

RAILROAD ABANDONMENT



Iowa Department
of Transportation

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INTRODUCTION

Abandonment and discontinuance of railroad service is allowed by federal law which permits a carrier to end its obligation to provide common carrier service over a particular rail line. Although a number of specific reasons may be given for the abandonment, it is generally based on economic factors.

This booklet is intended to provide information about the abandonment process and some guidance concerning how to prepare for an abandonment. This information is based on rules established by the Interstate Commerce Commission Termination Act of 1995, the Surface Transportation Board (successor to the former Interstate Commerce Commission), and the Staggers Rail Act of 1980, and the policies and procedures of the Iowa Department of Transportation.

Should questions arise regarding an abandonment procedure not covered in this booklet, or if further assistance is needed, contact John Hey, Modal Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, telephone 515-239-1653, or e-mail: john.hey@dot.iowa.gov.

ROLE OF THE IOWA DEPARTMENT OF TRANSPORTATION

The Iowa Department of Transportation (Iowa DOT) actively participates in the abandonment process. The Iowa DOT, except under exempt procedures, conducts at least one public meeting in conjunction with each abandonment application filed on any line, or portion thereof, in the state. This meeting is held to inform and assist rail users and the general public in understanding the rules and rights of participation under federal regulations.



The Iowa DOT staff studies information such as current and potential traffic on the line, revenues, costs, energy and environment, economic effects, alternative transportation, track condition, the cost to improve and maintain the line, and other rail use options such as short line or private use operations.

A “Staff Report” containing the findings of the Iowa DOT study is then prepared. Formal comments embodying the official position of the Iowa Department of Transportation are prepared and filed before the Surface Transportation Board (STB), as any interested party may do. The filing requirements and time limits are the same for all parties.

PRE-ABANDONMENT

PREVENTION

The loss of rail service will have an effect on nearly all rail users located along a rail line that is being considered for abandonment. These effects will range from making minimal changes to making extensive adjustments to compensate for the loss of rail service. Some shippers may divert their shipments to other modes of transportation, or elect to ship by truck/rail or truck/barge combinations. Others may be compelled to make major changes in operational procedures, or restricting the markets served. These alternatives can be costly and, at the very least, create some inconvenience.



The best way to prevent an abandonment is to eliminate beforehand the need for the railroad to consider such an action.

Once an abandonment application is filed, only **exceptional** circumstances brought to light during the proceedings can prevent approval of the application by the STB.

Whatever the situation, it is important that all parties work together toward the preservation of rail service. Rail users and communities should coordinate their efforts to build rail traffic volume. All sources of potential help should be explored.

This information is intended to assist you in preparing a foundation for averting an abandonment. It should be remembered that a carrier must have grounds for filing an application. Only through hard work and effective, concentrated effort can those potentially affected rail users hope to preserve or restore economic viability to the rail line.

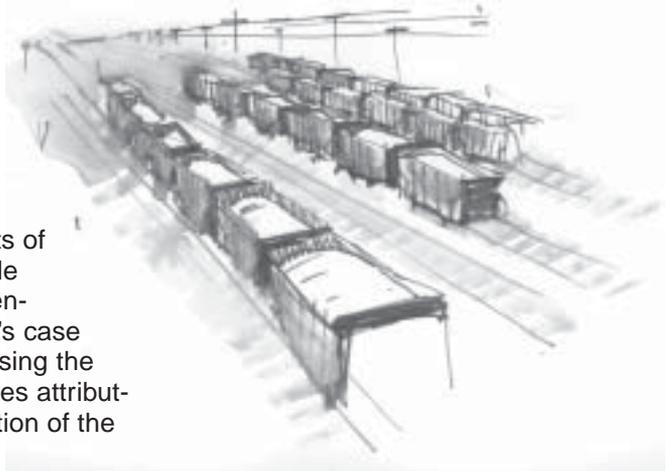
EARLY WARNING SIGNS

Has the volume of traffic on a rail line of interest to you declined in recent years? Has the track deteriorated to the degree that service has been affected? Has service to shippers on the line been adequate? Has car supply been satisfactory? The answers to these questions indicate whether rail users should be concerned about the retention of service on their rail line in the future.

Whenever shipments over a rail line decrease markedly, for any reason, users should anticipate the possibility of abandonment. If the decline in rail volume is attributable to the loss of business along the line or diversion of rail traffic to an alternate mode of transportation, then rail users may expect eventual discontinuance of service. The railroads, like any other business, are profit-oriented, and if rail service in this situation is to be retained, the rail users on the line must work quickly to restore an adequate level of traffic.

INDICATORS

POOR SERVICE. Failure to report inadequate service to the STB as soon as it begins to deteriorate, and regularly thereafter, is common among shippers. Poor service is often brought to the attention of the STB only after an application to abandon the line has been filed, which is too late to rectify the problem. The STB requires carriers to provide “adequate service” to rail users. While “adequate service” is a matter of interpretation, some control over a carrier’s operation can be exercised by the STB. Using alternative transportation to counter the effects of poor service, while necessary, may enhance the carrier’s case by further decreasing the traffic and revenues attributable to the operation of the line.



FAILURE TO PROVIDE CARS is often a sign of things to come. In the event cars are not provided in adequate numbers, and in a timely fashion, the STB should be notified. During periods of national shortage, shippers may not receive all the cars needed and the shortage must be shared by everyone. Shippers should maintain a carefully written and accurate record of cars ordered and supplied, as well as complaints made to the STB.

DETERIORATING TRACK CONDITIONS is another indicator of potential abandonment. Carriers often defer track maintenance, claiming lack of sufficient business to warrant further investment in the line. Tracks allowed to deteriorate significantly can provide sufficient justification for abandonment because of the need for heavy investment to restore the track to an appropriate level for safe and economic operation.

WHAT CAN BE DONE

What can be done before a rail line becomes the subject of an abandonment? If it is felt that a rail line of interest may be under consideration for abandonment, several actions could be taken to help avert the abandonment. Increased use of the rail line is the most certain means of improving the prospect for continuing service. Development of an agreement or contract guaranteeing a quantity of carloads to be shipped and cars to be supplied over a given period of time is a way of ensuring uninterrupted service. A rail user's willingness to invest money in his facility for rail purposes, such as increasing shipping capacities or improving loading equipment, is a way of showing an intention to increase carloads. Additional traffic volume can also be achieved through the development of new business. Communities along the line may help by attracting new business to the line or by encouraging non-users in the area to utilize rail service.

If the prospect of increasing traffic on the line is not probable, another alternative to the loss of service might be the implementation of a surcharge or higher freight rates to offset the deficit created by inadequate revenues from the existing level of traffic.

FEEDER RAILROAD DEVELOPMENT PROGRAM

The Feeder Railroad Development Program was created by the Staggers Rail Act of 1980. It provides rail users with an option through which abandonment may be averted. This federal program, set forth in Title 49 CFR 1151, provides interested parties with a means of dealing with inadequate rail service. It provides financially responsible parties, including various levels of government, the opportunity to purchase trackage with the intent of continuing rail operations under certain conditions.

IOWA RAIL ASSISTANCE PROGRAM

The Iowa Rail Assistance Program is an alternative available to shippers whose lines fulfill the requirements of Iowa DOT policy and federal regulations. Under this program shippers, the state and railroads may participate jointly in a financial arrangement to upgrade branch lines in order to develop more efficient operations. This program may also be available for qualifying segments of branch lines already abandoned. However, the line must be economically viable, or have the potential for becoming profitable.

IOWA RAILWAY FINANCE AUTHORITY

The Iowa Railway Finance Authority is a source of long-term, low-interest loans to shippers and others for the purchase or rehabilitation of a railroad line. Loans of up to 80% of the total acquisition cost may be available if the project is economically viable, brings positive benefits to the community, and is consistent with Iowa DOT policy.

ABANDONMENT PROCEDURES

Abandonment procedures are set forth in the Code of Federal Regulations: TITLE 49, PART 1152. The procedures for abandonment or discontinuance of a rail line are complex and they establish rigid time limits.



SYSTEM DIAGRAM MAP

Each Class I or II Rail Carrier must file and maintain a current **SYSTEM DIAGRAM MAP** with the STB. A Class III Carrier has the option of filing and maintaining a System Diagram Map or a narrative description of all its lines with the STB. This map or narrative shows or describes all the rail lines in the railroad's system and places each line in one of the following five categories.

- **CATEGORY 1** lines are those for which abandonment is anticipated by the carrier within three years, and a line must be in this category for at least 60 days before an application may be filed.

- **CATEGORY 2** lines are those under study by the carrier to determine whether the line is a potential candidate for abandonment in the future.
- **CATEGORY 3** lines are those pending before the STB for a decision on abandonment or discontinuance.
- **CATEGORY 4** lines are those presently being operated with financial assistance.
- **CATEGORY 5** lines are all other lines which a carrier owns and operates directly or indirectly.

Revisions or amendments to System Diagram Map are required only when a railroad changes the category of a line or when ordered by STB.

NOTICE OF INTENT

Before a railroad can file an application to abandon a line or discontinue service, it must first file a **NOTICE OF INTENT** with the appropriate federal and state agencies and with the significant rail users who would be affected. This notice is a form of advance warning and must be distributed concurrently with documents posted at specified stations on or near the affected line. The notice must be published weekly for three consecutive weeks in a local newspaper of general circulation in each county in which any part of the line is located. These requirements must be fulfilled between 15 and 30 days before the filing date of the application. The notice also contains specific information concerning the abandonment and instructions to interested parties concerning the filing of comments and protests with the STB.

ABANDONMENT APPLICATION

The **ABANDONMENT APPLICATION** must be filed with the STB and certain state offices. The railroad must, upon request, provide a copy of the application to anyone who proposes to file comments or protests with the STB. Within 20 days after the application is filed, the STB must publish a "Notice of Abandonment Application" in the Federal Register which will describe the proposal, advise the public about the due dates for offers of financial assistance and request for public use and trail use conditions, and how to participate in the abandonment proceedings. This is the only publication the STB will make in the Federal Register during the abandonment proceedings.

CONTENTS OF THE APPLICATION

The content of the application is prescribed by federal regulation. Basically, the application describes the location of the line, its physical condition and financial aspects of the operation. Specific information must be provided concerning the identity of the applicant and data relating to operational and maintenance expenses, revenues, rehabilitation costs, effect on economic development, environmental effects, and whether passenger service will be affected, plus any other additional information which would provide justification for the abandonment.

PUBLIC PARTICIPATION

A period of 45 days following the filing of an application is provided to enable interested parties to prepare and submit comments or protests to the STB. Comments may be in support of or in opposition to the application, or they may pertain to some other specific issue related to the application. Any requests for public use or trail use conditions should also be filed at this time. Persons who oppose the application but do not wish to fully participate in the process by appearing at any oral hearing or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the application and are prepared to participate actively and fully in the process should file a protest. All comments and protests submitted in the proper format will be considered by the STB, however, submittals must be filed within the allowed time and be received no later than the 45th day after the application was filed. If that 45th day occurs on a week-end or federal holiday then it must be received on the first working day following that week-end or federal holiday. A document will be accepted after this date only if it was sent by certified or registered mail and was postmarked at least three days prior to the due date.

STB RULES FOR PREPARING COMMENTS AND PROTESTS

Interested persons may become parties to the abandonment or discontinuance proceedings by filling written comments or protests with the STB. Protests to an abandonment or discontinuance shall be in the form of a verified statement and shall include all evidence and argument in support of protestant's position (protestant's case in chief). Protests, at a minimum, must contain the following information:

- (i) Protestant's name, address, and business.
- (ii) A statement describing protestant's interest in the abandonment or discontinuance proceeding including:
 - a. A description of protestant's use of the line;

- b. If protestant does not use the line, information concerning the group or public interest it represents; and
 - c. If protestant's interest is limited to the retention of only a portion of the line, a description of that portion of the line subject to protestant's interest (including milepost designation if available), and evidence showing that applicant can operate that portion of line profitably, including an appropriate return on its investment for those operations.
- (iii) Specific reason(s) for opposing the abandonment or discontinuance, including information regarding protestant's reliance on the involved service, with allegations of fact supported by affidavits from persons who have personal knowledge of the facts.
- (iv) Any rebuttal of information or material submitted by applicant.
- (v) Any requests for public use conditions (see page 16) and any requests for trail use conditions (see page 17).

In addition, the commenting or protesting party may provide a specific statement of position and a summary of evidence with regard to any or all of the following:

- (i) Intent to offer financial assistance (see page 14);
- (ii) Environmental impact;
- (iii) Impact on rural and community development;
- (iv) Recommended provisions for protection of the interests of employees;
- (v) A request for a public use condition (see page 16); and
- (iv) Prospective use of the right-of-way for interim trail use and rail banking under the National Trails Act (see page 17).

If an oral hearing is desired, a request for and the reasons why an oral hearing is necessary must be filed with the STB no later than 10 days after the application has been filed. If the STB decides to hold an oral hearing, the oral hearing shall be for the primary purpose of cross examination of witnesses filing verified statements in the proceeding. Any direct testimony, other than applicant's rebuttal evidence, shall be at the discretion of the hearing officer.

CERTIFICATE OF SERVICE

COMMENTS or **PROTESTS** must be in the form of a verified statement (notarized) to ensure development of a reliable record. An original and 10 copies of **COMMENTS** or **PROTESTS** must be filed with the Secretary, Surface Transportation Board, Mercury Building, 1925 K Street, N.W., Washington D.C. 20423. A copy must also be served on the railroad or its representative at the same time. If the applicant railroad is in bankruptcy, each comment or protest must also be filed on the Bankruptcy Court. Each filing must contain a Certificate of Service which verifies that all parties have been served copies of the documents being filed.

Although not required by law, a copy of any **COMMENTS** or **PROTESTS** filed with the STB should also be served on the Modal Division, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.



EFFECTIVE DATES

The following schedule governs the process for STB consideration and decision in abandonment and discontinuance application proceedings:

- Day 0** Application for abandonment or discontinuance is filed with STB, including applicant's case in chief. *(Note: The line must be in Category 1 for at least 60 days before an application may be filed. A Notice of Intent must also be filed between 15 and 30 days before the application is filed.)*
- Day 10** Due date for oral hearing requests.
- Day 15** Due date for STB decision on oral hearing requests.
- Day 20** Due date for Notice of Application to be published in the Federal Register. *(This is the only notice that STB will published in the Federal Register during an abandonment proceeding.)*
- Day 30** Due date for notice of intent to file an offer of financial assistance.
- Day 45** Due date for comments and protests, including opposition case in chief. Also, due date for public use and trail use requests.
- Day 60** Due date for applicant's reply or rebuttal to opposition case, and for applicant's response to trail use requests.
- Day 110** Due date for service of STB's decision on the merits. *(Note: A decision may be served sooner.)*
- Day 120** Due date for offers of financial assistance. If the application has been granted by a decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of that decision.

If an application for abandonment or discontinuance is filed by a bankrupt railroad, the STB shall base its decision (*or Report to the Bankruptcy Court*) on the application and any responses to the application that are filed. Authority over this type of action is held by federal courts having jurisdiction over bankruptcy matters.

EXEMPT PROCEDURES

NOTICE OF EXEMPTION

Under Title 49 CFR 1152 Subpart F, a carrier may file a **Notice of Exemption** with the STB for exemption from the regular STB abandonment procedures under Title 49 CFR 1152 Subpart C, if it can certify that:

- (i) No local traffic has moved over the line for at least two years;
- (ii) Any overhead traffic on the line can be rerouted over other lines; and
- (iii) No formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the STB or any U.S. District Court, or has been decided in favor of the complainant within the last two years.

The STB must find that the line is not necessary to carry out the rail transportation policy of the United States Government as established in Title 49 U.S.C. 10101, and the line is of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power before the abandonment can be approved.

At least 10 days prior to the filing of a **Notice of Exemption** with the STB, the carrier must notify the Iowa DOT, and other federal agencies of its intent to do so. Within 20 days after the Notice of Exemption is filed, the STB must publish the Notice in the Federal Register.

Petitions to stay the effective date of the exemption on other than environmental or historic preservation grounds must be filed with the STB within 10 days after the Notice of Exemption is published in the Federal Register. Petitions to stay the effective date of the exemption on environmental or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date in order to allow the STB to consider and act on the petition before the exemption becomes effective. Requests to implement interim trail use and rail banking under the National Trails Act (16 U.S.C. 1247(d) and 49 CFR 1152.29) must also be filed within this 10 day period.

Petitions for reconsideration, comments regarding environmental, energy and historic preservation matters, and requests for public use conditions must be filed with the STB within 20 days after the Notice of Exemption is published in the Federal Register. Any **Offer of Financial Assistance** must also be filed within this 20 day period. Petitions to stay or for reconsideration must clearly state the reasons why the exemption should be stayed or reconsidered.

EFFECTIVE DATES

- Day 0** Notice of Exemption filed with the Surface Transportation Board.
- Day 20** Due date for Notice of Exemption to be published in the Federal Register.
- Day 30** Due date for petitions to stay the effective date of the abandonment and petitions for interim trail use conditions.
- Day 40** Due date for petitions for reconsideration, petitions for public use conditions, Railroad's reply on willingness to negotiate interim trail use and rail banking agreement, and Offers of Financial Assistance.
- Day 50** Unless stayed or denied, the abandonment becomes effective subject to interim trails use and public use conditions if any.

PETITION FOR EXEMPTION

A carrier may also, under Title 49 CFR 1152 Subpart G, petition the STB for exemption from the regular abandonment procedures by filing a **Petition for Exemption**. The carrier must show, and the STB must find, that the line is not necessary to carry out the rail transportation policy of the United States Government as established in Title 49 U.S.C. 10101, and the line is of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power.

At least 10 days prior to the filing of a **Petition for Exemption** with the STB, the carrier must notify the Iowa DOT, and other federal agencies of its intent to do so. Within 20 days after a Petition for Exemption is filed with the STB, a notice of the filing must be published in the Federal Register by the STB. There will be no further Federal Register publication later if and when a petition is granted.

Any request for a public use condition and any request for trail use/rail banking under the National Trails Act must be filed within 20 days after the notice of the Petition for Exemption is published in the Federal Register. Questions and comments concerning environmental issues are to be directed to STB's Section of Environmental Analysis.

Offers of financial assistance must be filed with STB no later than 10 days after service of STB's decision granting the petition for exemption.

EFFECTIVE DATES

- Day 0** Petition For Exemption filed with the Surface Transportation Board.

- Day 20** Due date for Petition For Exemption to be published in the Federal Register. There will be no further publications in the Federal Register later if and when the Petition is granted.

- Day 30** Due date for notice of intent to file an offer of financial assistance.

- Day 40** Due date for filing request for public use and interim trails use / rail banking conditions. Any comments or protests should also be filed by this date.

- Day 110** Due date for service of STB's decision. (*Note: A decision may be served sooner.*)

- Day 120** Due date for offers of financial assistance. If the Petition For Exemption has been granted sooner, the offer of financial assistance shall be due no later than 10 days after the Petition For Exemption has been granted.

OFFERS OF FINANCIAL ASSISTANCE

Persons interested in retaining rail service have a final alternative to abandonment through an **Offer Of Financial Assistance** under the provisions of Title 49 CFR 1152.27. An offer of financial assistance is made to the carrier in either the form of a SUBSIDY or as an offer to PURCHASE the line for continued rail service.

The notice published in the Federal Register that an application for abandonment or discontinuance, or a petition for exemption, has been filed will serve as notice to persons intending to offer financial assistance for continued rail service. Within 10 days after publication, a formal notice of intent to make an offer of financial assistance must be filed with STB and served on the railroad. Offers of financial assistance may be filed with STB and served on the carrier anytime after the application or petition for exemption has been filed. Once the STB decision granting the application or petition for exemption has been served, the STB must be notified that an offer of financial assistance had been previously submitted. The offer, or notification of a previously filed offer, must be filed with STB and served on the carrier no later than 120 days after the application or petition for exemption was filed or within 10 days after service of the decision granting the application or petition for exemption.

Under exempt procedures the offer of financial assistance must be filed with the STB and served on the carrier within 10 days after the Notice of Exemption has been published in the Federal Register.

The STB will postpone the effective date of the abandonment if, within 15 days after the STB issues its decision granting the abandonment, or Notice of Exemption, the party offering financial assistance is found to be financially responsible. Should more than one offer of financial assistance be made, the carrier will be allowed to decide which offer it will consider.

Negotiations must be completed within 30 days from the date the offer of financial assistance is made. Either party may, within this period, request the STB arbitrate conditions of the agreement. If no agreement is reached during the negotiation period and arbitration has not been requested, the decision to postpone the abandonment's effective date will be revoked and the abandonment will become effective.

If the STB has been requested to arbitrate purchase conditions, a decision is required within 30 days. If subsidy is being considered, the STB will examine the cost of continuing service and a reasonable return on the value of the properties involved in order to set the level of subsidy. In arbitrating the conditions of a purchase offer, the STB will set the price and terms of the sale at no less than the fair market value of the facilities in question. The terms and conditions set by the STB will be binding on both parties. If the party desiring to purchase or subsidize the rail line does not accept the terms and conditions set by the STB, that party may withdraw within 10 days following the announcement of said terms and conditions. Any other financially responsible party may then, within 20 days of the decision, accept those terms and conditions and enter into a subsidy or purchase agreement.

A subsidizer may discontinue a subsidy by giving a 60 day notice to discontinue. Unless another offer to continue subsidy payments at least equal to the original agreement is received within the 60 day notice period, the carrier may request the STB to vacate its decision to postpone the abandonment's effective and the abandonment will become effective. Following the purchase of the line for continued rail operations, the buyer may not transfer or discontinue service until at least two years have passed. Transfer of ownership is not permitted for five years except back to the carrier from which it was acquired.

ACQUIRING ABANDONED RAILROAD RIGHT-OF-WAY

PRIVATE USE

Generally speaking, railroad companies have acquired title to their right-of-way (ROW) in one of several ways:

- (i) **TITLE BY FEE SIMPLE ABSOLUTE.** Fee Simple Absolute or Warranty Deed mean, in simple terms, that the railroad acquired the land outright or received it through a federal land grant and has complete rights to the property.
- (ii) **TITLE BY FEE SIMPLE DETERMINABLE.** Fee Simple Determinable is similar to an easement in that there are conditions and restrictions on the use of the property. For example, a seller may include conditions and restrictive terms in the deed which allows the railroad to hold title to the property "only so long as the property is used for 'rail operations' or 'rail purposes'." If the railroad does not use the property as set out in the deed, then the property reverts to the seller, the seller's heirs, successors or assignees.

- (iii) **EASEMENT / EMINENT DOMAIN.** An Easement provides for a specific and limited use of property which is owned by another. When the property is no longer used for the specific purpose set forth in the easement document it reverts to the owner. Title to the property acquired under the power of Eminent Domain is considered to be only an Easement.

Parties interested in acquiring abandoned railroad ROW should notify the railroad company's real estate department in writing, enclosing a legal description of the property, as soon as possible after the abandonment proceeding have been started. The prospective buyer should obtain a title opinion to determine the quality of title held by the railroad company and if the title is transferable before negotiations have reached the point of commitment. Because of the complexities involved in this process, it is advisable to get the help of an attorney or real estate expert.

In some instances, it may be advisable for parties interested in acquiring abandoned railroad ROW to form a group and purchase the ROW in one block and make their own divisions afterwards. Approaching the railroad company as a group might mean a reduction in the price of the property because the cost and expenditure of time is greater when dealing with each individual buyer than when dealing with a group. Again, it is advisable to have the professional help of an attorney because this method requires a great deal of cooperation and some special legal preparations.

Although interested parties can direct their inquiries to the railroad company regarding the purchase of abandoned railroad ROW any time after the abandonment proceeding have begun, no sale can be consummated until after the abandonment becomes effective. Negotiation for abandoned railroad ROW are carried on in the same manner as between any private parties or businesses. Neither the state nor the STB can act as intermediary in these negotiations.

PUBLIC USE

The STB may, in accordance with 49 CFR 1152.28, defer the sale of abandoned railroad right of way by the railroad company for up to 180 days from the effective date of the abandonment if the rail properties are suitable for use for other public purposes. The STB reserves to itself the right to determine the definition of public use. Game preserves, hiking and biking trails, utility lines and erosion control barriers are some of the uses that have been identified in the past as suitable public uses.

Parties seeking a **PUBLIC USE** condition in an abandonment proceeding must file a written request for public use condition with the STB no later than 45 days after the application is filed. The written request must contain the following information:

- (i) The condition sought;
- (ii) The public importance of the condition;
- (iii) The period of time for which the condition would be effective (up to the statutory maximum of 180 days); and
- (iv) The justification for STB to impose the time period requested.

A copy of the written request must also be sent to the railroad company.

A decision on the public use request will be issued prior to the effective date of the abandonment. The decision does not force the railroad company to accept an offer to purchase for public use...it only prescribes the time period, up to 180 days, during which negotiations may progress. If at the end of that time period no agreement has been reached, then the railroad company is free to accept any other offer.

INTERIM TRAIL USE AND RAIL BANKING

The STB may, in accordance with 49 CFR 1152.29 and 16 USC 1247 (d) (the National Trails Act), defer the abandonment to give interested parties the opportunity to negotiate a voluntary agreement with the railroad company for interim use of the right-of-way (ROW) for recreational trails. Trails use is subject to future restoration and reconstruction of the right-of-way for rail purposes should rail service ever be reinstated.

Parties interested in acquiring or using the railroad's ROW for interim trail use and rail banking pursuant to 49 CFR 1152.29 and 16 USC 1247 (d) must, within the 45 day comment period, submit a written request or petition to the STB with a copy to the railroad, indicating their desire to use the ROW for trail purposes. The request or petition must include:

- (i) A map, along with an accurate description (including mileposts), depicting the ROW or portion thereof which is proposed to be acquired or used for trail purposes,

- (ii) A statement indicating the user's willingness to assume full responsibility for:
- managing the right-of-way;
 - any legal liability arising out of the use of the ROW, or if immune, indemnify the railroad against any potential liability; and
 - the payment of any and all taxes assessed against the ROW.
- (iii) An acknowledgment that interim trail use is subject to the user continuing its responsibilities described in (ii) above and subject to possible future reconstruction and reactivation of the ROW for rail service.

The interim trail use statement must be in the following form:

**Statement of Willingness to Assume
Financial Responsibility**

In order to establish interim trail use and rail banking under 16 U.S.C. 1247 (d) and 49 CFR 1152.29, (Name of Interim Trail User) is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by (Name of Railroad) and operated by (Name of Railroad). The property, known as Name of Branch Line, extends from railroad milepost _____ near (Station Name), to railroad milepost _____ near (Station Name), a distance of _____ miles in (Name of County(ies) and State(s)). The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB-____ (Sub No. ____).

A map of the property depicting the right-of-way is attached.

(Name of Interim Trail User) acknowledges that use of the right-of-way is subject to user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

Under regular abandonment proceedings the STB will, provided abandonment would have been permitted and the railroad agreed to negotiate an interim trail use / rail banking agreement, issue a Certificate of Interim Trail Use or Abandonment (CITU) to the railroad and the interim trail user. Thirty days after the CITU is issued the railroad is permitted to discontinue service, cancel any applicable tariffs, and salvage track and materials consistent with interim trail use and rail banking conditions. If no interim trail use / rail banking agreement is reached within 180 days from the date the CITU is issued, the railroad will be permitted to fully abandon the line.

If the abandonment is being sought under Exempt Proceedings, then a petition containing the interim trail use statement must be filed concurrently with the STB and the Railroad within 10 days after the Notice of Exemption (or within 20 days after the Petition For Exemption) is published in the Federal Register. If rail service does not continue and the railroad agrees to negotiate an interim trail use / rail banking agreement, the STB will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and the interim trail user. As with the CITU, the NITU permits the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials consistent with interim trail use and rail banking conditions thirty days after the NITU is issued. If no interim trail use / rail banking agreement is reached within 180 days from the date the NITU is issued, the railroad will be permitted to fully abandon the line.



ADDITIONAL INFORMATION

If you have questions or need additional information,
consult these sources:

The Surface Transportation Board's (STB) Web site,
www.stb.dot.gov

John Hey, Modal Division
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e-mail: john.hey@dot.iowa.gov

The Iowa Department of Transportation's
Office of Rail Web site,
www.iowarail.com

Prepared by:



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