

§ 1151.4

(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

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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 year¹; and
- (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.

[48 FR 9654, Mar. 8, 1983, as amended at 56 FR 37862, Aug. 9, 1991; 64 FR 53268, Oct. 1, 1999]

§ 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

¹Gross 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.

(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.

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

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1152.50 Exempt abandonments and discontinuances of service and trackage rights.

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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