

(3) *Mail*: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC 20590-0001.

(4) *Hand Delivery*: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Transit Administration" and include docket number FTA-2009-0020. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 Fed. Reg. 19477), or visit www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jayme L. Blakesley at (202) 366-0304 or jayme.blakesley@dot.gov.

SUPPLEMENTARY INFORMATION:

The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements for six (6) rail car vehicles to be manufactured and assembled in Switzerland by Stadler Bussnang AG (Stadler) for the Capital Metropolitan Transportation Authority (Capital Metro) of Austin, Texas. Because Capital Metro has already awarded a contract to Stadler, it has asked for a post-award waiver.

Capital Metro set forth the grounds for its request in a letter dated February 19, 2009, a copy of which will be placed in the Docket: (1) Capital Metro acted in good faith when in 2006 it planned to use local sales tax revenues to fund its contract with Stadler; (2) Actual sales tax receipts are less than the amount estimated in 2006; and (3) Both offers submitted to Capital Metro proposed to manufacture and assemble the rail cars outside of the United States.

Capital Metro structured the RFP as a locally funded procurement without including many of the standard Federal requirements like Buy America and Cargo Preference. Because of a drop in sales tax revenues, Capital Metro's local revenue source, the feasibility of

funding this procurement with local funds has been significantly diminished. For this reason, Capital Metro has decided to utilize Federal funds and to seek a Buy America waiver for this vehicle procurement. FTA notes that Capital Metro did not request, and did not receive, the Buy America certification forms that are required in federally funded procurements.

With certain exceptions, FTA's "Buy America" requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). One such exception is if "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality." 49 U.S.C. 5323(j)(2)(B).

Section 3023(i)(5)(C) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) gave FTA the statutory authority to issue post-award waivers. This authority limits post-award waivers to non-availability waivers only. Consequently, the only post-award waivers granted to date have been on the basis of non-availability in cases in which the contractor has made a certification of compliance with the requirements in good faith but, for reasons not foreseen at the time of the initial RFP, compliance was rendered impossible or impracticable.

"In determining whether the conditions exist to grant a post-award non-availability waiver, [FTA] will consider all appropriate factors on a case-by-case basis." 49 CFR 661.7(c)(3). Such factors will include "the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project," 72 Fed. Reg. 53,691 (Sept. 20, 2007), and "may include project schedule and budget." 71 Fed. Reg. 69, 415 (Nov. 30, 2006). In addition, FTA will look to "existing precedents in public contracting law and practice." 71 Fed. Reg. 69,416 (Nov. 30, 2006). One such precedent is FTA's recent decision to grant a post-award non-availability waiver to the Regional Transportation Commission of Southern Nevada in circumstances similar to Capital Metro's request.

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance

of caution, given the unique circumstances by which a prospective FTA grantee issued a request for proposals without the inclusion of the traditional Buy America clause, intending to fully underwrite the contract using exclusively local funding. Therefore, in order to understand completely the facts surrounding Capital Metro's request, FTA seeks comment from all interested parties. A full copy of Capital Metro's petition has been placed in docket number FTA-2009-0020. Please submit comments by May 1, 2009. Late-filed comments will be considered to the extent practicable.

Issued this 20th day of April 2009.

Scott A. Biehl,

Acting Chief Counsel.

[FR Doc. E9-9467 Filed 4-23-09; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35238]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated January 20, 2009, Union Pacific Railroad Company (UP) has agreed to grant temporary local trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, CA, on UP's Oakland Subdivision, and UP milepost 219.4 at Eley, CA, on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Eley, CA, and UP milepost 280.7 at Keddie, CA, on UP's Canyon Subdivision, a distance of 61.3 miles.¹

The transaction is scheduled to be consummated on or after May 9, 2009, the effective date of the exemption (30 days after the exemption is filed).

The trackage rights agreement will permit BNSF to move empty and loaded

¹ BNSF submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003). Therefore, BNSF concurrently has filed a petition for partial revocation of this exemption in STB Finance Docket No. 35238 (Sub-No. 1), *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire at midnight on December 31, 2009, as provided in the parties' agreement. The petition will be addressed by the Board in a separate decision.

ballast trains to and from the ballast pit at Eley, CA, which is adjacent to the UP rail line. The trackage rights are temporary in nature and are scheduled to expire at midnight on December 31, 2009.

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 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the 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. Stay petitions must be filed by May 1, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35238, 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 Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

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

Decided: April 16, 2009.

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

Kulunie L. Cannon,
Clearance Clerk.

[FR Doc. E9-9192 Filed 4-23-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35240]

Muskogee City-County Port Authority—Operation Exemption—A Line of Railroad in Muskogee County, OK

Muskogee City-County Port Authority (the Port), a non-carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a 4.7-mile rail line extending from milepost 88.80, at or near Davis Field, to milepost 93.50, at or near Shopton, in Muskogee County, OK.

On January 6, 1993, a decision and notice of interim trail use or abandonment (NITU) was served by the Board's predecessor agency, the Interstate Commerce Commission, in *Missouri Pacific Railroad Co.—Abandonment Exemption—In Muskogee, McIntosh and Haskell Counties, OK*, Docket No. AB-3 (Sub-No. 104X), establishing a 180-day period for Missouri Pacific Railroad Company (MP)¹ to negotiate an interim trail use/rail banking agreement under the National Trails System Act, 16 U.S.C. 1247(d) for a 43.0-mile rail line extending from milepost 93.50, at or near Shopton, to milepost 50.50, near Kerr McGee, in Muskogee, McIntosh, and Haskell Counties, OK. Trail negotiations were successful and an agreement for rail banking and interim trail use was reached in the Line Donation Contract (Contract) between MP, the Port, and Indian Nations Recreation Trail (INRT). Pursuant to that agreement, the Port obtained the right to use the 4.7-mile segment described above for rail banking and interim trail use.² The Port now wishes to reactivate service over the 4.7 mile line segment.³

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

The transaction is scheduled to be consummated on May 10, 2009, the effective date of the exemption (30 days after the exemption is filed).

¹ Union Pacific Railroad is the successor-in-interest to MP.

² The NITU governing the rest of the line is not at issue here.

³ Port simultaneously filed a petition to vacate the NITU issued in *Missouri Pacific Railroad Co.—Abandonment Exemption—In Muskogee, McIntosh and Haskell Counties, OK*, Docket No. AB-3 (Sub-No. 104X) (ICC served Jan. 6, 1993). The petition will be addressed by the Board in a separate decision.

If the 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 does not automatically stay the transaction. Petitions for stay must be filed no later than May 1, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35240, 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 Jeffrey O. Moreno, 1920 N Street, NW., Suite 800, Washington, DC 20036-1601.

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

Decided: April 21, 2009.

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

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-9450 Filed 4-23-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2009-16]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 14, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2009-0084 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department