

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

- (1) abandon any part of its railroad lines; or
- (2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

- (1) finds public convenience and necessity, it shall—
 - (A) approve the application as filed; or
 - (B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or
- (2) fails to find public convenience and necessity, it shall deny the application.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 823; amended Pub. L. 112-141, div. C, title II, §32932(b), July 6, 2012, 126 Stat. 829.)

REFERENCES IN TEXT

Section 24706(c) of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 105-134, title I, §142(a), Dec. 2, 1997, 111 Stat. 2576, effective 180 days after Dec. 2, 1997.

PRIOR PROVISIONS

A prior section 10903, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1403; Pub. L. 96-448, title IV, §402(a), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98-216, §2(14), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(24), July 5, 1994, 108 Stat. 1378, related to authorizing abandonment and discontinuance of railroad lines and rail transportation.

AMENDMENTS

2012—Subsec. (b)(2). Pub. L. 112-141 substituted “24706(c) of this title before May 31, 1998” for “24706(c) of this title”.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE

Section effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

RAILROAD BRANCHLINE ABANDONMENTS BY BURLINGTON NORTHERN RAILROAD IN NORTH DAKOTA

Pub. L. 97-102, title IV, §402, Dec. 23, 1981, 95 Stat. 1465, as amended by Pub. L. 102-143, title III, §343, Oct. 28, 1991, 105 Stat. 948, provided that: “Notwithstanding any other provision of law or of this Act, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles, except that exempt abandonments and discontinuances that are effectuated pursuant to section 1152.50 of title 49 of the Code

of Federal Regulations after the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 1992 [Oct. 28, 1991], shall not apply toward such 350-mile limit: *Provided*, That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1982 (H.R. 4209), filed in the House of Representatives on November 13, 1981 (H. Rept. No. 97-331).” [Section 311 of H.R. 4209 is section 311 of Pub. L. 97-102, title III, Dec. 23, 1981, 95 Stat. 1460, which is not classified to the Code.] Similar provisions were contained in Pub. L. 97-92, title IV, §115, Dec. 15, 1981, 95 Stat. 1196.

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of this title, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of this title.]

§ 10904. Offers of financial assistance to avoid abandonment and discontinuance

(a) In this section—

(1) the term “avoidable cost” means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

- (A) working capital and required capital expenditure;
- (B) expenditures to eliminate deferred maintenance;
- (C) the current cost of freight cars, locomotives, and other equipment; and
- (D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

(2) the term “reasonable return” means—

- (A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and
- (B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

- (1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation;
- (2) its most recent reports on the physical condition of that part of the railroad line involved in the proposed abandonment or discontinuance;
- (3) traffic, revenue, and other data necessary to determine the amount of annual financial

assistance which would be required to continue rail transportation over that part of the railroad line; and

(4) any other information that the Board considers necessary to allow a potential offeror to calculate an adequate subsidy or purchase offer.

(c) Within 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application. Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier's estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated.

(d)(1) Unless the Board, within 15 days after the expiration of the 4-month period described in subsection (c), finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance regarding that part of the railroad line to be abandoned or over which all rail transportation is to be discontinued, abandonment or discontinuance may be carried out in accordance with section 10903.

(2) If the Board finds that such an offer or offers of financial assistance has been made within such period, abandonment or discontinuance shall be postponed until—

(A) the carrier and a financially responsible person have reached agreement on a transaction for subsidy or sale of the line; or

(B) the conditions and amount of compensation are established under subsection (f).

(e) Except as provided in subsection (f)(3), if the rail carrier and a financially responsible person (including a governmental authority) fail to agree on the amount or terms of the subsidy or purchase, either party may, within 30 days after the offer is made, request that the Board establish the conditions and amount of compensation.

(f)(1) Whenever the Board is requested to establish the conditions and amount of compensation under this section—

(A) the Board shall render its decision within 30 days;

(B) for proposed sales, the Board shall determine the price and other terms of sale, except that in no case shall the Board set a price which is below the fair market value of the line (including, unless otherwise mutually agreed, all facilities on the line or portion necessary to provide effective transportation services); and

(C) for proposed subsidies, the Board shall establish the compensation as the difference between the revenues attributable to that part of the railroad line and the avoidable cost of providing rail freight transportation on the line, plus a reasonable return on the value of the line.

(2) The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision. In such a case, the abandonment or discontinuance may be carried out immediately, unless other offers are being considered pursuant to paragraph (3) of this subsection.

(3) If a rail carrier receives more than one offer to subsidize or purchase, it shall select the offeror with whom it wishes to transact business, and complete the subsidy or sale agreement, or request that the Board establish the conditions and amount of compensation before the 40th day after the expiration of the 4-month period described in subsection (c). If no agreement on subsidy or sale is reached within such 40-day period and the Board has not been requested to establish the conditions and amount of compensation, any other offeror whose offer was made within the 4-month period described in subsection (c) may request that the Board establish the conditions and amount of compensation. If the Board has established the conditions and amount of compensation, and the original offer has been withdrawn, any other offeror whose offer was made within the 4-month period described in subsection (c) may accept the Board's decision within 20 days after such decision, and the Board shall require the carrier to enter into a subsidy or sale agreement with such offeror, if such subsidy or sale agreement incorporates the Board's decision.

(4)(A) No purchaser of a line or portion of line sold under this section may transfer or discontinue service on such line prior to the end of the second year after consummation of the sale, nor may such purchaser transfer such line, except to the rail carrier from whom it was purchased, prior to the end of the fifth year after consummation of the sale.

(B) No subsidy arrangement approved under this section shall remain in effect for more than one year, unless otherwise mutually agreed by the parties.

(g) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 825.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10905 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10904, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1404; Pub. L. 96-448, title IV, §402(b), Oct. 14, 1980, 94 Stat. 1941; Pub. L. 98-216, §2(4), Feb. 14, 1984, 98 Stat. 5, related to filing and procedure for applications to abandon or discontinue railroad lines or rail transportation, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See section 10903 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

§ 10905. Offering abandoned rail properties for sale for public purposes

When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the