

operate CMVs in interstate commerce.<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of TEA-21.

Section 4129 requires two substantive changes to be made in the current exemption process set out in the September 3, 2003 Notice. As required by section 4129(b) and (c), the changes are: (1) Elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin dose to demonstrate stable control of diabetes before being allowed to operate a CMV.

In order to accomplish these changes within the 90-day time frame established by section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. These revisions were those necessary to respond to the specific changes mandated by section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the necessary level of safety as also required by section 4129(a).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). All of the requirements set out in the September 3, 2003 Notice, except as modified in the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: December 13, 2005.

**Annette M. Sandberg,**

*Administrator.*

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**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34790]

#### Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary trackage rights to the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and the Iowa, Chicago & Eastern Railroad Corporation (IC&E) (DM&E and IC&E are referred to collectively as "User") between milepost (MP) 146.0 on BNSF's Corson Subdivision at Sioux Falls, SD, and MP 705.5 on BNSF's Aberdeen Subdivision at Wolsey, SD, a distance of 149.8 miles, solely for the overhead movement of User's business cars (and engines and end-of-train devices required to operate those business cars). The trackage rights run: between Sioux Falls, SD, and Canton, SD; between Canton, SD, and Mitchell, SD; and between Mitchell, SD, and Wolsey, SD. These trackage rights were scheduled to be effective on or after December 6, 2005, and the authorization for these trackage rights will expire one year after the effective date. However, although the term of the temporary trackage rights agreement is for no more than one year, BNSF has also agreed that, for a period of 10 years from the effective date of that agreement, BNSF shall agree to DM&E's requests to establish new annual temporary trackage rights arrangements on the same terms, provided that the temporary trackage rights agreement shall not have terminated early as a result of material default of DM&E, and further provided that DM&E shall not otherwise be in material default of the terms of the agreement.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605, 610-15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653, 664 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91, 98-103 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34790, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on User's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2875.

Board decisions and notices are available on its Web site at <http://www.stb.dot.gov>.

Decided: December 9, 2005.

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

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 05-24141 Filed 12-16-05; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34125 (Sub-No. 1)]

#### South Dakota Railroad Authority—Acquisition and Operation Modification Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to amend existing operating rights of the South Dakota Department of Transportation, successor in interest to the South Dakota Railroad Authority (User), at Aberdeen, SD, pursuant to an amendment (Amendment) to an existing agreement. Pursuant to the Amendment, BNSF has agreed to grant User and its designee the right to interchange traffic on and/or via BNSF-owned trackage at Aberdeen in connection with the movement of the traffic to, from, or via User's tracks between Kidder, SD, and Aberdeen, SD (the "Rail Line") pursuant to the terms outlined below.

(1) Subject to all other applicable terms and conditions set forth in the Amendment, BNSF shall permit the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and User or its designee to interchange with one another at Aberdeen Yard via the Interchange Access Line (as that is defined in an agreement between the parties) without restrictions for traffic which either originates or terminates on the Rail Line.

(2) Subject to all other applicable terms and conditions set forth in the Amendment, BNSF shall permit DM&E and User or its designee to interchange

<sup>1</sup> Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule," but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

with one another at Aberdeen Yard or on the State-owned trackage north of Aberdeen via the Interchange Access Line for traffic originating or terminating on DM&E in South Dakota, moving to or from points served by Canadian Pacific Railway's (CP's) network as it existed as of April 25, 2005, in (a) North Dakota (not including the Dakota, Missouri Valley & Western Railroad or CP-affiliated shortlines) other than to or from industries which are (as of April 25, 2005) jointly served by CP and BNSF (e.g., industries at Valley City and Minot), and (b) Canada (including, but not limited to, Canadian export ports and CP-affiliated shortlines); provided such rights shall extend only to movements of agricultural commodities (STCCs 01 and 20), fertilizers, ethanol, bentonite, and forest products, and provided further that such rights shall be subject to certain unit train restrictions for North Dakota points as set forth in the Amendment.

(3)(a) Subject to all other applicable terms and conditions set forth in the Amendment and other agreements between BNSF and User, BNSF shall permit User or its designee to interchange with lessees and operators of State-owned rail lines (as hereinafter defined) all traffic (excluding coal and intermodal traffic) originating or terminating on said State-owned rail lines.

(3)(b) In the event that traffic from the State-owned rail lines is being moved to/from Aberdeen by BNSF in haulage service for said operators/lessees pursuant to terms of a haulage agreement, the interchange with BNSF or the Rail Line operator shall occur at Aberdeen Yard (or other location in the Aberdeen vicinity at BNSF's discretion) on trackage designated by BNSF. In the event that the traffic is being moved to the Rail Line by the operators/lessees pursuant to exercise of trackage rights over BNSF trackage, such interchange shall be performed on the Rail Line or, if the operators/lessees request to interchange at Aberdeen Yard and BNSF local operating personnel consent thereto, at such tracks in Aberdeen Yard as may be designated by BNSF.

(3)(c) "State-owned rail lines" as referenced herein refer to the Mitchell, SD-Kadoka, SD Line and the Napa, SD-Platte, SD Line as those lines existed as of April 25, 2005, and do not include extensions which, in the future, may be connected to or from these lines; provided, however, "extensions" means additions to the lines by way of acquisition or construction of lines of railroad, but does not include, or otherwise prohibit interchange to/from

the Rail Line of, rail traffic moving to/from new industries located on the State-owned rail lines subsequent to April 25, 2005.

(4) Except as expressly provided above, User or its designee shall not move, or cause or allow to be moved, on, over, or via the Rail Line or the Interchange Access Line, traffic that neither originates nor terminates on the Rail Line.

The trackage rights granted by BNSF were scheduled to become effective on or after December 6, 2005. The purpose of the trackage rights is to allow User to have expanded interchange rights at Aberdeen.

As a condition to the exemption invoked by User, any employees affected by the trackage rights granted to User in STB Finance Docket No. 34125 (Sub-No. 1) will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653, 664 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34125 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on User's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2875.

Board decisions and notices are available on its Web site at <http://www.stb.dot.gov>.

Decided: December 9, 2005.

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. 34788]

#### **Mitchell-Rapid City Regional Railroad Authority and Dakota Southern Railway Company—Trackage Rights Exemption—BNSF Railway Company**

BNSF Railway Company (BNSF) has agreed to grant overhead trackage rights to the Mitchell-Rapid City Regional Railroad Authority (MRC, a political subdivision of the State of South Dakota) and the Dakota Southern Railway Company (DSRC, a sublessee/contract operator for MRC) (MRC and DSRC are referred to collectively as "User") at Mitchell, SD: (1) Between BNSF's connection with DSRC, at milepost (MP) 650.65, and DSRC-leased tracks in BNSF's Mitchell yard, at MP 650.16; and (2) between BNSF's Mitchell yard, at MP 650.16, and the Grain Shuttle Facility at Mitchell, at MP 652.9. In addition to User's right to utilize the Mitchell yard pursuant to other agreements, User shall also have the right to ingress and egress the Mitchell yard for the purpose of "running around" its train at Mitchell, if operationally necessary to originate traffic from or terminate traffic at the Grain Shuttle Facility. The new rights granted by BNSF apply only to traffic that originates or terminates on the rail line between Mitchell, SD, and Kadoka, SD (as that line existed as of April 25, 2005), and that originates or terminates at the Grain Shuttle Facility. Under the agreement entered into by BNSF and MRC/DSRC: MRC would be able to utilize the new rights granted by BNSF with another sublessee/contract operator (other than a Class I or Class II railroad or the Dakota, Minnesota & Eastern Railroad Corporation); and, if MRC ceases to be the lessee of the State of South Dakota for the corridor between Mitchell and Rapid City, SD, the new rights granted by BNSF will be automatically assigned to the State of South Dakota.

The trackage rights granted by BNSF were scheduled to become effective on or after December 6, 2005. The purpose of the trackage rights is to allow MRC/DSRC to move traffic between points on the Mitchell-Kadoka Line and the Grain Shuttle Facility at Mitchell.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605, 610–15 (1978), as modified in *Mendocino Coast Ry., Inc.—*