

it previously approved the listing and trading of the Shares of all of the Funds on the Amex and the trading, pursuant to UTP, of the Original Funds on the Exchange.<sup>21</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>22</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>23</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

In connection with the Exchange's UTP of the Shares of the Subsequent Funds, the Exchange will cease trading in the Shares if: (1) The listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available (at least every 15 seconds during the trading day), or the NAV is not disseminated to all market participants at the same time, or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In support of the portion of the proposed rule change regarding UTP of the Shares, of the Original Funds, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that

explains the special characteristics and risks of trading the Shares.

4. The Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if (1) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available at least every 15 seconds or the NAV is not disseminated to all market participants at the same time, or (2) the listing market delists the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for partially approving the remaining portion of this proposed rule change with regard to the UTP of the Subsequent Funds before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of these Shares on the Amex is consistent with the Act.<sup>24</sup> The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PCX-2005-115), as amended, is hereby partially approved on an accelerated basis.<sup>25</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Nancy M. Morris**,  
Secretary.

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**BILLING CODE 8010-01-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-2005-22935]

### Application of Mokulele Flight Service, Inc. for Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 2006-6-34).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Mokulele Flight Service, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

**DATES:** Persons wishing to file objections should do so no later than July 11, 2006.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST-2005-22935 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room PL-401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Vanessa R. Balgobin, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: June 27, 2006.

**Michael W. Reynolds**,

*Acting Assistant Secretary for Aviation and International Affairs.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2006-25169, Notice No. 1]

### Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of establishment of public docket; notice of availability.

**SUMMARY:** FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA), operating administrations of DOT, have initiated a

<sup>21</sup> See Amex Order, *supra* note 7.

<sup>22</sup> 17 CFR 240.12f-5.

<sup>23</sup> 15 U.S.C. 78k-(a)(1)(C)(iii).

<sup>24</sup> See Amex Order, *supra* note 7.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

comprehensive review of design and operational factors that affect the safety of railroad tank car transportation of hazardous materials. In order to facilitate public involvement in this review, FRA and PHMSA held a public meeting on May 31 and June 1, 2006, and FRA has established a public docket to provide all interested parties with a central location to both send and review relevant information concerning improving the safety of railroad tank car transportation of hazardous materials. The docket established for this purpose is designated Docket No. FRA-2006-25169. A copy of the transcript of the May 31 and June 1, 2006 public meeting is available in the docket.

**ADDRESSES:** The public is invited to submit both relevant information and relevant comments to the docket. Written submissions should refer to the docket number of this notice (Docket No. FRA-2006-25169) and may be submitted by any of the following methods:

*Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

*Fax:* 202-493-2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

*Hand Delivery:* Docket Management Facility, Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**SUPPLEMENTARY INFORMATION:** The Secretary of Transportation (Secretary) has authority over all areas of railroad safety (49 U.S.C. 20101 *et seq.*), and has delegated this authority to FRA. FRA has issued a comprehensive set of Federal regulations governing the safety of all facets of freight and passenger railroad operations (49 CFR parts 200-244). FRA also conducts research and development to enhance railroad safety. The Secretary is also responsible for “prescrib[ing] regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” 49 U.S.C. 5103. The Secretary has delegated this authority to PHMSA. FRA inspects railroads and shippers for compliance with both FRA railroad safety regulations and PHMSA regulations governing the transportation of hazardous materials in commerce.

As detailed in PHMSA’s “Notice of public meeting” published on May 24,

2006 (71 FR 30019), in the last several years, there have been a number of railroad accidents which resulted in hazardous material releases from tank cars. 71 FR at 30020. As noted in the May 24, 2006 notice, some of these accidents are of particular concern because they involved materials that were poisonous or toxic by inhalation (TIH materials). *Id.* In addition, several other railroad accidents have occurred in recent years that, while not involving TIH materials, also involve the breach of railroad tank cars containing DOT regulated hazardous materials. These accidents include tank car failures at Eunice, LA (May 27, 2000), Council Bluffs, IA (October 8, 2004), Milford, UT (January 12, 2005), Creighton, PA (February 2, 2005) and Cleveland, OH (January 27, 2006). A primary causative factor of each of these accidents (those involving TIH materials and those involving other than TIH materials) was railroad operations, a failed tank structure, or a combination of the two.

FRA and PHMSA have initiated a comprehensive review of design and operational factors that affect the safety of railroad tank car transportation of hazardous materials. As noted in the May 24, 2006 notice, this review will not consider security issues. *Id.* PHMSA and FRA have been working closely with the Transportation Security Administration of the Department of Homeland Security, on developing proposed regulations to enhance the security of rail shipments of hazardous materials. These regulatory proposals will be issued in separate proceedings open to public comment as appropriate in the future.

In order to facilitate public involvement in DOT’s comprehensive review of the safety of railroad tank car transportation of hazardous materials, PHMSA and FRA invited interested persons to participate in a public meeting in Washington, DC on May 31 and June 1, 2006 to share concerns and comments related to the safe transportation of hazardous materials in tank cars. In order to facilitate further public involvement, FRA has established a docket to provide interested parties with a central location to both send and review relevant information concerning the safety of railroad tank car transportation of hazardous materials. The docket established for this purpose is designated Docket No. FRA-2006-25169. The information submitted to the docket will aid FRA and/or PHMSA in determining whether future rulemakings will be necessary to improve the safety of railroad tank car transportation of hazardous materials. A copy of the

transcript of the May 31 and June 1, 2006 public meeting is available for review in the docket. Also included in the docket is a copy of the June 13, 2006 written statement of the FRA Administrator before the House Subcommittee on Railroads concerning current issues in rail transportation of hazardous materials. The Administrator’s testimony discusses hazardous material releases and steps FRA is taking to improve the safety of the rail movement of hazardous materials. The public is invited to submit both information and comments relevant to DOT’s comprehensive review of the safety of railroad tank car transportation of hazardous materials to the docket identified in this notice.

#### Privacy

Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 7, Pages 19477-78). The statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on June 28, 2006.

**Jo Strang,**

*Associate Administrator for Safety.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-995X]

#### New Mexico Gateway Railroad Limited Liability Company—Discontinuance Exemption—in Dona Ana County, NM

New Mexico Gateway Railroad Limited Liability Company (NMGR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately 3.5 miles of rail line at Santa Teresa, in Dona Ana County, NM, as follows: (1) A 4,412-foot spur identified as Track A; (2) a 3,375-foot spur identified as Track B; (3) a 3,884-foot spur identified as Track C; (4) a 4,338-foot spur identified as Track D; and (5) a 2,728-foot runaround track.<sup>1</sup> The line traverses

<sup>1</sup>NMGR was granted an exemption to operate the rail line in *New Mexico Gateway Railroad Limited*