Subpart F—Specific Categories of Costs

B. In § 413.100, paragraph (c)(2)(vi) is revised to read as follows:

§ 413.100 Special treatment of certain accrued costs.

(c) *Recognition of accrued costs.*

* * * * *

(2) *Requirements for liquidation of liabilities.*

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(vi) *FICA and other payroll taxes.*—(A) *General rule.* The provider's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies is included in allowable costs only during the cost reporting period in which payment (upon which the payroll taxes are based) is actually made to the employee. For example, payroll taxes applicable to vacation benefits are not to be accrued in the period in which the vacation benefits themselves are accrued but rather are allowable only in the period in which the employee takes the vacation.

(B) *Exception.* If payment would be made to an employee during a cost reporting period but for the fact the regularly scheduled payment date is after the end of the period, costs of accrued payroll taxes related to the portion of payroll accrued through the end of the period, but paid to the employee after the beginning of the new period, are allowable costs in the year of accrual, subject to the liquidation requirements specified in paragraph (c)(2)(i) of this section.

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 26, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 8, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–13110 Filed 5–15–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1146

[STB Ex Parte No. 628]

Expedited Relief for Service Inadequacies

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Pursuant to its decision in *Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served Apr. 17, 1998) (''*Review*''), the Board is instituting a proceeding to solicit comments on proposed rules that would establish expedited procedures for shippers to obtain alternative service from another rail carrier when the incumbent carrier cannot properly serve shippers. The Board requests that persons intending to participate in this proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: Notices of intent to participate in this proceeding are due May 28, 1998. Comments on this proposal are due June 15, 1998. Replies are due July 15, 1998.

ADDRESSES: An original plus 12 copies of all comments and replies, referring to STB Ex Parte No. 628, must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Ex Parte No. 628, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Copies of the written comments will be available from the Board's contractor, D.C. News and Data, Inc., located in Room 210 in the Board's building. D.C. News can be reached at (202) 289–4357. The comments will also be available for viewing and self copying in the Board's Microfilm Unit, Room 755.

In addition to an original and 12 copies of all paper documents filed with the Board, the parties shall submit their pleadings, including any graphics, on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All textual material, including cover letters, certificates of service, appendices and exhibits, shall be included in a single file on the diskette. The diskettes shall be clearly labeled with the filer's name, the docket number of this proceeding, STB Ex Parte No. 628, and the name of the electronic format used on the diskette for files other than those formatted in WordPerfect 7.0. All pleadings submitted on diskettes will be posted on the Board's website (www.stb.dot.gov). The electronic submission requirements set forth in this notice supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).[1]

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In STB Ex Parte No. 575, the Board conducted two days of informational hearings, on April 2 and 3, 1998, to examine issues of rail access and competition in today's railroad industry, and the statutory remedies and agency regulations and procedures that relate to those matters. As a result of those hearings, we announced, *inter alia,* that we would begin a rulemaking proceeding to consider revisions to our rules to provide shippers receiving poor service greater opportunity to obtain service from an additional carrier.

Overview

While the Board lacks general authority to require an unwilling railroad to permit physical access over its lines to the trains and crews of another railroad, it may direct that result in certain situations: under 49 U.S.C. 11324(c), as a condition to the incumbent's merger with another railroad; under 49 U.S.C. 11102(a), to serve terminal facilities when it would be in the public interest; or, under 49 U.S.C. 11123(a), to serve any facilities for a limited period of time (not more than 270 days) because of the carrier's inability or failure to provide its shippers with adequate service.[2] The Board may also direct an incumbent railroad to afford access indirectly, either by prescribing alternative through routes under 49 U.S.C. 10705(a) (requiring the incumbent to interline traffic with another railroad over a designated interchange and thereby create an alternative route and rates for a shipper's traffic) or by requiring reciprocal switching under 49 U.S.C. 11102(c) (where, for a fee, the incumbent must switch cars to and from another railroad so that the latter, even though it cannot physically reach a shipper, can constructively offer alternative single-line service).

The access remedies under sections 11102 and 10705—terminal trackage rights, reciprocal switching, and alternative through routes—are now invoked through the ''competitive access'' regulations, 49 CFR part 1144, and, to obtain relief, parties must show

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[1] A copy of each diskette submitted to the Board should be provided to any other party upon request.

[2] The using railroad must compensate the incumbent railroad for the use of its tracks, at a level to be determined by the carriers or fixed by the Board. 49 U.S.C. 11324(c), 11102(a), and 11123(b)(2).

that the incumbent rail carrier has acted in a way ''that is contrary to the competition policies of 49 U.S.C. 10101[] or is otherwise anticompetitive.''[3] At the Ex Parte 575 hearings, shippers complained that the ''anticompetitive conduct'' standard of the regulations is too restrictive and effectively precludes alternative service in those situations where it is most urgently needed—where shippers (such as those poorly served during the recent service emergency in the West) are not receiving the level of service needed from their incumbent carrier. At the hearings, the rail industry concurred that the Board should be able to remedy such service failures more quickly and effectively.

Accordingly, we seek comment on the proposed rules set forth below to provide expedited relief for demonstrated poor service.[4]

Choice of Remedies

To address these service issues more effectively, we propose rules under which parties may seek alternative rail service under either the access provisions of sections 11102 and 10705, or the emergency service provisions of section 11123. While section 11123 has typically been used to address regional service emergencies, such as the one recently experienced in the West,[5] we believe it can also be used to afford more localized relief to shippers; that section broadly permits Board intervention to remedy service deficiencies having ''substantial adverse effects'' on shippers, or where a rail carrier ''cannot transport the traffic offered to it in a manner that properly serves the public.'' 49 U.S.C. 11123(a).

Moreover, permitting shippers to proceed either under sections 11102 or 10705, on the one hand, or section 11123, on the other, affords greater flexibility and broadens the potential for regulatory relief. For example, trackage rights access under section 11102(a), while not statutorily limited in duration, is limited to an incumbent railroad's terminal facilities, and therefore is not available for shippers that are not located at or near terminal areas. In contrast, remedies under section 11123(a), although limited to 270 days, are potentially available for shippers located on any part of the incumbent carrier's network; this section also affords the Board more latitude to craft a variety of measures to remedy any particular service situation.[6]

Standard for Relief

Whichever remedies are sought, however, the predicate for relief would be the same: that, over an identified period of time, there has been a substantial, measurable deterioration in the rail service provided by the incumbent carrier.[7] We do not think it necessary or appropriate to propose a list of particular factors—or a formulaic weighing of such factors—that shippers must use to make that assessment, or to propose a specific test period. Each shipper has its own particular service needs and experiences, and carrier difficulties may vary. Our standard of relief must be flexible enough to permit us to address varying circumstances. Commenters may wish to address this issue.

We caution that the proposed rules are not meant to redress minor service disruptions. Access—particularly that which would compel physical access by another railroad over an incumbent's lines—is a serious remedy with potentially significant operational, safety, and financial consequences for the involved carriers, and we intend that the rules be used to remedy only substantial service problems that cannot readily be resolved by the incumbent railroad. Accordingly, we propose to require shippers to: (1) First discuss and assess with their incumbent carrier whether adequate service can be restored within a reasonable period of time that is consistent with the shipper's needs and, if not, outline in its request for relief why that is the case; and (2) obtain from another railroad the necessary commitment—should it be afforded access—to meet the shipper's service needs, and describe the carrier's plan to do so safely and without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service.

Expedited Procedures

The proposed rules include expedited procedures because of the usually urgent nature of serious service problems. Instead of the more time-consuming complaint process, parties may seek relief by petition.[8] We propose that the incumbent carrier be required to reply to such a petition within five business days, and that the shipper, if it wishes to file a rebuttal, be required to do so no more than three business days later.

If relief is granted under these rules, once the incumbent carrier can demonstrate that it has restored, or is prepared to restore, adequate service, it may file a petition to terminate that relief. We would discourage an incumbent carrier from filing such a petition too hastily after the Board's order, however, as the objective in a proceeding of this nature is to provide shippers with a needed degree of certainty of adequate rail service.

For the same reason, we propose that satisfying the standard for relief under section 11123 ordinarily would establish a presumption that the incumbent's inability to provide adequate service will last beyond the initial 30-day period, and thus will provide the basis for a subsequent order extending relief beyond the initial 30-day period. However, if the incumbent carrier can show that it is prepared to provide adequate service, it may seek to have the relief terminated within the first 30 days.

Should the incumbent carrier file a petition to terminate relief, replies are to be filed in five business days, and the carrier may file any rebuttal three business days afterward. The Board will then assess all relevant factors in determining what action would be appropriate.

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[3] 49 CFR 1144.5(a); *Intramodal Rail Competition,* 1 I.C.C.2d 822 (1985), *aff'd sub nom. Baltimore Gas & Elec. Co.* v. *United States,* 817 F.2d 108 (D.C. Cir. 1987). Under existing case law, parties must show that the incumbent carrier has either: (1) Used its market power to extract unreasonable terms, or (2) because of its monopoly position, shown a disregard for the shipper's needs by rendering inadequate service. *Midtec Paper Corp.* v. *Chicago & N.W. Transp. Co.,* 3 I.C.C. 2d 171 (1986), *aff'd sub nom. Midtec Paper Corp.* v. *United States,* 857 F.2d 1487 (D.C. Cir. 1988).

[4] As we explained in *Review,* slip op. at 6–7, this decision does not address whether to revise the competitive access regulations with respect to competitive issues not related to quality of service. We have directed the railroads and shippers to meet, under the supervision of an Administrative Law Judge, to identify mutually acceptable modifications to facilitate greater access in appropriate circumstances, and to report back to us by August 3, 1998. We are confident that shippers and railroads can find common ground on this issue. *See Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served May 4, 1998).

[5] STB Service Order No. 1518, *Joint Petition for Service Order* (STB served Oct. 31 and Dec. 4, 1997, and Feb. 17 and 25, 1998).

[6] Although the remedies under sections 11102 and 10705 are not statutorily limited in duration, we remind commenters that the relief contemplated by this proposal is intended to respond to service problems, and not to provide permanent responses to perceived competitive issues.

[7] Because the proposed predicate for relief is different than that for ''competitive'' access under 49 CFR 1144.5(a), and to avoid confusion, we do not propose to amend the competitive access regulations, as we had suggested in *Review,* but rather to adopt a new, discrete set of regulations to address relief for service inadequacies, 49 CFR part 1146.

[8] We note that section 11123(b)(1) gives us broad authority to afford relief without regard to the administrative adjudication procedures in 5 U.S.C. 551 et seq.

We invite comment on all aspects of this proposal. Any person that wishes to participate as a party of record in this matter must notify us of this intent by May 28, 1998. In order to be designated a party of record, a person must satisfy the filing requirements outlined in the **ADDRESSES** section. We will then compile and issue a service list. Copies of comments and replies must be served on all persons designated on the list as a party of record. Comments on the proposal are due June 15, 1998; replies are due July 15, 1998.

A copy of this decision is being served on all parties on the service list in Ex Parte No. 575. This decision will serve as notice that persons who were parties of record in the Ex Parte 575 proceeding will not be placed on the service list in the Ex Parte 628 proceeding unless they notify us of their intent to participate therein.

The Board preliminarily certifies that the proposed rules, if adopted, would not have a significant effect on a substantial number of small entities. While the proposed rules, if adopted, may ease the burdens on obtaining alternative rail service in the limited situations described, we do not expect them to affect a substantial number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1146

Administrative practice and procedures, Railroads.

Decided: May 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, Part 1146, consisting of § 1146.1, is proposed to be added to read as follows:

PART 1146—EXPEDITED RELIEF FOR SERVICE INADEQUACIES

1. The authority for part 1146 will read as follows:

Authority: 49 U.S.C. 721, 11102, 11123, and 10705.

§ 1146.1 Prescription of Alternative Rail Service

(a) *General.* Alternative rail service will be prescribed under 49 U.S.C. 11102(a), 11102(c), 10705(a), or 11123(a), if the Board determines that, over an identified period of time, there has been a substantial, measurable deterioration in rail service provided by the incumbent carrier.

(b)(1) *Petition for Relief.* Parties may seek relief described in paragraph (a) of this section by filing an appropriate petition containing:

(i) A full explanation, together with all supporting evidence, to demonstrate that the standard for relief contained in paragraph (a) of this section is met;

(ii) A summary of the petitioner's discussions with the incumbent carrier of the service problems and the reasons why the incumbent carrier is unlikely to restore adequate rail service consistent with the shipper's needs within a reasonable period of time;

(iii) A commitment from another available railroad to provide alternative service that would meet the shipper's service needs, and how that carrier would provide the service safely without degrading service to its existing customers or unreasonably interfering with the incumbent's overall ability to provide service; and

(iv) A certification of service of the petition, by overnight delivery, on the incumbent carrier.

(2) *Reply.* The incumbent carrier must file a reply to a petition under this subsection within five (5) business days.

(3) *Rebuttal.* The party requesting relief may file rebuttal no more than three (3) business days later.

(c) *Presumption of Continuing Need.* Unless otherwise indicated in the Board's order, a Board order issued under paragraph (a) of this section that prescribes relief under 49 U.S.C. 11123(a) shall establish a rebuttable presumption that the transportation emergency will continue for more than 30 days from the date of that order.

(d)(1) *Petition to Terminate Relief.* Should the Board prescribe alternative rail service under paragraph (a) of this section, the incumbent carrier may subsequently file a petition to terminate that relief. Such a petition shall contain a full explanation, together with all supporting evidence, to demonstrate that the carrier is providing, or is prepared to provide, adequate service to affected shippers. Absent special circumstances, carriers are discouraged from filing such a petition less than 90 days after relief is granted under paragraph (a) of this section.

(2) *Reply.* Parties must file replies to petitions to terminate filed under this subsection within five (5) business days.

(3) *Rebuttal.* The incumbent carrier may file any rebuttal no more than three (3) business days later.

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[FR Doc. 98–13095 Filed 5–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on the Proposed Threatened Status of the Sacramento Splittail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of the reopening of the comment period for the proposed threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*). The comment period has been reopened to acquire additional information on the status, abundance and distribution of the Sacramento splittail in the Central Valley of California.

DATES: Comments received by July 17, 1998 will be considered by the Service.

ADDRESSES: Written comments, materials and data, and available reports and articles concerning this proposal should be sent directly to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Thabault, at the address listed above (telephone 916/979–2725, facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (*Pogonichthys macrolepidotus*), is the only large cyprinid that is endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now apparently restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the