

noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120.

### NHTSA Decision

#### *Requirement Background*

The purpose of the flammability requirements is to reduce deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches or cigarettes. S5.7 of FMVSS No. 213 requires that each material used in a child restraint system shall conform to the flammability requirements contained in S4 of FMVSS No. 302. S4 contains flammability requirements to measure the burn rate of specific components of vehicle occupant compartments.

#### *NHTSA's Analysis of Graco's Reasoning*

Based on Dorel's explanation in its petition, certain warning labels sewn to a detachable pillow provided with the Dorel MyRide 65 child restraint system did not comply with the flammability requirements contained in FMVSS No. 213 and No. 302. Dorel stated that the subject warning labels were supplied by a sub-supplier of Dorel's usual supplier of pillow warning labels and were not properly treated for flammability resistance. Dorel concludes that since the warning labels were not properly treated for flammability resistance then the labels are not in compliance with FMVSS No. 213.

Dorel states that the noncompliance of the pillow label to the requirements of FMVSS No. 213 is inconsequential to overall motor vehicle safety. The size, location, function and overall design of the pillow at issue, together with the low risk of injury resulting from the noncompliant label on the detachable pillow, is inconsequential to the overall safety of the MyRide child restraint system. Since the label is physically small (3 inches by 1¼ inches) the likelihood of ignition is negligible, and the label is surrounded by flame resistant materials. Graco considered a variety of potential ignition sources that may be exposed to the label and believes that the likelihood of the label coming into contact with any type of ignition source is extremely low, including the potential ignition from cigarettes or other smoking materials.

#### *NHTSA Conclusions*

There appears to be an insignificant safety risk created by the noncompliance. The underlying concern is that the label attached to the

detachable pillow could ignite since it was not treated with flame resistant material. But the relatively small size of the label, together with its proximity to other materials on the child restraint system that have been treated with flame resistant materials, renders the likelihood of ignition for this one label extremely low.

There appears to be no significant safety risk caused by the noncompliance.

#### *NHTSA's Response to the Comment*

In its comments to the docket, Hoppe did not specifically address the pillow warning label noncompliance that is the essence of the Graco petition. Instead he applauded Graco and NHTSA for enforcing the applicable safety standards.

Because Hoppes' comments did not provide any information addressing Graco's noncompliance that is the essence of its petition, Hoppes' comments do not support denying the subject petition.

#### *Decision*

After a review of Graco's arguments and Dean L. Hoppe's comment, NHTSA is convinced that Graco has met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA agrees with Graco that this specific noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that Graco has met its burden of persuasion that the FMVSS No. 213 noncompliance in the child restraint systems identified in Graco's Noncompliance Information Report is inconsequential to motor vehicle safety. Accordingly, Graco's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the car child restraint systems<sup>2</sup> that Graco no longer

controlled at the time that it determined that a noncompliance existed in the subject vehicles.

**Authority:** (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: March 2, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35600]

#### **Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.; Continuance in Control Exemption; Santa Teresa Southern Railroad, LLC**

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. (CGX) and Ironhorse Resources, Inc. (Ironhorse) (collectively, parties) have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Santa Teresa Southern Railroad, LLC (STSR), upon STSR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Santa Teresa Southern Railroad, LLC—Operation Exemption—Rail Line of Verde Logistics Railroad, LLC at Santa Teresa, Dona Ana County, N.M.*, Docket No. FD 35599, wherein STSR seeks Board approval to operate over approximately 12,000 feet of rail line owned by Verde Logistics Railroad, LLC in Santa Teresa, N.M.

The parties intend to consummate the transaction no sooner than 30 days after filing their notice with the Board (March 22, 2012).

CGX, a noncarrier holding company, is owned by Gregory B. Cundiff and Connie Cundiff. CGX owns Ironhorse, also a noncarrier holding company. CGX owns the following Class III rail carriers: Crystal City Railroad, Inc.; Lone Star Railroad, Inc.; Rio Valley Railroad, Inc.; and Mississippi Tennessee Holdings, LLC. Ironhorse owns the following Class III rail carriers: Rio Valley Switching Company; Southern Switching Company; Mississippi Tennessee Railroad, LLC; Gardendale Railroad, Inc.; and STSR.

The parties represent that: (1) The rail line to be operated by STSR will not

<sup>2</sup> Graco's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Graco as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the affected child restraint systems. However, a decision on this petition cannot relieve distributors

and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant child restraint systems under their control after Graco notified them that the subject noncompliance existed.

connect with any of the railroads owned by CGX or Ironhorse; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines with any other railroads in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

The parties state that the purpose of the proposed transaction is the achievement of operating efficiency and economy.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 15, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35600, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street Suite 1890, Chicago, IL 60604-1112.

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Decided: March 5, 2012.

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

**Jeffrey Herzig,**  
Clearance Clerk.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35599]

#### **Santa Teresa Southern Railroad, LLC—Operation Exemption—Rail Line of Verde Logistics Railroad, LLC at Santa Teresa, Dona Ana County, NM**

Santa Teresa Southern Railroad, LLC (STSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 12,000 feet of rail line owned by Verde Logistics Railroad, LLC (Verde). The rail line extends between a point of connection with Union Pacific Railroad Company (UP) at or near milepost 1280 on UP's Lordsburg Subdivision and terminus at Strauss Road<sup>1</sup> at or near Santa Teresa, Dona Ana County, N.M. STSR states that it has entered into an Operating Agreement with Verde for STSR to provide common carrier rail service to shippers and receivers located in the Santa Teresa Logistics Industrial Park.

This transaction is related to a concurrently filed verified notice of exemption in *Gregory B. Cundiff, et al.—Continuance in Control Exemption—Santa Teresa Southern Railroad, LLC*, Docket No. FD 35600, wherein Mr. Gregory B. Cundiff and others seek Board approval to continue in control of STSR upon STSR's becoming a Class III rail carrier.

According to STSR, the transaction is expected to be consummated no sooner than 30 days after filing its notice with the Board. The earliest this transaction can be consummated is March 22, 2012, the effective date of the exemption (30 days after the notice of exemption was filed).

STSR certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million and will not result in its becoming a Class I or Class II rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 15, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35599, must be filed with the Surface Transportation Board, 395 E Street SW.,

Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112.

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Decided: March 5, 2012.

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

**Jeffrey Herzig,**  
Clearance Clerk.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35601]

#### **BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company**

Pursuant to a written trackage rights agreement, Union Pacific Railroad Company (UP) has agreed to grant trackage rights to BNSF Railway Company (BNSF) over a portion of a line of railroad known as the Lockport Branch, between milepost 0.1 at Raceland Junction and milepost 14.2 at Jay, a distance of 14.1 miles, in Lafourche Parish, La. (the Line).<sup>1</sup>

The earliest this transaction may be consummated is March 22, 2012, the effective date of the exemption (30 days after the notice was filed).

BNSF states that it is seeking trackage rights authority to protect its interests in the Lockport Branch. In Docket No. AB 33 (Sub-No. 277X), UP filed a verified notice of exemption to abandon most of the Lockport Branch over which BNSF now seeks trackage rights authority.<sup>2</sup> BNSF has asserted, in that abandonment proceeding, that it has authority sanctioned by the Board to provide service on the Line. UP has contested

<sup>1</sup> A copy of the trackage rights agreement was submitted with the notice of exemption. BNSF states that this agreement, dated August 1, 2000 (First Supplemental Agreement), is a supplement to the Trackage Rights Agreement dated September 10, 1998, between UP and BNSF, which was authorized by the Board in *Burlington Northern & Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co.*, FD 33663 (STB served Oct. 19, 1998). BNSF adds that, while the First Supplemental Agreement covers all former Southern Pacific Transportation Company branches connecting to the rail line between Dawes, Tex., and Avondale, La., in this proceeding BNSF seeks trackage rights authority only over the portion of the Lockport Branch between milepost 0.1 and milepost 14.2.

<sup>2</sup> Specifically, UP seeks authority to abandon the portion of the Lockport Branch between milepost 1.7 and milepost 14.2.

<sup>1</sup> STSR states that Strauss Road has been designed but has not yet been constructed.