

**Electronic Access**

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at <http://www.regulations.gov>, by searching docket RITA 2008-0002.

**FOR FURTHER INFORMATION CONTACT:**

Bernie Stankus, Office of Airline Information, RTS-42, Bureau of Transportation Statistics, 1200 New Jersey Avenue Street, SE., Washington, DC 20590-0001, (202) 366-4387.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2138-0039.

*Title:* Reporting Required for International Civil Aviation Organization (ICAO).

*Form No.:* BTS Form EF.

*Type Of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers.

*Number of Respondents:* 40.

*Number of Responses:* 40.

*Total Annual Burden:* 26 hours.

*Needs and Uses:* As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on October 1, 2008.

**M. Clay Moritz, Jr.,**

*Acting Assistant Director, Airline Information, Bureau of Transportation Statistics.*

[FR Doc. E8-23793 Filed 10-6-08; 8:45 am]

**BILLING CODE 4910-FE-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board**

[STB Docket No. AB-491 (Sub-No. 2X)]

**R.J. Corman Railroad Company/  
Pennsylvania Lines, Inc.—  
Abandonment Exemption—in  
Clearfield, Jefferson, and Indiana  
Counties, PA**

R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 7-mile segment of a line of railroad known as the Hillman Branch, extending from milepost 0 near McGees to the end of the line at milepost 7 near Hillman, in Clearfield, Jefferson, and Indiana Counties, PA. The line traverses United States Postal Service Zip Codes 15757, 15742, and 15767.

RJCP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic that has to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 6, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to

<sup>1</sup>The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any

file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 17, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to RJCP's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RJCP has filed a combined environmental and historic report, which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RJCP's filing of a notice of consummation by October 7, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "<http://www.stb.dot.gov>."

Decided: September 30, 2008.

request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup>Effective July 18, 2008, the filing fee for an OFA increased to \$1,500. See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Anne K. Quinlan,**  
*Acting Secretary.*

[FR Doc. E8-23416 Filed 10-6-08; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35164]

#### BNSF Railway Company—Petition for Declaratory Order

**AGENCY:** Surface Transportation Board.

**ACTION:** Institution of declaratory order proceeding; request for comments.

**SUMMARY:** In response to a petition filed by BNSF Railway Company (BNSF) on July 15, 2008, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e) to determine whether what BNSF characterizes as two track relocation projects in Oklahoma City, OK, are subject to the Board's jurisdiction and require prior Board approval. One reply in opposition to the petition and three letters in support of the petition have been filed. The Board seeks public comments on this matter.

**DATES:** Supplemental evidence from BNSF is due by October 17, 2008. Replies are due by November 6, 2008.

**ADDRESSES:** Send an original and 10 copies of any comments, referring to STB Finance Docket No. 35164, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, send one copy of comments to BNSF's representative, Kristy Clark, 2500 Lou Menk Drive, Fort Worth, TX 76131-2828, and one copy to Edwin Kessler, 1510 Rosemont Drive, Norman, OK 73072.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

**SUPPLEMENTARY INFORMATION:** BNSF's petition for declaratory order concerns what it now characterizes as a project to relocate two track segments of its Chickasha Subdivision between milepost 541.69 and milepost 539.96 to facilitate the Oklahoma City I-40 Crosstown Relocation project.<sup>1</sup>

<sup>1</sup> These track segments were previously the subject of a notice of exemption in *BNSF Railway Company—Abandonment Exemption—In Oklahoma County, OK*, STB Docket No. AB-6 (Sub-No. 430X), that was rejected in a Board decision served June 5, 2008.

Petitioner states that these two track segments must be relocated to make way for this major highway project. BNSF states that the segment of the Chickasha Subdivision between milepost 540.15 and milepost 541.69 (referred to as the middle segment) would be relocated by rerouting traffic over BNSF's Packingtown Lead, which will have the same throughput capacity and operating speeds as the Chickasha Subdivision line. BNSF states that the portion of the Chickasha Subdivision between milepost 540.15 and milepost 539.96 (referred to as the eastern segment) would be relocated to the south.<sup>2</sup> BNSF adds that a contractor for the Oklahoma Department of Transportation (ODOT) is constructing: (1) A new railroad bridge to elevate BNSF's Red Rock Subdivision where it crosses the Chickasha Subdivision and where the new highway will be located, and (2) new industry tracks to connect the two shippers located adjacent to the eastern segment (Producers Cooperative Oil Mill (Producers) and Mid-States Wholesale Lumber (Mid-States)) directly to BNSF's Red Rock Subdivision north of the Chickasha Subdivision.

BNSF argues that neither of these relocation projects will affect service to shippers or involve an extension into or an invasion of new territory, and that these projects are therefore outside of the Board's jurisdiction, citing among other authorities *Missouri Pac. R. Co. Trustee Construction*, 282 I.C.C. 388 (1952); and *City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). BNSF requests expedited processing of this proceeding to allow the highway project to move forward.

On August 4, 2008, ODOT submitted into the record a letter expressing support for an expedited declaratory ruling in favor of BNSF. ODOT also attached letters of support from Mick Cornett, Mayor of Oklahoma City, and the Greater Oklahoma City Chamber.

On August 5, 2008, Edwin Kessler filed a reply to BNSF's petition and a request for a procedural schedule, including a public hearing in Oklahoma City, OK.<sup>3</sup> Mr. Kessler argues that BNSF has failed to demonstrate that its

<sup>2</sup> BNSF states that it plans to file an individual exemption request or an application to abandon the western segment—the portion of the Chickasha Subdivision between milepost 541.69 and milepost 542.91—in the future. Therefore, the western segment is not at issue here.

<sup>3</sup> The public hearing request will be denied. The Board believes that the record can be developed and the issues resolved on the basis of written submissions.

proposed actions would be mere relocations of track. Rather, Mr. Kessler argues that the relocation of these segments will deprive some shippers of service, particularly Boardman, Inc. (Boardman), and will allow BNSF to serve new markets. Mr. Kessler argues that BNSF needs Board authorization to: (1) Construct the new tracks and (2) remove the two crossing diamonds on the eastern segment that enable it to reach two other shippers (Producers Co-Op Oil Mill and Mid-States Lumber Company).

On August 25, 2008, BNSF filed a response to Mr. Kessler's arguments in which it challenged several of Mr. Kessler's factual assertions.<sup>4</sup> BNSF also renewed its request for expedited Board handling of this matter.

On September 5, 2008, Mr. Kessler filed a reply to BNSF's August 25, 2008 response and also filed a separate document labeled "Motion to Compel" and "Motion to Cease and Desist" asking that the Board compel BNSF to undertake certain actions. In these motions, Mr. Kessler alleges that, in late July 2008, a railroad car carrying his locomotive was delivered to BNSF for transport to Boardman's facility, but that after reaching Oklahoma City some 19 days later, the car ultimately could not be delivered because the tracks leading to Boardman's facility had been removed. Mr. Kessler provided no verified statement to support these allegations.

On September 24, 2008, BNSF moved the Board to strike Mr. Kessler's September 5 pleading because it is an impermissible reply to a reply, is not properly verified, and involves matters that are either premature or outside the scope of this proceeding. BNSF also calls Mr. Kessler's locomotive shipment a "fraudulent ploy," which BNSF is investigating.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. BNSF asserts that no Board jurisdiction is implicated here, while Mr. Kessler argues that these projects are in fact subject to the Board's jurisdiction, as they would remove service to existing shippers and would allow BNSF to extend service into new territory. A

<sup>4</sup> In that document, BNSF also withdrew an earlier request that the Board rule that the United States District Court for the Western District of Oklahoma was without jurisdiction to enjoin the two relocation projects. On August 14, 2008, the District Court issued an order granting BNSF's motion to dismiss Kessler's petition to enjoin BNSF for lack of jurisdiction. *Edwin Kessler v. BNSF Railway Company and Oklahoma Department of Transportation*, Case No. CIV-08-358-R (W.D. Okla. 2008).