

Tread Plies – 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies – 2 polyester, the tires were marked: Tread Plies – 2 Rayon + 2 Steel + 1 Polyamide, Sidewall Plies – 2 Rayon. Of the total, approximately 162,500 tires may have been delivered to customers. The remaining tires have been identified in Michelin's warehouse.

Michelin stated that these tires meet or exceed all FMVSS No. 109 performance requirements and, therefore, this noncompliance is inconsequential as it relates to motor vehicle safety.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to Section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments addressing the ANPRM, which sought comments on the tire labeling information required by 49 CFR 571.109 and 571.119, part 567, part 574, and part 575. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction (number of plies and type of ply cord material in the tread and sidewall) labeling requirements of FMVSS 109, paragraphs S4.3 (d) and (e), most comments indicated that the information was of little or no safety value to consumers. However, the tire construction information is valuable to the tire re-treading, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc., (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire so that proper retread, repair, and recycling procedures can be selected.

In addition to the written comments solicited by the ANPRM, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perception and understanding of tire labeling. Few of the focus group participants had knowledge of tire label information beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we believe that it is likely that few consumers are influenced by the tire construction

information (i.e., the number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire. However, the tire repair, retread, and recycling industries use the tire construction information.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, specifying rayon instead of polyester for tire construction will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries, according to ITRA. In this case, the fact that steel is used in the tread construction of the tires appears on the sidewalls. In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Michelin's application is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 4, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34142]

Bethlehem Steel Corporation— Corporate Family Transaction Exemption

Bethlehem Steel Corporation (BSC), a noncarrier holding company, has filed a verified notice of exemption. As part of an overall corporate restructuring, BSC is forming six new limited liability company subsidiaries (LLCs) to merge with and succeed to the rights of six of BSC's existing subsidiary Class III rail carriers. BSC will continue to control the LLCs.¹

The transaction was to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed.) The corporate restructuring will provide tax benefits to BSC, eliminate the filing of certain tax returns, and provide other administrative benefits.

BSC's control of the LLCs and the conversion of the six existing BSC rail carriers to LLCs through mergers are transactions within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). BSC states that the transaction will not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

¹ The six BSC subsidiary railroads are as follows: Brandywine Valley Railroad Company, operating in the States of Pennsylvania and Delaware; Upper Merion and Plymouth Railroad Company, operating in the State of Pennsylvania; Conemaugh & Black Lick Railroad Company, operating in the State of Pennsylvania; Keystone Railroad, Inc., operating in the State of Pennsylvania; Steelton & Highspire Railroad Company, operating in the State of Pennsylvania; and Patapsco & Back Rivers Railroad Company, operating in the State of Maryland. The instant corporate family transaction is related to six concurrently filed verified notices of exemption: STB Finance Docket No. 34154, *Brandywine Valley Railroad Company LLC—Acquisition and Operation Exemption-Brandywine Valley Railroad Company*; STB Finance Docket No. 34155, *Upper Merion and Plymouth Railroad Company LLC—Acquisition and Operation Exemption-Upper Merion and Plymouth Railroad Company*; STB Finance Docket No. 34156, *Conemaugh & Black Lick Railroad Company LLC—Acquisition and Operation Exemption-Conemaugh & Black Lick Railroad Company*; STB Finance Docket No. 34157, *Keystone Railroad LLC—Acquisition and Operation Exemption-Keystone Railroad, Inc.*; STB Finance Docket No. 34158, *Steelton & Highspire Railroad Company LLC—Acquisition and Operation Exemption-Steelton & Highspire Railroad Company*; and STB Finance Docket No. 34159, *Patapsco & Back Rivers Railroad Company LLC—Acquisition and Operation Exemption-Patapsco & Back Rivers Railroad Company*.

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. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34142, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796.

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Decided: January 2, 2002.

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

Vernon A. Williams,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34154]

Brandywine Valley Railroad Company LLC—Acquisition and Operation Exemption—Brandywine Valley Railroad Company

Brandywine Valley Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Brandywine Valley Railroad Company (Brandywine)¹ and operate the following rail lines: (1) Between milepost 12.7, at the Delaware/Pennsylvania state line and milepost 30.29, at Modena, PA, a distance of

17.59 miles;² (2) Between milepost 18.0, at Wawa, PA, and milepost 54.50, at the Pennsylvania/Maryland state line near Sylmar, MD, a distance of 36.50 miles;³ and (3) between milepost 12.7, at the Delaware/Pennsylvania border and milepost 2.9, at Elsmere Jct., DE, a distance of 9.8 miles.⁴

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which Brandywine is to be merged into Applicant. The separate existence of Brandywine will cease and Applicant will be the surviving entity and continue the operations formerly provided by Brandywine.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34154, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, PO Box 796, West Chester, PA 19381-0796.

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Decided: January 2, 2002.

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

Vernon A. Williams,

Secretary.

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² See *Brandywine Valley Railroad Company—Acquisition Exemption—Pennsylvania Department of Transportation*, STB Finance Docket No. 34141 (STB served Jan. 8, 2002).

³ See *Brandywine Valley Railroad Company—Modified Rail Certificate*, STB Finance Docket No. 33722 (STB served Apr. 16, 1999).

⁴ See *Certificate of Designated Operator, Brandywine Valley Railroad Company*, STB D-OP No. 100 (STB served June 10, 1999).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34156]

Conemaugh & Black Lick Railroad Company LLC—Acquisition and Operation Exemption—Conemaugh & Black Lick Railroad Company

Conemaugh & Black Lick Railroad Company LLC (Applicant), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from its corporate affiliate Conemaugh & Black Lick Railroad Company (CBL)¹ and operate a 32-mile rail line in Cambria County, PA.²

The transaction was expected to be consummated as of January 1, 2002. The earliest the transaction could have been consummated was December 26, 2001, the effective date of the exemption (7 days after the notice of exemption was filed).

This transaction is related to *Bethlehem Steel Corporation—Corporate Family Transaction Exemption*, STB Finance Docket No. 34142 (STB served Jan. 10, 2002), through which CBL is to be merged into Applicant. The separate existence of CBL will cease and Applicant will be the surviving entity and continue the operations formerly provided by CBL.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34156, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hockey, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796.

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Decided: January 2, 2002.

¹ Both Applicant and CBL are wholly owned subsidiaries of Bethlehem Steel Corporation.

² Applicant states that the rail line is composed of yard and switching tracks and does not have assigned mileposts.

¹ Both Applicant and Brandywine are wholly owned subsidiaries of Bethlehem Steel Corporation.