

# **federal register**

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WEDNESDAY, JANUARY 8, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 5

PART III



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## **INTERSTATE COMMERCE COMMISSION**

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**STANDARDS FOR  
DETERMINING RAIL  
SERVICE CONTINUATION  
SUBSIDIES**

## Title 49—Transportation

## CHAPTER X—INTERSTATE COMMERCE COMMISSION

## SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 293 (Sub-No. 2)]

## PART 1125—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

On February 25, 1974 (39 FR 7182), the Director of the Rail Services Planning Office (Office) of the Interstate Commerce Commission (Commission) issued a notice of proposed rulemaking and order, pursuant to section 205(d)(3) of the Regional Rail Reorganization Act of 1973 ("Act") which provides that the Rail Services Planning Office shall:

• • • within 180 days after the date of enactment of this Act, determine and publish standards for determining the "revenue attributable to the rail properties," the "avoidable costs of providing service" and "a reasonable return on the value," as those phrases are used in section 304 of this Act, after a proceeding in accordance with the provisions of section 553 of Title 5, United States Code • • •

After an extended (113 days) period for public comment, the Office issued standards on July 1, 1974 (39 FR 24294).

The standards defined "revenue attributable" as the actual revenues accruing to the railroad as derived from way-bills and other source documents, plus any subsidy payments that would cease on termination of service. Passenger revenues not directly assignable would be prorated on the basis of passenger miles on the branch to passenger miles

The "avoidable costs of providing service" on the branch were defined as actual costs to the extent that they are available. Where they are not available, allocation formulas based upon the railroad's annual report form (R-1) filed with the Commission would be employed. Avoidable off-branch costs would be determined by a formula based on an application of system-wide data contained in the carrier's annual report (R-1) to the Commission's Formula for Use in Determining Rail Freight Service Costs, Rail Form A, Statement IP1-73 (Rail Form A). Avoidable costs would also include the costs incurred in upgrading service and improving the condition of track and related facilities.

The calendar year before the year in which the notice of intent to discontinue service is filed was established as the base year for revenue and cost data, unless that notice were given prior to April 1 in which case it would be the second preceding calendar year.

The standards adopted July 1 defined "reasonable return" as the interest rate equal to the publicly quoted yield on U.S. Treasury notes of approximately the same life as the subsidy agreement. The value of the properties upon which the return would be based was defined as the net liquidation value of those properties used and useful to provide the service demanded by the person offering the subsidy; that is their current market value less the cost of dismantling and disposi-

tion. Disputes over what property is needed to provide service and over the value of that property would be settled by arbitration.

Notice of a proposal to discontinue service was required to be given to the general public by publication in local newspapers. Notice would also have to be given to the Governor and public service commission of each State in which the branch is located, and to the Office.

On July 30, 1974, the Office issued a notice announcing that petitions seeking amendment of the standards would be accepted if filed on or before August 19, 1974 (39 FR 28196).

During August and September the Office conducted a series of public seminars explaining the purpose of the standards and their applicability.

In requesting amendment of the standards, several parties urged that the standards be tested on actual branch lines, and that the time for filing pleadings seeking amendment of the standards be extended until such tests could be completed. On September 10, 1974, the Office issued a notice announcing that it would test the standards and that the time for filing pleadings was being extended to October 30, 1974. All interested parties were invited to participate in the tests (39 FR 33574).

The petitions for reconsideration, the public seminars, and the branch line tests revealed that the standards adopted on July 1 required modification in a number of respects, and they are being amended effective immediately. Since the revised standards reflect significant changes from the original version, public comments seeking further amendment will be entertained until February 18, 1975.

In recognition of the fact that the circumstances surrounding each subsidy situation are different, the revised standards are intended to encourage negotiations between the parties to structure subsidy agreements to meet those circumstances. It is believed that arm's-length negotiations between the parties will provide a better basis for a subsidy agreement than would rigid standards. For example, the subsidizer may wish to provide funds to improve track conditions so that higher speed limits would be permitted. Higher speeds could, in some instances, result in lower transportation costs, and since transportation costs represent a significant portion of on-branch costs, it may be possible that this factor, during the subsidy period, would more than offset the rehabilitation costs. This would result in better overall service at a lower total cost.

It is also conceivable that adjustments in the frequency of service would be desired. In many situations reliability of service is more important to the shipper than frequency of service. While the latest regular service level will be established as the standard, an agreement between the parties to either raise or lower it will not be precluded. Other inducements, such as relief from revenue or property taxes, could also be taken into consideration in the negotiations. How-

ever, in the event an agreement cannot be reached on a voluntary basis, a mandatory procedure is provided to assure continuation of service.

## BRANCH LINE TESTS

Each State within the 17-State region covered by the Act was requested to identify a branch line for test purposes. Initially, it was anticipated that tests would be conducted on each of the lines so identified. However, as a result of the initial tests, it was determined that further testing would be of little value since it was apparent that significant modification of the standards would be necessary.

The Office used the testing program as an opportunity to work together with interested parties in order to perfect the published standards and thus better fulfill the Office's responsibility under the Act. Points made in the petitions filed and at public seminars conducted by the Office were checked during the tests. Many of the modifications adopted herein result directly from information and knowledge obtained during the testing.

The standards were tested on two Penn Central Transportation Company lines: the line between Georgetown and Lewes, Delaware, and the line between Columbus and Holmesville, Ohio. On-site investigations were conducted to determine the availability of data required by the standards. As indicated above, notice of the tests was given through publication in the Federal Register and was served on all parties to this proceeding. All persons indicating a desire to participate were invited to attend.

The first trip was to Philadelphia, Pennsylvania, to inspect the records maintained at the Penn Central headquarters. The inspection revealed that Penn Central's accounting system is designed to accumulate data on a responsibility rather than territorial basis. It was found that the entire Penn Central rail system is divided into over 6,000 "responsibility" levels with each department (transportation, maintenance of way, etc.) having its own set of so-called management center accounts. In addition, it was found that the railroad's accounting system is flexible enough to collect costs for specific purposes.

Currently, Penn Central maintains approximately 2,000 "cost centers" covering activities involving financial agreements with other parties, e.g., leased lines, joint-use facilities and passenger operations. This cost system cuts across responsibility lines and provides direct cost for any activity so designated. It was found that through this system direct cost collection at the branch level could be initiated within approximately 30 days after a line had been designated and adequately described.

It was further learned that data is not collected in a systematized manner at the branch level for many of the factors involved in the apportionment formulas utilized by the standards. The only method by which this data can be

collected is a special on-site study of the line in question.

As a follow-up to the Philadelphia meeting, field trips were conducted in Delaware and Ohio. The purpose of the trips was to determine the extent to which on-branch direct costs could be ascertained at the local level. It was found that by using records maintained at the local level, it is possible to ascertain direct costs related to most maintenance of way and transportation accounts. During the tests, it was possible to determine the actual number of train trips, time involved, crew costs, number of cars originated and terminated, and maintenance of way labor and supply costs for the branches involved.

As a result of the data collected on the field trips, it was possible to compute the revenues attributable and on-branch avoidable costs as defined in the standards adopted on July 1. No problems relating to computation were discovered in connection with the method by which revenues are determined under those standards. The waybill abstract data proved to be fairly accurate. The only problem identified related to timing, for the Penn Central file related to when the waybill was abstracted rather than when the shipment occurred.

However, the same cannot be said with respect to avoidable costs. There is a lack of detailed cost data on a uniform basis. While the test group was able to identify actual on-branch costs for certain accounts, the methodology utilized

would not necessarily be workable on all such tests since informal records were the source for certain accounts.

The July 1 standards provided for the use of apportionment formulas for certain accounts when direct costs are not use of apportionment formulas for certain accounts, serious inequities could result from their application. For example, an application of those apportionment formulas to the Georgetown-Lewes line would have assigned over \$44,000 for the maintenance of way accounts while the informal records indicate that there had been no actual costs incurred except for track patrol. Similar results were obtained in the Columbus-Holmesville line. Only \$77,109 was identified on an actual basis for these accounts, while the apportionment formula would have assigned \$290,294.

Similar disparities in transportation expenses would result if the number of trips and time per trip were estimated inaccurately. While this may sound like a truism, it was found that "educated" estimates were significantly higher than the actual records indicated for these factors.

Even though a conscientious effort was made to estimate these factors on the two test lines, they were substantially overestimated in both cases. Holidays, track maintenance, equipment breakdown, or lack of traffic can result in trips canceled or shortened.

A comparison of 1973 allocated and actual on-branch costs is shown below.

	Georgetown/Lewes		Columbus/Holmesville	
	Allocated	Actual	Allocated	Actual
Maintenance of way/structures.....	\$44,306	10	\$290,294	\$77,109
Maintenance of equipment.....	4,181	\$4,181	49,806	49,806
Transportation—Rail line.....	42,963	23,799	379,941	209,436
Taxes, except income taxes.....	9,361	2,750	195,500	156,883
Total on-branch costs.....	100,811	30,730	915,541	493,233

<sup>1</sup> Excludes track patrol.

POSITIONS OF THE PARTIES AND DISCUSSION

Several petitions were filed requesting that the Office modify the standards. The participating parties are listed below. Other issues were raised during the public seminars and the branch line tests. A discussion of the major issues and their resolution follows:

**Concept.** The issue most often raised is the use of historical data as the basis of the subsidy payment. There is near unanimity in the position that the standards should employ actual rather than historical data, with parties representing all factions including railroads, shippers, and local, State and Federal agencies, opposing the approach taken in the standards adopted July 1. The arguments presented include illegality (i.e., prior year costs are not "avoidable costs"), unavailability of data, and various inequities to either the railroad or the subsidizer based on year-to-year cost variances. Among other disadvantages to the use of historical data cited by the parties include the lack of recognition of rate and wage increases and inflation.

Several of these problems also surfaced during the tests.

The original decision to use historical data was based upon the need for certainty in the actual amount of the subsidy payment. It was feared that potential subsidizers (principally government entities) could not enter into a subsidy agreement unless it involved a fixed amount. The New England Regional Commission (supported by six New England States) continues to argue this position.

As pointed out by the New England Regional Commission, an after-the-fact adjustment would result in a form of a cost reimbursement contract. They suggest that such an agreement may be unconstitutional in certain states. Even if it is not unconstitutional, they submit that cost reimbursement contracts provide little incentive for efficient performance and require adequate accounting systems to assure proper reimbursement.

While none of the petitioners noted the fact, it has been learned that several States have other, and possibly more significant, legal problems with the sub-

sidy program. Many States are prohibited from using public funds to subsidize a private entity. A survey reveals that most States are taking action to resolve this problem by amending the law or by channeling funds through intermediate authorities. The Office is confident that with the same ingenuity the States can resolve any cost reimbursement prohibition.

The Office also recognizes that the open-end feature is especially critical when a small community or private party is involved as the subsidizer. A substantial increase in the payment could result in serious financial problems, possibly even insolvency. This potentiality could foreclose the possibility of subsidy by smaller interests. While the Office recognizes these disadvantages, it is believed that they can be eliminated, reduced, or at least neutralized.

The Office believes that the nature and complexity of cost and revenue factors involved in subsidy agreements preclude reasonable accuracy in negotiation of an approximate fixed price. Even if service and maintenance levels could be accurately forecast, changes in the traffic level could substantially alter the subsidy payment. It is believed that the requirement of branch level data collection and written reports will provide an adequate basis for the determination of reimbursable costs.

The amended standards will place a 15 percent upward ceiling to the end-of-year adjustment, which will tend to act as an incentive to the railroad to keep costs within the estimated level. It will also provide a maximum level of payment for a given subsidy year, thus eliminating the open-end aspects of the agreement. Treating the remainder of the adjustment as a subsequent year cost will allow the railroad to recoup its legitimate reimbursement if the agreement is continued and allow the subsidizer a chance to reconsider his subsidy decision in the light of a new estimated level of payment. If the agreement is not continued, the railroad would lose the amount of the carry-over but would be relieved of the duty to continue service. Since a downward adjustment will not place a financial burden on either party, no maximum was set for refunds.

The use of actual year data would also provide an incentive to the subsidizer to increase revenue through encouragement of traffic growth. Many of the costs involved, especially maintenance of way, will not increase in direct proportion to increased traffic for the type of line involved in the subsidy program. Even if such costs do increase, there is usually a time delay. As a result, a significant increase in revenues could substantially reduce the short run subsidy payment. It is believed that the disadvantage of utilizing historical data overrides the need for absolute certainty. Accordingly, the standards will be revised to utilize actual subsidy year data for both revenues and costs.

The handling of bridge or overhead traffic was the subject of some discussion. It was suggested that the initial stand-



ards do not go far enough in crediting the branch with its inherent advantages. The initial standards attributed all bridge or overhead traffic to the branch if termination of service on the branch would cause the railroad to lose the traffic. They also attributed potential losses in revenues resulting from rerouting of such traffic as revenue to the branch. In addition, many suggested that the additional costs incurred by a railroad in rerouting should be treated as a savings to the branch.

The use of actual year data resolves these issues. Branch or overhead traffic will be treated on the basis of actual experience. The railroad's revenues for such traffic will be prorated to the branch on the basis of miles that the bridge traffic moved on the branch to the miles the traffic moved on the system. On-branch costs for such traffic will be calculated on the same basis as traffic originated or terminated on the branch.

The decision to adopt standards that utilize actual subsidy year data leads to the requirement of developing an interim method of estimating the subsidy payment for use in deciding whether or not to subsidize and in negotiating the subsidy agreement. Several parties, including the New England Regional Commission and the Penn Central Transportation Company, suggested methods of estimating the subsidy payment. Other parties also stressed the need for a quick, easy-to-apply formula for use in the initial decision stage. The revised standards incorporate portions of each of these approaches.

Many petitioners challenged the use of apportionment formulas, especially those that relate solely to the branch. In particular, they complained that the adopted apportionment formulas for maintenance of way and transportation expenses grossly overstate the actual expenses involved. As reported in the discussion of the tests conducted by the Office, this concern was found to be especially true for maintenance of way and the crew cost portion of transportation costs. In both tests, the apportionment of these expenses substantially overstated the actual situation. The adoption of a method that incorporates actual expenses will eliminate this problem.

Most of the opponents to the use of historical data and apportionment ratios also suggested that a branch line accounting and reporting system is necessary in order to obtain the required data. While it may be desirable to have such a system-wide accounting and reporting system, one cannot be justified on the basis of the subsidy program alone.

As was mentioned earlier, representatives of the railroad industry (i.e., The Association of American Railroads and the Penn Central Transportation Company) strongly urged the adoption of the standards based upon actual operation. Inherent in this approach is the ability to identify actual expenses. All railroads must have some mechanism to isolate costs if they are involved in joint-use facilities, leased lines, or passenger op-

erations involving either a subsidy or payment from Amtrak. During the test, it was ascertained that Penn Central could easily modify its accounting procedures to collect data prospectively and thus identify on an actual basis most on-branch expenses. Staff contacts with the other railroads in bankruptcy indicated this to be true for them as well. As a result, the revised standards will require railroads to collect actual data for certain accounts covering branch lines involved in subsidy agreements. The data collection would be limited to the period of the subsidy and to accounts related to the specific branch.

Section 304 of the Act provides that all rail services may be discontinued, and the underlying rail properties abandoned, if they are not included in the final system plan, unless a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offers to subsidize the service or purchase the properties. In the situation where a new rail service continuation subsidy is offered to preclude discontinuance or abandonment, the amount must cover the difference between the revenue attributable to such rail properties and the avoidable costs of providing service on such rail properties plus a reasonable return on the value of such rail properties. The standards promulgated herein define those terms and, as a result, provide a basis for calculation of the subsidy payment. Since the U.S. Railway Association is not required to utilize these standards as criteria for inclusion of branch lines in the Final System Plan, there is a distinct possibility that a branch could be excluded from the plan yet be profitable under the standards. It is obvious from a reading of the Act that branches caught in such a circumstance should be protected from discontinuance of service. Therefore, to assure that such a circumstance does not arise, the Office establishes the amount a potential subsidizer must offer under section 304(c) (2) (A) of the Act as the amount computed in accordance with the interim formula, or \$1 whichever is the greater amount.

*Interim subsidy payment.* The amended standards at § 1125.3, include an interim formula to be used as the basis for computing the initial subsidy payment and for negotiating the subsidy agreement. The parties will be free to negotiate on almost all agreement provisions; however, standards are established which can be invoked in case of impasse.

To assure consistency with the reorganization process decisions, the interim formula will be based on the same year data that the U.S. Railway Association employs in its decision-making process. At the present time it is assumed that the light density line viability decisions will be based upon 1973 data, primarily the 1973 waybill abstract files. It was found during the branch line tests that these data are reasonably accurate.

An advantage to the use of these data will be the assistance the Office can give

to the parties. While the railroads will be required to file comprehensive revenue and cost data along with their notice of intent to discontinue service, the Office can accelerate the process by making much of the data available in advance to those that wish to have it. Timing is a critical factor since the Act provides a potential subsidizer only 60 days from the date a railroad files a notice of intent in which to decide whether or not to offer a subsidy and thereby preclude discontinuance of service.

Information needed to calculate the interim formula can be divided into four primary categories: revenues, off-branch costs, on-branch costs, and value of rail property.

Using the waybill abstract files as a data base, the Office will be able to make freight revenue and off-branch cost calculations available to interested parties. While the interim formula will take other sources of revenue into consideration, in most instances, freight revenues will represent the only significant source of income for the branch line.

Off-branch cost calculations relate solely to freight traffic. With these two factors available in advance, and with assistance from the Office available upon request to aid in developing the remaining factors, it is believed that the timing problem can be reduced substantially. The following standards will be utilized in the interim formula unless the parties agree on different levels.

The estimate for "revenues attributable" will include the same sources of revenues as those required in the standards. These include freight and passenger revenues from all traffic originated or terminated on the branch, existing subsidy payments, overhead traffic and accessorial revenues. All of the data will be presented for the same base year as employed by the Association in the decision-making process (presumably 1973). These data may be adjusted for rate changes. By agreement of the parties, more current figures may be used.

A ratio of the off-branch costs to revenues for the base year will be calculated for each branch. The ratio will be applied to the estimated revenue for the subsidy year to determine the estimated off-branch cost. The off-branch calculation will utilize variable system average costs, short line mileages, and traffic information from the waybill abstract files. The Office will computerize the formula and make the calculations available to interested parties.

On-branch costs will be divided into six categories: Routine maintenance of way and structures, rehabilitation, maintenance of equipment, transportation, miscellaneous, and taxes. A minimum level of maintenance of way and structures is prescribed. The branch line tests revealed that the type of track involved in the subsidy program will have been subjected to various levels of deferred maintenance. The interim formula establishes the Federal Railroad Administration's (FRA) safety standards for Class I track as the minimum allowable track condition. FRA requires peri-

odic inspection of track depending upon the class and use of the track. The expenses involved in inspection, vegetation control and spot or emergency maintenance to meet minimum Class I track standards must be included in the calculations.

Since there will be an adjustment for actual costs, the Office believes that an arbitrary level can be utilized for estimation purposes. The inclusion of such an estimate will assure that both parties recognize their respective responsibilities. Based upon the experience gained in the branch line tests, it would appear that such maintenance can be performed for approximately \$1,000 per mile per year. Both lines tested fell into a minimum maintenance category. The Georgetown-Lewes line had no maintenance costs other than track patrol, and the Columbus-Holmesville line averaged approximately \$1,000 per mile.

This, of course, does not cover any so-called "programmed maintenance" or rehabilitation costs. If, at the time the notice of intent is filed, the track does not meet FRA Class I standards, it will be mandatory that such rehabilitation costs be covered by the subsidy. In such cases the railroad will be required to furnish a detailed estimate of the costs to rehabilitate the track to Class I standards with the notice of intent to discontinue service.

The Office also recognizes that under some circumstances, even though the track will meet minimum standards, this level of maintenance will not be satisfactory. Higher levels may be negotiated by the parties in such cases. As mentioned above, the incentive to reduce transportation costs should encourage upgrading of track conditions where normal speed limits are impaired.

The estimate for maintenance of equipment will be based upon an application of system average costs per locomotive gross ton-mile for road locomotive repairs and locomotive unit-hours for yard locomotive repairs. Locomotive depreciation also will be based on locomotive unit-hours. Passenger car depreciation will be based upon a passenger car-mile ratio. Freight car costs will be based upon an average per day and per mile car cost. The railroad will be required to furnish an estimated number of days a freight car will remain on the branch.

Transportation costs will be estimated based upon system average costs. The number of trips per year will be based upon the frequency of service performed at the time the notice is filed unless the parties agree to a different level. Labor costs for train crews will be based on system average costs for each type of crew applied to the hours of service on the branch. Fuel costs will be based upon system average costs per locomotive unit-hour and train supplies and expenses on average costs per train-hour. This information will be furnished by the railroad with the notice of intent. The railroad will also furnish estimates of costs for the remaining transportation accounts using the final standards as a guide to their inclusion.

The estimate for miscellaneous expenses will include only those direct outlays anticipated during the subsidy year. The railroad will be required to furnish an estimate with the notice of intent.

The estimate for property taxes will be based upon the base year actual, adjusted for tax rate changes. Revenue taxes will be based upon the revenue level estimated by the interim formula. The remaining factor, value of property, will be estimated by the railroad when the notice of intent is filed. The basis of the valuation will be the net liquidation value for non-rail transportation purposes of the rail properties used or useful in performing the service. If the valuation is challenged an appraisal of the property by a qualified and certified appraiser or appraisers may be offered by the potential subsidizer. If the parties cannot agree on a valuation through negotiation an average of the two appraisals will be used as the basis of the interim formula and the final value will be determined through arbitration before the end of the first subsidy year.

The present standards, as modified herein, will provide the basis for the actual subsidy payment. The standards will provide for a final payment adjusted for actual experience during the subsidy year. Railroads involved will be required to establish a system of collecting costs and other relevant data at the branch level and to provide the subsidizer with periodic financial reports which analyze the actual data in relation to the estimates. Significant deviations from the estimates will have to be explained in the report. Increases over 15 percent in the amount of actual subsidy payment as compared to the estimate will be treated as a carry-over cost in the subsequent year.

**Revenues.** The regulations relating to revenues are to be found in § 1125.4 of the revised standards. The Association of American Railroads, United States Department of Transportation, and others suggest that freight revenues be prorated on a mileage ratio between the branch and the system, and consequently, that off-branch revenues and costs be eliminated from the standards. The Office believes that this approach would not fairly represent the revenues a branch contributes to the system. Since there appears to be no accepted method of dividing revenues, the Office believes that the adopted standards provide the most equitable approach.

The Commonwealth of Pennsylvania suggested the use of a passenger ratio and the Association of American Railroads suggested the use of a passenger car-mile ratio rather than the adopted passenger-mile ratio to determine passenger revenues. A passenger ratio does not take into account the distance factor and a passenger car-mile ratio does not relate to revenues derived. Therefore, it is believed that the passenger-mile ratio adopted in the original standards should be retained.

**Avoidable costs.** The cost standards, contained in § 1125.4 of the regulations adopted July 1, appear as § 1125.5 of the

revised standards. The majority of the comments were directed toward the standards for determining avoidable costs. The problems involving the use of historical data, apportionment, and data availability have been treated above.

The widest range of disagreement between the petitioners arises in the discussion concerning the cost accounts to be included in the standards. Basically, the parties representing railroad interests support full allocation of all costs. The potential subsidizers takes the position that the standards should exclude indirect costs.

The Office agrees that the phrase "avoidable cost" should be strictly construed, but this fact does not necessarily exclude indirect costs. It is important to note that the Act discusses avoidable costs in the context of providing the service not of abandoning the service. This distinction is significant. Equipment depreciation accounts best illustrate this distinction. As many parties suggest, capital investment is a "sunk cost" and the depreciation thereof, taken from the viewpoint of abandonment, is not an avoidable cost. However, when viewed from the standpoint of a continuing operation, capital investments in equipment must be made from time to time in order to maintain service; and, consequently, depreciation costs for these items would be avoidable. The same principle would also apply to structure depreciation, but, the standards provide that rehabilitation costs be recovered during the period covered by the subsidy agreement. In effect, capital investment in structures is treated as an expense. Each on-branch account has been reviewed and the modifications reflected in the amended standards are summarized below.

**Account 266—Road property—depreciation.** This account will be deleted from the standards. Investments made prior to the subsidy agreement represent "sunk" costs. Future investments in this type of property will be treated as current expenses under the provision covering adequate and efficient rail service.

**Account 267—Retirements; and Account 270—Dismantling retired property.** These accounts will be deleted from the standards entirely since they do not relate to the costs of providing service.

**Account 542—Rent for leased roads and equipment.** This account will be deleted from the standards since any costs involved are included in the return on investment.

The following accounts will still be included; however, the basis of their assignment to the branch has been altered or they have been grouped with other accounts.

**Account 311—Locomotive repairs.** This account will be separated between yard and other (road) and each in turn will be separated between diesel and other (electric). The service unit factor for yard locomotives shall be the ratio of locomotive unit hours separated between diesel and electric on the branch to those of the total system. The service unit factor for other (road) locomotives shall be the ratio of locomotive gross ton miles on

the branch separated between diesel and electric to those of the total system.

*Account 314—Freight train car repairs.* On-branch car costs shall be calculated on the basis of system average day and mileage ratios. This account will be one element in the car cost per day and per mile calculation.

*Account 330—Equipment retirements.* The only amounts includable shall be for specialized equipment that would be expendable as a result of abandonment, such as floating equipment 330(56).

*Account 372—Dispatching trains; Account 373—Station employees; Account 374—Weighing, inspection, and demurrage bureaus; Account 375—Coal and ore wharves; Account 377—Yardmasters and yard clerks; Account 379—Yard switch and signal tenders; and Account 407—Communication system operation.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis and will be assignable only if it can be demonstrated that such costs would be avoided as a result of the service being discontinued.

*Account 376—Station supplies and expenses; and Account 389—Yard supplies and expenses.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

*Account 378—Yard conductors and brakemen; and Account 380—Yard enginemen.* These costs shall be assigned only on a direct basis.

*Account 382—Yard switching fuel.* This account shall only be includable when the branch is served by diesel locomotives classified as a yard switch engine. The service unit factor shall be the ratio of diesel locomotive unit hours-yard, on the branch to those of the total system.

*Account 383—Yard switching power produced; and Account 384—Yard switching power purchased.* These accounts shall only be includable when electric locomotives classed as switch engines are used to serve the branch. The service unit factor shall be the ratio of electric locomotive unit hours on the branch to those of the total system.

*Account 388—Servicing yard locomotives.* This account shall only be includable when the branch is served by locomotives which are classed as switch engines. The service unit factor shall be the ratio of yard locomotive unit hours on the branch to those of the total system.

*Account 392—Train enginemen; Account 401—Trainmen.* These costs shall be assigned only on a direct basis.

*Account 394—Train fuel.* This account is only to be included when service on the branch is performed by diesel locomotives in local/way or through train service. The service unit factor shall be the ratio of diesel locomotive unit hours on the branch to those of the total system.

*Account 395—Train power produced; and Account 396—Train power purchased.* These accounts shall only be includable when electric locomotives in local/way or through train service are used to serve the branch. The service unit factor shall be the ratio of electric

locomotive unit-hours on the branch to those of the total system.

*Account 400—Servicing train locomotives.* This account shall be apportioned to the branch on the basis of the locomotive unit-miles on the branch to those of the total system.

*Account 404—Signal and interlocker operation; and Account 405—Crossing protection.* These accounts shall be included on an actual basis only.

*Account 503 Cr.; and Account 536 Dr.—Hire of freight cars and highway revenue equipment.* On-branch car costs shall be calculated on the basis of system average day and mileage ratios. The freight car portion of these accounts shall be elements in the calculation of car cost per day and per mile. The highway revenue equipment would only be allowed on a direct basis.

*Accounts 277, 335, 409, and 449—Employees health and welfare benefits; and Payroll taxes.* These costs shall be included in the subsidy calculations on a basis that will allow for a reasonable assignment of these costs in proportion to the labor costs incurred.

The following accounts will be added to the standards:

*Account 331—Equipment-Depreciation.* (52) *Locomotives—Yard.* This account shall be included if the branch is served by yard locomotives. The cost shall be assigned to the branch based on the ratio of the locomotive unit-hours on the branch to those of the total system.

(52) *Locomotives—Other.* When a branch is served by a local/way or through train crew the expense shall be assigned to the branch on the ratio of locomotive unit-hours on the branch to those of the total system.

(53) *Freight-train cars.* On-branch car costs shall be calculated on the basis of system average day and mileage ratios. This is an element in the cost per car day and per car-mile calculation.

(54) *Passenger-train cars.* In those instances where passenger service is offered on the branch, this expense shall be assigned on the basis of the passenger car miles on the branch to those of the total system.

(55) *Highway revenue equipment.* Only equipment which is specialized in its capacity and/or would not be used elsewhere in revenue service may be included. The inclusion of the expense shall be on an actual basis only.

(56) *Floating equipment.* Expenses relating to equipment under this category for which there would be no further need shall be included on an actual basis only. Equipment depreciation costs must be treated as an avoidable cost in recognition of the requirement for equipment replacement.

*Account 505—Rent from passenger-train cars; and Account 538—Rent for passenger-train cars.* Those branches having passenger service shall include these accounts in those instances where the rental of specific equipment will cease upon the termination of operation on that particular branch.

*Freight-train car costs.* The on-branch costs for time-mileage freight-train cars

shall be calculated on the basis of applying the railroad's average costs per car-day and per car-mile to the actual number of car-days and car-miles accumulated on the branch during the subsidy year. These costs shall include Account 314—Freight-train car-Repairs; Account 331(53) Equipment-Depreciation of Freight-train cars; freight car portion of Account 503—Hire of freight cars and highway revenue equipment—credit; freight car portion of Account 536—Hire of freight cars and highway revenue equipment—debit; and the return on investment in freight-train cars.

The system totals for repairs and depreciation shall be divided into time related and mileage related costs on the basis of the standard Rail Form A apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs and 60 percent time and 40 percent mileage for depreciation). Return on investment shall be treated as a 100 percent time-related cost. The system total receipts and payments for the hire of time-mileage cars and the basic data used in the development of the car-day and car-mile factors shall be taken from the railroad's latest Form R-1.

The on-branch costs of freight cars rented on a straight mileage basis shall be the system average cost per mile applied to the total miles accumulated on the branch loaded and empty. The data necessary to calculate the mileage costs shall be taken from the Form R-1.

Some parties challenged the use of the functional service unit costs developed by the application of Rail Form A, as the basis of determining off-branch costs since it utilizes variable costs. They suggest that Rail Form A was not designed to develop avoidable costs and that its use for that purpose is improper. While on the surface it might seem inconsistent to allow system variable costs to be allowed for off-branch costs, it is believed justified on the basis of equity to the railroad since all system revenues from traffic originating or terminating on the branch are attributed to the branch. A failure to recognize off-branch variable costs would probably lead to situations where the operating railroad would try to divert the traffic to another carrier at the earliest possible point regardless of service considerations. This would not only result in circuitous movement and concomitant time delays but would also decrease the revenue attributable to the branch. The adopted approach recognizes the services rendered by the carrier to the branch traffic.

It was also suggested that the use of Rail Form A results in double counting of certain terminal handling costs. As a result of these suggestions, the use of Rail Form A was reviewed and it was determined that certain modifications were desirable.

The off-branch costs can be separated into two distinct categories; terminal and/or interchange costs, and line-haul costs. The initial standards provided that the terminal cost be taken directly from an application of the carrier's Rail Form A. The terminal costs basically



consist of three categories of expense: switching costs, car ownership costs, and station billing and other clerical costs. It has been correctly suggested that certain elements of the terminal cost at the branch end of the movement are duplicated through the on-branch costs. The revised standards will eliminate these elements. "Intertrain switching" costs shall be substituted for the "road train to industry" switching costs currently used in the calculation. The car ownership portion of the terminal cost shall be modified to employ the same concept used in the on-branch car cost (i.e., cost per car-day). Two days will be allowed in the terminal area at the branch end of the movement to cover both the loaded and the empty car moves. The third category of expense, the station billing and other clerical costs, shall remain the same unless the station billing function is actually performed on the branch. In such cases, these costs shall be omitted from the off-branch calculation and included as a direct on-branch cost.

The method of providing for costs relating to rehabilitation and/or upgraded service gave rise to several comments. The parties representing potential operating railroads support the proposition of total "front-end" loading of such costs while the potential subsidizers favor spreading the costs over a period of years. In certain cases the front-end loading of these costs will undoubtedly create monetary hardships on the subsidizer. While the fact that Federal matching funds are authorized for only two years cannot be ignored, there is nothing to preclude long-term subsidy agreements. The modifications to the standards will assure considerable flexibility between the parties to the subsidy agreement, including the ability to spread such costs over a longer period. This would be especially true where a subsidy is offered that does not involve Federal funds.

Many parties also suggest that the subsidizer should obtain an interest in the rehabilitated property. This argument has merit only if the rehabilitation increases the net liquidation value of the property. The subsidy agreement could include a provision to cover this possibility.

It may be true, as many parties suggest, that where substantial rehabilitation costs are involved, a potential subsidizer might protect his investment more effectively by purchasing the line.

Since the parties are given considerable latitude in establishing service and rehabilitation levels through the interim formula, the necessity for the subsection (formerly § 1125.4(d)) covering adequate and efficient rail service has been eliminated.

*Investment base and reasonable return on the value:* Comments relating to the "reasonable return on the value" were directed toward two primary areas, valuation and rate of return. Some parties challenged the authority of the Office to issue standards for determining the value of the rail property involved. However, as already noted, section 205(d)

of the Act places the responsibility upon the Office for determining the meaning of certain phrases used in section 304, including a "reasonable return on the value" of rail properties over which subsidized rail service is to be performed. The Office believes that a reading of these two sections together makes clear the Congressional intent that the standards provide a formula by which a monetary sum (subsidy payment) may be readily computed. It is impossible to develop a meaningful formula for this purpose without determining standards for valuation of the properties to which the reasonable rate of return is to apply.

A few parties questioned use of the term "net liquidation value" for determining the investment base to which the reasonable return is to apply. Some suggested use of the term "salvage value" as employed by the Commission in abandonment proceedings; others, such terms as "original cost less accrued depreciation" sometimes employed by regulatory agencies in rate-making proceedings; and still others the terms "market value" or "fair market value."

It should be pointed out that section 304 contemplates a situation wherein a railroad has transferred to Consolidated Rail Corporation or to other railroads all or substantially all of its rail properties designated for such conveyance in the final system plan. It is thereupon relieved of its common carrier obligations, and rail service on the remainder of its rail properties may be discontinued and these properties abandoned pursuant to section 304(c) notwithstanding any provision of the Interstate Commerce Act, the constitution or law of any State, or the decision of any court or administrative agency of the United States or of any State unless a rail service continuation subsidy is offered. Thus, the circumstances are not analogous to those involved either in an abandonment proceeding under section 1(18) of the Interstate Commerce Act or in the determination of a reasonable return on an investment base necessary for the continuing discharge of common carrier obligations in the public interest. In the usual case the owners of the properties being considered for subsidy under this section will be the trustees of a railroad in reorganization or their successors in interest. It should be noted also that the valuation standards promulgated herein do not apply to an offer to purchase pursuant to section 304(d).

Some parties urged that it is unreasonable to limit the value of the properties to their highest and best use for purposes other than rail transportation. This limitation was imposed initially under the theory that a notice of intent to discontinue service necessarily would indicate a belief of the owners that the highest and best use of the property would not be for common carrier rail transportation purposes.

It is conceivable that a governmental authority or other responsible persons might wish to purchase a property on which the owners propose to discontinue service, expecting to operate it as a sub-

sidized short line railroad. Or, the trustees or owners of a particular property subject to section 304 might, if a subsidy were available, decide to continue operations rather than abandon. In either of these cases, there appears to be no justification for inserting in the subsidy formula a return on an investment base greater than that which would have motivated the trustees or owners to decide upon abandonment in the absence of subsidy. That base would be the net liquidation value for purposes other than rail transportation. Consequently, the limitation will remain in the standards.

Most of those commenting agree that some sort of arbitration procedure would be necessary in the event of disagreement between the parties as to the properties that are used or useful or the net liquidation value. Some have argued that the arbitration should not be final or binding. The Office does not perceive that the arbitration would serve any useful purpose if not final and binding. Further, it is implicit in sections 205(d)(3) and 304(c) that the determination of subsidy standards by the Office was intended by Congress to be final and binding. It follows that arbitration of any differences as to the meaning of these standards should also be final and binding. It is noteworthy that none of the comments took issue with the proposed procedure for naming arbitrators.

Some of the comments argued that "opportunity costs of capital" for most railroads are higher than the rate of return set by the standards. This may be, although no persuasive evidence to this effect was presented. In any event, the standards do not apply to "most railroads," but only to those which would be relieved of common carrier obligations under section 304 of the Act.

For similar reasons, the reasonable rate of return is not necessarily one which, taking account of the risks and hazards incident to common carrier rail transportation, would permit the trustees or managements of railroads to attract capital to enable continued rail transportation operations responsive to the public needs. Were these trustees or managements in charge of an on-going, profitable transportation concern, they might choose to invest the proceeds of an abandonment in improving the remainder of the rail properties in their care, considering that course to be in the best interests of the investors for whom they are fiduciaries. In the circumstances contemplated by section 304 of the Act this is unlikely, and an external investment appears to furnish a more likely measure of their fiduciary opportunities. Also, the reasonable return under consideration in § 1125.7 applies to prudent investment of funds gained from partial recovery of previously "sunk" capital, rather than commitment of such funds to new ventures.

Should the return allowed be too small, it would not satisfy minimum constitutional standards of sufficiency; moreover, achievement of the overall goals of the Act would seem to require that con-

sideration be given to reasonable treatment of investors in the profitable railroads and those in reorganization within the region. Also, investors as a class (holders of interests in insurance policies, savings accounts, pension plans, etc.) constitute a wide segment of the public whose interest the Act is designed to serve. But if the return allowed is unreasonably high in the light of the applicable circumstances, an unfair burden would be placed on the subsidizing body.

Some of the comments have suggested a fixed rate of return, such as 10 percent after income taxes. The Office considers that the standard for rate of return ought not only to be as simple and readily determinable as possible, because it will apply at some time in the future in which prevailing capital market conditions cannot be predicted with certainty, it also should be flexible. Consequently, the concept of a fixed rate of return is rejected.

Some of the comments received argue that the return should be computed after allowance for income taxes, urging that for most taxpaying railroads the tax shield is one of the most important economic values involved in an abandonment decision, and in one instance citing the hypothetical example of a railroad with a marginal tax rate of 50 percent. The Office has been unable to locate any example of a railroad in the region enjoying an effective income tax rate at this level.

In any event, we are concerned here not with "most taxpaying railroads," but primarily with those rail properties of bankrupt carriers not designated for rail service operations in the final system plan and as to which service discontinuance notices have been given as specified in section 304(a). The Office is aware that income tax considerations are customarily given weight by regulatory authorities in determining the rate of return necessary to sustain on-going public service operations. For reasons previously outlined, however, these considerations do not apply in circumstances envisaged by section 304. Where trustees of a railroad in reorganization or a profitable railroad in the region which has transferred substantially all of its rail properties to Consolidated Rail Corporation or other railroads pursuant to the final system plan actually to abandon the remaining rail properties, the proceeds of such abandonments would have to be prudently invested or paid out to investors or claimants for which the trustees or managers of these railroads are fiduciaries. What income tax rates would apply to the earnings from such investments or to such payouts cannot presently be foreseen, but the applicable taxes would be the obligation of the trustees, the profitable railroad, or those who receive the payouts, as the Internal Revenue Code might provide. Thus, to require those who provide a subsidy for continuance of rail services to include in their payments any pre-determined allowance for taxes over and above the pre-tax return which could be obtained

on the proceeds from abandonment does not appear to be warranted.

The Penn Central trustees point out certain difficulties with the language of § 1125.6 of the standards published July 1 (§ 1125.7 of the revised standards) and also urge that, to avoid limiting subsidy agreements to seven years or less, Treasury bonds as well as notes be included in the securities employed to measure reasonable return on the value. Some issues of Treasury bonds, in contrast to notes, may be called for redemption, at the option of the United States, prior to maturity. Also, certain series of Treasury bonds no longer issued but still outstanding in quantity, may be redeemed at par and accrued interest prior to call or maturity for the sole purpose of paying Federal estate taxes due from the estate of a deceased owner. One non-marketable series is exchangeable for marketable 1½ percent Treasury notes of series EA or EO. These should be excluded from the definition of obligations to be considered in determining the return. Amended § 1125.7 has been revised to take account of these suggestions, and to exclude Treasury bills, which have a life of less than one year.

The Penn Central trustees also comment that, although the Act provides for limited Federal assistance to the subsidizing bodies, this is not tantamount to a guaranty of the subsidy agreements. Accordingly, they urge that the owner of the line at least receive a premium of 20 percent over the specified rate; 10 percent being assignable to risk and the other 10 percent to the lack of liquidity of the investment.

While it is true that the subsidizer may have a credit standing inferior to that of the United States and that the subsidy agreements may not be as liquid as Treasury obligations, it is believed that the difficulties involved in quantifying these factors negate their application.

The difficulty here is that the trustees do not present any specific rationale to justify the 20 percent, or any other fixed premium. Certainly, it could not properly be applied in a case where the United States was the subsidizing body.

The Office has endeavored to develop some ready mechanism by which the relative credit standing of each subsidizing entity could be factored into the rate of return. One approach considered was to hinge the rate of return upon a rating assigned by the standard rating services, such as Moody's Standard and Poor's or Fitch. Over the ten years 1964-1973, for example, average yields on Moody's Aaa industrial bonds were 10.8 percent below the average for Baa industrials, and average yields on Aaa municipals were 6.3 percent less than the average for Baa municipals. However, these ratings apply to particular bonds, not to the issuers of them. In practice, many of the subsidizing bodies may not, at the time of entering into a subsidy agreement, have any outstanding securities held by the public, and thus may have no ratings from any of the accepted rating services.

Consideration also was given to establishing some other measure of return than Treasury obligations as possibly more nearly reflecting the relative risk. Inquiry of the rating services failed to disclose any publicly quoted, regular, periodic listing of yields on industrial and municipal securities which would be legal for investment by fiduciaries. The Office, therefore, believing that in view of time constraints the need for a readily measurable and publicly available standard is overriding, considers that the use of United States Treasury obligations for this purpose, without any arbitrary premium, will yield the maximum degree of fairness to all parties.

#### PARTIES FILING PETITIONS

##### GOVERNMENT

###### Federal

Office of Public Counsel, Rail Services Planning Office  
United States Department of Agriculture  
United States Department of Transportation  
United States Railway Association

###### State

Commonwealth of Massachusetts, Office of Transportation and Construction  
Commonwealth of Pennsylvania  
Commonwealth of Pennsylvania Department of Transportation  
New York State Department of Transportation  
Office of the Governor of West Virginia  
Pennsylvania Public Utility Commission and the Pennsylvania State Legislative Board, United Transportation Union (jointly)  
State of Connecticut Department of Transportation  
State of New Hampshire  
State of New Jersey Department of Transportation  
State of Rhode Island and Providence Plantations Department of Transportation  
State of Vermont

###### Local

Chester County Planning Commission  
City of Philadelphia  
Council on the Environment of New York City

###### Regional

Appalachian Regional Commission  
New England Regional Commission

###### Business

Agrico Chemical Company  
Air Products and Chemicals, Inc.  
Armstrong Cork Company  
Archer Daniels Midland Company  
Borden Chemical  
E. Keeler Company  
Evans Products Company  
FS Services, Inc.  
Hammermill Paper Company  
Illinois Grain Corporation  
Imperial Oil Company  
Institutional Investors Penn Central Group and Certain Indenture Trustees  
International Minerals & Chemical Corporation  
PPG Industries, Inc.  
Royster Company  
Sperry New Holland  
Swift Chemical Company  
Trans-Act Association, Inc.

###### ORGANIZATIONS

Adrian Area Chamber of Commerce  
National Industrial Traffic Leagues  
New Jersey State Chamber of Commerce



RAILROADS

Association of American Railroads  
 Detroit, Toledo & Ironton Railroad Company  
 and The Ann Arbor Railroad Company  
 Central Railroad Company of New Jersey  
 Penn Central Transportation Company  
 Southern Pacific Transportation Company

CONCERNED CITIZENS

Allan J. Barnes  
 Thomas Park Shearer

ORDER

In consideration of the foregoing: *It is ordered*, That Part 1125 of Subchapter B of Chapter X of Title 49 of the Code of Federal Regulations, be amended by substituting standards set forth below, for the standards adopted on July 1, 1974.

*It is further ordered*, That this order shall become effective on January 8, 1975.

[SEAL] ROBERT L. OSWALD,<sup>1</sup>  
 Secretary.

- Sec. 1125.1 Purpose and scope.
- 1125.2 Definitions.
- 1125.3 Interim subsidy payment.
- 1125.4 Revenue attributable to the rail properties.
- 1125.5 Avoidable costs of providing service.
- 1125.6 Valuation of rail properties.
- 1125.7 Reasonable return on the value of the properties.
- 1125.8 Submission of information by railroad giving notice of intent to discontinue service on a branch.

Appendices I & II Information to be furnished.

AUTHORITY: Sec. 205(d) (3), Regional Rail Reorganization Act of 1973, Pub. L. 92-236, 87 Stat. 985, 994.

§ 1125.1 Purpose and scope.

(a) Section 304(c) (2) of the Act provides that no rail service may be discontinued and no rail properties may be abandoned pursuant to that section if a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offers a rail service continuation subsidy which covers the difference between the revenue attributable to such rail properties and the avoidable costs of providing service on such rail properties, plus a reasonable return on the value of such properties.

(b) Section 205(d) (3) of the Act directs the Rail Services Planning Office to determine and publish standards for determining the "revenue attributable to the rail properties", the "avoidable costs of providing service", and "a reasonable return on the value" as those phrases are used in section 304 of the Act. This Part sets forth those standards.

(c) The standards set forth herein employ an interim formula for establishing an estimated first year subsidy payment. This estimate will serve as a basis for the subsidy offer within the context of section 304(c) (2) of the Act and provide a framework for the negotiation of a subsidy agreement. The amount a subsidizer must offer under

section 304(c) (2) (A) is the amount computed in accordance with the interim formula, or \$1, whichever is the greater amount. The final payment will be adjusted based on data related to the subsidy period. Where an adjustment results in an increase in the estimated subsidy payment, the amount of such increase in excess of 15 percent of the estimated payment shall be treated as a carry-over avoidable cost in the subsequent subsidy year.

§ 1125.2 Definitions.

Unless otherwise required by the context, the following definitions apply in this part:

"Account" means an account in the Commission's Uniform System of Accounts for Railroad Companies (49 CFR Part 1201).

"Act" means the Regional Rail Reorganization Act of 1973, Public Law 93-236 (87 Stat. 985).

"Base year" means the same year employed by the U.S. Railway Association in developing the final system plan.

"Branch" means a segment of a railroad that is not designated to be in the final system plan under the Act, and that is the subject of a notice in writing of intent to discontinue service under section 304(a) of the Act and notice of intent to abandon rail properties under section 304(b) of the Act.

"Commission" means the Interstate Commerce Commission.

"Form R-1" means the railroad's annual report filed with the Commission in accordance with the requirements of section 20 of the Interstate Commerce Act.

"Notice of Intent" means a notice in writing of intent to discontinue service under section 304(a) of the Act and notice of intent to abandon rail properties under section 304(b) of the Act.

"Office" means the Rail Services Planning Office established by section 205 of the Act.

"Person offering a subsidy" means a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offering a rail service continuation subsidy under section 304(c) (2) (A) of the Act.

"Rail Form A" means the Commission's *Formula for Use in Determining Rail Freight Service Costs, Statement 1F1-73*.

"Railroad" means a railroad company, or the trustee or trustees of a railroad company, that gives a notice in writing of intent to discontinue service under section 304(a) of the Act, and, as the context requires, "railroad" may mean either the owner of rail properties over which subsidized service is or may be performed, or the operator of that service, or both.

"Subsidy year" means any 12 month period for which a subsidy agreement is negotiated and in operation.

§ 1125.3 Interim subsidy payment.

The person offering a subsidy shall offer to pay, in return for the continuation of rail service, an amount computed

on the basis of the interim formula described in this section. The interim payment may be adjusted, by agreement of the parties, to take into account factors, such as rate increases and changes in traffic levels which would make the sole use of base year data an inappropriate means of estimating the payment for the subsidy year. The interim formula makes use of estimates of revenues, off-branch costs, on-branch costs and a return on the value of the properties involved. The "base year" for all estimates under this section shall be the same year employed by the United States Railway Association in developing the final system plan pursuant to sections 206 and 207 of the Act.

(a) *Revenues*. The estimated revenues shall include all the sources of revenue described in § 1125.4, computed on the basis of base year data.

(b) *Off-branch costs*. A ratio of off-branch costs to revenues for the base year shall be used to derive the estimate of the off-branch costs for the subsidy year. The base year off-branch costs shall be calculated using the methodology described in § 1125.5(k). If data identifying actual carloads by car type are not available, car type shall be based upon the railroad's best estimate. A ratio shall be developed by applying these costs against the base year revenues. The resulting ratio shall be applied to the revenues estimated in paragraph (a) of this section to develop the estimated off-branch cost for the subsidy year.

(c) *On-branch costs*. The estimate for on-branch costs shall be separated into the following six categories: Routine maintenance of way and structures, rehabilitation, maintenance of equipment, transportation, taxes, and miscellaneous.

(1) The costs for routine maintenance of way and structures shall be estimated at \$1,000 per year per mile of track on the branch for which the railroad is responsible for maintenance, unless the parties agree to a higher level.

(2) Rehabilitation costs will not be included unless (A) the track involved does not meet minimum Federal Railroad Administration (FRA) Class 1 safety standards (49 CFR 213), in which case, the railroad will furnish a detailed estimate of the costs to rehabilitate the track to the minimum level with the notice of intent and provision to cover such costs shall be included in the subsidy agreement; or (B) the potential subsidizer requests a level of service which requires expenditures for rehabilitation, and makes such a request within 10 days after the date the notice of intent is filed, in which case the railroad shall furnish an estimate of the costs involved within 20 days after the date of that request. All such requests and estimates shall be on a specific project basis.

(3) The estimate for maintenance of equipment costs shall be based on the same methodology employed in § 1125.5 (b), using base year data rather than subsidy year data. Unless the parties agree to a different base, the resulting average unit costs shall be applied to the

<sup>1</sup> Present: George M. Chandler, Director, Rail Services Planning Office to whom the matter under consideration in this docket has been assigned.

branch base year service units to arrive at the estimate.

(4) Transportation costs shall be estimated, based upon system average costs. The number of trips per year shall be based upon the frequency of service performed at the time the notice is filed unless the parties agree to a different level. Labor costs for train crews shall be based on system average costs for each type of crew applied to the hours of service on the branch. The crew costs shall be classified into four major categories: Yard, local/way, through, and passenger. The straight time average cost per hour for each yard or local/way crew member shall be calculated using the railroad's Employees, Service, and Compensation Report (Form B) for the base year. The calculation is made by adding together the straight time compensation, col. (9), and the constructive allowances, col. (11), and dividing this total by the straight time hours actually worked, col. (4). This process would be repeated for each yard and local/way class of employee. After the hourly rate is determined for each member, the cost per crew hour shall be calculated based on the exact size and consist of the crew currently serving the branch. The crew cost per hour is multiplied by the estimated hours that will be incurred in serving the branch during the subsidy period. If the branch is served by a through train crew, the cost shall be assigned to the branch based on the estimated train-hours that will be incurred serving the branch times the system average crew cost per freight train-hour. The crew cost per train-hour is developed by dividing the freight portions of accounts 392 and 401 (R-1, Sch. 320, col. (e)) by the train hours in freight service (R-1, Sch. 531, line 30, col. (b)). Passenger crew cost shall be based on the estimated passenger train-hours that will occur on the branch during the subsidy period times the average crew cost per passenger train-hour. The crew cost per train-hour is developed by dividing the passenger portion of accounts 372 and 401 (R-1, Sch. 320, col. (h)) by the train-hours in passenger service (R-1, Sch. 531, line 30, col. (c)). The estimated direct crew costs must be increased to cover fringe benefits using the procedure described in § 1125.5(e). The railroad shall also furnish estimates of costs for the remaining transportation accounts using the final standards as a guide to their includability and basis of calculation.

(5) The estimate for property taxes shall be based upon the base year actual tax assessment, adjusted for tax rate changes. Revenue taxes shall be based upon the revenue level estimated pursuant to paragraph (a) of this section.

(6) The estimate for miscellaneous expenses shall include only those direct outlays anticipated during the subsidy year.

(d) *Return on value.* The railroad shall appraise the value of the property on the basis of definition found in § 1125.6. If the valuation is challenged, an appraisal of the property by a qualified and certified appraiser(s) shall be offered by the potential subsidizer. If the parties

cannot agree on a valuation through negotiation, an average of the two appraisals shall be used as the basis of the interim formula. The rate of return to be applied to the value of the properties shall be estimated in accordance with the procedures described in § 1125.7.

#### § 1125.4 Revenue attributable to the rail properties.

The revenue attributable to the rail properties of a branch is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch, for the subsidy year. The revenues assigned shall be derived from the following accounts:

(a) *Account 101—Freight.* The revenues assigned under this account shall be the actual revenues accruing to the railroad, derived from waybills and other source documents for all traffic that:

(1) Originates and terminates on the branch;

(2) Originates or terminates on the branch and is handled off the branch on the system but not on another carrier; and,

(3) Originates or terminates on the branch and is handled on another carrier.

The revenues of all bridge or overhead traffic shall be attributed to the branch on the basis of the ratio of miles moved on the branch to miles moved on the system.

(b) *Account 102—Passenger; Account 104—Sleeping car; and Account 105—Palor and chair car.* The revenues assigned under these accounts shall be the amounts in the railroad's accounts apportioned to the branch on the basis of the ratio of passenger car-miles on the branch to passenger car-miles on the system of the railroad.

(c) *Account 103—Baggage; Account 106—Mail; Account 107—Express; Account 108—Other passenger train; Account 109—Milk; and Account 131—Dining and buffet.* The revenues assigned under these accounts shall be the amounts in the railroad's accounts apportioned to the branch on the basis of the ratio of passenger car-miles on the branch to passenger car-miles on the system of the railroad.

(d) *Account 110—Switching; Account 113—Water transfers; Account 132—Hotel and restaurant; Account 133—Station, train, and boat privileges; Account 135—Storage—Freight; Account 137—Demurrage; Account 138—Communication; Account 139—Grain elevator; Account 141—Power; Account 142—Rents of buildings and other property; Account 143—Miscellaneous; Account 151—Joint facility, Cr.; and Account 152—Joint facility, Dr.* The revenues assigned under these accounts shall be the actual revenues accruing to the rail road that are directly attributable to the branch.

#### § 1125.5 Avoidable costs of providing service.

The avoidable costs of providing service on a branch are the total of the costs assigned or apportioned to the

branch in accordance with this section. All on-branch costs, whether direct or allocated, shall be computed separately for freight and passenger services. Costs apportioned under paragraphs (a) through (k) of this section shall be derived from the latest Form R-1 of the railroad filed with the Commission prior to the conclusion of the subsidy year. Labor costs must be identified separately for all accounts when costs are assigned on a direct basis.

(a) *Maintenance of way and structures—(1) Account 202—Roadway maintenance; Account 212—Ties; Account 214—Rails; Account 216—Other track material; Account 218—Ballast; and Account 220—Track laying and surfacing.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(2) *Account 206—Tunnels and subways; Account 208—Bridges, trestles and culverts; Account 210—Elevated structures; Account 221—Fences, snowsheds, and signs; Account 227—Station and office buildings; Account 229—Roadway buildings; Account 231—Water stations; Account 233—Fuel stations; Account 235—Shops and engine houses; Account 237—Grain elevators; Account 239—Storage warehouses; Account 241—Wharves and docks; Account 243—Coal and ore wharves; Account 244—TOFC and COFC terminals; Account 247—Communications systems; Account 249—Signals and interlockers; Account 253—Power plants; Account 257—Power—transmission systems; and Account 265—Miscellaneous structures.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis. A cost may not be assigned under one of these accounts unless the facility to which it pertains is in use for rail transportation purposes and its only useful purpose is to serve the branch.

(3) *Account 272—Removing snow, ice, and sand; Account 273—Public improvements—Maintenance; Account 278—Maintaining joint tracks, yards, and other facilities—Dr.; Account 279—Maintaining joint tracks, yards, and other facilities—Cr.; Account 281—Right-of-way expenses; and Account 282—Other expenses.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(b) *Maintenance of Equipment—(1) Account 311—Locomotives—Repairs.* This account shall be separated between yard and other (road) with a further separation between diesel and other electric. The costs assigned under this account for yard locomotives shall be apportioned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric yard locomotive unit-hours to the total system diesel and electric yard locomotive unit-hours. The costs assigned under this account for other locomotives (road) shall be apportioned to the branch separately for diesel and electric locomotives on the basis of the ratio of branch diesel and electric locomotive gross ton-miles in road service

to the total system diesel and electric locomotive gross ton-miles in road service.

(2) *Account 317—Passenger—train cars—Repairs.* The costs assigned under this account shall be the actual branch costs assigned on a direct basis. If the costs cannot be assigned on a direct basis, the amount in the railroad's account shall be apportioned to the branch on the basis of the ratio of branch passenger car-miles to the railroad's total passenger car-miles.

(3) *Account 318—Highway revenue equipment—Repairs.* The costs assigned under this account shall be the actual branch costs assigned on a direct basis.

(4) *Account 323—Floating equipment—Repairs; Account 326—Work equipment—Repairs; Account 328—Miscellaneous equipment—Repairs; Account 329—Dismantling retired equipment; and Account 330—Retirements—Equipment.* The costs assigned under these accounts shall be the actual costs that are directly attributable to the branch.

(5) *Account 331—Equipment—Depreciation—(52) Locomotives—Yard.* This account shall be included if the branch is serviced by a yard locomotive. The cost shall be assigned to the branch on the basis of the ratio of locomotive unit-hours on the branch to total locomotive unit-hours on the system.

(52) *Locomotives—Other.* When a branch is served by a local/way or through train crew the expense shall be assigned to the branch on the basis of the ratio of locomotive unit hours on the branch to the total locomotive unit-hours on the system.

(53) *Freight-train cars.* On-branch car costs shall be calculated on the basis of system average day and mileage ratios. This is an element in the cost per car-day and per car-mile calculation.

(54) *Passenger train cars.* In those instances where passenger service is offered on the branch, this expense shall be assigned to the branch on the basis of the ratio of passenger car miles on the branch to the passenger car-miles on the total system.

(55) *Highway revenue equipment.* Only equipment which is specialized in its capacity and/or would not be used elsewhere in revenue service may be included. The inclusion of the expense shall be on an actual basis only.

(56) *Floating equipment.* Expenses relating to equipment under this category for which there would be no further need may be included on an actual basis only.

(6) *Account 336—Joint maintenance of equipment expenses—Dr.; Account 337—Joint maintenance of equipment expenses—Cr.; and Account 339—Other expenses.* The costs assigned under these accounts shall be the actual costs that are directly attributable to the branch.

(c) *Transportation—Rail Line.—(1) Account 372—Dispatching trains; Account 373—Station employees; Account 374—Weighing, inspection, and demurrage bureaus; Account 375—Coal and ore wharves; Account 377—Yardmasters and yard clerks; Account 379—Yard switch and signal tenders; and Account*

*407—Communication system operation.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis and will be assignable only if it can be demonstrated that such costs would be avoided as a result of the service being discontinued.

(2) *Account 376—Station supplies and expenses; and Account 389—Yard supplies and expenses.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(3) *Account 378—Yard conductors and brakemen; and Account 380—Yard enginemen.* These costs shall be assigned only on a direct basis.

(4) *Account 382—Yard switching fuel.* The costs assigned to this account shall be the amount in the railroad's account apportioned to the branch on the basis of the ratio of yard diesel locomotive unit-hours on the branch to the railroad's total yard diesel locomotive unit hours.

(5) *Account 383—Yard switching power produced; and Account 384—Yard switching power purchased.* The costs assigned to these accounts shall be the amount in the railroad's accounts apportioned to the branch on the basis of the ratio of electric yard locomotive unit-hours on the branch to the railroad's total electric yard locomotive unit-hours.

(6) *Account 388—Servicing yard locomotives.* The costs assigned to this account shall be the amount in the railroad's account apportioned to the branch on the basis of the ratio of branch yard locomotive unit hours to the railroad's total yard locomotive unit hours.

(7) *Account 392—Train enginemen; and Account 401—Trainmen.* These costs shall be the actual branch costs assigned on a direct basis.

(8) *Account 394—Train fuel.* If the branch is served by a local/way or through train crew, the costs assigned under this account shall be the amount in the railroad's account apportioned to the branch on the basis of the ratio of branch diesel locomotive unit-hours (road) to the railroad's total diesel locomotive unit-hours (road).

(9) *Account 395—Train power produced; Account 396—Train power purchased.* The costs assigned to these accounts shall be the amounts in the railroad's accounts apportioned to the branch on the basis of the ratio of branch electric road locomotive unit hours to the railroad's total system electric road locomotive unit hours.

(10) *Account 400—Servicing train locomotives.* If the branch is served by a local/way or through train crew, the costs assigned under this account shall be the amount in the railroad's account apportioned to the branch on the basis of the ratio of branch locomotive unit-miles (road) to the railroad's total locomotive unit miles (road).

(11) *Account 402—Train supplies and expenses.* If the branch is served by a local/way or through train crew, the costs assigned under this account shall be the amount in the railroad's account apportioned to the branch on the basis of the ratio of branch train hours to the

railroad's total train-hours. However, heater and refrigerator charges and credits may not be included in Account 402 unless they are applicable to the branch.

(12) *Account 404—Signal and interlocker operation; and Account 405—Crossing protection.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(13) *Account 406—Drawbridge operation; and Account 408—Operating floating equipment.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis, but only if those costs are incurred for the exclusive use of the branch.

(14) *Account 411—Other expenses; Account 415—Clearing wrecks; Account 416—Damage to property; Account 417—Damage to livestock on the right-of-way; Account 418—Loss and damage—Freight; Account 421—TOFC/COFC terminals; Account 422—Other highway transportation expenses; Account 390—Operating joint yards and terminals—Dr.; Account 391—Operating joint yards and terminals—Cr.; Account 412—Operating joint tracks and facilities—Dr.; and Account 413—Operating joint tracks and facilities—Cr.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(d) *Miscellaneous Operations.—Account 441—Dining and buffet service; Account 442—Hotels and restaurants; Account 443—Grain elevators; Account 445—Producing power sold; Account 446—Other miscellaneous operations; Account 447—Operating joint miscellaneous facilities—Dr.; and Account 448—Operating joint miscellaneous facilities—Cr.* The costs assigned under these accounts shall be the actual branch costs assigned on a direct basis.

(e) *Fringe benefits.* (1) Fringe benefits shall be assigned on a basis of a percentage of direct wages. The percentage shall be developed by using data from the railroad's latest Form R-1. The total of all health and welfare accounts (Accounts 277, 335, 359, 409, 449, and 456) taken from Sch. 320, col. (b) shall be added to the total of payroll taxes, old-age retirement and unemployment insurance, taken from Sch. 350, and divided by the total employee compensation taken from Sch. 320, col. (b). The resulting percentage shall be applied to the direct labor costs relating to maintenance of way and structures, transportation, and miscellaneous expenses.

(2) Since direct labor costs are not available for maintenance of equipment, the railroad shall be required to furnish a ratio of labor costs to total maintenance of equipment expenses. The ratio shall be applied to the maintenance of equipment costs assigned to the branch to develop an estimate of the related labor costs. The percentage developed in the preceding paragraph shall then be applied to the estimated labor costs to develop the fringe benefit costs for maintenance of equipment.

(f) *Revenue taxes.* The amount of revenue taxes shall be computed based on the amounts directly paid in those



States that subject the railroad to a revenue tax.

(g) *Property taxes.* The amount of property taxes shall be the amount levied against the property on the branch, in those States where a true ad valorem tax is levied, based on the value of certain kinds of railroad property such as track, land buildings, and other facilities. In States where property taxes are levied on the basis of a formula of a State-wide valuation of property, the railroad shall support any claim of savings for property taxes in the event of abandonment of the branch. If the railroad would realize State-wide savings on the basis of a proposed discontinuance of service on more than one branch operated in that State, the amount assigned to that branch shall be apportioned on the basis of the ratio of the miles of track on that branch to the railroad's miles of track proposed for discontinuance in that State.

(h) *Rent income—(1) Account 503—Hire of freight cars and highway revenue equipment—Credit balance.* The amount assigned under this account shall be based on a special analysis of the highway revenue equipment used exclusively on the branch.

(2) *Account 504—Rent from locomotives; Account 505—Rent from passenger-train cars; Account 506—Rent from floating equipment; and Account 507—Rent from work equipment.* The amounts assigned under these accounts shall be based on the actual receipts for the kind of equipment rented, but may not be included unless the kind of equipment rented is normally used exclusively for branch traffic.

(3) *Account 508—Joint facility rent income.* The amounts assigned under this account shall be the actual branch receipts assigned on a direct basis.

(1) *Rents Costs—(1) Account 536—Hire of freight cars and highway revenue freight equipment—Debit balance.* The amount assigned under this account shall be based on a special analysis of the highway revenue equipment used exclusively on the branch.

(2) *Account 537—Rent for locomotives; Account 538—Rent for passenger-train cars; and Account 539—Rent for floating equipment.* If the equipment is used exclusively for branch traffic, the costs assigned under these accounts shall be the actual branch costs assigned on a direct basis. If analysis shows common rents, the common rents cost shall be apportioned to the branch on the basis of the ratio of applicable locomotive, passenger-train car, or floating equipment days or miles, as used for billing purposes, on the branch to the total of those days or miles on other lines of the railroad.

(3) *Account 540—Rent for work equipment.* The costs assigned under this account shall be the actual branch costs assigned on a direct basis.

(4) *Account 541—Joint facility rents.* The costs assigned under this account shall be the actual branch costs assigned on a direct basis, plus, for common ex-

penses, an apportionment of common expenses to the branch on the basis of the ratio of the branch total in Accounts 278, 336, 390, and 412 to the railroad's total in those accounts.

(j) *Freight train car costs.* The on-branch costs for time-mileage freight-train cars shall be calculated on the basis of the railroad's average costs per day and per mile. These costs shall include Account 314—Freight train cars—Repairs; Account 331 (53) Equipment—Depreciation of freight train cars; freight car portion of Account 503—Hire of freight cars and highway revenue equipment—Credit balance; freight car portion of Account 536—Hire of freight cars and highway revenue equipment—Debit balance; and the return on investment in freight-train cars. The system totals for repairs and depreciation shall be divided into time related costs and mileage related costs on the basis of the standard Rail Form A apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Return on investment shall be treated as a 100 percent time related cost. The system total receipts and payments for the hire of time-mileage cars and the basic data used in the development of the car-day and car-mile factors shall be taken from the railroad's latest Form R-1. The specific steps to complete the calculations are as follows:

(1) The total system car-days shall be calculated as follows:

freight car ownership at the beginning and ending of the year (R-1, Sch. 417, line 69, cols. n and w); multiplying the average by the standard active number of car-days per car (346) as developed in ICC Docket number 31358; subtracting car-days on foreign lines (R-1, Sch. 376, lines 15 and 16, col. (c)); and adding the foreign car days on home line (R-1, Sch. 376, lines 15 and 16, col. (d)).

(2) The total railroad car miles shall be calculated by adding the loaded car miles (R-1, Sch. 531, line 12, col. (d)) to the empty car miles (R-1, Sch. 531, line 14, col. (d)).

(3) The cost per car-day shall be calculated by adding 50 percent of the railroad's total freight-train car repair cost (R-1, Sch. 320, line 74, col. (b)); 60 percent of the railroad's total freight-train car depreciation costs (R-1, Sch. 330, line 3, col. (b)); 100 percent of the railroad's return on investment on freight-train cars (Rail Form A, Form 2, line 20, col. (6)); the time portion of the railroad's payments for the hire of time-mileage freight-train cars (R-1, Sch. 376, line 14, col. (d)); subtracting the time portion of the railroad's receipts for hire of time-mileage freight train cars (R-1, Sch. 376, line 14, col. (c)); and dividing the result by the total system car-days developed in paragraph (j) (1) of this section.

(4) The cost per car-mile shall be calculated by adding 50 percent of the railroad's total freight-train car repair cost (R-1, Sch. 320, line 74, col. (b)); 40 percent of the railroad's total freight-train car depreciation costs (R-1, Sch. 330, line 3, col. (b)); the mileage portion of the

railroad's payments for the hire of time-mileage freight-train cars (R-1, Sch. 376, line 8, col. (d)); subtracting the mileage portion of the railroad's receipts for the hire of time-mileage freight-train cars (R-1, Sch. 376, line 8, col. (c)); and dividing the result by the total system car-miles developed in paragraph (j) (2) of this section.

(5) The costs per car-day and per car-mile developed in paragraph (j) (4) of this section shall be applied to the total car-days and total car-miles accumulated on the branch for all traffic originated and/or terminated on the branch and all bridge traffic handled by the branch during the subsidy period which are attributable to time-mileage freight-train cars. The car-day and car-mile factors shall be furnished by the railroads. The on-branch costs for freight-train cars rented on a straight mileage basis shall be the system average cost per car-mile applied to the total car-miles accumulated on the branch, loaded and empty. The average cost per car-mile is developed from the railroad's latest Form R-1, Sch. 376, or as follows: col. (d) plus col. (f) divided by col. (b), (using line 1 for tank cars, line 2 for refrigerator cars, line 5 for TOFC/COFC cars and line 3 for all other cars).

(k) *Off-branch costs.* (1) Certain terminal costs, line-haul car costs, and interchange costs shall be considered as the off-branch avoidable costs of providing service over the remainder of the railroad's system. These costs shall be computed by applying variable unit costs to the service units attributed to the branch traffic during the subsidy period.

(2) The following through train single line variable unit costs shall be developed by the railroad by applying data contained in its latest Form R-1 filed with the Commission to Rail Form A: cost per carload by car type, modified cost per carload by car type (substitute an inter-train switching cost, separated between mileage and other than mileage cars, for a road train to industry switching cost; and substitute a modified car ownership cost developed in accordance with section 1125.5(j) above using an allowance of two days in the terminal to cover the loaded and empty car movement for the standard car ownership costs; cost per car-mile by car type; cost per ton-mile; and cost per car interchanged, separated between mileage cars and other than mileage cars.

(3) Terminal costs shall be calculated by multiplying the modified costs per carload, by car type, by the total number of carloads originated or terminated on the branch during the subsidy year. To this amount add the regular costs per carload, by car type, times the number of carloads which originate or terminate on the branch that are local to the railroad serving the branch.

(4) The line haul costs shall be calculated by applying the costs per car-mile by car type to the loaded car-miles on the system by car type originated or terminated on the branch during the subsidy year and applying the ton-mile unit cost to the total ton-miles on the

system of revenue freight in road service originated or terminated on the branch during the subsidy year and totaling the results.

(5) The interchange costs shall be calculated by multiplying the cost per car interchanged by the number of cars of traffic interchanged that originated or terminated on the branch.

**§ 1125.6 Valuation of rail properties.**

The value of the rail properties on a branch shall be determined in accordance with the following:

(a) Only the following properties on a branch may be considered:

(1) Those that are used and useful to provide the rail services requested by the person offering a subsidy.

(2) In the absence of a request for specific services by that person, those properties that are used and useful to provide the rail service performed on the branch at the time the final system plan becomes effective, or if no service was being performed at that time, the services that were last performed on the branch.

(b) The value of the properties shall be their net liquidation value for their highest and best use, consistent with applicable zoning and land use regulations, determined by computing their current market value for other than rail transportation purposes, less all costs of dismantling and disposition of improvement necessary to make the remaining property available for its highest and best use.

(c) If the railroad and person offering a subsidy cannot, within a period of time that either of them considers reasonable after the beginning of negotiations for the payment of the subsidy, agree on the properties that are used and useful or the net liquidation value, or both, the one that considers that a reasonable period of time has elapsed may notify the other of its intention to have the matter arbitrated. Each of the parties shall then appoint a representative and the representatives shall select an arbitrator or arbitrators mutually acceptable to them. The decision of the arbitrator or arbitrators shall be final.

(d) If either party fails to appoint a representative within five days after receiving notice from the other party of its representative, or if the appointed representatives fail, within five days after the last one of them is appointed, to agree upon a mutually acceptable arbitrator or arbitrators, either party may submit the matter for arbitration to the American Arbitration Association pursuant to its commercial arbitration rules, and the decision of its arbitrator or arbitrators shall be final.

(e) In considering the value of properties under this section, the arbitrator or arbitrators shall consider, among other factors, any bona fide offer for the properties, or a part thereof, recent sales of adjoining or similar properties, and any available appraisals, by a reputable

appraiser, of the properties, or a part thereof.

(f) If the person offering a subsidy is a public body, each meeting of an arbitrator or arbitrators with the parties for the purposes of receiving information or evidence or to hear arguments or views shall be open to the public. Any interested member of the public may file written views, argument, or information with the arbitrator or arbitrators at any time within 3 days after the closing of the sessions that are open to the public.

**§ 1125.7 Reasonable return on the value of the properties.**

The reasonable return on the value of rail properties, as determined under § 1125.6, shall be the interest rate that is equal to the publicly quoted yield to maturity or earliest call date on the first business day of the month in which the subsidy agreement is entered into, for United States Treasury bonds or notes maturing or having an earliest call date approximately coterminous with the end of the subsidy period. United States Treasury bonds redeemable at par before call or maturity for the sole purpose of applying the proceeds to payment of Federal estate taxes, and Treasury notes Series EA or EO shall be excluded from consideration for this purpose.

**§ 1125.8 Submission of information by railroad giving notice of intent to discontinue service on a branch.**

(a) A railroad giving notice of intent to discontinue service on a branch shall give to the Director of the Office, and to the governor and railroad regulatory commission of each State within which the branch is located and to any other person upon request an "Estimate of Subsidy Payment" including information prescribed in Appendix I to this Part.

(b) Beginning with the week in which it gives notice of intent to discontinue service on a branch, pursuant to section 304(a)(2)(B) of the Act, the railroad shall publish a copy of that notice of intent in a newspaper or newspapers of general circulation in the areas encompassing the branch at least once a week for three consecutive weeks.

(c) Each railroad providing the information required by paragraph (a) of this section, and publishing a notice as required by paragraph (b) of this section, shall include therein a statement to the effect that copies of the materials and information upon which the railroad's calculations for the purposes of § 1125.3 have been made are located at an office of the railroad within the State or States concerned and may be examined by any interested person during regular working hours. However, documents upon which the calculations are made which disclose information concerning the nature, kind, quantity, destination, consignee, or routing of traffic shall, if the railroad so requests, be shown only to a representative of the person offering a subsidy and only if that representative agrees to keep that information confidential.

service, pursuant to section 304(a)(2)

(d) A notice of intent to discontinue (B) of the Act, is not considered to be completed or given until the railroad has taken the actions required by paragraphs (a) through (c) of this section.

(e) Each railroad must establish a system of collecting the cost and other relevant data required herein at the branch level.

(f) Each railroad must file a "Financial Status Report" including the information prescribed in Appendix II to this Part within 30 days after the end of each quarter of the subsidy year. Significant deviations from the original estimates must be explained. Unless the parties agree otherwise, the third quarter report will be the basis for negotiating the subsequent year subsidy agreement. The year-end report will be the basis of the subsidy payment adjustment.

(g) A railroad entering into a subsidy agreement shall make available, in the same manner and subject to the same conditions described in paragraph (c) of this section, to any interested person copies of the materials and information upon which calculations for the purposes of § 1125.4 through 1125.7 have been or are to be made.

**APPENDIX I—INFORMATION TO BE FURNISHED**

The following information is required to be furnished under § 1125.8(a). All data shall be developed in accordance with the methodology set forth in § 1125.3.

**REVENUES ESTIMATED FOR**

1. Freight Originated And/Or Terminated On Branch.
2. Bridge Traffic.
3. Demurrage.
4. Passenger.
5. All Other.
6. Total Estimated Revenues (lines 1 through 5).

**AVOIDABLE COST ESTIMATES FOR**

7. Off-Branch Costs (Ratio times line 1).
8. On-Branch Costs (lines 8 a through 8 f).
  - a. Maintenance of Way and Structures.
  - b. Rehabilitation.
  - c. Maintenance of Equipment.
  - d. Transportation.
  - e. Taxes.
  - f. Miscellaneous.
9. Total Avoidable Cost Estimate (line 7 plus line 8).

**RETURN ON VALUE ESTIMATE**

10. Valuation of Property.
11. Rate of Return.
12. Total Return on Value (line 10 times line 11).

**ESTIMATED SUBSIDY PAYMENT**

13. Estimated Subsidy Payment (line 6 minus lines 9 and 12).

**APPENDIX II—INFORMATION TO BE FURNISHED**

The following information is required to be furnished under § 1125.8(f). All data shall be developed in accordance with the methodology set forth in § 1125.4-7. The actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item, except that off-branch costs shall be estimated during the subsidy year by applying the ratio developed in the interim formula to the actual revenues shown in item 1.

## RULES AND REGULATIONS

## REVENUES FOR

1. Freight Originated And/Or Terminated on Branch.
2. Bridge Traffic.
3. Demurrage.
4. Passenger.
5. All Other.
6. Total Revenues (line 1 through 5).

## AVOIDABLE COSTS FOR

7. Off-Branch Costs (Ratio times Line 1).
8. On-Branch costs (lines 8a through 8f).
- a. Maintenance of Way and Structures.
- b. Rehabilitation.
- c. Maintenance of Equipment.
- d. Transportation.
- e. Taxes.
- f. Miscellaneous.
9. Total Avoidable Cost (line 7 plus line 8).

## RETURN ON VALUE

10. Valuation of Property.
11. Rate of Return.
12. Total Return on Value (Line 10 times Line 11).

## SUBSIDY PAYMENT

13. Subsidy Payment (line 6 minus lines 9 and 12).

[FR Doc.75-170 Filed 1-7-75; 8:45 am]