

hearing will be held. Based on the Draft EIS and comments received, the LPA may be refined, and the City of Tucson will further assess the LPA in the Final EIS and will apply for FTA approval to initiate Preliminary Engineering of the LPA.

Issued on: December 15, 2004.

**Leslie T. Rogers,**

*Region IX Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-18755; Notice 2]

#### Coupled Products, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Coupled Products, Inc. (Coupled Products) has determined that certain hydraulic brake hose assemblies that it produced do not comply with S5.3.4 of 49 CFR 571.106, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, "Brake hoses." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Coupled Products has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of Coupled Products' petition was published, with a 30 day comment period, on August 5, 2004, in the **Federal Register** (69 FR 47484). NHTSA received no comments.

S5.3.4 of FMVSS No. 106, tensile strength, requires that "a hydraulic brake hose assembly shall withstand a pull of 325 pounds without separation of the hose from its end fittings." A total of approximately 24,622 brake hose assemblies, consisting of 3,092 assemblies bearing Part Number 5478 and 21,530 assemblies bearing Part Number 5480 may not comply with S5.3.4. The potentially affected hoses were manufactured using a "straight cup" procedure rather than the appropriate "step cup" procedure. Compliance testing by the petitioner of eight sample hose assemblies from two separate manufacturing lots of these hoses revealed that seven of the eight samples experienced hose separation from the end fittings at from 224 to 317 pounds.

Coupled Products believes that the noncompliance is inconsequential to motor vehicle safety and that no

corrective action is warranted. Coupled Products stated in its petition:

Both Part Numbers 5478 and 5480 are utilized in specific boat trailer applications of a single trailer manufacturer. \* \* \* [T]he routing and placement of the hoses on the particular boat trailers involved, and the shielded nature of the end fittings on those trailers are such that a linear, end-to-end "straight pull" on the hose assembly, such as that specified in the FMVSS No. 106 tensile strength test procedure, is unlikely to occur in real-world use. Because of the manner in which these hose assemblies are installed, rather than a "straight pull," it is more likely that the free length of the hose itself could be entangled or caught on a piece of road debris or other obstruction, resulting in a "side pull" on the assembly. With this potential in mind, [Coupled Products] conducted a side pull tensile test on a sample of the subject brake hose assemblies to simulate the possible effect of a side pull on the integrity of the assembly. This was accomplished by creating special mounting fixtures and apparatus to the standard testing equipment. \* \* \* The "side pull" test results show that the tensile load achieved prior to the ends separating from the hose exceeded 530 pounds in each of the five samples tested—well in excess of the 325 pound requirement.

Coupled Products further stated:

We believe that it is likely that in order for such a [side] pull to occur, the debris or obstacle in question would need to be of such size and/or weight that its encounter with the trailer would result in significant structural impact and thus have immediate effect on the operation of the trailer. While we have not been able to devise a test that would verify this theory, we believe that this is a realistic scenario. As a result, it seems likely that the trailer would likely incur an operational impact even before the possible loss of braking capability resulting from hose assembly failure.

The axles used in the trailers in question are stationary. Unlike sliding axles that are used in some trailers, the axles used in these trailers are in a fixed location. Consequently, the possibility that the sliding movement of the axle might result in unintended pull on the hose is remote. \* \* \*

Because the braking system on the trailer is independent of the towing vehicle's braking system, any failure of the hose assembly due to excessive tensile force—unlikely as that may be—will not result in a loss of braking capability of the towing vehicle. Thus, in the unlikely event of separation, the driver would still retain full braking capability of the towing vehicle and would be able to stop the vehicle (although additional stopping distance may be required depending on the type of vehicle being used).

In support of its petition, Coupled Products stated that NHTSA has in other cases, determined that a FMVSS No. 106 noncompliance is inconsequential to safety where, "because of the specific vehicle application involved, the hose assembly

will not be subject to the type of forces specified in the standard." To support this assertion, Coupled Products cited two inconsequential petition grants: General Motors, 57 FR 1511 (January 14, 1992) and Mitsubishi Motors America, 57 FR 45868 (October 5, 1992). The petitioner specifically referred to the statement in these petition grants that the "end use of the hoses was such that they were subject to pressure, not vacuum applications."

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety. The two prior inconsequentiality petition grants cited by the petitioner relate to the adhesion requirement for air brake hoses, which addresses the separation of the inner layers of the brake hose. This is distinguishable from the noncompliance in Coupled Products' hoses, which relates to the tensile strength requirement for hydraulic brake hoses, and addresses the separation of the hydraulic brake hose from the end fittings. Therefore, NHTSA's grant of the petitions cited by Coupled Products is not persuasive precedent.

The petitioner states that because of the specific vehicle application involved, (*i.e.*, the hoses are used in specific boat trailer applications of a single trailer manufacturer), the hoses are installed in such a manner as to make it unlikely that the hose assembly would be subject to the type of forces to which the tensile strength test is directed. However, this is also true of many automobile brake hose applications.

In addition, the tensile strength test is a worst case test, subjecting the crimped joint to a separation pull. The purpose of the tensile strength test is to test only the crimped area in a brake hose. A test conducted at an angle to the end fitting centerline, such as conducted by the petitioner, would not measure the strength of the crimped area by itself but also the interaction of the end fitting with the interior wall of the brake hose. This would result in a more lenient test for the crimped area.

The petitioner also asserts that because the braking system on the trailer is independent of the towing vehicle's braking system, a failure of the hose assembly on the trailer would not result in a loss of braking capability of the towing vehicle, and the driver would be able to stop both vehicles. However, in the event that the failure of the hose assembly occurred, the driver of the towing vehicle would be faced with a potentially serious safety situation due to the reduced stopping capability of the vehicle combination. In

addition, the braking imbalance can affect the stability of the towing vehicle, which can result in a loss-of-control of the vehicle combination.

The compliance testing by the petitioner resulted in seven of eight sample hose assemblies experiencing hose separation from the end fittings at from 224 to 317 pounds. This represents a noncompliance margin of from 45 percent to 2 percent, respectively, compared to the requirement of 325 pounds, over a total population of 24,622 hose assemblies. NHTSA believes that a noncompliance margin of up to 45 percent presents a serious safety concern.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, its petition is hereby denied. Coupled Products must now fulfill its obligation to notify and remedy under 49 U.S.C. 30118 (d) and 30120(h).

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

Issued on: December 15, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-398 (Sub-No. 9X)]

#### San Joaquin Valley Railroad Company—Discontinuance Exemption—in Kern County, CA

[STB Docket No. AB-170 (Sub-No. 1X)]

#### Sunset Railway Company—Abandonment Exemption—in Kern County, CA

Sunset Railway Company (SRY) and San Joaquin Valley Railroad Company (SJVR) (collectively, applicants) have filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service*<sup>1</sup> for SRY to abandon and for

SJVR to discontinue service over a 16.3-mile line of railroad, known as the Sunset Subdivision, extending between west of Levee, milepost 20.0, and Taft, milepost 36.3, in Kern County, CA. The line traverses United States Postal Service Zip Code 93268.

SRY and SJVR have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line in over 2 years and any overhead traffic can be rerouted over other lines; (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 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 (environmental reports), 49 CFR 1105.8 (historic reports), 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.<sup>2</sup>

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 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 January 20, 2005, unless stayed pending reconsideration. Petitions to stay that do

Upon consultation with applicants, December 1, 2004 is used as the actual filing date. Applicants also indicated a new consummation date of January 19, 2005. Under 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The amended notice was filed on December 1, 2004. Therefore, the earliest possible date consummation date is January 20, 2005. By letter filed on December 13, 2004, applicants confirmed that the consummation date should be January 20, 2005. Applicants also indicated that, upon further review of their records and communication from Baker Petrolite Corporation (BPC), they have determined that BPC was an active shipper located at milepost 18.99, and have reduced the scope of the abandonment and discontinuance so as to continue to serve BPC. Applicants stated that, as per a December 1, 2004 conversation with BPC, the reduction in the scope of abandonment and discontinuance resolved BPC's concerns.

<sup>2</sup> In the December 13, 2004 letter, applicants certified that the certification contained in their verified notice of exemption filed on November 19, 2004, remains correct and accurate for the rail line between milepost 20.0 and milepost 36.3.

not involve environmental issues,<sup>3</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 10, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: Attorney for SRY—Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606; Attorneys for SJVR—Gary A. Laakso, Esq., Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

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

Applicants have filed environmental and historic reports which address the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 23, 2004.

Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) 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), SJVR 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 SJVR's filing of a notice of

<sup>3</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service 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.

<sup>1</sup> The verified notice of exemption was received by the Board on November 19, 2004, but was not docketed as filed until November 24, 2004, when the filing fee for SRY was received. Applicants did not include a consummation date in the notice. However, by letter filed on November 30, 2004, applicants indicated a consummation date of January 13, 2005. By letter filed on December 1, 2004, applicants requested to amend the notice to change the length of the line from 18.0 miles to 16.3 miles, extending between west of Levee, milepost 20.0, and Taft, milepost 36.3, in Kern County, CA.