

existing shippers on adjoining segments will continue to receive local service; all overhead service can be rerouted; no one has requested local service on the middle segment in over 10 years; and there is no indication of any need for service on the middle segment in the future. Finally, because any traffic that might need to move over the middle segment could move over a refurbished BNSF Line (the Packingtown Lead), the public convenience and necessity does not require BNSF to keep the middle segment in the national rail system. Accordingly, the Board on its own motion granted BNSF an exemption from the provisions of 49 U.S.C. 10903 for the middle segment.

In seeking a declaratory order, BNSF also asked the Board for an expedited decision so that the relocation project to facilitate the construction of the I-40 highway could go forward. The Board, on its own motion, exempted the abandonment of the middle segment from the statutory offer of financial assistance (OFA) program so that the highway project may proceed and because applying the OFA provisions under 49 U.S.C. 10904 is not necessary to carry out the rail transportation policy.

Lastly, the Board granted an exemption on its own motion from the public use provisions under 49 U.S.C. 10905. BNSF has already agreed to make the right-of-way available to Oklahoma Department of Transportation (ODOT) for public use, *i.e.*, the construction of I-40. Therefore, the purpose sought to be achieved by section 10905—to provide an opportunity to public bodies to negotiate for the acquisition of abandoned rail properties—has already been fulfilled by the agreement reached between BNSF and ODOT.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 19, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

**Andrea Pope-Matheson,**  
Clearance Clerk.

[FR Doc. E9-12099 Filed 5-22-09; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2009-15]

#### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before June 15, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2009-0250 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.

- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laverne Brunache (202) 267-3133 or Tyneka Thomas (202) 267-7626, Office

of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 20, 2009.

**Pamela Hamilton-Powell,**  
Director, Office of Rulemaking.

#### Petition for Exemption

*Docket No.:* FAA-2009-0250.

*Petitioner:* Ameristar Air Cargo, Inc.

*Section of 14 CFR Affected:* 14 CFR 121.434(h)(3).

*Description of Relief Sought:* Ameristar Air Cargo, Inc. (Ameristar), has petitioned the Federal Aviation Administration to permit a pilot that meets certain conditions outlined in its petition, but not the requirements of 14 CFR 121.434(g), to serve as a pilot in an airplane for which the pilot has newly qualified. Additionally, Ameristar wishes to operate under such an exemption outside the United States, specifically: Canada, Mexico, Central America, South America, and the Caribbean nations or areas of operations authorized in its operations specifications.

[FR Doc. E9-12091 Filed 5-22-09; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Purpose, Use and Effect of Field Operations Training Manual.

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of Interpretation of Internal Agency Document.

**SUMMARY:** The purpose of this notice is to restate and confirm the Agency's policy regarding the purpose, use and effect of the paper and electronic versions of FMCSA's Field Operations Training Manual (FOTM and eFOTM).  
**DATES:** *Effective Date:* This interpretation restates policy already in effect.

**FOR FURTHER INFORMATION CONTACT:** Peter Snyder, Trial Attorney, Office of the Chief Counsel, Enforcement Division, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461, telephone (708) 283-3515; or Genevieve Sapir, Attorney-Advisor, Office of the Chief Counsel, Regulatory Affairs Division, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone (202) 366-7056.

## Background

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) established the Federal Motor Carrier Safety Administration ("FMCSA") as a new operating administration within the Department of Transportation, effective January 1, 2000 (Pub. L. 106-159, 113 Stat. 1748, December 9, 1999). Continuing the practice first established by FMCSA's predecessors, the Office of Motor Carriers and the Office of Motor Carrier Safety, both within the Federal Highway Administration, FMCSA issues guidance to its Field Service Centers and State Division Offices, in the form of the Field Operations Training Manual (FOTM). Volume III (Enforcement: General Functions of an Investigator) of the first FOTM, which was issued by the new operating administration in January 2000, states: "This chapter has been prepared to assist the Investigator in the performance of investigative work. The intent is to present investigative procedures which can be used while conducting all types of investigations." This guidance is now stored and distributed in electronic format in the eFOTM, which is periodically updated as new policies are adopted in response to legislation and new program initiatives. A redacted version of the eFOTM is available in the FMCSA Electronic Reading Room at: <http://www.fmcsa.dot.gov/foia/electronicreadingroom.htm>. FMCSA redacted certain information from the eFOTM available at this Web site in accordance with the Freedom of Information Act.

The eFOTM is, and has been, best characterized as internal enforcement guidelines, a "best practices" guide for the Agency's Safety Investigators and other enforcement staff. It is intended to provide guidance to assist with the sound exercise of discretion in conducting investigations, compliance reviews, roadside inspections and safety audits. The United States Court of Appeals for the District of Columbia Circuit recognized that the FOTM does not impose new substantive burdens, in the sense that it neither requires nor prohibits any particular actions on the part of motor carriers. *Aulenback, Inc. v. Federal Highway Admin.*, 103 F.3d 156, 169 (DC Cir. 1997). Instead, "the Manual simply provides guidance for [FMCSA staff] seeking to identify motor carrier operations that pose a potential danger to public safety." *Id.* The District of Columbia Circuit has also held that since the FOTM is not a legislative rule, section 553 of the Administrative Procedure Act did not require notice and comment rulemaking to precede

adoption of the manual. *American Trucking Ass'ns, Inc. v. DOT*, 166 F.3d 374 (DC Cir. 1999).

## Current Policy

The Agency continues to regard the FOTM and eFOTM as internal enforcement guidance; the guidance does not alter underlying substantive legal requirements and does not provide an independent basis for enforcement. The investigatory procedures set forth in the eFOTM, and whether and to what extent Agency employees follow them, are not relevant in determining whether Federal motor carrier statutes or regulations have been violated or the appropriate penalty to be assessed for such violations. If an employee fails to comply with investigative, inspection, audit or other guidelines, the Agency will address that departure from recommended procedures internally, on a case-by-case basis, and may consider disciplinary action, training or other appropriate measures. However, the Agency hereby provides public notice that it will not consider an FMCSA or State employee's failure to follow the FOTM or eFOTM guidance as a defense to penalties or violations assessed against drivers or motor carriers. An FMCSA or State employee's failure to follow the FOTM or eFOTM guidance will not excuse violations of the Federal Motor Carrier Safety Regulations, Federal Motor Carrier Commercial Regulations, or the Hazardous Materials Regulations by any person, including motor carriers and drivers, nor will it provide grounds for reducing civil penalties. *See In the Matter of J. Line, Inc., dba J-Line Transp.*, Docket No. FMCSA-2008-1087 (Administrative Law Judge's Order Denying Cross-Motions for Final Order) (Jan. 13, 2009); *Swift Transp. Co., Inc.*, Docket No. FMCSA-2004-17248-63 (Order Respecting Field Operations Training Manual) (Jan. 12, 2007).

Issued on: May 19, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

[FR Doc. E9-12136 Filed 5-22-09; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 18, 2009

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 25, 2009 to be assured of consideration.

### Financial Crimes Enforcement Network (FinCEN)

*OMB Number:* 1506-0005.

*Type of Review:* Revision.

*Form:* FinCEN 103.

*Title:* Currency Transaction Report by Casinos.

*Description:* Casinos and card clubs file Form 103 for currency transactions in excess of \$10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(2). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

*Respondents:* Businesses or other for-profits.

*Estimated Total Reporting Burden:* 230,000 hours.

*OMB Number:* 1506-0014.

*Type of Review:* Extension.

*Form:* FINCEN-105.

*Title:* Report of International Transportation of Currency or Monetary Instruments.

*Description:* FinCEN, and the Department of Homeland Security (DHS) and the DHS Bureaus, are required under 31 U.S.C. 5316(a) to collect information regarding mailing, shipment, or transportation of currency or monetary instruments of more than \$10,000 in value into or out of the United States

*Respondents:* Individuals or Households

*Estimated Total Reporting Burden:* 140,000 hours.

*OMB Number:* 1506-0033.

*Type of Review:* Extension.

*Title:* Customer Identification Programs for Mutual Funds.

*Description:* Mutual Funds are required to establish and maintain customer identification programs. A copy of the written program must be maintained for five years. *See* 31 CFR 103.131.

*Respondents:* Businesses or other for-profits.

*Estimated Total Reporting Burden:* 266,700 hours.