

### **49 C.F.R. § 1151.1 Scope.**

This part governs applications filed under [49 U.S.C. 10907](#). The Board can require the sale of a rail line to a financially responsible person. A rail line is eligible for a forced sale if it appears in category 1 or 2 of the owning railroad's system diagram map (but the railroad has not filed an application to abandon the line), or the public convenience and necessity, as defined in [49 U.S.C. 10907\(c\)\(1\)](#), permit or require the sale of the line.

[[56 FR 37861](#), Aug. 9, 1991; [64 FR 53268](#), Oct. 1, 1999]

### **49 C.F.R. § 1151.2 Procedures.**

(a) Service. When an application is filed, applicant must concurrently serve a copy of the application by first class mail on:

(1) The owning railroad;

(2) All rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed;

(3) The designated State agency in the State(s) where the property is located;

(4) County governments where the line is located;

(5) The National Railroad Passenger Corporation (Amtrak) (if Amtrak operates on the line);

(6) And the national offices of rail unions with employees on the line.

(b) Acceptance or rejection of an application.

(1) The Board, through the Director of the Office of Proceedings, will accept a complete application no later than 30 days after the application is filed by publishing a notice in the Federal Register. An application is complete if it has been properly served and contains substantially all information required by [§ 1151.3](#), except as modified by advance waiver. The notice will also announce the schedule for filing of competing applications and responses.

(2) The Board, through the Director of the Office of Proceedings, will reject an incomplete application by serving a decision no later than 30 days after the application is

filed. The decision will explain specifically why the application was incomplete. A revised application may be submitted, incorporating portions of the prior application by reference.

(c) Competing applications.

(1) Unless otherwise scheduled in the notice, competing applications by other parties seeking to acquire all or any portion of the line sought in the initial application are due within 30 days after the initial application is accepted.

(2) The Board, through the Director of the Office of Proceedings, will issue a decision accepting or rejecting a competing application no later than 15 days after it is filed. A competing application will be rejected if it does not substantially contain the information required by [§ 1151.3](#), except as modified by advance waiver.

(d) Incomplete applications.

(1) If an applicant seeking to file an initial or competing application is unable to obtain required information that is primarily or exclusively within the personal knowledge of the owning carrier, the applicant may file an incomplete application if it files at the same time a request for discovery under 49 CFR part 1114 to obtain the needed information from the owning carrier.

(2) The Board, through the Director of the Office of Proceedings, will by decision conditionally accept incomplete initial or competing applications, if the Director determines that the discovery sought is necessary for the application and primarily or exclusively within the knowledge of the owning carrier.

(3) When the information sought through discovery has been filed for an initial application, Federal Register notice under paragraph (b) of this section will be published.

(4) When the information sought through discovery has been filed for a competing application, a decision will be issued under paragraph (c) of this section.

(e) Comments. Unless otherwise scheduled in the notice, verified statements and comments addressing both the initial and competing applications must be filed within 60 days after the initial application is accepted.

(f) Replies. Unless otherwise scheduled in the notice, verified replies by applicants and other interested parties must be filed within 80 days after the initial application is accepted.

(g) Publication. If the Board finds that the public convenience and necessity require or permit sale of the line, the Board shall concurrently publish this finding in the Federal Register.

(h) Acceptance or rejection. If the Board concludes that sale of the line should be required, the applicant(s) must file a notice with the Board and the owning railroad accepting or rejecting the Board's determination. The notice must be filed within 10 days of the service date of the decision.

(i) Selection. If two or more applicants timely file notices accepting the Board's determination, the owning railroad must select the applicant to which it will sell the line and file notice of its selection with the Board and serve a copy on the applicants within 15 days of the service date of the Board decision.

(j) Waiver. Prior to filing an initial or competing application, an applicant may file a petition to waive or clarify specific portions of part 1151. A decision by the Director of the Office of Proceedings granting or denying a petition for waiver or clarification will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board.

(k) Extension. Extensions of filing dates may be granted for good cause.

[[48 FR 9654](#), Mar. 8, 1983, as amended at [48 FR 34475](#), July 29, 1983; [56 FR 37861](#), Aug. 9, 1991]

SOURCE: [48 FR 9654](#), March 8, 1983; [62 FR 50525](#), Sept. 26, 1997, unless otherwise noted.

AUTHORITY: [49 U.S.C. 10907](#).

#### **49 C.F.R. §1151.3 Contents of application.**

(a) The initial application and all competing applications must include the following information in the form of verified statements:

(1) Identification of the line to be purchased including:

(i) The name of the owning carrier; and

(ii) The exact location of the line to be purchased including milepost designations, origin and termination points, stations located on the line, and cities, counties and States

traversed by the line.

(2) Identification of applicant including:

(i) The applicant's name and address;

(ii) The name, address, and phone number of the representative to receive correspondence concerning this application;

(iii) A description of applicant's affiliation with any railroad; and

(iv) If the applicant is a corporation, the names and addresses of its officers and directors.

(3) Information sufficient to demonstrate that the applicant is a financially responsible person. In this regard, the applicant must demonstrate its ability:

(i) To pay the higher of the net liquidation value (NLV) or going concern value (GCV) of the line; and

(ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.

(4) An estimate of the NLV and the GCV of the line and evidence in support of these estimates.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (a)(4) of this section.

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.

(8) A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result

from negligence on the part of the operator in exercising the trackage rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Board approval. (This Statement Will Be Binding Upon Applicant if the Application is Approved.)

(10) The name and address of any person(s) who will subsidize the operation of the line.

(11) A statement that the applicant will seek a finding by the Board that the public convenience and necessity permit or require acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's system diagram map.

(i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that:

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

(ii) If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application.

(12) A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(13) A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(14) If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:

(i) The railroad(s) involved;

(ii) the estimated revenues that will result from the division(s);

(iii) The total costs of operating the line segment purchased (including any trackage rights fees).

(iv) Information sufficient to allow the Board to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year [\[FN1\]](#) ; and

<sup>1</sup> Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

(v) Any other pertinent information.

(15) The extent to which the owning railroad's employees who normally service the line will be used.

(16) A certificate stating that the service requirements of [§ 1151.2\(a\)](#) have been met.

(b) Applicant must make copies of the application available to interested parties upon request.

[[56 FR 37862](#), Aug. 9, 1991; [64 FR 53268](#), Oct. 1, 1999]

**49 C.F.R. § 1151.4 Board determination.**

(a) The Board shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Board must find that:

(1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that adequate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Board finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

(1) Either

(i) The public convenience and necessity require or permit the sale of line or line segment; or

(ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

(2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: this finding will not be required for applications filed after October 1, 1983).

(c) If the Board finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Board shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Board shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Board to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Board shall, pursuant to [49 U.S.C. 10705\(a\)](#), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Board will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by [49 U.S.C. 10709\(d\)\(2\)](#), which limits Board maximum ratemaking jurisdiction to rates above certain cost/price ratios.

SOURCE: [48 FR 9654](#), March 8, 1983; [62 FR 50525](#), Sept. 26, 1997, unless otherwise noted.

AUTHORITY: [49 U.S.C. 10907](#).

#### **49 C.F.R. § 1152.27 Financial assistance procedures.**

(a) Provision of information. An applicant must provide promptly upon request to a party considering an offer of financial assistance to continue existing rail service, and concurrently to the Board, the following:

(1)(i) In an application or petition for exemption proceeding, an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;

(ii) In a class exemption proceeding, either an estimate of the annual subsidy or the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;

(2) Its most recent reports on the physical condition of the involved line; and

(3) Traffic, revenue, and other data necessary to determine the amount of annual financial assistance that would be required to continue rail transportation over that part of the railroad line. In an exemption proceeding, the data to be provided must at a minimum include the carrier's estimate of the net liquidation value of the line, with supporting data reflecting available real estate appraisals, assessments of the quality and quantity of track materials in a line, and removal cost estimates (including the cost of transporting



removed materials to point of sale or point of storage for relay use), and, if an offer of subsidy is contemplated, an estimate of the cost of rehabilitating the line to Federal Railroad Administration class 1 Safety Standards (49 CFR part 213).

(b) Federal Register notice.

(1) Abandonment and discontinuance applications. The Federal Register publication, which gives notice of the filing of the application 20 days after the application is filed, will serve as notice to persons intending to offer financial assistance to assure continued rail service under [49 U.S.C. 10904](#) and these regulations as they relate to abandonment and discontinuance applications. Offers of financial assistance will be due 120 days after the application is filed or 10 days after a decision granting the application is served, whichever occurs sooner.

(2) Exemption proceedings.

(i) If a petition for individual exemption from the prior approval requirements of [49 U.S.C. 10903](#) is filed with the Board for abandonment or discontinuance of a line of railroad, the Board will publish notice of the petition in the Federal Register within 20 days of the filing of the petition. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under [49 U.S.C. 10904](#) and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner.

(ii) If a notice of exemption is filed under the class exemption, the Board will publish notice of the exemption in the Federal Register within 20 days of filing. The Federal Register publication will serve as notice to persons with a potential interest in providing financial assistance to assure continued rail service on the line under [49 U.S.C. 10904](#) and these regulations as they relate to exempt abandonments and discontinuances. Offers of financial assistance will be due no later than 30 days after the date of the Federal Register publication giving notice of the exemption.

(c) Submission of financial assistance offer--

(1) Abandonment and discontinuance applications and petitions for exemption--

(i) Service and filing. An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance application or exemption proceeding. The offer must be filed concurrently with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001.

(A) An offer may be filed and served at any time after the filing of the abandonment or discontinuance application or petition for exemption. Once a decision is served granting an application or petition for exemption, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 10 days after service of the Board decision granting the application or petition for exemption. This filing and service is subject to the requirements of [49 CFR 1152.25 \(d\)\(1\)](#), [\(d\)\(2\)](#), and [\(d\)\(4\)](#).

(C) If, after a bona fide request, applicant or petitioner has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the application or petition, the Board will entertain petitions to toll the 10-day period for submitting offers of financial assistance under paragraph (c)(1) of this section. Petitions must be filed with the Board within 5 days after service of the decision granting the application or petition for exemption. Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 10 days after service of the decision granting the application or petition for exemption. These petitions and replies must be filed on or before their actual due date under [49 CFR 1152.25\(d\)\(4\)](#). The Board will issue a decision on petitions within 15 days after service of the decision granting the application or petition for exemption.

(ii) Contents of offer. The offeror shall set forth its offer in detail. The offer must:

(A) Identify the line, or the portion of the line, in question;

(B) Demonstrate that the offeror is financially responsible; that is, that it has or within a reasonable time will have the financial resources to fulfill proposed contractual obligations; governmental entities will be presumed to be financially responsible; and

(C) Explain the disparity between the offeror's purchase price or subsidy if it is less than the carrier's estimate under paragraph (a)(1) of this section, and explain how the offer of subsidy or purchase is calculated.

(2) Class exemption proceedings.

(i) Expression of intent to file offer. Persons with a potential interest in providing financial assistance must, no later than 10 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, submit to the carrier and the Board a formal expression of their intent to file an offer of financial assistance, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase). Such submissions are subject to the filing requirements of [§ 1152.25\(d\)\(1\)](#) through [\(d\)\(3\)](#). Submission of a formal expression of intent under this subsection will automatically stay the effective date

of the notice of exemption under the class exemption for 40 days (normally, this will be 10 days beyond the date stated in the Federal Register publication).

(ii) Service and filing. An offeror must serve its offer of assistance on the carrier that instituted the exempt filing as well as all other parties to the proceeding. The offer must be filed concurrently with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423–0001.

(A) An offer may be filed and served at any time after the filing of the notice of exemption. Once a notice of exemption is published in the Federal Register, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section. This filing and service is subject to the requirements of [49 CFR 1152.25\(d\)\(1\)](#), [\(d\)\(2\)](#), and [\(d\)\(4\)](#).

(C) If, after a bona fide request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the notice of exemption, the Board will entertain petitions to toll the 30–day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Board within 25 days after publication in the Federal Register (as described in paragraph (b)(2)(ii) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after publication. These petitions and replies must be filed on or before their actual due date under [49 CFR 1152.25\(d\)\(4\)](#). The Board will issue a decision on petitions to toll the offer period within 35 days after publication.

(D) Upon receipt of a formal expression of intent to file an offer under paragraph (c)(2)(i) of this section, the rail carrier applicant may advise the Board and the potential offeror that additional time is needed to develop the information required under paragraph (a) of this section. Applicant shall expressly indicate the amount of time it considers necessary (not to exceed 60 days) to develop and submit the required information to the potential offeror. For the duration of the time period so indicated by the applicant, the 30–day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Board action.

(iii) Contents of offer. The offeror shall set forth its offer in detail. The offer must meet the requirements of paragraph (c)(1)(ii) of this section.

(d) Access to documents. Upon receipt by the carrier of a written comment under [§ 1152.25](#) or a formal expression of intent under paragraph (c)(2)(i) of this section indicating an intent to offer financial assistance, or upon receipt by the carrier of an offer

of financial assistance, whichever occurs earlier, the carrier must make available to that party or offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit 1 ([§ 1152.36](#)) or, if an exemption proceeding, those documents that would have been used in preparing Exhibit 1 had an abandonment or discontinuance application been filed, or other records, reports, and data in the possession of the carrier seeking the exemption that provide comparable data. These documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

(e) Review of offers--

(1) Abandonment and discontinuance applications. The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will issue a decision postponing the effective date of the authorization for abandonment or discontinuance. This decision will be issued within 15 days of the service of the decision granting the application (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section, or within 5 days after expiration of the 120 day (4 month) period described in [49 U.S.C. 10904](#), if that occurs first). Under the delegation of authority at [§ 1011.7\(a\)](#), the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of [49 U.S.C. 10904\(d\)](#) for purposes of instituting negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of [49 U.S.C. 10904\(d\)](#) for purposes of instituting negotiations will be acted upon by the entire Board pursuant to [49 CFR 1011.2\(a\)\(7\)](#).

(2) Exemption proceedings. The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will postpone the effective date either of the decision granting a petition for individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to [49 U.S.C. 10904](#). The decision to postpone and partially revoke will be issued within 15 days of the service date of a decision granting a petition for exemption, or within 35 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) or (c)(2)(ii) (C) or (D) of this section). Under the delegation of authority at [section 1011.7\(a\)](#), the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of [49 U.S.C. 10904\(d\)](#) for purposes of partial revocation and institution of negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of [49 U.S.C. 10904\(d\)](#) for purposes of partial revocation and institution of negotiations will be acted upon by the entire Board pursuant to [49 CFR 1011.2\(a\)\(7\)](#).

(f) Agreement on financial assistance.

(1) If the carrier and a person offering financial assistance enter into a subsidy agreement designed to provide for continued rail service, the Board will postpone the effective date of the abandonment or discontinuance. If a decision granting a petition for individual exemption, or a notice of exemption, has been issued, the Board will postpone the effective date of the decision or notice of exemption. The postponement will be for as long as the subsidy agreement is in effect.

(2) If the carrier and a person offering to purchase a line enter into a purchase agreement which will result in continued rail service, the Board will approve the transaction and dismiss the application for abandonment or discontinuance, or the petition for exemption or notice of exemption. Board approval is not required under [49 U.S.C. 10901](#), [10902](#), or [11323](#) for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to [49 U.S.C. 10501\(a\)](#).

(g) Failure to reach agreement on financial assistance.

(1) If the carrier and a financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of compensation. This request must be filed with the Board within 30 days after the offer is made and served concurrently by overnight mail on all parties to the proceeding. The request must be accompanied by the appropriate fee, codified at [49 CFR 1002.2\(f\)\(26\)](#). Replies will be due 5 days later.

(2) If no agreement is reached within 30 days after the offer of purchase or subsidy is made, and no request is made to the Board to set the conditions and amount of compensation under paragraph (g)(1) of this section, the Board will serve a decision vacating the prior decision, which postponed the effective date of the decision granting the application, the decision granting the exemption, or the notice of exemption and, which, if applicable, partially revoked either the decision granting the exemption or (in the case of a class exemption) the notice of exemption. The Board will issue the decision to vacate within 10 days of the due date for requesting the Board to set the conditions and amount of compensation, and the Board will make the decision to vacate effective on its date of service.

(h) Request to establish conditions and compensation for financial assistance.

(1) If the Board is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Board will issue a decision within 30 days after the request is due.

(2) If the applicant receives multiple offers of financial assistance, requests to establish conditions and compensation will not be permitted before the applicant selects the offeror with whom it wishes to transact business. (See paragraph (l)(1) of this section.)

(3) A party requesting the Board to establish conditions and compensation for financial assistance must, within the time period set forth in paragraph (h)(4) of this section, provide its case in chief, including reasons why its estimates are correct and the other negotiating party's estimates are incorrect, points of agreement and points of disagreement between the negotiating parties, and evidence substantiating these allegations. The offeror has the burden of proof as to all issues in dispute.

(4) The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 35 days after the offer is made. No rebuttal evidence will be permitted and evidence and information submitted after these dates will be rejected.

(5) If requested, the Board will determine the amount and terms of subsidy based on the avoidable cost of providing continued rail transportation, plus a reasonable return on the value of the line. Under [49 U.S.C. 10904\(f\)\(4\)\(B\)](#), no subsidy arrangement approved under [section 10904](#) shall remain in effect for more than one year unless mutually agreed by the parties.

(6) If requested, the Board will determine the price and other terms of sale. The Board will not set a price below the fair market value of the line (including, unless otherwise agreed upon by the parties, all facilities on the line or portion necessary to provide effective transportation services). Fair market value equals constitutional minimum value which is the greater of the net liquidation value of the line or the going concern value of the line. The constitutional minimum value is computed without regard to labor protection costs.

(7) Within 10 days of the service date of the Board's decision, the offeror must accept or reject the Board's terms and conditions with a written notification to the Board and all parties to the proceeding. If the offeror accepts the terms and conditions set by the Board, the Board's decision is binding on both parties. If the offeror withdraws its offer or does not accept the terms and conditions set by the Board with a timely written notification, the Board will serve, within 20 days after the service date of the Board decision setting the terms and conditions, a decision vacating the prior decision, which postponed the effective date of either the decision granting the application or exemption or the notice of exemption, and which, if applicable, partially revoked the exemption or (in the case of a class exemption) the notice of exemption (unless other offers are being considered under paragraph (l) of this section). The decision to vacate will be effective on its date of service.

(i) Substitution of purchasers and disposition after sale.

(1) Prior to the consummation of a purchase under this section, an offeror may substitute its corporate affiliate as the purchaser under an agreement, provided the Board has

determined either:

(i) The original offeror has guaranteed the financial responsibility of its affiliate; or

(ii) The affiliate has demonstrated financial responsibility in its own right.

(2) Except as provided in paragraph (i)(3) of this section, a purchaser under this section may not:

(i) Transfer the line or discontinue service over the line prior to the end of the second year after consummation of the original sale under these provisions; or

(ii) Transfer the line, except to the carrier from whom the line was purchased, prior to the end of the fifth year after consummation.

(3) Paragraph (i)(2) of this section does not preclude a purchaser under this section from transferring the line to a corporate affiliate following the consummation of the original sale. Prior Board approval of the affiliate's acquisition and operation, however, is required under [49 U.S.C. 10901](#), [10902](#), or [11323](#). A corporate affiliate acquiring a line under this section is prohibited from discontinuing service over the line or transferring the line to a party that is not a corporate affiliate during the time periods prescribed in paragraph (i)(2) of this section.

(j) Discontinuance of subsidy. A subsidizer may discontinue a subsidy under this section by giving 60 days notice of the discontinuance to the applicant and all other parties to the proceeding. Unless another financially responsible party enters into a subsidy agreement as beneficial to the carrier as the discontinued subsidy agreement in a situation where the 1-year time limit of [49 U.S.C. 10904\(f\)\(4\)\(B\)](#) has not yet run, the carrier may by filing a request with the Board and serving the request on all parties to the abandonment or exemption proceeding obtain a decision vacating the decision postponing the effective date of either the decision granting the application, or petition for individual exemption, or the notice of exemption. The Board will issue a decision to vacate within 10 days after the filing and service of the request. This decision to vacate will be effective on its service date.

(k) Default on agreement. If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Board of that default. Upon notification, the Board will take appropriate action.

(l) Multiple offers of financial assistance.

(1) If an applicant receives more than one offer to purchase or subsidize the line from offerors found to be financially responsible, the applicant must select the offeror from

those with whom it wishes to transact business. In abandonment and discontinuance application and petition for exemption proceedings within 25 days after service of the decision granting the application or petition for exemption, and in class exemption proceedings within 45 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section, the railroad must:

(i) File a written notification of its selection with the Board; and

(ii) Serve a copy of the notification on all parties to the proceeding.

(2)(i) Abandonment and discontinuance applications and petitions for exemption. If the applicant has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Board to establish the conditions and amount of compensation within 40 days after the service date of the decision granting the application or petition for exemption. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 50 days of the service date of the decision granting the application or petition for exemption and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision authorizing abandonment or discontinuance within 60 days of the service date of the decision granting the application or petition for exemption. This decision will be effective on the date of service.

(ii) Class exemption proceedings. If the carrier seeking the exemption has received multiple offers of financial assistance from persons found to be financially responsible and has selected the offeror with whom it wishes to transact business, the negotiating parties shall complete the sale or subsidy agreement or request the Board to establish the conditions and amount of compensation within 60 days after the Federal Register publication described in paragraph (b)(2)(ii) of this section. A request to the Board to set terms and conditions must be served concurrently on all parties to the proceeding. If no agreement on subsidy or sale is reached within the 60-day period and the Board has not been requested to establish the conditions and amount of compensation, any other financially responsible offeror may request the Board to establish the conditions and amount of compensation. This request must be filed at the Board within 70 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section and served concurrently on all parties to the proceeding. If no other request is filed, the Board will issue a decision vacating the decision postponing the effective date of the notice of exemption within 80 days of the Federal Register publication described in paragraph (b)(2)(ii) of this section. The decision to vacate will be effective on the date of service.



(3) If the Board has established the conditions and amount of compensation, and the original offer is withdrawn under paragraph (h)(7) of this section, any other offeror found to be financially responsible may accept the Board's decision within 20 days after the service date of the Board's decision setting terms and conditions. If the decision is accepted by another such offeror, the Board will require the applicant to accept the terms incorporated in the Board's decision.

(m) Additional time for filing. Notwithstanding the deadlines previously set forth in part 1152 for filing an offer of financial assistance, parties that can show that they would be materially prejudiced by having less than the full 4 months for filing an offer of financial assistance provided in [49 U.S.C. 10904\(c\)](#) for application proceedings may seek relief under 49 CFR part 1117.

(n) Special provisions for summary discontinuance and abandonment of lines not part of the Final System Plan.

(1) Board authorization is not needed for the cessation of service on a line of railroad formerly in reorganization that was not included in the Final System Plan (Plan) under the Regional Rail Reorganization Act of 1973, [45 U.S.C. 701 et seq.](#), as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, if the line has been continuously subsidized since the inception of the Plan. To provide an opportunity for rail service continuation through offers of financial assistance, however, the owner of the line must give not less than 60 days' notice of a discontinuance, and beginning 120 days after discontinuance, not less than 30 days' notice of abandonment. Designated operators need only comply with the notice requirements of [§ 1150.11](#) of this title. In instances of discontinuance by a designated operator, the line owner is not obligated to operate the line. Notice is to be sent by the line owner to the Board, the governor and transportation agencies and the government of each political subdivision of each state in which such rail properties are located and to each shipper who has used the rail service during the previous 12 months. The Board will generally apply the OFA procedures in this section (49 CFR 1152.27) for class exemptions to summary abandonment and discontinuance notices (except that the Board will not postpone the effective date of a summary discontinuance). For example, notice of summary abandonment or discontinuance will be published by the Board in the Federal Register within 20 days of filing. Paragraph (b)(2)(ii) of this section. Expressions of intent to file an offer must be filed no later than 10 days after the Federal Register publication. Paragraph (c)(2)(i) of this section. An offer must be filed within 30 days of the Federal Register publication. Paragraphs (b)(2)(ii) and (c)(2)(ii)(B) of this section. The Board will review offers to determine if a financially responsible person has offered assistance. If this criterion is met, the Board will postpone the effective date of the summary abandonment (but not the discontinuance) within 35 days of the Federal Register publication. Paragraph (e)(2) of this section. If the carrier and financially responsible person fail to agree on the amount or terms of subsidy or purchase, either party may request the Board to establish the conditions and amount of the compensation. This request must be filed within 30 days after the offer of purchase or subsidy is made, and the Board will issue a decision within 30 days after the request is

due. Paragraphs (g)(1) and (h)(1) of this section.

(2) Where a designated operator is being used, it shall be paid a reasonable management fee. If the parties cannot agree on this fee, it shall be four and one-half percent of the total annual revenues attributable to the branch.

[[63 FR 28290](#), May 22, 1998; [74 FR 52909](#), Oct. 15, 2009; [75 FR 30713](#), June 2, 2010]

SOURCE: [61 FR 67883](#), Dec. 24, 1996; [63 FR 28290](#), May 22, 1998, unless otherwise noted.

AUTHORITY: [11 U.S.C. 1170](#); [16 U.S.C. 1247\(d\)](#) and [1248](#); [45 U.S.C. 744](#); and [49 U.S.C. 701](#) note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

#### **49 C.F.R. § 1152.28 Public use procedures.**

(a)(1) If the Board finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, the Board will determine if the involved rail properties are appropriate for use for other public purposes.

(2) A request for a public use condition under [49 U.S.C. 10905](#) must be in writing and set forth:

(i) The condition sought;

(ii) The public importance of the condition;

(iii) The period of time for which the condition would be effective (up to the statutory maximum of 180 days); and

(iv) Justification for the imposition of the time period. A copy of the request shall be mailed to the applicant.

(3) For applications filed under part 1152, subpart C, a request for a public use condition must be filed not more than 45 days after the application is filed. A decision on the public use request will be issued by the Board or the Director of the Office of Proceedings prior to the effective date of the abandonment. For abandonment exemptions under part 1152, subpart F or exemptions granted on the basis of an individual petition for exemption filed

under [49 U.S.C. 10502](#), a request for a public use condition must be filed not more than 20 days from the date of publication of the notice of exemption in the Federal Register in the case of class exemptions under subpart F of this part, or not more than 20 days from the date of publication of notice of the filing of the petition for individual exemption in the Federal Register.

(b) If the Board finds that the rail properties are appropriate for use for other public purposes, the railroad may dispose of the rail properties only under the conditions described in the Board's decision. The conditions imposed by the Board may include a prohibition against the disposal of the rail assets for a period of not more than 180 days from the effective date of the decision authorizing the abandonment or discontinuance, unless the properties have first been offered, on reasonable terms, for sale for public purposes. This period will run concurrently with any other postponements. Jurisdiction to impose such conditions expires after 180 days from the effective date of the decision authorizing the abandonment or discontinuance.

SOURCE: [61 FR 67883](#), Dec. 24, 1996; [63 FR 28290](#). May 22, 1998, unless otherwise noted.

AUTHORITY: [11 U.S.C. 1170](#); [16 U.S.C. 1247\(d\)](#) and [1248](#); [45 U.S.C. 744](#); and [49 U.S.C. 701](#) note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

**49 C.F.R. § 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.**

(a) If any state, political subdivision, or qualified private organization is interested in acquiring or using a right-of-way of a rail line proposed to be abandoned for interim trail use and rail banking pursuant to [16 U.S.C. 1247\(d\)](#), it must file a comment or otherwise include a request in its filing (in a regulated abandonment proceeding) or a petition (in an exemption proceeding) indicating that it would like to do so. The comment/request or petition must include:

- (1) A map depicting, and an accurate description of, the right-of-way, or portion thereof (including mileposts), proposed to be acquired or used;
- (2) A statement indicating the trail sponsor's willingness to assume full responsibility for:
  - (i) Managing the right-of-way;

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

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

(3) An acknowledgment that interim trail use is subject to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

#### Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under [16 U.S.C. 1247\(d\)](#) and 49 CFR 1152.29 with respect to the right-of-way owned by \_\_\_\_\_ (Railroad) and operated by \_\_\_\_\_ (Railroad), \_\_\_\_\_ (Interim Trail Sponsor) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way. The property, known as \_\_\_\_\_ (Name of Branch Line), extends from railroad milepost \_\_\_\_\_ near \_\_\_\_\_ (Station Name), to railroad milepost \_\_\_\_\_, near \_\_\_\_\_ (Station name), a distance of \_\_\_\_\_ miles in [County(ies), (State(s) ]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB \_\_\_\_\_ (Sub-No. \_\_\_\_\_). A map of the property depicting the right-of-way is attached.

\_\_\_\_\_ (Interim Trail Sponsor) acknowledges that use of the right-of-way is subject to the sponsor's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

(b)(1) In abandonment application proceedings under [49 U.S.C. 10903](#), interim trail use statements are due within the 45-day protest and comment period following the date the abandonment application is filed. See [§ 1152.25\(c\)](#). The applicant carrier's response notifying the Board whether and with whom it intends to negotiate a trail use agreement is due within 15 days after the close of the protest and comment period (i.e., 60 days after the abandonment application is filed).

(i) In every proceeding where a Trails Act request is made, the Board will determine whether the Trails Act is applicable.

(ii) If the Trails Act is not applicable because of failure to comply with § 1152.29(a), or is applicable but the carrier either does not intend to negotiate an agreement, or does not timely notify the Board of its intention to negotiate, a decision on the merits will be issued and no Certificate of Interim Trail Use or Abandonment (CITU) will be issued. If the carrier is willing to negotiate an agreement, and the public convenience and necessity permit abandonment, the Board will issue a CITU.

(2) In exemption proceedings, a petition containing an interim trail use statement is due within 10 days after the date the notice of exemption is published in the Federal Register in the case of a class exemption and within 20 days after publication in the Federal Register of the notice of filing of a petition for exemption in the case of a petition for exemption. When an interim trail use comment(s) or petition(s) is filed in an exemption proceeding, the railroad's reply to the Board (indicating whether and with whom it intends to negotiate an agreement) is due within 10 days after the date a petition requesting interim trail use is filed.

(3) Late-filed trail use statements must be supported by a statement showing good cause for late filing.

(c) Regular abandonment proceedings.

(1) If continued rail service does not occur pursuant to [49 U.S.C. 10904](#) and [Sec. 1152.27](#), and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail sponsor for that portion of the right-of-way as to which both parties are willing to negotiate. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date the CITU is issued; and permit the railroad to fully abandon the line if no trail use agreement is reached 180 days after the CITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The CITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the CITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the CITU and request that it be vacated on a specified date. If a party requests that the CITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement CITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-

of-way. Copies of the decision will be sent to:

- (i) The abandonment applicant;
- (ii) The owner of the right-of-way; and
- (iii) The current trail sponsor.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under [49 U.S.C. 10901](#) and 49 CFR part 1150, or exempted under [49 U.S.C. 10502](#), then the CITU will be vacated accordingly.

(d) Exempt abandonment proceedings.

(1) If continued rail service does not occur under [49 U.S.C. 10904](#) and 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail sponsor for the portion of the right-of-way as to which both parties are willing to negotiate. The NITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date the NITU is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after the NITU is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The NITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the NITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the NITU and request that it be vacated on a specific date. If a party requests that the NITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement NITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

- (i) The abandonment exemption applicant;
- (ii) The owner of the right-of-way; and

(iii) The current trail sponsor.

(3) If an application to construct and operate a rail line over the right-of-way is authorized under [49 U.S.C. 10901](#) and 49 CFR part 1150, or exempted under [49 U.S.C. 10502](#), then the NITU will be vacated accordingly.

(e)(1) Where late-filed trail use statements are accepted, the Director (or designee) will telephone the railroad to determine whether abandonment has been consummated and, if not, whether the railroad is willing to negotiate an interim trail use agreement. The railroad shall confirm, in writing, its response, within 5 days. If abandonment has been consummated, the trail use request will be dismissed. If abandonment has not been consummated but the railroad refuses to negotiate, then trail use will be denied. If abandonment has not been consummated and the railroad is willing to negotiate, the abandonment proceeding will be reopened, the abandonment decision granting an application, petition for exemption or notice of exemption will be vacated, and an appropriate CITU or NITU will be issued. The effective date of the CITU or NITU will be the same date as the vacated decision or notice.

(2) A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under [49 U.S.C. 10903](#), or by individual or class exemption issued under [49 U.S.C. 10502](#)) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. Copies of the railroad's notice of consummation shall be filed with the Chief, Section of Administration, Office of Proceedings. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. For good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing.

(f)(1) When a trail user intends to terminate trail use and another person intends to become a trail user by assuming financial responsibility for the right-of-way, then the existing and future trail users shall file, jointly:

(i) A copy of the extant CITU or NITU; and

(ii) A Statement of Willingness to Assume Financial Responsibility by the new trail user.

(iii) An acknowledgement that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

(2) The parties shall indicate the date on which responsibility for the right-of-way is to transfer to the new trail user. The Board will reopen the abandonment or exemption proceeding, vacate the existing NITU or CITU; and issue an appropriate replacement NITU or CITU to the new trail user.

(g) In proceedings where a timely trail use statement is filed, but due to either the railroad's indication of its unwillingness to negotiate interim trail use agreement, or its failure to timely notify the Board of its willingness to negotiate, a decision authorizing abandonment or an exemption notice or decision is issued instead of a CITU or NITU, and subsequently the railroad and trail use proponent nevertheless determine to negotiate an interim trail use agreement under the Trails Act, then the railroad and trail use proponent must file a joint pleading requesting that an appropriate CITU or NITU be issued. If the abandonment has not been consummated, the Board will reopen the proceeding, vacate the outstanding decision or notice (or portion thereof), and issue an appropriate CITU or NITU that will permit the parties to negotiate for a period agreed to by the parties in their joint filing, but not to exceed 180 days, at the end of which, the CITU or NITU will convert into a decision or notice permitting abandonment.

(h) When the parties negotiating for rail banking/interim trail use reach an agreement, the trail sponsor and railroad shall jointly notify the Board within 10 days that the agreement has been reached. The notice shall include a map depicting, and an accurate description of, the involved right-of-way or portion thereof (including mileposts) that is subject to the parties' interim trail use agreement and a certification that the interim trail use agreement includes provisions requiring the sponsor to fulfill the responsibilities described in paragraph (a)(2) of this section. Additionally, if the interim trail use agreement establishes interim trail use over less of the right-of-way than is covered by the CITU or NITU, the notice shall also include a request that the Board vacate the CITU or NITU and issue a replacement CITU/NITU for only the portion of the right-of-way covered by the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU or NITU, issue an appropriate replacement CITU or NITU for only the portion of the right-of-way covered by the interim trail use agreement, and issue a decision permitting immediate abandonment of the portion of the right-of-way not



subject to the interim trail use agreement. Copies of the decision will be sent to:

(1) The rail carrier that sought abandonment authorization;

(2) The owner of the right-of-way; and

(3) The current trail sponsor.

[[62 FR 34670](#), June 27, 1997; [64 FR 53268](#), Oct. 1, 1999; [74 FR 52910](#), Oct. 15, 2009; [77 FR 25914](#), May 2, 2012]

SOURCE: [61 FR 67883](#), Dec. 24, 1996; [63 FR 28290](#), May 22, 1998, unless otherwise noted.

AUTHORITY: [11 U.S.C. 1170](#); [16 U.S.C. 1247\(d\)](#) and [1248](#); [45 U.S.C. 744](#); and [49 U.S.C. 701](#) note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.