

STB ADOPTS FINAL RULE TO IMPROVE OFFER OF FINANCIAL ASSISTANCE PROCESS AND PROTECT IT AGAINST ABUSE

The Surface Transportation Board announced today that it is adopting a final rule to improve the agency's Offer of Financial Assistance (OFA) process and protect it from abuse.

Under the OFA process, financially responsible parties may offer to temporarily subsidize continued rail service over a line that a carrier seeks to abandon or discontinue service, or offer to purchase a line and provide continued rail service on a line that a carrier seeks to abandon. Although the OFA process has been used numerous times for legitimate offers to save rail service, the STB is aware of occasions when parties have initiated the process in bad faith. The modifications adopted today enhance the Board's ability to protect the integrity of the OFA process by ensuring that OFA offerors are financially capable of maintaining service and that there is a continued need for rail service. The modifications will also improve overall efficiency and transparency of the OFA process.

With respect to financial responsibility, under the amended regulation, an OFA offeror makes a preliminary showing of financial responsibility when it submits its notice of intent to the Board and the incumbent railroad. The rule establishes a formula for calculating the level of financial responsibility the offeror would need to demonstrate, which varies based on whether the offeror seeks to subsidize continued rail service or acquire the line outright. Additionally, the rule codifies what constitutes proper evidence of financial responsibility (e.g., balance sheets, letters of credit, financing commitments) and what does not (e.g., the ability to borrow money on credit cards and evidence of non-liquid assets intended as collateral).

The amended regulation also requires that the OFA offeror show a continued need for rail service on the line subject to discontinuance or abandonment. This showing would be made when the offeror files its offer with the Board and would be based on evidence of commercial need (e.g., letters of support from industry), community need (e.g., letters of support from local government), local transit dynamics, and overall operational feasibility.

The Board's final rules in Offers of Financial Assistance, Docket No. EP 729, may be viewed and downloaded at www.stb.gov, under "E-LIBRARY / Decisions & Notices / 06 / 29 / 17".