

§ 260.27

49 CFR Ch. II (10-1-01 Edition)

rail services including a discussion of the following:

(1) Applicant's current and prospective traffic base, including by commodity and geographic region, major markets served, major interchange points, and market development plans;

(2) Applicant's current operating patterns, and plans, if any, to enhance its ability to serve its current and prospective traffic base;

(3) System-wide plans to maintain equipment and rights-of-way at current or improved levels; and

(4) Specific plans for rationalization of marginal or uneconomic services;

(b) Detailed financial information, including:

(1) Financial statements prepared by a Certified Public Accountant (audited, if available), for the four calendar years immediately preceding the date of filing of the application, including:

(i) A copy of Applicant's most recent year-end general balance sheet and a copy of Applicant's most recent unaudited general balance sheet; and

(ii) Applicant's most recent annual income statement and a spread sheet showing unaudited monthly and year-to-date income statement data up to the date the application is filed;

(2) Projected financial statements, including 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 requested in the application:

(i) Forecasted annual income statement;

(ii) Forecasted year-end balance sheets. These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts; and

(iii) A spread sheet showing changes in financial position for the year in which the application is filed, including the period ending on the date of the application based upon actual data and the period from the date of the application to the end of the year, based upon estimated and forecasted data;

(c) Capital spending plans for the next five years;

(d) Cash flow projections;

(e) Contingency plans for termination of the project before completion, if necessary; and

(f) A narrative description of Applicant's management team, including:

(1) Rail experience of top management;

(2) Management's plans for achieving growth and its long-term capital spending plan; and

(3) A narrative description of Applicant's workforce and the historical rate of employee turnover.

§ 260.27 Additional information for loan guarantees.

Applications for a loan guarantee shall also include in the order indicated and identified by applicable numbers and letters corresponding to those used in this section, the following information:

(a) With respect to each existing obligation to be refinanced or proposed obligation:

(1) A certified copy of proposed or executed obligation agreements;

(2) A detailed description of the obligation, and a description of the series or issue of which the obligation is, or will be, a part, including:

(i) Effective date, or anticipated effective date;

(ii) Where a guarantee is sought for an outstanding obligation being refinanced, actual effective rate of interest; or where the obligation is new, the terms of the proposed obligation including the proposed effective rate of interest; and

(iii) All related documents, whether executed or proposed;

(3) For an existing obligation, the Applicant's payment history on that obligation; and

(b) With respect to each existing Lender, Holder, or prospective Lender, a statement as to:

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

(2) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to do business on the Lender, Holder, or prospective Lender;

(3) Brief statement of the circumstances and negotiations leading to the agreement by the Lender, Holder, or prospective Lender to make the loan;

Federal Railroad Administration, DOT

§ 260.31

(4) Brief statement of the nature and extent of any affiliation or business relationship between the Lender, Holder, or prospective Lender and the Applicant or any of Applicant's directors, partners, or principal executive officers; and.

(5) Full and complete statement of all sums to be provided by the Lender or Holder, or to be provided by the prospective Lender in connection with the proposed obligation including:

(i) Name and address of each person to whom the payment has been made or will be made and nature of any affiliation, association, or prior business relationship between any person named in this paragraph and the Lender, Holder or prospective Lender or any of its directors, partners, or officers; and

(ii) Amount of the cash payment, or the nature and value of other consideration.

§ 260.29 Third party consultants.

Applicants may utilize independent third-party consultants to prepare a financial evaluation of the proposed project and the applicant, if approved by FRA. Providing such an evaluation would greatly assist FRA in the evaluation of the application and would significantly reduce the time necessary for FRA to process the application. We encourage the use of third party consultants.

§ 260.31 Execution and filing of the application.

(a) The original application shall bear the date of execution, be signed in ink by or on behalf of the Applicant, and shall bear the corporate seal in the case of an Applicant which is a corporation. Execution shall be by all partners if a partnership, unless satisfactory evidence is furnished of the authority of a partner to bind the partnership, or if a corporation, an association or other similar form of organization, by its president or other executive officer having knowledge of the matters therein set forth. Persons signing the application on behalf of the Applicant shall also sign a certificate in form as follows:

(Name of official) certifies that he or she is the (Title of official) of the (Name of Applicant); that he or she is authorized on the

part of the Applicant to sign and file with the Administrator this application and exhibits attached thereto; that the consent of all parties whose consent is required, by law or by binding commitment of the Applicant, in order to make this application has been given; that he or she 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 Applicant); that he or she 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 or her knowledge, information, and belief; and that Applicant will pay the balance of the investigation charge in accordance with §260.11.

(Signature of official)

(Date)

(b) There shall be made a part of the original application the following certificate by the Chief Financial Officer or equivalent officer of the Applicant:

(Name of officer) certifies that he or she is (Title of officer) of (Name of Applicant); that he or she has supervision over the books of accounts and other financial records of the affected Applicant 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 practices; that such accounts are adequate to assure that proceeds from the financing being requested will be used solely and specifically for the purposes authorized; that he or she has examined the financial statements and supporting schedules included in this application and to the best of his or her knowledge and belief those 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, those financial statements and supporting schedules represent a true and complete statement of the financial position of the 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 Applicant.

(Signature of official)

(Date)

(c) The Applicant shall pay the investigation charge in accordance with §260.11.

(d) The application shall be accompanied by a transmittal letter in form as follows: