

## § 245.303

### § 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full shall be received by FRA no later than thirty days after the Assessment Notice is mailed. Payment is made only when received by FRA. Payments in excess of ten thousand dollars (\$10,000.00) shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the Assessment Notice. Payments of ten thousand dollars or less shall be by check or money order payable to the Federal Railroad Administration. The payment shall be identified as the railroad's user fee by noting it with the User Fee Bill Number as assigned by FRA and by returning the payment record received with the Assessment Notice. Payment shall be sent to the address stated in the assessment notice. Any railroad making an aggregate payment for one or more subsidiaries or affiliates should return the payment records for each and list all applicable Bill Numbers with the payment.

(b) The responsibility for paying the user fee rests with the responsible entity (see §245.5(h)). Parties involved in purchase and sale transactions of railroad(s) or portions of a railroad shall be responsible for allocating the user fee amongst the interested entities in an appropriate fashion. FRA will not prorate user fee bills.

(c) No user fee will be collected from railroads that properly report zero train miles and zero road miles on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

(d) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures (49 CFR 89).

## 49 CFR Ch. II (10-1-04 Edition)

### PART 250—GUARANTEE OF CERTIFICATES OF TRUSTEES OF RAILROADS IN REORGANIZATION

Sec.

- 250.1 Form and content of application.
- 250.2 Required exhibits.
- 250.3 Fees.
- 250.4 Execution and filing of application.
- 250.5 General instructions.

AUTHORITY: Sec. 3(f) of the Emergency Rail Services Act of 1970, Pub. L. 91-663; sec. 1.49(m), regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m).

SOURCE: 36 FR 770, Jan. 16, 1971, unless otherwise noted.

#### § 250.1 Form and content of application.

The application shall include, in the order indicated and by section numbers and letters corresponding to those used in this part, the following:

- (a) *As to the Trustee:*
  - (1) Full and correct name and principal business address.
  - (2) The name and address of the reorganization court under the direction of which the Trustee is acting and the docket number of the proceeding.
  - (3) Name, title, and address of the person to whom correspondence regarding the application should be addressed.
  - (4) Brief description of the loan and its purpose or purposes, including statements of
    - (i) The total amount of the loan and the amount of the guarantee being sought,
    - (ii) The purpose or purposes for which the loan proceeds will be used,
    - (iii) The maturity date or dates,
    - (iv) The date or dates on which the Trustee desires the funds to be made available, and
    - (v) The rate of interest.
  - (5) Statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by applicant or any applicant's parent as to the date of the application, including:
    - (i) Status of any claims under litigation; and
    - (ii) Any other debts or credits existing between the applicant and the United States, showing the department

or agency involved in such loans, claims and other debts;

(6)(i) Statement on behalf of the Trustee that the Trustee has endeavored to obtain a loan or loans for the purpose or purposes proposed without a guarantee by the Secretary, but has not been able to obtain a loan therefor upon reasonable terms, or if only upon terms considered unreasonable, a statement setting forth such terms and describing any facts relevant thereto.

(ii) Information as to the Trustee's efforts to obtain the needed financing without a guarantee thereof by the Secretary, and as to the results of such efforts. (See §250.2(b)(1) as to exhibits on this subject.)

(7) Full and complete statement, together with independent supporting evidence, where feasible, concerning the effect that cessation of essential transportation services of carrier would have on the public welfare.

(8) Full and complete statement, together with supporting evidence, where possible, demonstrating that cessation of essential transportation services by applicant carrier is imminent.

(9) Full and complete statement, together with supporting evidence, if possible, that there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide essential transportation services other than the issuance of Trustee certificates. Such statements shall include in detail a complete listing of all nontransportation assets of the carrier and corporate affiliates, or subsidiaries having a fair market value of not less than \$50,000, together with the amount of encumbrances thereon, if any, and a statement or plan for the disposition or sale of such assets as a means of obtaining funds necessary for essential transportation services.

(10) Full and complete statement, together with supporting evidence, if possible, demonstrating, with particularity, that the carrier can reasonably be expected to become self sustaining within a reasonable period of time.

(11) Full and complete statement, together with supporting evidence, that the probable value of the assets of the carrier in the event of liquidation provides reasonable protection to the United States.

(b) *As to the holder or holders:*

(1) Full and correct name and principal business address.

(2) Names and addresses of principal executive officers and directors, or partners.

(3) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to the lender to make the loan and to accept the proposed obligation.

(4) Brief statement of the circumstances and negotiations leading to the agreement by the lender to make the proposed loan, including the name and address of any person or persons, or employees of the carrier, representing or purporting to represent the Trustee in connection with such negotiations.

(5) Brief statement of the nature and extent of any affiliation or business relationship between the lender and any of its directors, partners, or principal executive officers, on the one hand, and, on the other, the carrier and any of its directors, partners, or principal executive officers, or any person or persons whose names are required to be furnished under paragraph (b)(4) of this section.

(6) Full and complete statement of all sums paid or to be paid and of any other consideration given or to be given by lender in connection with the proposed loan, including with respect thereto:

(i) Name and address of each person to whom the payment is made or to be made,

(ii) The amount of the cash payment, or the nature and value of other consideration,

(iii) The exact nature of the services rendered or to be rendered,

(iv) Any condition upon the obligation of the lender to make such payment, and

(v) The nature of any affiliation, association, or prior business relationship between any person named in answer to paragraph (6)(i) of this section and the lender or any of its directors, partners, or officers.

(c) *As to the impact of the financing on the environment.* (1) Summary statement of the use to which funds will be put and any anticipated impact on the

## § 250.2

## 49 CFR Ch. II (10-1-04 Edition)

environment. After reviewing this submission, the Administrator retains the right to require the Trustee to submit a detailed assessment of the financing's impact on the environment in a general format to be supplied by the Administrator.

(2) [Reserved]

[44 FR 23851, Apr. 23, 1979]

### § 250.2 Required exhibits.

There shall be filed with and made a part of each application and copy thereof the following exhibits, except that exhibits filed with the Administrator pursuant to some other statutory provision or regulation which are in the same format as the following exhibits may be incorporated in and made part of the application filed under this part by reference. While the application is pending, when actual data become available in place of the estimated or forecasted data required in the exhibits under this part, such actual data must be reported promptly to the Administrator in the form required in the appropriate exhibit.

(a) The following exhibits are required concerning the Trustee and the carrier:

(1) As Exhibit 1, copy of duly certified order of the court, or instrument of appointment, appointing trustees of the carrier.

(2) As Exhibit 2, a certified copy of the order(s) of the reorganization court having jurisdiction of applicant authorizing (i) the filing of the application with the Administrator for a guarantee of the Trustee's certificate; (ii) filing of the application with the Interstate Commerce Commission for authority to issue a Trustee's certificate; (iii) such pledge of security for the loan and the guarantee as the applicant proposes in connection with Exhibit 3; and (iv) compliance by the Trustee with conditions to the guarantee imposed by law and the Administrator.

(3) As Exhibit 3, full and complete statement, together with supporting evidence, that the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

(4) As Exhibit 4, a map of the carrier's existing railroad.

(5) As Exhibit 5, statement showing miles of line owned; miles operated; number of units of locomotives, freight cars, and passenger cars owned and leased; principal commodities carried; and identification of the ten most important industries served.

(6) As Exhibit 6, statement as to whether any railroad affiliated with the carrier has applied for or received any Federal assistance since 1970.

(7) As Exhibit 7, statement showing total dividends, if any, declared and total dividends paid for each of the last 5 calendar years and for each month of the current year to latest available date.

(8) As Exhibit 8, a copy of applicant's most recent year-end general balance sheet certified by applicant's independent public accountants, if available, and a copy of applicant's most recent unaudited general balance sheet as of a date no less recent than the end of the third month preceding the date of the filing of the application. The unaudited balance sheet shall be presented in account form and detail as required in Schedule 200 of the Commission's annual report R-1 or R-2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R-1 or R-2 with marginal notations listing the changes may be substituted):

(i) Particulars of Account 704, Loans and Notes Receivable, in form and detail as required in Schedule 201 of annual report R-1 for the Class I railroads, and in similar form for the Class II railroads except that for Class II railroads, loans and notes receivable that are each less than \$25,000 may be combined into a single amount;

(ii) Particulars of investment in affiliated companies and other investment in form and detail required in Schedules 205 and 206 of annual report R-1, or Schedules 1001 and 1002 of annual report R-2, as appropriate;

(iii) Particulars of balances in Accounts 741, Other Assets, and 743, Other Deferred Changes, in form and detail required in Schedule 216 of annual report R-1 or Schedule 1703 of annual report R-2, as appropriate;