however, FRA has granted waivers for qualified passenger equipment at higher cant deficiencies. A more detailed discussion of cant deficiency can be found in 52 FR 38035, October 13, 1987.

Amtrak, BNSF, and WSDOT have worked together to accomplish the goal of reducing trip times. Amtrak plans to dedicate a second locomotive, either a P40 or P42 high-performance locomotive, to each Talgo train. BNSF, the track owner, has initiated a program working with the municipalities to reduce the number of speed restrictions. BNSF also lifted speed restrictions imposed decades ago and not lifted after track improvements were made. Another part of the program is to increase curve speeds from those developing three inches of cant deficiency on as many as 376 curves on the route.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–97–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on May 7, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 97–12417 Filed 5–12–97; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M–034]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, MAR–570, Room 8117, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2400 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Number: None.

Expiration Date of Approval: June 30, 1997.

Summary of Collection of Information: Concerns approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be required to submit financial data upon which MARAD approval would be based. In certain cases, brokers would be required to certify that American underwriters were offered opportunity to compete for the business.

Need and Use of the Information: 46 CFR Part 249, published as a final rule on June 20, 1988, prescribes regulations for approval of underwriters for marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended. The regulations provide for approval of foreign underwriters on the basis of an assessment of their financial condition, the regulatory regime under which they operate, and a statement attesting to a lack of discrimination in their country against U.S. hull insurers. The regulations also require that American underwriters be given an opportunity to compete for every placement, thereby necessitating in some cases certification that such opportunity was offered.

Description of Respondents: Foreign underwriters of marine insurance and insurance brokers placing marine hull insurance if less than 50 percent of the placement is made in the American market.

Annual Responses: 82.

Annual Burden: 66 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: May 7, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–12431 Filed 5–12–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–114; Notice 2]

Final Decision That Certain Nonconforming Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final decision that certain nonconforming vehicles are eligible for importation.

SUMMARY: This document announces a final decision by the Administrator of the National Highway Traffic Safety Administration (NHTSA) that certain vehicles that do not comply with all applicable Federal motor vehicle safety standards, but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States. The vehicles in question either (1) Are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features

that comply with, or are capable of being altered to comply with all U.S. safety standards. This document also announces NHTSA's decision to rescind the vehicle eligibility number that was formerly applicable to all vehicles certified by their original manufacturer as complying with Canadian safety standards (eligibility number VSA–1), and to assign four separate eligibility numbers to Canadian certified vehicles, based on those vehicles' classification and weight.

DATES: This decision is effective on May 13, 1997.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the vehicle is substantially similar to a motor vehicle of the same model and model year that was originally manufactured for import into and sale in the United States and was certified as complying with all applicable FMVSS, and also finds that the noncompliant vehicle is capable of being readily altered to comply with all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if NHTSA decides that its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS.

On March 7, 1997, NHTSA published a notice in the **Federal Register** at 62 FR 10614 announcing that it had made a tentative decision that certain motor vehicles that do not comply with all applicable FMVSS, but that are certified by their original manufacturer as complying with all applicable Canadian Motor Vehicle Safety Standards, are eligible for importation into the United States. The notice identified these vehicles as:

(a) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, and that comply with FMVSS No. 214;

(b) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, and before September 1, 1998, that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; and

(c) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1998, and before September 1, 2002, that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216.

The reader is referred to the March 7 notice for a full discussion of the factors leading to the tentative decision.

The notice also proposed to rescind Vehicle Eligibility Number VSA–1, which NHTSA had established as the designator for importers to use on the HS–7 Declaration Form accompanying entry to indicate the import eligibility of all vehicles certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards (CMVSS). In place of this designator, the notice proposed to assign four separate eligibility numbers (VSA–80 through VSA–83) to Canadian-certified vehicles, based on vehicle classification (i.e., passenger car, multipurpose passenger vehicle, truck, bus, trailer, motorcycle) and, in the case of multipurpose passenger vehicles, buses and trucks, based also on vehicle weight. The reader is also referred to the March 7 notice for a full discussion of this proposal.

In accordance with 49 U.S.C. § 30141(b), the notice solicited public comments on the tentative decision that NHTSA had made and on the agency's proposal to assign new import eligibility numbers to Canadian-certified vehicles. Four comments were submitted in response to the notice. The first of these was submitted by members of the North American Automotive Trade Association (NAATA). In their comment, the NAATA members requested NHTSA to be as expedient as possible in making a final decision regarding the import eligibility of Canadian-certified passenger cars manufactured on or after September 1, 1996 that comply with FMVSS Nos. 208 and 214. The NAATA members also requested the agency to preserve for Canadian market vehicles a waiver from the fee established at 49 CFR 594.8 for importing a vehicle pursuant to an eligibility decision by the NHTSA Administrator. In support of this request, the NAATA members contended that NHTSA incurs no additional administrative overhead or burden in processing these vehicles, in comparison to the agency's processing of Canadian market vehicles that have previously been determined eligible for importation. Additionally, the NAATA members characterized the proposed change in eligibility numbers for Canadian-certified vehicles as being merely clerical in nature, and not resulting in any actual change to ''the entry or compliance package approval process.''

The second comment was submitted by Philip Trupiano of Auto Enterprises, Inc. of Clawson, Michigan, a Registered Importer of nonconforming vehicles. In his comment, Mr. Trupiano also requested the agency to expedite its eligibility decision with respect to Canadian-certified passenger cars manufactured on or after September 1, 1996. Mr. Trupiano further expressed the opinion that NHTSA should not establish September 1, 2002, or any other date for the expiration of import eligibility on Canadian market vehicles. Mr. Trupiano observed that the notice reflected the agency's intent ''to issue new decisions covering vehicles manufactured on or after September 1, 2002 within a sufficient period before that date is reached.'' In Mr. Trupiano's opinion, NHTSA's ability to honor this intent is undermined by the fact that it has taken the agency more than seven months from September 1, 1996 to issue a final decision of import eligibility with respect to Canadian-certified passenger cars manufactured on or after that date.

Mr. Trupiano noted that NHTSA proposed September 1, 2002 as the next cutoff because that is the date on which revised interior impact protection requirements that are to be phased in under FMVSS No. 201, Occupant Protection in Interior, and that are not found in the corresponding CMVSS, will become effective for all passenger cars and for multi-purpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 10,000 pounds or less. To eliminate the need for NHTSA to issue a new eligibility decision following the proposed September 1, 2002 cutoff, Mr. Trupiano suggested that the agency could make compliance with FMVSS No. 201 a condition for the import eligibility of all affected vehicles manufactured on or after September 1, 1996.

Although Mr. Trupiano stated that he has no objection to the proposed assignment of new eligibility numbers to Canadian-certified vehicles, he expressed the opinion that such a change is unnecessary in view of the fact that Registered Importers provide information on vehicle classification in the certificates of conformity that they submit to NHTSA to obtain the release of bonds posted for noncomplying vehicle.

Additionally, Mr. Trupiano requested the agency to clarify in writing that

vehicles entered under the proposed eligibility numbers would be exempt from the fee prescribed under 49 CFR 594.8. Mr. Trupiano contended, without providing any supporting analysis, that the imposition of such a fee on Canadian-certified vehicles would be in violation of the North American Free Trade Agreement (NAFTA). Mr. Trupiano further expressed the understanding that Canadian-certified vehicles are not subject to the fee prescribed under 49 CFR 594.8 because of an agreement between NHTSA and the Canadian government reflected in a letter dated March 16, 1990 from Canadian Ambassador D.H. Burney to Jerry R. Curry, who was then NHTSA Administrator, and a response from Administrator Curry to Ambassador Burney dated April 24, 1990. Copies of these letters, which were attached to Mr. Trupiano's comments, have been placed in the public docket for this eligibility decision. Mr. Trupiano interprets this correspondence as containing an agreement on NHTSA's behalf to waive importation fees on Canadian market vehicles which ''cannot be unilaterally changed.''

The third comment was submitted by Brian Osler, Executive Director and Counsel to NAATA. In his comment, Mr. Osler expressed agreement with the agency's tentative decision to extend import eligibility to Canadian market vehicles manufactured on or after September 1, 1996 that are in compliance with FMVSS Nos. 208 and 214. Mr. Osler took exception, however, to the proposed eligibility cutoff date of September 1, 2002, contending, as did Mr. Trupiano, that this will result in future delays that will cause economic hardship. Mr. Osler predicted that NHTSA's ''administrative requirements'' will prevent the agency from honoring its commitment to issue a new eligibility decision within a reasonable period before the September 1, 2002 cutoff date is reached. To eliminate the need for a future decision, Mr. Osler recommended that the tentative decision be revised along the lines suggested by Mr. Trupiano. Mr. Osler also shared Mr. Trupiano's opinion that NHTSA has an obligation to adopt this approach under Article 908 of NAFTA, which he characterized as requiring the agency to conduct FMVSS conformity assessments as expeditiously as possible. Mr. Osler additionally urged NHTSA to state in writing that vehicles imported under the proposed eligibility numbers are exempt from the fees prescribed under 49 CFR 594.8, and contended that this is ''necessary to ensure that NHTSA does not unduly restrict trade as contemplated by the Free Trade Agreement.'' Mr. Osler also characterized the correspondence between Administrator Curry and Ambassador Burney as reflecting the agency's agreement not to ''impose fees that would unduly restrict trade between Canada and the United States.''

The fourth comment was submitted by Lawrence A. Beyer, an attorney who represents several Registered Importers. In his comment, Mr. Beyer also expressed general agreement with the tentative decision, but voiced concern that the assignment of new eligibility numbers for Canadian-certified vehicles could be a ploy for eliminating the fee waiver that has applied to these vehicles when imported under eligibility number VSA–1. Mr. Beyer contended that if the agency is so motivated, its actions would contradict a requirement in 49 CFR Part 594 for fees to be set at the beginning of the fiscal year. Mr. Beyer further suggested that if NHTSA intends to change the fee structure for Canadian imports, the agency should publish a separate notice in the **Federal Register** concerning the matter, so that those who stand to be impacted will have a fair opportunity to comment.

NHTSA has considered each of the issues that these comments have raised. The agency has taken note of the concerns the commenters have expressed regarding the timing of this final decision. That timing was influenced, in part, by information that NHTSA obtained from Registered Importers indicating that Model Year 1997 vehicles would begin to be retired from Canadian rental fleets in March and April of this year, reducing the need for an earlier decision regarding the import eligibility of those vehicles. Contrary to the assumptions expressed by certain of the commenters, the timing of this decision has no bearing on any future such actions that NHTSA may take. As stated in the notice of tentative decision, the agency intends to issue new eligibility decisions covering vehicles for which the September 1, 2002 cutoff date was proposed within a sufficient period before that date is reached. The alternative suggested by certain of the commenters of specifying compliance with FMVSS No. 201 as a condition for the import eligibility of vehicles manufactured on or after September 1, 1996 is less acceptable to the agency. Should Canada adopt the revised interior impact protection requirements that are to be phased in under FMVSS No. 201 by September 1, 2002, there will be no need for compliance with this standard to be made a specific condition for import eligibility. Since those requirements have yet to be phased in, FMVSS No. 201 is at present substantially similar to its Canadian counterpart, precluding the need for compliance with the standard to be made a specific condition for the import eligibility of vehicles manufactured on or after September 1, 1996.

Contrary to the assumption expressed by one of the commenters, NHTSA did not propose to assign new vehicle eligibility numbers to Canadian-certified vehicles as a means to circumvent any purported fee exemption for those vehicles. As stated in the notice of tentative determination, the agency instead proposed separate eligibility numbers based on vehicle classification, and, in the case of multipurpose passenger vehicles, trucks, and buses, by weight, so that the eligibility decisions that pertain to Canadian-certified vehicles can be more readily modified in the event that any future discrepancies arise between Canadian and U.S. standards that affect only certain classes of vehicles. The use of a single eligibility number to cover all vehicle classes made it difficult to keep track of past modifications to these eligibility decisions. Contrary to the opinion of one commenter, the need for separate eligibility numbers is not undermined by the existence of vehicle classification information in the certificates of conformity that Registered Importers submit to NHTSA. The agency is not proposing separate eligibility numbers so that it can monitor the volume of Canadian imports by vehicle class, but instead to facilitate any future modifications to the eligibility determinations that may become necessary.

As the commenters recognized, the notice of tentative decision was entirely silent with respect to the issue of fees for Canadian imports. NHTSA did not introduce the subject because its intent was to have an eligibility decision in place as soon as possible to cover vehicles manufactured on or after September 1, 1996, without the delays that a controversy over fees could engender. In point of fact, there is no existing ''waiver'' of fees for Canadian vehicles. The importers of these vehicles must pay the fee for reimbursement of the U.S. Customs Service's bond processing costs established under 49 CFR 594.9.

The fee for importing a vehicle pursuant to a determination by the Administrator found at 49 CFR 594.8 is imposed, as that section states, to cover the direct and indirect costs incurred by NHTSA in making the eligibility determination. This fee is now set at

$134, and, as stated at 49 CFR 594.8(a), is payable by each importer of a vehicle covered by an import eligibility determination made under 49 CFR Part 593.

At the time that it was first established, the fee for importing a motor vehicle pursuant to an eligibility determination on the Administrator's initiative based on the existence of a substantially similar U.S.-certified vehicle was $1,560, to be paid only by the importer of the first vehicle covered by the determination. See 54 FR 40100, 40108 (September 29, 1989). Consistent with this provision, in the notice announcing its first final determination of import eligibility for Canadian-certified vehicles, published on August 13, 1990 at 55 FR 32988, NHTSA stated that the $1,560 fee then required under 49 CFR 593.8 would ''be payable only once, and by the first importer of any Canadian vehicle covered by this determination.'' 55 FR 32990.

In his correspondence with the Canadian Ambassador that is cited by several of the commenters, former NHTSA Administrator Curry stated that ''the fee of $1,560 would cover the blanket determination of all passenger cars, and would not be applied to each individual make and model year of passenger car,'' thereby ''effectively moot[ing] Canada's . . . request that Canadian market passenger cars be exempted from the determination fee.'' It is worth noting that this letter neither stated nor otherwise acknowledged the existence of any exemption from importation fees for Canadian vehicles. The letter in fact stated that the Ambassador's request for such an exemption could not be granted in that the fees established by the agency were specifically required by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100–562.

Although NHTSA has continued to collect the other fees established under 49 CFR Part 594 from the importers of Canadian-certified vehicles, the agency has not been collecting the fee prescribed under section 594.8 from those importers because that fee has already been paid by the first person to import a Canadian-certified vehicle under an eligibility decision made by the agency. That payment in theory reimbursed NHTSA for its costs in making the import eligibility decision. As a consequence, NHTSA has stated at various junctures that the fee for importing a vehicle pursuant to an Administrator's determination would not apply to Canadian vehicles covered by eligibility number VSA–1. See, e.g., 58 FR 41681, 41682 (August 5, 1993) and 61 FR 51043, 51044 (September 30, 1996).

Even though NHTSA is now rescinding eligibility number VSA–1, and replacing it with four separate eligibility numbers based on vehicle classification and weight, the agency does not intend to collect the importation fee established under 49 CFR 594.8 from the importers of vehicles covered by those eligibility numbers. First, the agency recognizes that the assignment of new eligibility numbers for Canadian-certified vehicles does not constitute a new import eligibility determination with respect to those vehicles that would justify imposition of the fee required under 49 CFR 594.8. However, even if payment of that fee could be justified, given the volume of nonconforming Canadian imports (which exceeded 15,000 vehicles in calendar year 1995 alone), the only fee that could be assessed on a ''per-vehicle'' basis to reimburse the agency for its costs in making eligibility decisions regarding those vehicles would be too minuscule to justify its imposition.

NHTSA is currently considering, however, proposing fees pursuant to 49 U.S.C. § 30141(a)(3) to reimburse the agency's costs associated with making decisions as to whether particular vehicles may be released by registered importers, i.e, the costs for the review and processing of certificates of conformity submitted by registered importers to document that vehicles that were not originally manufactured to conform to all applicable FMVSS have been brought into conformity with those standards. Such fees would apply to all vehicles for which conformity certificates are submitted to NHTSA, including vehicles imported from Canada.

Final Decision

Accordingly, the Administrator of NHTSA hereby decides that:

(a) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, and that comply with FMVSS No. 214;

(b) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1993, and before September 1, 1998, that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; and

(c) All multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1998, and before September 1, 2002, that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;

that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States on the basis that either:

1. they are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale there, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS; or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the Form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle Eligibility Number VSA–1 has previously covered all eligible vehicles certified by their original manufacturer as complying with all applicable CMVSS. NHTSA hereby rescinds that eligibility number and assigns the following eligibility numbers to the vehicles it covered, and to those admissible under this notice of final decision:

Vehicles Certified by Their Original Manufacturer as Complying with all Applicable Canadian Motor Vehicle Safety Standards

Number	Vehicles
VSA–80 ..	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208;

Number	Vehicles
	(c) All passenger cars manufactured on or after September 1, 1996 and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS Nos. 208, and that comply with FMVSS No. 214.
VSA–81 ..	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on and after September 1, 1991, and before September 1, 1993, and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks and buses with a GVWR of 4536 kg. (10,000 lbs.) or less, that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with the requirements of FMVSS Nos. 202, 208, 214, and 216.
VSA–82 ..	All multipurpose passenger vehicles, trucks and buses with a GVWR greater than 4536 kg. (10,000 lbs.) that are less than 25 years old.
VSA–83 ..	All trailers, and all motorcycles that are less than 25 years old.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: May 7, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–12488 Filed 5–12–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 5; Notice of petitions filed by applicants seeking waiver of otherwise applicable requirements respecting seven construction projects; Request for comments.

SUMMARY: CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRI), and Consolidated Rail Corporation (CRC)[1] intend to file, on or before July 10, 1997, a ''primary application'' seeking Surface Transportation Board (Board) authorization for, among other things, (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of the assets of Conrail by and between CSX and NS. *See* Decision No. 2, served April 21, 1997, and published that day in the **Federal Register** at 62 FR 19390. Applicants have now filed petitions seeking waiver of certain otherwise applicable requirements respecting seven related construction projects. These waivers, if granted, would allow applicants to begin construction on these projects following the completion by the Board of its environmental review of the constructions, and the issuance of a further decision approving construction, but prior to approval by the Board of the primary application. The Board seeks comments from interested persons respecting the waivers sought by applicants.

DATES: Written comments must be filed with the Board no later than June 2, 1997. Replies may be filed by applicants no later than June 4, 1997.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33388 and must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33388, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.[2] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2538; FAX: (202) 219–3289] and to each of applicants' representatives: (1) Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, DC 20004–1202; (2) Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 Seventeenth Street, N.W., Washington, DC 20006–3939; and (3) Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: On April 10, 1997, CSX, NS, and Conrail filed a notice of intent (CSX/NS–1) that indicates that they intend to file a 49 U.S.C. 11323–25 application (referred to as the ''primary application'') seeking Board authorization for, among other things, (a) the acquisition by CSX and NS of control of Conrail, and (b) the division of the assets of Conrail by and between CSX and NS. In Decision No. 2, served April 21, 1997, and published that day in the **Federal Register** at 62 FR 19390, we determined that the transaction contemplated by applicants is a major transaction as defined at 49 CFR 1180.2(a), and we invited comments on the procedural schedule proposed by applicants. Comments were filed on or before May 1, 1997, and a decision respecting the procedural schedule will be issued shortly.

Our regulations provide that applicants shall file, concurrently with their 49 U.S.C. 11323–25 primary application, all ''directly related applications, *e.g.*, those seeking authority to construct or abandon rail lines,'' etc. 49 CFR 1180.4(c)(2)(vi). Our regulations also provide, however, that,

[1] CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRI and CRC are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

[2] In addition to submitting an original and 25 copies of all documents filed with the Board, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette formatted for WordPerfect 7.0 (or formatted so that it can be converted into WordPerfect 7.0) and clearly labeled with the identification acronym and number of the pleading contained on the diskette. *See* 49 CFR 1180.4(a)(2). The computer data contained on the computer diskettes submitted to the Board will be subject to the protective order granted in Decision No. 1, served April 16, 1997 (as modified in Decision No. 4, served May 2, 1997), and is for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate expedited review by the Board and its staff.