



DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
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Mr. Jonathon Binet
United States Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: DoD Comment Regarding Offers of Financial Assistance (Docket No. EP 729)

Dear Mr. Binet:

The Surface Transportation Board sought comment on whether and how it should update its rules pertaining to offers of financial assistance in order to improve that process and protect it from abuse. Enclosed, please find comments from the Military Surface Deployment and Distribution Command (SDDC).

Should any questions arise regarding SDDC's comments, please do not hesitate to contact me at (618) 220-5796 or via e-mail at david.j.dicenso.civ@mail.mil. Thank you for your consideration of the enclosed.

DAVID J. DICENSO
Attorney-Advisor

SURFACE TRANSPORTATION BOARD
49 CFR CHAPTER X
[DOCKET NO. EP 729]
OFFERS OF FINANCIAL ASSISTANCE
ADVANCED NOTICE OF PROPOSED RULEMAKING

COMMENTS FROM
RAILROADS FOR NATIONAL DEFENSE PROGRAM
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
TRANSPORTATION ENGINEERING AGENCY

This statement is in regard to the Surface Transportation Board Federal Register Docket Number EP 729 which was published in the Federal Register on December 14, 2015. This is an advanced notice of proposed rulemaking concerning offers of financial assistance (OFA) related to prospective railroad abandonments and discontinuances of service.

The Surface Transportation Board seeks comments on whether and how it should update its rules pertaining to offers of financial assistance.

On behalf of the Department of Defense, the Military Surface Deployment and Distribution Command (SDDC) has an ongoing interest concerning proposed changes to the railroad abandonment process.

By way of background, the Transportation Engineering Agency of SDDC (SDDCTEA), through the Railroads for National Defense (RND) Program, works with each military Service to identify its requirements for civil sector rail service. The Services' needs and requirements are then integrated into civil sector plans. The October 2013 report, "Strategic Rail Corridor Network (STRACNET) and Defense Connector Lines", is the formal document that designates civil rail lines most important to national defense. This designation comprises over 36,000 miles of integrated and interconnected lines for the movement of defense cargo throughout the United States in peace and war. There are approximately 120 military installations and other locations involved in the movement of defense forces and material to ports of embarkation for deployment. These sites require rail service to accomplish their assigned mission and are served by lines designated as part of the STRACNET and connectors between STRACNET lines and military installations and critical ports.

Occasionally, the rail carriers that own these lines make a financial determination that they lose money and they then seek to abandon them. If a rail line is important to national defense, the Department of Defense must be able to enter the abandonment process to prevent the abandonment. One of the tools for preventing an abandonment is the OFA.

Railroads are to be operated in the public interest. If it is in the public interest that a money-losing railroad line remain in operation, then it is reasonable to expect some government entity to

submit an OFA, preserving the public interest of continued operation, while not damaging the private interest by forcing a railroad company to continue to operate a railroad line that serves the public interest at an uncompensated loss. Clearly, national defense is one aspect of the public interest.

Any rulemaking should continue the presumption in the Code of Federal Regulations § 1152.27 that any government entity is financially responsible. Therefore, government entities should not be required to make an “earnest money” payment or escrow payment, or to obtain a bond in order to propose, prepare, or file an OFA. Carriers should be required to provide financial information to government entities that are considering filing an OFA without the government entities having to prove they are financially responsible.

The rulemaking should not require that offerors perform additional steps or reduce the time offerors have to file OFAs below what is currently specified in the Code of Federal Regulations § 1152.27. The Code of Federal Regulations § 1152.27 already has stringent timelines and procedures for offerors to follow.

Government entities and shippers on the rail line should not have to demonstrate a need for rail service to file an OFA. Since the offeror(s) intend to make an OFA, it should be presumed that they recognize the need to do so and consider rail service so important to them that they are willing to pay for (or subsidize) it. There should be no need for them to demonstrate that rail service is operationally feasible; the cost of operating (and, if necessary, restoring) the rail line would be resolved between the parties pursuant to the OFA negotiations.

The current OFA process protects and preserves the interests of potential stake holders, to include the U.S. Government who is charged with critical responsibilities of national defense. The Board should deny any request by a carrier to be exempted from the OFA process if there is a potential benefit to national defense in retaining the line.

Normally, if the Department of Defense were to make an OFA, it would be with the intent for the current carrier to continue operations on the line rather than government acquisition of the line. Thus, the presumption should be that the existing carrier will retain the common carrier obligations if the OFA process is successful. If it is initially unclear which entity within a group that is filing an OFA will actually contract with the carrier, the uncertainty can be resolved on a case-by-case basis as part of the OFA process.

If a government entity files an OFA, there should not be a requirement for an individual to provide his or her personal address. Likewise, if a government entity files an OFA, there should not be a requirement to include its legal name, the state under whose laws it is organized, and the address of its principal place of business; these items would not be applicable.

We note that the Board believes that at this stage the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, (RFA) do not apply. However, we believe that they may apply

at some point in the process. Any community with a population less than 50,000 that is served by a railroad is potentially impacted by this rule. While the Department of Defense may not be directly impacted, it is foreseeable that a small municipal entity meeting this definition would step forward with an OFA for a rail line that is being considered for abandonment; that line may also have a very important role in our National Defense. Thus, any definitions or processes regarding "small entities" should accommodate the potential interests of small communities as well as the Department of Defense impact and national security concerns.

The Department of Defense rarely participates in abandonment cases since most proposed railroad abandonments do not involve railroad lines that are important to national defense. However, if an abandonment application is filed and we recognize an important national defense interest, the OFA process must remain flexible enough to fully support Department of Defense interests in preserving the line.



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