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## Title 49 —Transportation

### Subtitle B —Other Regulations Relating to Transportation

#### Chapter II —Federal Railroad Administration, Department of Transportation

#### Part 250 Guarantee of Certificates of Trustees of Railroads in Reorganization

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

**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 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;
  - (iv) Particulars of loans and notes payable in form and detail required in Schedule 223 of annual report R-1, or Schedule 1701 of annual report R-2, as appropriate, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security, if any;
  - (v) Particulars of long-term debt in form and detail required in Schedules 218 and 219 of annual report R-1 or Schedules 670, 695, 901, 902 and 1702 of annual report R-2, as appropriate, together with a brief statement concerning each mortgage, pledge, and other lien, indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

- (vi) Particulars of balance in Account 784. Other Deferred Credits, in form and detail required in Schedule 225 of annual report R-1 or Schedule 1704 of annual report R-2, as appropriate; and
  - (vii) Particulars as to capital stock in form and detail required in Schedules 228, 229, and 230 of annual report R-1 or Schedule 690 in annual report R-2, as appropriate.
- (9) As Exhibit 9, a copy of carrier applicant's report to its stockholders or report of the trustee for each of the 3 years preceding the year in which the application is filed.
- (10) As Exhibit 10, applicant's most recent annual income statement certified by applicant's independent public accounts if available, and a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed in account form similar to that required in column (a) of Schedule 300 of annual report R-1 or R-2 as appropriate. For those months preceding and ending upon the date of the unaudited balance sheet presented in Exhibit 8, the income statement shall be reported on an actual basis and so noted. For those months between the dates of the unaudited balance sheet and the filing of the application, the income statement data shall be reported on an estimated basis and so noted and shall be submitted in conjunction with corresponding estimated month-end balance sheets. For those months between the date of the application and the end of the year income statement data shall be presented on a forecasted basis and so noted and shall be submitted in conjunction with a forecasted balance sheet as at the year end.
- (11) As Exhibit 11, spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance required in the application:
- (i) Forecasted annual income statement data in account form and detail similar to that required in column (a) of Schedule 300 of annual report R-1 or R-2 as appropriate, including the subaccounts comprising line 2 (railway operating expenses), as specified by lines 64, 92, 105, 159, 166, and 180 of Schedule 320; and
  - (ii) Forecasted year-end balance sheets in account form and detail similar to that required in Schedule 200 of annual report R-1 or R-2, as appropriate. These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts.
- (12) As Exhibit 12, a spread sheet showing changes in financial position for the year in which the application is filed in account form and detail as required in Schedule 309 of annual report R-1 and R-2 as appropriate as follows:
- (i) For that period ending on the date of the unaudited balance sheet in Exhibit C, based upon actual data; and
  - (ii) For that period from the balance sheet date to the end of the year, based upon estimated and forecasted data.
- (13) As Exhibit 13, a spread sheet showing forecasted changes in financial position for each of the four calendar years subsequent to the year in which the application is filed, both before and after giving effect to any funds requested in the application and including a statement showing the bases for such estimates, in account form and detail as required in Schedule 309 of the annual Report R-1 for Class I railroads in similar form and detail for Class II railroads.

- (14) As Exhibit 14, a statement showing actual cash balance at the beginning of each month and the actual cash receipts and disbursements during each month of the current year to the date of the latest balance sheet furnished as Exhibit 8, together with a monthly forecast (both before and after giving effect to use of proceeds from the proposed loan) for the balance of the current year and the year subsequent thereto.
- (15) As Exhibit 15, a general statement setting forth the facts as to estimated prospective earnings and other funds upon which applicant relies to repay the loan.
- (b) The following exhibits are required as to the transaction.
  - (1) As Exhibit 16, copies of correspondence from all, and not less than three, lending institutions or security underwriters to which application for the financing has been made, evidencing that they have declined the financing unless guaranteed by the Secretary or specifying the terms upon which they will undertake the financing without such guarantee.
  - (2) As Exhibit 17, specimens, or forms where specimens are not available, of all securities to be pledged or otherwise issued in connection with the proposed loan; and in case of mortgage, a copy of the mortgage or indenture.
  - (3) As Exhibit 18, copies of the loan agreement entered into, or to be entered into, between the Trustee and lender, and of any agreements or instruments executed or to be executed in connection with the proposed loan.

[44 FR 23852, Apr. 23, 1979]

### § 250.3 Fees.

On date of final payment of the loan guaranteed by the Secretary pursuant to application filed under this part, the applicant carrier or the trustee, if still in existence, shall pay, or cause to be paid, to the Administrator as a guarantee fee such amount as the Administrator hereafter may determine and prescribe as necessary to cover the administrative costs of carrying out the provisions of the Emergency Rail Services Act of 1970.

### § 250.4 Execution and filing of application.

The following procedure shall govern the execution and filing of the application:

- (a) The original application shall bear the date of execution and be signed with ink by or on behalf of the trustee and the lender. Execution on behalf of the trustee shall be by the trustee or trustees having knowledge of the matters therein set forth. Persons signing the application on behalf of the trustee and lender, respectively, shall also sign a certificate in form as follows:

(Name of official) \_\_\_\_\_ certifies that he is the \_\_\_\_\_ (title of official) of the \_\_\_\_\_ (name of carrier or lender); that he is authorized on the part of said applicant to sign and file with the Administrator this application and exhibits attached thereto; that he has carefully examined all of the statements contained in such application and the exhibits attached thereto and made a part thereof relating to the aforesaid \_\_\_\_\_ (name of carrier or lender); that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

(Date)

- (b) There shall be made a part of the original application the following certificate by the Chief Accounting Officer of the carrier:

(Name of officer) \_\_\_\_\_, certifies that he is \_\_\_\_\_ (title of officer) of \_\_\_\_\_ (name of carrier applicant); that he has supervision over the books of account and other financial records of the carrier and has control over the manner in which they are kept; that such accounts are maintained in good faith in accordance with the effective accounting and other orders of the Interstate Commerce Commission; that he has examined the financial statements and supporting schedules included in this application and to the best of his knowledge and belief said statements accurately reflect the accounts as stated in the books of account; and that, other than the matters set forth in the exceptions attached to such statements, said financial statements and supporting schedules represent a true and complete statement of the financial position of the carrier applicant and that there are no undisclosed assets, liabilities, commitments to purchase property or securities, other commitments, litigation in the courts, contingent rental agreements, or other contingent transactions which might materially affect the financial position of the carrier applicant.

(Date)

- (c) The original application and supporting papers, and six copies thereof for the use of the Administrator shall be filed with the Administrator, Federal Railroad Administration, Department of Transportation, Washington, DC. Simultaneously, one copy of the application and supporting papers shall be filed with the Secretary of the Interstate Commerce Commission, Washington, DC. Each copy shall bear the dates and signatures that appear in the original and shall be complete in itself, but the signatures in the copies may be stamped or typed. If unusual difficulties arise in the furnishing of any of the exhibits required in § 250.2, the carrier applicant or the lender, upon appropriate showing and with the consent of the Administrator, may file a lesser number.
- (d) In the event the furnishing of exhibits in the detail required by § 250.2 is shown by the applicant or applicants to be unduly burdensome in relation to the nature and amount of the loan, the Administrator may modify the requirements of said section. In addition, the Administrator may waive or modify any requirement of this part upon good cause shown, or make any additional requirements he deems necessary.

## § 250.5 General instructions.

- (a) If the application is approved by the Administrator and the Secretary of Transportation and the latter agrees to make the guarantee, the following documents will be required for deposit with the Administrator before the transaction is closed:
- (1) Final opinion by counsel for the Trustee to the effect that he is familiar with the corporate powers of the carrier applicant and the orders of the reorganization court; that the Trustees of the carrier applicant are authorized to execute and deliver the certificate or other obligations evidencing the same, and to pledge and hypothecate any securities pledged as collateral; that the certificate or other obligations so executed and so delivered constitute the valid and binding obligations of the Trustees of the carrier that the certificate or other obligations of the Trustee will be treated as an expense of administration and receive the highest lien on the railroads property and priority in payment under the Bankruptcy Act, and that the lender and the Secretary will obtain a lien on any security involved of the rank and priority represented by the Trustee. Such opinion shall also cover the priority and lien of each item of the collateral offered.

- (2) Certified copies of the reorganization court orders and decrees authorizing the Trustee to execute and deliver the certificates or other obligations and to give the security under and according to the terms of the loan and guarantee as prescribed by the Administrator. Such order or orders of the reorganization court shall specify that trustee certificates, guaranteed by the Secretary as to payment of principal and interest, shall be treated as an expense of administration and receive the highest lien on the railroad's property and priority in payment under the Bankruptcy Act.
  - (3) Unexecuted copies of the foregoing documents will be delivered to the Administrator 3 business days prior to closing.
- (b) The guarantee by the Secretary of a loan pursuant to an application filed as provided in this part should not be construed as relieving a carrier from complying with applicable provisions of section 20a of the Interstate Commerce Act (49 U.S.C. 20a) in relation to the issuance of Trustee certificates.