SURFACE TRANSPORTATION BOARD

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STB PROPOSES COMPREHENSIVE REFORMS TO STREAMLINE TRAIL USE AND RAILBANKING PROCESS

The Surface Transportation Board today issued a notice of proposed rulemaking to modernize and simplify the Board's trail use and railbanking regulations. The proposal would reduce regulatory burdens, streamline the railbanking process, and better align the Board's procedures with its limited, ministerial role under the National Trails System Act Amendments of 1983 (the Trails Act). Consistent with the statute, the proposed rule eliminates the Board's role in the negotiation of interim trail use, provides a discontinuance pathway to trail use, and clarifies the Board's role when implementing the Trails Act, among other changes.

The U.S. Department of Justice petitioned the Board to amend its Trails Act implementing regulations. In light of that petition and a broader critical review of its existing regulations, the Board now proposes a comprehensive set of reforms.

Under the Trails Act, participation in trail use by rail carriers and potential trail sponsors is entirely voluntary. Currently, during an abandonment authorization proceeding, a prospective trail sponsor may file a request that the Board issue a Notice or Certificate of Interim Trail Use (NITU or CITU), which specifies a voluntary negotiation period and preserves the rail corridor from abandonment while negotiations are underway but permits the rail carrier to discontinue service. If a trail use agreement is reached, a rail carrier cannot exercise abandonment authority during trail use. If an agreement is not reached before the negotiating period expires, or if a NITU or CITU is revoked (including because a trail sponsor has terminated trail use), the rail carrier may abandon the line within a prescribed time period without further action from the Board. Courts have found that trail use under this process can result in a federal taking of property. Under today's proposal:

- The Board would no longer issue a NITU or CITU. Instead, rail carriers and prospective trail sponsors would negotiate outside of Board processes.
- Once an agreement is reached, the parties would request a Board Trails Act order authorizing the transfer of the rail carrier's interest in the right-of-way to the sponsor.
- A new pathway would allow Trails Act requests in discontinuance proceedings, and the existing abandonment pathway would be modified.

- If a rail line has previously been authorized for abandonment and a Trails Act order is requested, the rail carrier would give up that abandonment authority, requiring new authority if they want to abandon the line in the future.

- The Board would clarify in Trails Act orders that the agency is not exercising eminent domain nor is it requiring use of a right-of-way in a manner that is inconsistent with the property rights transferred by the rail carrier.

- Where a rail carrier or owner of a rail line wants to act as its own trail sponsor, there would no longer be any required Board action before trail use can be implemented.

- A trail sponsor would continue to assume responsibilities required under the Trails Act, and the right-of-way would remain subject to possible reactivation of rail service.

The proposed rule would apply prospectively and would not affect lines for which a NITU or CITU is already in place at the time the rule is adopted. The Board expects these proposed changes would reduce filing requirements and regulatory costs, while also reducing potential federal takings liability by clarifying the Board's role.

The Board invites public comment on the proposed rule. Comments are due by January 8, 2027, and reply comments are due by February 8, 2027. The Notice of Proposed Rulemaking in Petition for Rulemaking to Consider Amendments to Regulations Governing Interim Use of Rights-of-Way as Trails (49 CFR Part 1152), Docket No. EP 777, may be viewed and downloaded here.

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