

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366-4512, PHMSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

### Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) require that Division 1.1 fireworks must be examined by a DOT-approved explosives test laboratory and assigned a recommended shipping description, division, and compatibility group in accordance with § 173.56(b). The tests provided for the classification of Division 1.1 fireworks specified in §§ 173.57 and 173.58 describe the procedures used to determine the acceptance criteria and assignment of class and division for all new explosives.

The HMR also permit Division 1.1 firework devices that have been approved by the competent authority of a foreign government that PHMSA's Associate Administrator has acknowledged in writing as acceptable in accordance with 49 CFR § 173.56(g).

According to § 173.56(j), manufacturers of Division 1.3 and 1.4 fireworks or their designated U.S. agents may apply for an EX classification approval without prior examination by a DOT-approved explosives test laboratory if the firework device is manufactured in accordance with APA Standard 87-1 (IBR, see § 171.7), and the device passes the thermal stability test. Additionally, the applicant must certify that the firework device conforms to the APA Standard 87-1 and that the descriptions and technical information contained in the application are complete and accurate. PHMSA has in the past, on a case-by-case basis, approved some Division 1.1G fireworks without requiring testing by a DOT-approved explosives examination laboratory. However, we evaluate each EX approval application independently and have also required Division 1.1G fireworks to undergo examination testing by a DOT-approved explosive examination lab prior to issuing the EX approval.

While APA Standard 87-1 references two instances where Division 1.1 fireworks may be approved under the standard, it does not call for the level of testing required in the HMR, nor does it provide testing and criteria to determine

when a firework ceases to be a Division 1.1 and becomes forbidden for transport.

We are clarifying our policy that all Division 1.1 fireworks must undergo examination by a DOT-approved explosives examination laboratory. However, if a fireworks device is classed and approved as a Division 1.1 firework, the UN Test Method 6 is not required. Rather, the testing will be limited to UN Test Method 4a(i) and 4b(ii), as is already specified in § 173.57(b). The examination laboratory may request additional information if necessary to make their classification recommendation. Additionally, we allow the laboratory to make a classification recommendation for Division 1.1 fireworks based on analogy.

PHMSA believes that by adhering to the requirements of the HMR and issuing Division 1.1 fireworks approvals only after a DOT-approved explosive laboratory has examined and recommended a classification, or an approval has been issued by a competent authority of a foreign government acknowledged by PHMSA's Associate Administrator, we are ensuring that fireworks transported in commerce meet the established criteria for their assigned classification, thereby minimizing the potential of the shipment of incorrectly classified or forbidden fireworks.

For these safety reasons, PHMSA is seeking comment on its clarification of its fireworks approvals policy whereby PHMSA will accept and issue only those classification approval applications for Division 1.1 fireworks that have been examined and assigned a recommended shipping description, division, and compatibility group by a DOT-approved explosives test laboratory in accordance with 49 CFR 173.56(b), or has been approved by the competent authority of a foreign government that PHMSA's Associate Administrator has acknowledged in writing as acceptable in accordance with 49 CFR 173.56(g).

Issued in Washington, DC on September 21, 2011.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB 6 (Sub-No. 475X)]

### BNSF Railway Company— Abandonment Exemption—in Boulder County, CO

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 1.37 miles of rail line extending between milepost 20.80 and milepost 22.17 at Lafayette, in Boulder County, CO (the Line). The Line traverses United States Postal Service Zip Code 80026 and includes no stations.

BNSF has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) the Line is stub-ended and not capable of handling any overhead traffic, therefore, there is no overhead traffic 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(c) (environmental 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 Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 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 October 27, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an

<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 Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any 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.

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 7, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, NW., Suite 225, Washington, DC 20005.

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

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 30, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service 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), BNSF 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 BNSF's filing of a notice of consummation by September 27, 2012, 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 22, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Unit.

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<sup>2</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35387]

#### Ag Processing Inc A Cooperative— Petition for Declaratory Order; Institute Proceeding and Hold Oral Argument

In response to a petition filed by Ag Processing Inc A Cooperative (Ag Processing) regarding the reasonableness of a Norfolk Southern Railway Company (NSR) tariff, the Surface Transportation Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). The Board also will hold oral argument to address issues in this proceeding on Tuesday, October 25, 2011, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street, SW., Washington, DC. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

On July 20, 2010, Ag Processing filed a petition for declaratory order challenging the reasonableness of an NSR tariff insofar as it imposes charges and penalties on loaded rail cars that exceed the car's weight limit as a result of weather conditions encountered after the car is delivered to the railroad. The petition was amended to add other shippers<sup>1</sup> and to continue the challenge after NSR revised the tariff. At Petitioners' request, the Board ordered the parties to mediate the dispute, but mediation was unsuccessful, and NSR filed a motion to dismiss the petition on January 27, 2011, along with confidential materials subject to a protective order. The Petitioners filed their reply on March 8, 2011.

The Board does not anticipate the need for additional evidentiary filings in this proceeding. The Board is setting this case for oral argument on the issues raised in this case. The parties should be prepared to discuss: (1) Industry practice relating to cars made overweight by snow or ice; (2) how frequently closed-hopper cars and tank cars are made overweight by snow and ice and how those cars have been brought into compliance in the past; (3) what NSR's overweight policies were prior to adopting the procedures in question; and (4) whether the agency's treatment of demurrage—which also involves issues of due diligence and equipment usage—is a useful model to

<sup>1</sup> The amended petition added Bunge North America, Inc., Archer Daniels Midland Company, Louis Dreyfus Corporation, and Perdue Agribusiness, Inc. as petitioners (collectively, Petitioners).

employ here. The Petitioners and NSR will each have 20 minutes of argument time. The Petitioners may reserve part of their time for rebuttal if they so choose.

By October 18, 2011, each party shall submit to the Board the name of the counsel who will be presenting its argument. The Petitioners, in their filing, shall also address the requested time reserved for rebuttal, if any. Parties should prepare a short oral statement and be prepared to answer questions from the Board. The purpose of oral argument is to provide an opportunity for questions that the Board may have regarding any issue in the proceeding.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument.

A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

#### Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, SW. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities