponsor include with its request a statement of willingness to assume responsibility for management, legal liability, and payment of taxes related to the right-of-way, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 CFR 1152.29(a). If the rail carrier agrees to negotiate with a prospective trail sponsor, and if the line is otherwise authorized for abandonment, the Board issues either a Notice of Interim Trail Use (NITU) or a Certificate of Interim Trail Use (CITU), depending on the type of proceeding.[6] Id. 1152.29(c)(1), (d)(1). Per the Board's regulations, a NITU/CITU expressly authorizes the rail carrier to "discontinue service, cancel any applicable tariffs, and salvage track and materials." Id. 1152.29(c)(1)(i), (d)(1)(i). The NITU/CITU also authorizes a period of time (under the current regulations, a year, with possible extensions), during which the rail carrier and prospective trail sponsor may negotiate an interim trail use/railbanking agreement. Id. 1152.29(c), (d). Parties must jointly notify the Board if they reach such an agreement during the NITU/CITU negotiating period. 49 CFR 1152.29(h). Once notification has been provided, the Board's Trails Act regulations require nothing more from rail carriers and trail sponsors, and no further action from the Board, as a predicate to transfer or convey a line for interim trail use/railbanking.

Under the current framework, the Board will only issue a NITU/CITU for lines authorized for abandonment. See 49 CFR 1152.29(c), (d). A rail carrier, however, cannot exercise that abandonment authority during the NITU/CITU negotiating period or, if an interim trail use/railbanking agreement is reached, while the right-of-way is being used as a trail. See Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee & Covington Cntys., Ala., AB 1073X, slip op. at 2 (STB served Mar. 3, 2015). In that sense, pursuant to the voluntary process, a NITU/CITU operates as a "regulatory barrier to consummation" of the rail carrier's abandonment authority. See, e.g., id.; see also 49 CFR 1152.29(e)(2). If no railbanking/interim trail use agreement is reached by the expiration of the NITU/CITU negotiation period (and any extension thereof), or if the NITU/CITU is revoked, including because the trail sponsor has terminated trail use, the rail carrier may exercise its authority to abandon the line, without further action by the agency, 49 CFR 1152.29(c)(1), (d)(1), provided that there are no unmet conditions imposed on abandonment, such as, for example, environmental conditions, that must be satisfied prior to consummation. See Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking, EP 749 et al., slip op. at 4 (STB served Oct. 2, 2018). Railroads must file a "notice of consummation" of abandonment if they wish to exercise abandonment authority. Id.; see also 49 CFR 1152.29(e). Filing such a notice of consummation is the only legally recognized way to consummate abandonment authorization. Honey Creek R.R., Inc.—Pet. for Declaratory Order, FD 34869 et al., slip op. at 5 (STB served June 4, 2008). The notice must be filed within one year from the date on which the line was authorized for abandonment or 60 days from expiration

[6] NITUs are issued in abandonment "exemption" proceedings, which are streamlined proceedings available where the abandonment has been exempted from regulation under 49 U.S.C. 10502. CITUs are issued in abandonment "application" proceedings, wherein the abandonment has not been exempted and thus requires a full application process. There is no substantive difference between railbanking under a CITU and a NITU. Nat'l Trails Sys. Act & R.R. Rights of Way, EP 702, slip op. at 4 n.3 (STB served Apr. 30, 2012).

of the last barrier to consummation (including a NITU/CITU negotiating period), whichever is later. 49 CFR 1152.29(e).

The Board retains jurisdiction over a rail line throughout the NITU/CITU negotiating period, any period of railbanking/interim trail use, and any period during which rail service is restored. Only after a NITU/CITU is no longer in effect and the railroad has lawfully consummated its abandonment authority is the Board's jurisdiction terminated. See 16 U.S.C. 1247(d); Hayfield N. R.R. v. Chi. & N. W. Transp. Co., 467 U.S. 622, 633 (1984). At that point, whatever property interest the rail carrier has in the right-of-way, including any rail easement, becomes "ordinary real property" subject to the application of state law. Id. at 632. Thus, when a rail carrier operates a rail right-of-way pursuant to an easement that is limited to use for rail purposes, abandonment may result in the easement being extinguished under state law, thereby unencumbering the underlying land and allowing those who own the land in fee to take possession of the right-of-way. Preseault, 494 U.S. at 8. Extinguishment of the easement is not possible, however, while the right-of-way remains within the Board's jurisdiction. See, e.g., Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996) ("State law claims [for possession of the right-of-way] can only be brought *after* the [agency] has authorized an abandonment and after the railroad has consummated that abandonment authorization.").

Takings Framework. Courts have held that use of the Board's Trails Act regulations can result in a federal government taking of property. Such claims are litigated by and against the United States pursuant to the Tucker Act, 28 U.S.C. 1491(a)(1). Those claims have generally proceeded under one or both of the following theories.

First, a taking has been held to arise if the NITU/CITU delays or stops a rail carrier's abandonment of the right-of-way that otherwise would have occurred and, as a consequence, "state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting." Caldwell v. United States, 391 F.3d 1226, 1233 (Fed. Cir. 2004); see, e.g., Sauer W. LLC v. United States, 151 F.4th 1339, 1344-45 (Fed. Cir. 2025); Caquelin v. United States, 959 F.3d 1360, 1371 (Fed. Cir. 2020). This theory may support a claim for a temporary taking for the duration of the NITU/CITU, even if negotiations during the NITU/CITU negotiating period do not yield an interim trail use/railbanking agreement. E.g., Memmer v. United States, 50 F.4th 136, 139 (Fed. Cir. 2022). This theory may also support a claim for a permanent taking on the ground that, once an interim trail use/railbanking agreement is reached, the NITU/CITU blocks abandonment of the rail carrier's easement "indefinitely." See e.g., id. at 139.

Second, a taking has been held to arise if trail use resulting from invocation of the Board's processes exceeds the scope of the property rights transferred by the rail carrier to the trail sponsor (e.g., if the rail carrier's easement is limited to use for railroad purposes and would not permit trail use as a matter of state law). See, e.g., Preseault v. United States, 100 F.3d 1525, 1550 (Fed. Cir. 1996) (en banc) (plurality opinion) (finding a taking when, "pursuant to ICC Order," the trail sponsor established trail use that "could not be justified under the terms and within the scope of the existing easements for railroad purposes"). The Court of Federal Claims has, at times, attributed this taking of new property rights to Board issuance of a NITU/CITU. See, e.g., Haggart v. United States, 108 Fed. Cl. 70, 82 (2012) ("The power to exceed the scope

of the easement was held by the federal government, acting through the STB. That power was exercised by the government on October 27, 2008 and November 28, 2008, when it issued the three NITUs."); see also Howard v. United States, 106 Fed. Cl. 343, 351 (2012) (framing one of the issues as "whether, when the STB issued the NITU and authorized recreational trail use on the railroad rights-of-way running through the plaintiffs' lands," such "interim trail use [was] within the scope of the railroad easements that encumber plaintiff's property"). In Kotis Assocs., LLC v. United States, the Court of Federal Claims recently characterized the "STB's implementing regulations" as "assign[ing]" to the rail carrier a trail use "property right," which it may then sell to the trail sponsor through the Board's "trail-use proceeding." 176 Fed. Cl. 346, 356 (2025).

DOJ's Proposal & Other Parties' Comments

Under DOJ's proposal, the Board would modify its procedures to allow railroads to pursue interim trail use/railbanking by initiating an exemption proceeding for the purpose of obtaining authority to discontinue service over a line. (Pet. for Rulemaking 2.) DOJ argues that use of a discontinuance pathway would avoid disputes specific to abandonment proceedings and reduce the time typically required to conclude the Board's railbanking process, especially in circumstances in which a railroad and trail sponsor have already negotiated an agreement. (Id. at 18-22.) DOJ further proposes that abandonment no longer be authorized (at least in a discontinuance exemption proceedings) without further action from the Board if interim trail use/railbanking negotiations do not result in a trail use agreement; rather, the railroad would need to request abandonment authority should negotiations not yield an interim trail use agreement, and the Board would issue a subsequent decision indicating whether the rail carrier may abandon the line.[7] (Id. at 16-17, 27.) DOJ states that its proposals should eliminate features of existing railbanking regulations that courts have sometimes found to mandate or compel the continuation of a railroad's easement—thereby preventing reversion of private property rights and resulting in temporary takings of private property rights—before any interim trail use agreement has been reached. (Id. at 2-3.) The proposal would also clarify that the abandonment and railbanking processes are distinct and confirm that interim trail use/railbanking is voluntary. (Id. at 2, 13-14.)

Some commenters objected to DOJ's proposal while others supported it. In their joint reply, AAR and ASLRRA argue that DOJ's proposed rulemaking is not necessary or advisable. Among other things, they claim that DOJ's proposal that abandonment no longer be authorized without further action from the Board if trail use negotiations fail or the negotiation period expires would be a regulatory burden. (AAR/ASLRRA Reply 8.) They also question whether the Board would permit "offers of financial assistance" under 49 U.S.C. 10904 to purchase the line should a rail carrier and trail sponsor seek interim trail use/railbanking via discontinuance. (Id. at 10.) And, with respect to DOJ's efforts to eliminate temporary takings in the context of litigation in the Court of Federal Claims, AAR and ASLRRA argue that it is not at all clear

[7] Likewise, DOJ proposes (also in exemption proceedings) that where an interim trail use/railbanking agreement has been reached but the trail sponsor has terminated interim trail use, the Board issue a decision addressing whether the rail carrier may abandon the right-of-way. (Pet. for Rulemaking 27-28.)

whether the proposed amendments would ultimately change the takings analysis. (Id. at 13.) They further object to what they describe as DOJ's attempt to use the Board's limited regulatory role in the context of the Trails Act for the unrelated purpose of bolstering DOJ's litigation strategy in Fifth Amendment takings cases. (Id. at 14.) NARPO, Largent, and Kotis Holdings also object to DOJ's proposed rules, focusing primarily on issues related to the rights of landowners. (NARPO Reply 2; Largent Reply 1-2; Kotis Holdings Reply 1-4.)

Lassen and RTC both support DOJ's petition insofar as it would broaden the circumstances under which interim trail use/railbanking may be implemented and avoid decisions of the Federal Circuit—termed "fallacious decisions" by Lassen and "misguided jurisprudence" by RTC—to the effect that issuance of a NITU triggers a "temporary taking" even if no railbanking agreement resulting in trail use is ever reached. (Lassen Reply 2, 9; RTC Reply 2-3.)

On August 8, 2025, DOJ filed a further submission, responding to the replies and reiterating its request that the Board initiate a rulemaking to consider its recommended reforms.

PRELIMINARY MATTER

On August 8, 2025, DOJ and DOI filed a joint motion to withdraw DOI as a petitioner in this matter. The motion states that DOI has limited resources and intends to focus on core statutory responsibilities, and that it will not be providing further support for the rulemaking petition. (Mot. 1.) No commenter has opposed this request, and DOI's withdrawal should minimally impact this proceeding given DOJ's continued involvement. Accordingly, the joint motion will be granted. The caption for this proceeding will be amended to reflect that the petition is no longer being pursued jointly.

DISCUSSION AND CONCLUSIONS

Overview.

In light of DOJ's petition, the Board has undertaken a comprehensive evaluation of its obligations under the Trails Act and the regulations implementing them. As explained below, the Board agrees with DOJ that the Board should propose a discontinuance pathway for interim trail use/railbanking. But, as the petition anticipates, the Board has also "identif[ied] additional opportunities to reduce regulatory burdens." (Pet. for Rulemaking 19.) The Board additionally proposes to end its regulatory role in negotiations over interim trail use/railbanking and to replace NITU/CITUs with a Trails Act order authorizing the rail carrier to transfer its interest in the right-of-way to the trail sponsor, if necessary, after an agreement is reached. Consistent with Congress's statutory policy goals to "minimize the need for Federal regulatory control over the rail transportation system," "ensure the development and continuation of a sound rail transportation system," and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. 10101(2), (4), (7), these further simplifications should substantially reduce the Board's regulatory footprint while better conforming the Board's processes to the Trails Act's text.

The Board proposes to abolish its existing process whereby it has issued NITU/CITUs at the negotiation stage for lines authorized for abandonment. Instead, any voluntary negotiations between a rail carrier and a potential trail sponsor would take place outside of the Board's processes and without any Board action. After an agreement is reached, the Board would, at the parties' joint request, authorize a rail carrier to transfer its interest in a right-of-way to a trail sponsor for interim trail use/railbanking, provided that the rail carrier owning the line has discontinued service on the line (pursuant to Board discontinuance authorization)[8] and no other rail carriers are licensed to operate there. Trails Act orders would be subject to the trail sponsor meeting the management, liability, and tax conditions required by the Trails Act, and subject to the line being available for rail service reactivation if needed. See 16 U.S.C. 1247(d). The process would work as follows:

- For a line authorized for discontinuance, the rail carrier and trail sponsor would jointly request in the discontinuance docket an order authorizing the rail carrier to transfer its interest in the right-of-way to a trail sponsor under the Trails Act, with the rail carrier certifying that it has discontinued service on the line and that no other carriers are licensed to operate there, and with the trail sponsor supplying information and representations of the kind currently required by 49 CFR 1152.29(a)(1)-(3).

- For a line authorized for abandonment (without consummation[9]), the rail carrier and trail sponsor would file the above-described joint transfer request in the abandonment docket, and the rail carrier would additionally include in the request notice that it is relinquishing its authority to fully abandon the line.

- For a line not authorized for abandonment or discontinuance, the rail carrier would seek discontinuance authority (via application, petition for exemption, or notice of exemption, as appropriate), and the parties would file their joint transfer request in that docket. Discontinuance would need to be authorized before or at the same time that the Board issues an order approving the transfer for interim trail use/railbanking.

If these conditions are met, the Board would issue an order authorizing the transfer, subject to the conditions that the trail sponsor "assume full responsibility" for managing the right-of-way, for "legal liability arising out of [its] transfer or use," and for taxes assessed on it. 16 U.S.C. 1247(d). In any Trails Act order, the Board would state that its order does not (1) exercise any power of eminent domain, (2) take or burden private property, (3) authorize the rail carrier or the trail sponsor to condemn or take private property, or (4) allow for use of property in excess of existing property rights.

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[8] Or where the line owner otherwise has no common carrier obligation, as in the case of a line acquired by a state pursuant to 49 CFR 1150.22 that has been approved for abandonment but not yet fully abandoned, and which the state did not operate itself.

[9] Lines for which authorized abandonment has been consummated are no longer within the Board's jurisdiction and therefore not eligible for railbanking. See Becker v. STB, 132 F.3d 60, 63 (D.C. Cir. 1997).

The proposed amendments would accommodate the potential for reactivated rail service on a railbanked line, pursuant to existing policies.[10] The Board would also entertain petitions to transfer the line to a new trail sponsor, as well as requests to abandon the line in the event that interim trail use has ceased.

Under these proposed amendments, the Board would not conduct environmental or historic reviews of orders transferring rights-of-way to trail sponsors (beyond whatever review was required for the predicate grants of abandonment or discontinuance authority)[11] because the Board lacks discretion under the Trails Act to deny such a transfer that has been properly requested. Trails Act orders are not federal actions or undertakings, and neither the National Environmental Policy Act, 42 U.S.C. 4321 to 4347, nor the National Historic Preservation Act, 54 U.S.C. 300101 to 307108, apply.[12]

As discussed in more detail below, these proposed amendments are intended to reduce regulatory burden by eliminating the need for parties to notify the Board of pending negotiations and for the carrier to secure abandonment authority as a prerequisite to interim trail use/railbanking. Nothing in the Trails Act imposes either requirement. Indeed, the only

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[10] Specific standards and procedures for reactivating rail service are beyond the scope of this rulemaking. Reactivation will continue to be governed by agency precedent. Per the Trails Act, it remains the case that "an interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service. If and when the railroad wishes to restore rail service . . . , it has the right to do so, and the trail user must step aside." Ga. Great S. Div., S.C. Cent. R.R.—Aban. & Discon. Exemption—between Albany & Dawson, in Terrell, Lee, & Dougherty Cntys., Ga., 6 S.T.B. 902, 906 (2003). And although 49 CFR 1152.29(c)(3) and (d)(3) suggest that authority under 49 U.S.C. 10901 or 10502 is required to restore rail service within a railbanked right-of-way, that regulation was abrogated (at least in significant part) in Iowa Power, Inc.—Construction Exemption—Council Bluffs, Iowa, where the agency made clear that "no [49 U.S.C.] 10901 authority would be required" where the transferring rail carrier "is the one who decides to restore active service on all or part of the [railbanked] right-of-way." 8 I.C.C.2d 858, 866 n.12 (1990).

[11] The Board has proposed categorically excluding abandonments and discontinuances from environmental review, except in cases where the abandonment or discontinuance would result in traffic diversion that exceeds certain thresholds and, in the case of abandonments, where any track salvage would occur prior to consummation or entry into an interim trail use agreement. Permitting Reform—Envt'l Review Process, EP 779, slip op. at 31, 33 (STB served Mar. 25, 2026).

[12] See 42 U.S.C. 4336e(10)(B)(vii) (excluding nondiscretionary decisions from NEPA's definition of "major federal action"); 16 U.S.C. 1247(d) ("[T]he Board *shall* impose such terms and conditions as a requirement of any transfer or conveyance for interim use . . . ." (emphasis added)); Citizens Against Rails-to-Trails v. Surface Transp. Bd., 267 F.3d 1144, 1152 (D.C. Cir. 2001); Goos, 911 F.2d at 1295; see also Dep't of Transp. v. Public Citizen, 541 U.S. 752, 770 (2004) ("[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect[, and] the agency need not consider these effects").

affirmative step that the Trails Act requires the Board to take is to impose certain conditions on "any transfer or conveyance" of the right-of-way for interim trail use, just as these proposed amendments do. The amendments are also consistent with the Trails Act's other, prohibitory commands that the Board not "treat[]" interim trail use "as an abandonment," and, after transfer to a trail sponsor, "not permit abandonment or discontinuance inconsistent or disruptive of such use." 16 U.S.C. 1247(d). These amendments should also reduce the United States's Trails Act-related takings liability, which has grown as the result of court decisions that do not reflect the Board's Trails Act role. (See Further Filing at 20 (arguing that "the most straightforward way to address the 'temporary takings' is to reform the features of the Board's regulations that courts have sometimes found to operate as a temporary taking of property rights").)

The Board does not propose to give this rule, if adopted, retroactive effect. These amendments would therefore not affect lines for which a NITU/CITU is already in place. In addition, because the rule does not regulate stakeholders' primary conduct and would not apply to cases in which negotiations are already ongoing, the Board does not anticipate that the proposed rule would endanger any serious reliance interests. Any parties that do have such interests, however, are encouraged to bring them to the Board's attention in comments.

The individual elements of the Board's proposal are discussed in more detail below. The proposed new regulatory text is set forth in Appendix A, with the principal changes occurring in the new 49 CFR 1152.29, and with minor conforming changes made to other provisions.

The Board will no longer issue CITUs/NITUs or otherwise concern itself with interim trail use/railbanking negotiations; instead, the Board will authorize transfer of the rail carrier's interest in the right-of-way to the trail sponsor once an agreement is reached.

Under existing regulations, the Board responds to expressions of trail-use interest by potential trail sponsors and carriers by issuing a NITU/CITU—a document that, among other things, authorizes the rail carrier to discontinue rail service and salvage track for an extendable one-year period while the rail carrier and trail sponsor negotiate. 49 CFR 1152.29(c)(1), (d)(1). The Board has said that the NITU/CITU operates as a "legal barrier" to the carrier consummating abandonment authority on the line during the negotiation period (and after an agreement is reached), so that the NITU/CITU can have the effect of delaying the default one-year deadline to consummate abandonment authority. E.g., Ala. & Fla. Ry.—Aban. Exemption—in Geneva, Coffee & Covington Cntys., Ala., AB 1073X, slip op at 2 (STB served Mar. 3, 2015); see 49 CFR 1152.29(e)(2).

This complicated scheme governing voluntary negotiations between the rail carrier and the trail sponsor appears to represent unnecessary "Federal regulatory control over the rail transportation system." 49 U.S.C. 10101(2). Accordingly, the Board proposes to eliminate it.

To start, there is no need for the Board to "authorize" any negotiations or negotiation period. Although the Board has sometimes described the NITU/CITU as "authorizing [the carrier] to negotiate" with would-be trail sponsors, e.g., Norfolk S. Ry.—Aban. Exemption—City of Greensboro, N.C., AB 290 (Sub-No. 404X), slip op. at 1 (STB served Jan. 4, 2024), rail carriers do not actually need the Board's permission to engage in negotiations with potential trail

sponsors. They may do so at any time. The existing regulations recognize as much, see 49 CFR 1152.29(g) (accommodating agreements reached after the prescribed negotiation period ends), and, as DOJ observes, "railroads often enter negotiations and reach tentative agreements with interested trail sponsors before initiating the exemption abandonment proceedings," (DOJ Further Filing at 3-4 & n.6 (collecting numerous examples)). To the extent the NITU/CITU has been understood to authorize negotiations, therefore, it is unneeded.

Nor is a NITU/CITU needed to authorize the discontinuance of service or the salvage of track during negotiations. A rail carrier that wishes to discontinue service during trail-related negotiations can simply seek discontinuance authority; or, if the carrier already has obtained but not consummated abandonment authority, it can simply file a notice that it is exercising discontinuance authority, which is a lesser-included power. See, e.g., Norfolk S. Ry—Aban. Exemption—in Dayton, Montgomery Cnty., Ohio, AB 290 (Sub-No. 390X) (STB served Feb. 12, 2021). And a rail carrier needs no authority to salvage track at all. "[T]he Board generally does not regulate a railroad's . . . decisions . . . regarding disposition of rail property," including track salvage. Permitting Reform—Envt'l Review Process, EP 779, slip op. at 9 n.12. Even on an active rail line where there is a common carrier obligation, a carrier is not prohibited from salvaging track, so long as no shipper seeks service and the carrier "is prepared to restore the track should it receive a reasonable request for service."[13] BNSF Ry.—Pet. for Declaratory Ord., FD 35164 et al., slip op. at 5-6 (STB served May 7, 2010).

Finally, there is no need for a NITU/CITU or any other Board action to "block" the carrier's consummation of abandonment during negotiations. To the extent that a NITU/CITU nominally has that effect today, it appears to do so only as an artifact of how the Board structured notices of consummation of abandonment when it created them in 1996. The Board determined that abandonment authority should generally expire unless the carrier files a notice of consummation within one year. Aban. & Discon. of Rail Lines and Rail Transp. Under 49 U.S.C. 10903, 61 Fed. Reg. 67,876, 67,879 (Dec. 24, 1996) (promulgating 49 CFR 1152.29(e)(2)). But to account for situations such as interim trail use/railbanking, the Board determined that the one-year deadline would not apply when there is a "legal or regulatory barrier[] to consummation," and decided that a NITU/CITU would be one such barrier. Id. It is clear that the Board's aim was to effectuate an abandonment consummation deadline consistent with the Trails Act's prohibition on permitting abandonment during interim trail use/railbanking, but there is no language to suggest that the Board considered blocking abandonment consummations during negotiations to be an independent policy goal. See id. Nor would it have been. Interim trail use/railbanking has always been a voluntary process, and even today a rail carrier wishing to end negotiations and consummate abandonment can always ask the Board to vacate the NITU/CITU before the negotiation period expires. City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137, slip op. at 7 (STB served July 31, 2019). As a result, any

[13] A carrier that removes track from a line on which it has an active common carrier obligation must still provide service on reasonable request, at the risk of being subject to a common-carrier violation claim before the Board if it does not.

NITU/CITU function of blocking consummation of abandonment during negotiations is unnecessary.[14]

Under the new proposed approach, the Board would not take action regarding trail use until the rail carrier and trail sponsor have reached an interim trail use/railbanking agreement and the parties have jointly filed with the Board a petition to authorize transfer of the rail carrier's interest in the right-of-way to the trail sponsor pursuant to 16 U.S.C. 1247(d) and proposed 49 CFR 1152.29.

The petition to transfer would represent that the rail carrier owning the line[15] and trail sponsor have reached an interim trail use/railbanking agreement for the right-of-way, that the rail carrier has discontinued rail service on the line or is in the process of seeking authority to do so (including contemporaneously with the petition), and that no other rail carriers are licensed to operate there. The petition would also contain substantially the same information and representations that are currently required by 49 CFR 1152.29(a), namely: (1) a map and description of the portion of the right-of-way proposed to be transferred, including mileposts; (2) a statement of the trail sponsor's willingness to assume full responsibility for managing the right-of-way, for paying any legal liability arising out of the transfer or any interim trail use, and for paying associated taxes; and (3) the trail sponsor's acknowledgments (a) that the transfer will be conditioned on the trail sponsor meeting its statutory responsibilities and not alienating or otherwise altering any portion of the transferred right-of-way in a manner that would be inconsistent with future reactivation for rail service and (b) that the Board has the authority and obligation to vacate the Trails Act order, requiring that the right-of-way be transferred away from the trail sponsor, if the right-of-way needs to be reactivated for rail service. In the petition, the carrier also would need to relinquish any unconsummated abandonment authority (if applicable), as explained below.

If these standards are met, and the line has been authorized for discontinuance, the Board would issue an order authorizing the transfer of the rail carrier's interest in the right-of-way to the trail sponsor and imposing the trail sponsor's statutory responsibilities as conditions of that transfer, as required by 16 U.S.C. 1247(d). The order would also condition the transfer on the trail sponsor not alienating or otherwise altering any portion of the transferred right-of-way in a manner that would be inconsistent with future reactivation for rail service.

This new approach better implements the mandate of the Trails Act, and in particular the operative sentence of section 1247(d) directing the Board to take action:

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[14] As a consequence of this proposed change, the fact that interim trail use/railbanking negotiations are ongoing will no longer automatically prevent the application of the one-year deadline for rail carriers to consummate abandonment authority. The Board does not anticipate that this change will significantly impact the process for rail carriers, given that the one-year consummation deadline is subject to extension requests, see 49 CFR 1152.29(e)(2), and given that rail carriers will no longer need to seek abandonment authority to pursue interim trail use/railbanking (see below).

[15] See note 8, supra.

> If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter . . . .

16 U.S.C. 1247(d). That language requires the Board to authorize and condition "any transfer or conveyance" of the railroad's interest in the right-of-way to the trail sponsor when the specified requirements are met—which is what the proposed rule does. Nothing in the Trails Act requires or even contemplates that the Board will regulate interim trail use/railbanking negotiations before an agreement is reached. Reducing the agency's regulatory role in this way better carries out the statutory policies to "minimize the need for Federal regulatory control over the rail transportation system . . . ," "reduce regulatory barriers to entry into and exit from the industry," and "provide for the expeditious handling and resolution of [Board] proceedings . . . ." 49 U.S.C. 10101(2), (7), (15).

The new approach should also reduce takings liability for the United States to the extent it is based on a misunderstanding of the Board's role in the Trails Act process. The Federal Circuit has held that a NITU/CITU can effect a taking during the negotiations period because, in the court's view, the NITU/CITU "compels the railroad to delay its abandonment." E.g., Memmer, 50 F.4th at 140. But interim trail use/railbanking is voluntary, e.g., Nat'l Wildlife Fed'n, 850 F.2d at 702; 1986 Rules, 2 I.C.C.2d at 598—and so are interim trail use/railbanking negotiations. The Board has never denied a request to vacate a NITU/CITU from a rail carrier that desires to end negotiations in order to consummate abandonment before an interim trail use/railbanking agreement is reached. See, e.g., City of Fishers, FD 36137, slip op. at 7. Given the inherent voluntariness of negotiations, the NITU/CITU negotiating period thus appears to be creating takings liability for the United States while serving no apparent regulatory purpose. By ending Board involvement in the negotiation period altogether, the Board expects that courts would reassess the viability of takings claims against the United States that arise before an interim trail use/railbanking agreement is reached.

The Board will establish a discontinuance pathway to interim trail use/railbanking.

The Board additionally proposes to create a discontinuance pathway to interim trail use/railbanking. That is, the Board would no longer require abandonment authority as a predicate to interim trail use/railbanking, as the current regulations do, and would instead allow interim trail use/railbanking of any line that the Board has authorized for discontinuance if no other carriers are licensed to operate there. This proposal resembles the one in DOJ's petition and would be expected to achieve the same benefits, including reduced regulatory burdens, avoidance of unnecessary disputes, and a potential reduction in takings liability.

The Board's exit licensing procedures include authorizing the "abandonment" or "discontinuance" of rail lines. 49 U.S.C. 10903(a)(1). Once consummated, abandonment and

discontinuance both end the rail carrier's common carrier obligation to provide service on the line on reasonable request. E.g., Mfrs. Ry.—Discon. Exemption—in St. Louis Cnty., Mo. (Mfrs. Ry.), AB 1075X, slip op. at 2 (STB served Feb. 6, 2013). The principal difference is that abandonment removes the line from the Board's exclusive jurisdiction. Id. At that point, the rail carrier's property rights in the right-of-way become "ordinary real property" subject to the application of state law, Hayfield N. R.R., 467 U.S. at 632, including laws that may provide for extinguishment of the rail carrier easement and possession of the underlying land by those who own it in fee. Discontinuance, by contrast, leaves the line in the Board's jurisdiction such that state laws that could result in loss of the right-of-way remain preempted and the option of resumed common carrier operations on the line is preserved without the need for new construction and/or operating authority from the Board. Mfrs. Ry., AB 1075X, slip op. at 2; see Preseault v. ICC, 494 U.S. 1, 5 n.3 (1990). The Board authorizes abandonment or discontinuance "only if . . . the present or future public convenience and necessity require or permit" it, 49 U.S.C. 10903(d), or if the proposed action is exempt from regulation under 49 U.S.C. 10502(a).

It is appropriate that the Board require *some* type of exit license as a predicate to interim trail use/railbanking, in that the Trails Act does not mandate that the Board allow interim trail use/railbanking on lines for which there remains an active rail transportation need. The Trails Act's purpose is to "preserve established railroad rights-of-way for future reactivation of rail service" and to keep rail lines within Board jurisdiction in the case of their "interim use" as a trail if the line is "subject to restoration or reconstruction for railroad purposes." 16 U.S.C. 1247(d). That language would make little sense if a line were still needed for railroad purposes at the time that it was railbanked.

As discussed above, under the agency's existing regulations, only rail lines authorized for abandonment have been eligible for interim trail use/railbanking. See 49 CFR 1152.29(c), (d); Suppl. Procs., 4 I.C.C.2d at 159. But the Board does not appear previously to have considered whether discontinuance could also serve as an interim trail use/railbanking predicate.

The Board now concludes that interim trail use/railbanking should be permitted on lines over which the carrier is authorized to discontinue service and no other carriers are licensed to operate. The feature of lines authorized for abandonment that makes them suitable for interim trail use/railbanking is that the Board has found the public convenience and necessity to permit the cessation of common carrier rail service over them. See 49 U.S.C. 10903(a)(1). The same is true of lines over which the carrier is authorized to discontinue service and no other carriers are licensed to operate. See id. In fact, discontinuance better fits the Trails Act. See Preseault, 494 U.S. at 5 n.3, 8. Unlike abandonment, discontinuance leaves open "the option of resuming common carrier operations over the line in the future without obtaining new Board authority," Mfrs. Ry., AB 1075X, slip op. at 2—that is, leaves the line "subject to restoration or reconstruction for railroad purposes," 16 U.S.C. 1247(d). As the Supreme Court put it, Congress in the Trails Act "deem[ed] interim trail use to be like discontinuance rather than abandonment." Preseault, 494 U.S. at 8. And under the existing regulations, the Board already authorizes discontinuance in every case of interim trail use/railbanking (and never allows the consummation of abandonment while a NITU/CITU is in place). See 49 CFR 1152.29(c), (d), (e)(2); 16 U.S.C. 1247(d).

A discontinuance pathway could encourage interim trail use/railbanking by reducing the regulatory burden of initiating it. By their nature, abandonment determinations have higher stakes than discontinuance determinations because they authorize the permanent loss of the corridor to the rail network. For example, under the Board's "stranded segment" doctrine, the Board does not authorize abandonments that would isolate an adjoining segment from the rail system. R.J. Corman R.R. Prop., LLC—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn. (R.J. Corman), AB 1296X, slip op. at 3 (STB served Nov. 17, 2022). Because abandonment is a prerequisite to interim trail use/railbanking under the Board's current regulations, the stranded segment doctrine has the effect of barring interim trail use/railbanking despite railbanked lines remaining within the Board's jurisdiction. See Elk River R.R.—Aban. Exemption—in Kanawha & Clay Cntys., W. Va., AB 1314X, slip op. at 3-4 (STB served Mar. 25, 2022). Moreover, to avoid a rail line's permanent loss, a party may offer to purchase a line that the rail carrier seeks to abandon under the financial assistance provisions of 49 U.S.C. 10904, but may only offer to subsidize operations on a line for which the carrier seeks discontinuance. Offers of Financial Assistance, EP 729, slip op. at 1 (STB served Dec. 7, 2015); Mfrs. Ry., AB 1075X, slip op. at 6 n.6.

But the difference between abandonment and discontinuance is irrelevant in the very common situation in which rail carriers initiate abandonment proceedings only as a technical prerequisite for railbanking, with no intent to fully abandon. (See DOJ Further Filing at 3-4 & n.6 (collecting examples of rail carriers explicitly initiating abandonment proceedings only to facilitate interim trail use/railbanking).) A discontinuance pathway would enable those rail carriers to pursue interim trail use/railbanking without litigating—or requiring the Board to resolve—whether the line's full abandonment would serve the public convenience and necessity.[16] It would avoid conflict with the Board's stranded segment doctrine. See R.J. Corman, AB 1296X, slip op. at 7 (STB served Nov. 17, 2022) (Member Fuchs joined by Member Schultz, concurring) (explaining that wasteful effort could have been avoided in ascertaining the regulatory status of a long-unused connected segment if the Board had allowed for a discontinuance pathway to railbanking instead); Great Redwood Trail Agency—Adverse Aban.—Mendocino Ry. in Mendocino Cnty., Cal., AB 1305 (Sub-No. 1), slip op. 15 (STB served Feb. 19, 2026) (Member Hedlund, concurring) (similar); see also Cent. Or. & Pac. R.R.—Aban. & Discon. of Serv.—in Coos, Douglas, & Lane Cntys., Or., AB 515 (Sub No. 2), slip op. at 12-13 (STB served Oct. 31, 2008) (stranded segments doctrine precluded unconditioned abandonment but not unconditioned discontinuance). A discontinuance pathway would also avoid potential forced sale proceedings under 49 U.S.C. 10904 where the rail carrier was not interested in abandoning in the first place (and was merely seeking abandonment authority as a means of railbanking the line). Such a sale makes little sense if the rail carrier intends all along to transfer its line for interim trail use/railbanking, where it will be subject to reactivation should the need arise (obviating the point of a sale).

[16] A discontinuance still would need to meet (or qualify for an exemption from) the statutory public convenience and necessity standard, and any objecting shippers would, of course, be able to raise their concerns.

A discontinuance pathway should also have the effect of further reducing the government's misplaced takings liability. As explained above, the Federal Circuit has held that a NITU/CITU effects a taking because it "block[s]" abandonment by the railroad and thus prevents "state law reversionary property interests that would otherwise vest in the adjacent landowners" from vesting. Memmer v. United States, 50 F.4th 136, 145 (Fed. Cir. 2022) (quoting Caldwell, 391 F.3d at 1233). But, as discussed above, interim trail use/railbanking is voluntary. The Board will only issue a NITU/CITU when the rail carrier consents, and thus is choosing to pursue interim trail use/railbanking and not pursue abandonment.[17] E.g., Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 702 (D.C. Cir. 1988); 1986 Rules, 2 I.C.C.2d at 598. The existing regulations arguably obscure that fact by forcing rail carriers to formally request and obtain abandonment authority en route to interim trail use/railbanking, despite the rail carrier choosing to forgo use of that authority when it agrees to negotiate interim trail use/railbanking. The discontinuance pathway avoids any mistaken impression that Board regulation prevents an otherwise-willing rail carrier from consummating abandonment prior to transferring the line to a trail sponsor; under the discontinuance pathway, the rail carrier does not request abandonment authority and the Board does not grant it.

For similar reasons, the Board proposes modifying the abandonment pathway to interim trail use/railbanking. Specifically: if a rail carrier has already received unconsummated abandonment authority when it asks to transfer its interest in the right-of-way to the trail sponsor, the Board proposes that the petition to transfer must include, in addition to the statement that the rail carrier has consummated or is consummating its discontinuance authority,[18] a statement relinquishing the carrier's right to fully abandon the line and withdrawing any request for authority to do so.

This would be a change from the existing regulations, under which any abandonment authority granted prior to railbanking becomes usable again for a 60-day period following the end of interim trail use/railbanking. See 49 CFR 1152.29(e)(2). But keeping abandonment authority pending in the background during interim trail use/railbanking comes at a cost to the United States, as it appears to have contributed to courts concluding that it is Board action (rather than voluntary carrier action) that prevents rail carriers from pursuing abandonment instead of interim trail use/railbanking. See, e.g., Memmer, 50 F.4th at 145. Requiring rail carriers to formally relinquish that authority when they instead decide to railbank a line will foster clearer lines of accountability for not abandoning, and will better reflect the reality that interim trail use/railbanking is voluntary: when a rail carrier chooses to transfer a line to a trail sponsor for interim trail use/railbanking, the carrier is choosing, for the time being, not to abandon the line.

To be sure, this change does require an additional step in the situation in which a trail sponsor intends to terminate interim trail use over some or all of the right-of-way, and the rail

[17] Under current regulations, a rail carrier that wants to cease interim trail use/railbanking negotiations and consummate abandonment is free to request that the Board vacate the NITU/CITU.

[18] Authority to abandon a line entails authority to discontinue service there. See, e.g., Norfolk S. Ry—Aban. Exemption—in Dayton, Montgomery Cnty., Ohio, AB 290 (Sub-No. 390X) (STB served Feb. 12, 2021).

carrier seeks to abandon that portion of the line. In that case, the current regulations allow either the carrier or the trail sponsor to request that the NITU/CITU be vacated and request that the line be "immediate[ly] authorized for abandonment." 49 CFR 1152.29(c), (d). Under the amended rules, however, it would be necessary to seek abandonment authority through a new request. But requests to vacate CITUs/NITUs under the current rules happen fairly infrequently (less than twice per year on average, and often pertaining to only a small portion of the railbanked right-of-way), and the paperwork required to obtain abandonment authority (including earlier-granted authority) should be largely duplicative of (and can incorporate by reference) what was required to obtain discontinuance or abandonment authority in the first instance. Ultimately the Board believes that the efficiency costs the new rule may impose would be outweighed by the gains of greater fidelity to the text of the Trails Act text, clarification of the Board's statutory role, and the potential for avoiding takings liability based on a mistaken understanding of the interim trail use/railbanking process.

The Board additionally confirms that, under the proposed discontinuance pathway, the line would not be available for purchase under the financial assistance provisions of 49 U.S.C. 10904 and 49 CFR 1152.27. As noted, that option is available only for abandonments. Mfrs. Ry., AB 1075X, slip op. at 6 n.8. But when a rail carrier seeks discontinuance authority (whether for the purpose of interim trail use/railbanking or not), interested persons will still have the usual opportunity to submit requests to subsidize operations for up to one year. Id. Should such a request be granted, discontinuance authority would not issue during the provision of financial assistance.

The Board would clarify in Trails Act orders that the Board is not exercising eminent domain or requiring use of the right-of-way in a manner inconsistent with whatever property rights are transferred from the rail carrier to the trail sponsor.

The proposal would also clarify the Board's ministerial role under the Trails Act.

Under the existing regulations, some courts have understood the NITU/CITU affirmatively to create a right to establish interim trail use on the right-of-way, even when the rail carrier's property rights over the right-of-way do not by their terms permit trail use. These decisions have tended to view the Board as adjudicating property rights and, through the NITU/CITU, modifying those rights or even creating new property rights to allow trail-use to occur.[19] For example, the decision in Kotis Associates LLC v. United States, 176 Fed. Cl. 346 (2025), described the Board as a "condemnation 'court,'" exercising eminent domain to take the underlying landholders' property without their participation. Id. at 357; see also id. at 370-71

[19] See, e.g., Haggart v. United States, 108 Fed. Cl. 70, 82 (2012) ("Without the NITU, neither Burlington Northern nor King County could have transformed the property into a recreational trail . . . . The power to exceed the scope of the easement was held by the federal government, acting through the STB. That power was exercised by the government . . . when it issued the three NITUs."); Howard, 106 Fed. Cl. at 351 ("[When] the STB issued the NITU[, it] authorized recreational trail use on the railroad rights-of-way running through the plaintiffs' lands . . . ."); James v. United States, 130 Fed. Cl. 707, 732 (2017) ("The NITU imposed a new and different burden on the property.").

(treating the NITU as a "judgment of immediate possession"). Based on the court's understanding of the Board's role, Kotis Associates gave "dispositive" weight to the NITU's description of the physical boundaries of the railbanked right-of-way—which simply reflected the trail sponsor's representations to the Board—notwithstanding documentary evidence indicating otherwise. See id. at 369-72. The court thus viewed the NITU as "taking" a substantial portion of the abutting landowners' property and transferring it to the trail sponsor because, in the court's view, "the NITU is the authoritative document through which Congress and the STB impose [a new] easement [for interim trail use/railbanking]." Id. at 371.

The proposed regulations would help ensure an improved understanding of the Board's very limited role in Trails Act administration. The Trails Act requires from the Board no more than that it impose certain conditions when a rail carrier wishes to transfer its right-of-way to a trail sponsor for use as a trail and that, after such a transfer, it not permit abandonment or discontinuance inconsistent with trail use. 16 U.S.C. 1247(d). The modest role for the Board in the Trails Act stands in contrast to other instances where Congress authorized the Board to "allow" one party to use or acquire the property "owned by" another. In those instances, Congress expressly granted the Board that authority and required the Board to establish compensation. See 49 U.S.C. 11102(a) (authorizing the Board to grant terminal trackage rights over facilities "owned by a rail carrier"); 49 U.S.C. 10907 (authorizing Board to force the sale of a rail line where certain findings of inadequate service have been made, and directing the Board to require such sale to be "at a price not less than the constitutional minimum value"); 49 U.S.C. 10904 (permitting the Board to require the sale of a line to be abandoned and requiring that it "determine the price and other terms of sale"); cf. 49 U.S.C. 11102(c) (requiring that Board establish "compensation" when requiring rail carriers to enter into reciprocal switching agreements). The Trails Act includes no similar provision nor, as the agency has long held, does it confer condemnation power. 1986 Rules, 2 I.C.C.2d at 597; see also Preseault v. ICC, 494 U.S. at 15 & n.8, 16 (Trails Act is not "a program of direct federal trail acquisition").

Moreover, whenever the Board authorizes the construction, acquisition, and operation of rail lines and combination of rail carriers under 49 U.S.C. 10901 and 11324, it is up to the applicant to obtain the necessary property and contract rights that would enable it to exercise the regulatory authority issued by the STB and begin rail operations. Allegheny Valley R.R.—Pet. for Declaratory Order, FD 35388, slip op. at 3 (STB served Apr. 25, 2011) (explaining that the Board's acquisition authority "is permissive, not mandatory, and cannot be viewed as conveying property rights to an applicant, as property ownership rights are determined by state law."); Ohio River Partners LLC—Acquis. & Operation Exemption—Hannibal Dev., LLC, FD 35984, slip op. at 3 (STB served Apr. 1, 2016) (same); Tongue River R.R.—Constr. & Operations—W. Alignment, FD 30186 (Sub-No. 3), slip op. at 16 n.50 (STB served Oct. 9, 2007) ("In rail construction cases . . . [t]he applicant is responsible for acquiring the land necessary to build the line."). Just as the Board does not involve itself in an applicant's efforts to obtain whatever property and contractual rights it needs to establish rail service, it does not involve itself in the trail sponsor's efforts to secure whatever rights it may need to establish trail use. Indeed, such a role for the Board—one that requires or otherwise licenses the use of property beyond the scope of existing property rights—is inconsistent with the Board's "essentially ministerial" role under the Trails Act. Goos, 911 F.2d at 1295. And it would be far more reaching than what the Board

does when exercising its core rail regulatory responsibilities over which it has far greater discretion.

The Trails Act no doubt permits rail carriers to transfer any or all of whatever property interests the railroad has in the right-of-way to a state, municipality, or private organization for interim trail use/railbanking. From the Board's perspective, what is important is that the rail carrier's interests remain within the Board's jurisdiction and thus cannot be deemed abandoned as a matter of state law, and that the rail carrier's ability to reinstate service in the future otherwise cannot be undermined. E.g., Idaho N. & Pac. R.R.—Aban. & Discon. Exemption—in Wash. & Adams Cntys., Idaho, 3 S.T.B. 50, 59 (1998) (explaining that the Board's principal concern after a railbanking agreement has been reached is that "nothing occur that would preclude a railroad's right to reassert control over the right-of-way"). Indeed, the Board's jurisdiction only preempts the remedies "provided under this part"—i.e., the rail provisions of the Interstate Commerce Act, 49 U.S.C. 10101-11908—not duties assigned to the Board under other provisions. See Trevarton v. S. Dakota, 817 F.3d 1081, 1086 (8th Cir. 2016) (emphasizing that the Board's "exclusive jurisdiction under 49 U.S.C. 10501(b) 'is limited to remedies with respect to rail *regulation*'"); Kan. & Okla. R.R.—Aban. Exemption in Hodgeman, Comanche, Kiowa, & Pratt Cntys., Kan., AB 853 (Sub-No. 1X), slip op. at 5 (STB served Apr. 30, 2020) (state and local laws are preempted if they interfere with railbanking). Whether the trail sponsor has the property rights needed to implement trail use is simply not relevant to the Board's regulation of the rail network.[20]

In keeping with the Board's narrow statutory mandate under the Trails Act, the Board proposes to explicitly state in each order under 16 U.S.C. 1247(d) that, by approving the transfer or conveyance of the right-of-way as required by the statute, the Board (1) is not exercising any power of eminent domain, (2) is not taking or burdening private property, (3) is not authorizing the rail carrier or the trail sponsor to condemn or take private property, and (4) is not allowing for use of property in excess of existing property rights. The Board would merely be authorizing the rail carrier to transfer its property rights in the right-of-way to the trail sponsor, with conditions.

The Board will have no role in the Trails Act process in cases in which the rail carrier itself wants to operate a trail.

From time to time, the Board has issued a NITU/CITU at the request of a rail carrier seeking to establish interim trail use/railbanking on its own line, acting as its own trail sponsor. See, e.g., Metro N. Commuter R.R.—Aban. Exemption—in Dutchess & Putnam Cntys., N.Y., AB 1311 (Sub-No. 1X), slip op. 2 & n.4 (STB served Feb. 7, 2024); Great Redwood Trail Agency—Aban. Exemption—in Mendocino, Trinity, & Humboldt Cntys., Cal., AB 1305X, slip op. 5-6 & n.6 (STB served Oct. 25, 2022). In those cases, the Board has not required the rail carrier to file a notice that an agreement for interim trail use/railbanking has been reached, but instead to file a notice "confirming that it is implementing interim trail use/rail banking." Id.

[20] To be sure, if a trail sponsor lacks sufficient property rights to use a railbanked line as a trail, that situation may raise questions regarding the Trails Act's continued applicability, including whether it continues to prohibit the Board from permitting abandonment inconsistent or disruptive of trail use.

It follows from the above discussion that, under the proposed new framework, the Board will no longer take affirmative action where a rail carrier (or non-carrier owner) intends to act as its own trail sponsor and establish interim trail use/railbanking itself on its own line. As explained, the Board's only affirmative role in interim trail use/railbanking is to approve and condition the "transfer or conveyance" of a rail carrier's rights over an unused right-of-way to a trail sponsor, where necessary. If no such transfer is needed, no affirmative action from the Board is required. The consequence should be a reduction in paperwork and simplified or eliminated regulatory proceedings in the situations where this rule applies.

As far as the Board's licensing procedures are concerned, a rail carrier wishing to use some or all of its right-of-way for trail use may do so on its own without seeking authority from the agency, so long as such trail use does not interfere with the provision of common carrier rail service. See Great Redwood Trail Agency—Adverse Aban.—Mendocino Ry. in Mendocino Cnty., Cal., AB 1305 (Sub-No. 1), slip op. at 13 (STB served Feb. 19, 2026) ("There is generally no prohibition to a rail carrier permitting its right-of-way to be used for non-rail purposes so long as such uses do not interfere with common carrier rail service."). And a rail carrier can seek discontinuance authority if it wishes to be relieved of its common carrier obligation during any such trail use. (Indeed, the rail carrier *must* seek discontinuance authority if the trail use would supplant, rather than coexist with, the rail line.) In such a case, as in any other, if a right-of-way is put to interim trail use and subject to reactivation for railroad purposes, that interim use "shall not be treated" by the Board "as abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. 1247(d).

The Board will similarly not take action in the case of interim trail use/railbanking by a non-carrier state or state subdivision that has acquired a rail line approved for abandonment under the Board's Common Carrier Status of States rules. See 49 CFR 1150.22; Common Carrier Status of States, State Agencies & Instrumentalities, & Pol. Subdivisions, 363 I.C.C. 132 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982); see also S. Dakota ex rel. Dep't of Transp.—Pet. for Declaratory Order, FD 36697 (STB served Aug. 21, 2023) (issuing NITU where non-carrier state was "both the owner of the [line] and the trail sponsor"). Under those rules, a state's acquisition of a line that has been approved for abandonment, but for which the abandonment has not been consummated, is exempted from the Board's jurisdiction. 49 CFR 1150.22. An operator that contracts with the state to provide service over the line incurs a common carrier obligation. Id. The operator is exempt from the statutory requirements governing the start-up and termination of operations found at 49 U.S.C. 10901 and 10903, but must comply with the special rules in 49 CFR pt. 1150 subpart C. Id. Under the proposed new Trails Act framework, after an operator terminates service, the state will not need the Board's permission to establish interim trail use/railbanking, and there is no role for the Board to play because no transfer or conveyance of the right-of-way is necessary. If interim trail use does occur, that interim trail use "shall not be treated" as having consummated the abandonment if the right-of-way is subject to reactivation for railroad purposes. 16 U.S.C. 1247(d).

ENVIRONMENTAL REVIEW

The proposed action is categorically excluded from environmental review because it is a "rulemaking . . . that has no potential for significant environmental impacts." 49 CFR 1105.6(c)(6). The proposed rule simplifies and clarifies Board procedures implementing the Trails Act and does not regulate industry actors' primary conduct. No extraordinary circumstances warrant the preparation of an environmental assessment or environmental impact statement.

REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Id. 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 603(a), or certify that the proposed rule would not have a "significant impact on a substantial number of small entities," 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed changes to its regulations here are intended to streamline, rationalize, and clarify its trail use procedures and they do not mandate the conduct of small entities. The changes proposed here are largely procedural and would not have a significant economic impact on Class III rail carriers or trail sponsors (whether as small businesses, not-for-profits, or small governmental jurisdictions) to which the RFA applies. The proposed rules, if promulgated, would no longer require prospective trail sponsors to request Board permission to negotiate for interim trail use/railbanking, or Board permission for rail carriers to consent to such requests. The proposed rules would also enable rail carriers to consummate abandonment authority if they are no longer interested in negotiating for interim trail use without waiting for the Board-ordered negotiation period to expire or asking that the order be vacated. As discussed below, the Board estimates that these changes would eliminate all paperwork requirements in approximately 45% of attempted railbanking negotiations. See infra 21 n.22. In the remaining cases, the Board does not expect that the new petition for Trails Act transfer would result in any greater burden than would the existing request for a NITU/CITU, and may even result in less. The proposed rules would, however, require that rail carriers (or trail sponsors acting on behalf of rail carriers) to seek abandonment authority should they wish to abandon lines over which the trail sponsor intends to terminate interim trail use. Because termination requests are infrequent, and because this rulemaking does not modify the substantive standards for abandonment, including use of the class exemption at 49 CFR 1152.50, the Board does not anticipate it will be any more difficult for such rail carriers to obtain that authority under the proposed rules. On balance, the Board expects the impact of the proposed rule would be a reduction in regulation

and paperwork burden for small entities. Further, the Board asserts that the economic impact of the reduction in paperwork would be entirely beneficial to small entities as such entities would have reduced filing burdens associated with negotiating an interim trail use agreement. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. This decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

PAPERWORK REDUCTION ACT

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), and Appendix B, the Board seeks comments about the revisions in the proposed rules to the currently approved collection of Preservation of Rail Service (OMB Control No. 2140-0022) and Statutory Licensing Authority (OMB Control No. 2140-0023) regarding: (1) whether the collection of information, as modified in the proposed rule in Appendix A, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate.

The proposed rule no longer requires the filing of a trail use request whenever a trail sponsor and rail carrier negotiate trail use for lines authorized for abandonment, or the filing of requests to extend the authorized negotiation period. The Board estimates the proposed rules would reduce the total annual hourly burden by 50 hours under Preservation of Rail Service (OMB Control No. 2140-0022) because not every negotiation for interim trail use/railbanking yields an agreement.[21] The proposed rules, however, will require a rail carrier (or a trail sponsor acting on behalf of a rail carrier) to seek abandonment authority should it wish to abandon a railbanked line for which a trail sponsor intends to terminate trail use. But because trail sponsors infrequently terminate trail use and because the filing should be substantially duplicative of the request for abandonment authority previously filed for the line, the Board expects that the proposed rules will increase the total hourly burden by only 20 hours under Statutory Licensing Authority (OMB Control No. 2140-0023). The Board welcomes comment on the estimates of actual time and costs of compliance with the proposed rules, as detailed in Appendix B. The proposed rules will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11(b). Once the comment period ends, comments received by the Board regarding the information collection will also be forwarded to OMB for its review.

[21] The Board estimates that 45% of negotiations for interim trail use/railbanking do not result in an agreement. See Limiting Extensions of Trail Use Negotiating Periods, EP 749 (Sub-No. 1), slip op. at 5 (STB served June 6, 2019) (describing RTC's database showing that, as of November 2018, the agency had issued 718 NITU/CITUs resulting in 393 interim trail use/railbanking agreements). These data are consistent with the Board's estimate that, over the last three years, the Board issued NITU/CITUs in thirteen cases in which negotiations have concluded, and seven of those cases resulted in agreements.

EXECUTIVE ORDER 12866 (REGULATORY PLANNING AND REVIEW) AND EXECUTIVE ORDER 14192 (UNLEASHING PROSPERITY THROUGH DEREGULATION)

Executive Order 12866, as modified by Executive Order 14215, provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is significant under section 3(f) of Executive Order 12866. The STB anticipates requesting that the final rule be considered an Executive Order 14192 deregulatory action.

The proposed rule is needed to simplify the Board's railbanking processes and reduce unnecessary takings liability for the United States. The Board has discretion to carry out the directives of 16 U.S.C. 1247(d) through appropriate rules and regulations governing filing requirements and procedures for railbanking at the Board. The Board lacks discretion, however, to reject a railbanking request on the grounds that the particular rail line in question is not suitable for railbanking. See Citizens Against Rails-to-Trails v. Surface Transp. Bd., 267 F.3d 1144, 1152 (D.C. Cir. 2001); Goos v. ICC, 911 F.2d 1283, 1295 (8th Cir. 1990).

The benefits of the proposed rule include eliminating any need for regulated entities to file paperwork with the Board in cases where interim trail use/railbanking negotiations occur but do not result in an agreement, which the Board estimates to be approximately 45% of cases. See supra 21 n.22. In those cases, the existing regulations require the parties to seek and require the Board to issue a NITU/CITU (and require the rail carrier to seek vacatur of that NITU/CITU should it wish to end negotiations), but, under the proposed rule, a Board filing is required only after the parties have reached agreement. The Board estimates that each of the filings to be eliminated takes approximately five hours to complete. An additional substantial benefit of the rulemaking would be an expected reduction in the takings liability of the United States—and the costs of litigating those claims—particularly in cases where no interim trail use/railbanking agreement is reached. Whereas under the current regime a NITU/CITU has been held to effect a taking in those circumstances, under the proposed rule there would be no agency action and hence no takings claim or corresponding litigation. According to the Treasury Department website, Trails Act-related payments from the judgment fund over the last two years, including payment of interests and attorney fees, exceeded $50 million. These takings cases are against the United States and handled by DOJ, and the Board is not in a position to project what percentage of those awards and cost payments would not have occurred under the new rules or estimate the litigation costs incurred by DOJ. But the Board expects that the amount of expense saved by the proposed rule would be substantial.

In terms of costs of the rulemaking, the proposed reforms do require that rail carriers seek authority to abandon railbanked lines in cases where interim trail use has been terminated, whereas that authority is effectively automatic under the current regulations. However, trail sponsor requests to terminate trail use are infrequent, occurring on average no more than twice per year, and those requests will largely duplicate requests previously filed. Thus, the Board anticipates that this rule will be net deregulatory, as the benefits from less regulation of rail carrier and trail sponsor trail use negotiations will outweigh any increase in administrative or other costs borne by carriers, trail sponsors, or the Board.

The alternatives the Board considered included (1) the no-action alternative and (2) the proposal in the petition for rulemaking filed by DOJ. The Board rejected the no-action alternative because that alternative—i.e., the situation in which the Board does nothing—would not solve the problem of the unnecessary filings and takings litigation expenses that are regular features of the status quo. The proposal the Board is putting forward resembles DOJ's proposal in many respects but is more comprehensive and makes other changes to align the Trails Act procedures with the Board's overall regulatory scheme.

List of Subjects:

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

It is ordered:

1. DOJ's petition for rulemaking is granted in part. The Board proposes to amend its regulations as shown in the attached appendix. Notice of the proposed action will be published in the Federal Register.

2. Comments are due by January 8, 2027. Reply comments are due by February 8, 2027.

3. DOJ and DOI's joint motion to withdraw DOI as a petitioner in this matter is granted.

4. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

5. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

APPENDIX A

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 1321(a), the Surface Transportation Board amends chapter X of title 49 of the Code of Federal Regulations as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

2. Amend § 1002.2 by revising paragraph (f)(27)(i) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(27) * * *

(i) A Petition for Trails Act Transfer under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

* * * * *

PART 1011— BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 1301, 1321, 11123, 11124, 11144, 14122, 15722, and 24308.

4. Amend § 1011.7 by revising paragraphs (a)(3)(iv) and (a)(3)(v) to read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

(a) * * *

(3) * * *

(iv) To issue orders under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d).

(v) In any proceeding where interim trail use/railbanking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

* * * * *

PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

5. The authority citation for part 1105 continues to read as follows:

Authority: 16 U.S.C. 1456 and 1536; 42 U.S.C. 4332 and 6362(b); 49 U.S.C. 1301 note (1995) (Savings Provisions), 1321(a), 10502, and 10903-10905; 54 U.S.C. 306108.

6. Revise § 1105.12 to read as follows:

§ 1105.12 Sample newspaper notices for abandonment exemption cases.

In every abandonment exemption case, the applicant shall publish a notice in a newspaper of general circulation in each county in which the line is located and certify to the Board that it has done this by the date its notice of (or petition for) exemption is filed. The notice shall alert the public to the proposed abandonment, to available reuse alternatives, such as public use, and to how it may participate in a Board proceeding. Sample newspaper notices are provided in appendix A to this part for guidance to the railroads.

7. Revise Appendix A to Part 1105 to read as follows:

Appendix A to Part 1105—Sample Newspaper Notices

Sample Local Newspaper Notice for Out-of-Service Abandonment Exemptions

Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Surface Transportation Board), it intends to file with the Surface Transportation Board, Washington, DC, a notice of exemption under 49 CFR 1152 Subpart F Exempt Abandonments permitting the (abandonment of or discontinuance of service on) a ____mile line of railroad between railroad milepost ____, near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes) and railroad milepost ____, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in ____ County(ies), (State). The proceeding will be docketed as No. AB____ (Sub-No.____X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Office of Environmental Analysis (OEA), Surface

Transportation Board, Washington, DC or by calling that office at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions or public use conditions also can be filed with the Board. Any pleading that raises matters other than environmental issues (such as public use and offers of financial assistance) must be filed directly with the Board's Office of Chief Counsel, Washington, DC [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance or public use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative: (Name, address and phone number).

Sample Local Newspaper Notice for Petitions for Abandonment Exemptions

Notice of Intent to Abandon or to Discontinue Rail Service

(Name of railroad) gives notice that on or about (insert date petition for abandonment exemption will be filed with the Surface Transportation Board) it intends to file with the Surface Transportation Board, Washington, DC, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the (abandonment of or discontinuance of service on) a____mile line of railroad between railroad milepost ____, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes), and railroad milepost ____, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in ____ County(ies), (State). The proceeding has been docketed as No. AB ____ (Sub-No.____X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC or by calling OEA at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions or public use conditions also can be filed with the Board. Any pleading that raises matters other than environmental issues (such as public use~~,~~ and offers of financial assistance) must be filed directly with the Board's Office of Chief Counsel, Washington, DC [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance or public use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative (Name, address and phone number).

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

8. The authority citation for part 1152 continues 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. 1301, 1321(a), 10502, 10903-10905, and 11161.

9. Revise § 1152.21 to read as follows:

§ 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 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 interests 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 discontinuance 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) 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 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 railbanking 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 conditions, should indicate the proceeding designation STB No. AB ___ (Sub-No. ___) and must be filed with the Chief of Case Administration, Office of Chief Counsel, Surface Transportation Board, Washington, DC 20423, 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). Every comment or protest 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 Office 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 the 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 Office 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 Office 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.

10. Amend § 1152.22 by revising paragraph (i) to read as follows:

§ 1152.22 Contents of application.

* * * * *

(i) Draft *Federal Register* notice. The applicant shall submit a draft notice of its application to be published by the Board. The Board will publish the notice in the *Federal Register* within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth below:

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

Notice of Application to Abandon or to Discontinue Service

On (insert date application was filed with the Board) (name of applicant) filed 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), 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) and traverses through _____ (ZIP Codes) United States Postal Service ZIP Codes.

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 applicant's entire case for abandonment (or discontinuance) (case in chief) was filed with the application.

This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since (insert date).

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

Any interested person may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests (including the protestant's entire opposition case), within 45 days after the application is filed. All interested persons should be aware that following any discontinuance 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) must be filed within 45 days after the application is filed. 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 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.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and railbanking under 16 U.S.C. 1247(d) and § 1152.29.

Parties seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use conditions, must indicate the proceeding designation STB No. AB __ (Sub-No. __) and should be filed with the Chief of Case Administration, Office of Chief Counsel, Surface Transportation Board (Board), Washington, DC 20423, 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). Every comment or protest shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every 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 Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office 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 Office 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.

* * * * *

11. Amend § 1152.24 by revising paragraph (f) to read as follows:

§ 1152.24 Filing and service of application.

* * * * *

(f) A rail carrier that receives authority from the Board to abandon a line shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (i.e., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the carrier has consummated, or fully exercised, the abandonment authority on a certain date. Such notice shall be filed within 1 year of the service date of the decision permitting the abandonment. Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the carrier’s filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding must be instituted if the carrier seeks to abandon the line. Copies of the carrier's notice of consummation shall be filed with the Chief of Case Administration, Office of Chief Counsel. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes. If, however,

any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. For good cause shown, a carrier may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing.

* * * * *

12. Amend § 1152.25 by revising paragraphs (a)(1), (a)(1)(v), and (c)(1) to read as follows:

§ 1152.25 Participation in abandonment or discontinuance proceedings.

(a) * * *

(1) *Protests and comments.* Interested persons may become parties to an abandonment or discontinuance proceeding by filing written comments or protests with the Board. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) must be included in these filings. 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 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 shall include all evidence and argument in support of protestant's position (protestant's case in chief). Protests must contain the following information:

* * *

(v) Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules).

* * * * *

(c) * * *

(1) Written comments and protests, as well as requests for public use conditions, shall be filed with the Board (the Chief of Case Administration, Office of Chief Counsel, Surface Transportation Board, Washington, DC 20423) within 45 days of the filing with the Board of an abandonment or discontinuance application.

* * * * *

13. Amend § 1152.26 by revising paragraph (a) to read as follows:

§ 1152.26 Board determination under 49 U.S.C. 10903.

(a) The following schedule shall govern the process for Board consideration and decisions in abandonment and discontinuance application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.
Day 10—Due date for oral hearing requests.
Day 15—Due date for Board decision on oral hearing requests.
Day 20—Due date for Notice of Application to be published in the *Federal Register*.
Day 45—Due date for protests and comments, including opposition case in chief, and for requests for public use conditions.
Day 60—Due date for applicant's reply to opposition case and for applicant's response to requests for public use conditions.
Day 110—Due date for service of decision on the merits.
Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

* * * * *

14. Revise § 1152.29 to read as follows:

§ 1152.29 Prospective use of rights-of-way for interim trail use and railbanking.

(a) *Petition for Trails Act Transfer defined.* Under section 208 of the National Trails System Act, 16 U.S.C. 1247(d) ("the Trails Act"), a carrier or other owner of a rail line can transfer its interest in the right-of-way to a state, political subdivision, or qualified private organization ("trail sponsor") for interim trail use. The Board must approve and condition that transfer. An owner and trail sponsor seeking to obtain such approval must jointly file with the Board a Petition for Trails Act Transfer.

(b) *Content.* All Petitions for Trails Act Transfer must be filed jointly by the owner and the trail sponsor and must include:

(1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be transferred. This identification is for notice and administrative purposes only. It does not determine the location, width, extent, validity, or ownership of any property interest.

(2) A joint representation that the owner and the trail sponsor have reached an agreement to transfer the owner's property interest in the designated right-of-way to the trail sponsor for interim trail use.

(3) The owner's representations (i) that no rail carriers other than the owner are licensed to operate on the line and, if the owner is a rail carrier, (ii) that the owner has obtained Board authority to discontinue service on the line and has consummated that authority or that the owner is seeking Board authority to do so and will discontinue service immediately upon receiving such authority, and (iii) that the owner does not intend to fully abandon the line and is relinquishing any previously granted Board authority to do so, including a statement withdrawing any notice of exemption for abandonment that the owner has previously filed for the line, if applicable.

(4) The trail sponsor's representations that it is prepared to assume full responsibility for:

(i) Managing the right-of-way;

(ii) Any legal liability arising out of the transfer or use of the right-of-way (unless the trail sponsor is immune from liability, in which case the trail sponsor need only indemnify the owner against any potential liability); and

(iii) The payment of any and all taxes that may be levied or assessed against the right-of-way.

(5) The trail sponsor's acknowledgments:

(i) That the transfer will be conditioned on the trail sponsor meeting its responsibilities described in the preceding paragraph of this section, such that the trail sponsor's continued performance of those responsibilities will be a requirement of the transfer.

(ii) That the trail sponsor cannot alienate or otherwise alter any portion of the right-of-way in a manner that would be inconsistent with future reactivation for rail service, absent express Board permission.

(iii) That the Board has the authority and obligation to vacate the resulting Trails Act order if the right-of-way is needed for reactivation of rail service and that continued trail use inconsistent with reactivation will not be permitted.

(c) *Procedures for filing.*

(1) Lines authorized for discontinuance. If the right-of-way is on a rail line on which the Board has authorized the owner to discontinue service, the parties shall jointly file the petition for transfer in the discontinuance docket.

(2) Lines authorized for abandonment. If the right-of-way is on a rail line that the Board has authorized the owner to abandon but for which the abandonment has not been consummated, the parties shall jointly file the petition for transfer in the abandonment docket.

(3) Other lines. If the right-of-way is on a rail line that the Board has not authorized for either abandonment or discontinuance by the owner, the owner shall request, in a new docket, discontinuance authority from the Board (via application, petition for exemption, or notice of exemption, as appropriate), and the parties shall file the petition for transfer in that new docket.

(d) *Effect of Trails Act Order.* A Board order granting a Petition for Trails Act Transfer under this section authorizes the owner to transfer its property rights in the right-of-way to the trail sponsor, with such conditions as the Board may impose. The order does not involve the exercise of any power of eminent domain. It does not take or burden private property. It does not authorize the owner or the trail sponsor to condemn or take private property. And it does not authorize the use of private property in excess of existing property rights.

(e) *Substitution of trail sponsor.* When a trail sponsor intends to terminate trail use and another person intends to become a trail sponsor by assuming financial responsibility for the right-of-way, then the current and future trail sponsors shall jointly file a petition to transfer the property interest in the right-of-way to the future trail sponsor. The filing must include the map and description of the right-of-way described in § 1152.29(b)(1) and the future trail sponsor's representations and acknowledgments described in § 1152.29(b)(4) and (b)(5).

(f) *Ending interim trail use/railbanking.* After a line has been transferred to a trail sponsor pursuant to these regulations, the Board will entertain petitions to vacate the Trails Act order and reactivate rail service on the line. The Board will also entertain requests to authorize the line for abandonment or take other appropriate action in the event that the trail sponsor intends to end the use of all or any portion of the right-of-way as a trail.

15. Amend § 1152.50 by revising paragraphs (d)(3), (d)(5), and (e) to read as follows:

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

* * * * *

(d) * * *

(3) The Board, through the Chief Counsel, 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 discontinuance 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. 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.

* * *

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

* * *

(e) *Consummation notice.* As provided in § 1152.24(f), rail carriers that receive authority to abandon a line under § 1152.50 must file with the Board a notice that abandonment has been consummated.

16. Amend § 1152.60 by revising paragraphs (c) and (e) to read as follows:

§ 1152.60 Special Rules.

* * * * *

(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 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, DC 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 interests 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 discontinuance 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 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*.

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 Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office 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 Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

* * * * *

(e) As provided in § 1152.24(f), rail carriers that receive authority to abandon a line by individual exemption under 49 U.S.C. 10502 must file with the Board a notice that abandonment has been consummated.

APPENDIX B

INFORMATION COLLECTIONS

Summary: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act, the Surface Transportation Board gives notice that it is requesting from the Office of Management and Budget approval for the revisions of two existing collections: Preservation of Rail Service (OMB Control Number 2140-0022) and Statutory Licensing Authority (OMB Control Number 2140-0023), as further described below. The proposed revisions are necessitated by this notice of proposed rulemaking. Across the two collections, the rule will result in a net decrease in paperwork burden.

Collection 1

Title: Preservation of Rail Service

OMB Control Number: 2140-0022

STB Form Number: None

Type of Review: Revision

Respondents: Affected shippers, communities, or other interested persons seeking to preserve rail service over rail lines that are proposed or identified for abandonment or discontinuance, and railroads that are required to provide information to the offeror or applicant. Approximately 25.

Frequency: On occasion, as shown in the table below:

Table: Number of Yearly Responses and Total Burden Hours

Type of Filing	Estimated annual average number of filings (2023-2025)	Number of hours per response	Total estimated burden hours
Offer of Financial Assistance (and related filings)	2	46 hours	92 hours
Request for Public Use Condition	1	4 hours	4 hours
Feeder Line Application	1	70 hours	70 hours
Trails Act Transfer Request	13	5 hours	65 hours
Total burden hours			231 hours

Total Burden Hours (annually including all respondents): 231 hours (total of estimated hours per response multiplied by the number of responses for each type of filing). This estimate is 50 hours less than the estimate in the Board's 2026 information collection request. The reduction results from replacing the "Trail Use Request (with extensions)" type of filing with the "Trails Act Transfer Request" type of filing. Under the proposed rule, Trails Act Transfer Requests would not be filed where the parties negotiate but fail to reach a trail use agreement. The Board estimates that negotiations fail to result in a trail use agreement in approximately 45% of cases. Therefore, the estimated annual average number of filings for trail use requests (now Trails Act Transfer Requests) is reduced by about 45%, or from 23 to 13.

Total "Non-hour Burden" Cost: Because Board collections are submitted electronically to the Board, there is no cost for filing with the Board. However, respondents are sometimes required to send consultation letters to various other governmental agencies. Copies of these letters are part of an environmental and historic report that must be filed with this collection (unless waived by the Board). Because some of these other agencies may require hard copy letters, there may be some limited mailing costs, which staff estimates in total to be approximately $1,800.00. The proposed rule is not expected to change this estimate.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier freight railroads and certain other carriers operating in the United States. Under the laws the Board administers, persons seeking to preserve rail service may file pleadings before the Board to acquire or subsidize a rail line for continued service, to impose a public use condition, or to request a Trails Act transfer to a trail sponsor.

When a line is proposed for abandonment or discontinuance, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board: an offer of financial assistance (OFA) to subsidize or purchase a rail line for which a railroad is seeking abandonment or discontinuance (49 U.S.C. 10904), including a request for the Board to set terms and conditions of the financial assistance; a request for a public use condition (49 U.S.C. 10905); or a request for authority to transfer the line to a trail sponsor under the Trails Act (16 U.S.C. 1247(d)). Similarly, when a line is placed on a system diagram map identifying it as an anticipated or potential candidate for abandonment, affected shippers, communities, or other interested persons may seek to preserve rail service by filing with the Board a feeder line application to purchase the identified rail line (49 U.S.C. 10907). Additionally, the railroad owning the rail line subject to abandonment or discontinuance must, in some circumstances, provide information to the applicant or offeror, as included above.

As to trail use, under the proposed rule, the STB will issue a Trails Act order authorizing the transfer of the rail line to a trail sponsor under 16 U.S.C. 1247(d) if the rail line's owner and the trail sponsor have entered into an agreement for interim trail use/railbanking and other conditions are met. See proposed 49 CFR 1152.29.

Collection 2

Title: Statutory Licensing Authority

OMB Control Number: 2140-0023

STB Form Number: None

Type of Review: Revision

Respondents: Rail carriers and non-carriers seeking statutory licensing or consolidation authority, an exemption from filing an application for such authority, or interchange commitments. Approximately 85.

Frequency: On occasion, as shown in the table below:

Table: Number of Yearly Responses and Total Burden Hours

Type of Filing	Estimated annual average number of filings (2020-2022)	Number of hours per response	Total estimated burden hours
Applications	7	575 hours	4,025 hours
Petitions*	15	75 hours	1,125 hours
Notices*	88	25 hours	2,200 hours
Notices of exemption for abandonment following Trails Act transfer*	2	10 hours	20 hours
Interchange commitments	5	10 hours	50 hours
Total burden hours			7,420 hours

* Under section 10502, petitions for exemption and notices of exemption are permitted in lieu of an application.

Total Burden Hours (annually including all respondents): 7,420 hours (total of estimated hours per response multiplied by the number of responses for each type of filing). This estimate is 20 hours greater than the estimate in the Board's 2024 information collection request.[1] The increase results from the proposed addition of the new type of filing "Notices of exemption for abandonment following Trails Act transfer." This type of filing is necessitated by the proposed rule because, under the proposed rule, rail carriers will need to relinquish any abandonment authority they have received for the line in order to seek a Trails Act transfer for the purpose of interim trail use/railbanking. Therefore, in the event that the trail sponsor wishes to end interim trail use/railbanking, the rail carrier will need to seek new abandonment authority should it wish to abandon the line. However, because in this scenario the rail carrier would previously have received abandonment authority (that it has since relinquished), the Board estimates that the hourly burden of the new notice of exemption would be substantially lower than normal. The Board estimates that this situation arises approximately twice each year.

[1] The Board's 2024 information collection's calculation summed to 7,400 hours, but the total was incorrectly reported as 7,300 hours.

Total "Non-hour Burden" Cost: Because Board collections are submitted electronically to the Board, there is no cost for filing with the Board. However, respondents are sometimes required to send consultation letters to various other governmental agencies. Copies of these letters are part of an environmental and historic report that must be filed with this collection (unless waived by the Board). Because some of these other agencies may require hard copy letters, there may be some limited mailing costs, which staff estimates in total to be approximately $2,100.00. The proposed rule is not expected to change this estimate.

Needs and Uses: As mandated by Congress, an application for prior approval and authority must be filed with the Board by persons seeking to construct, acquire, or operate a line of railroad; by railroads seeking to abandon or discontinue operations over a line of railroad; and, in the case of two or more railroads, by railroads seeking to consolidate their interests through merger or a common-control arrangement. See 49 U.S.C. 10901-03, 11323-26. Under 49 U.S.C. 10502, persons may seek an exemption from many of the application requirements of sections 10901-03 and 11323-26 by filing with the Board a petition for exemption or notice of exemption in lieu of an application. The collection by the Board of these applications, petitions, and notices (including collection of disclosures of rail "interchange commitments" under 49 CFR 1121.3(d), 1150.33(h), 1150.43(h), and 1180.4(g)(4)) enables the Board to meet its statutory duty to regulate the referenced rail transactions. If the actions for which authority is sought create agreements with interchange commitments that limit the future interchange of traffic with third parties, then certain information must be disclosed to the Board about those commitments. 49 CFR 1121.3(d), 1150.33(h), 1150.43(h), 1180.4(g)(4). The collection of this information facilitates the case-specific review of interchange commitments and enables the Board's monitoring of their usage generally.