

the Commission were held on October 23–24, 2006, in Santiago, Chile.

At the fourth Council meeting held on April 24, 2008, in Santiago, Chile, the Council discussed the implementation of Chapter 19 of the FTA with respect to public participation, progress reports on the eight cooperative projects under Chapter 19, implementation of the 2005–2006 Work Program, and elaboration of the 2007–2008 Work Program. At that meeting the Trade and Environment Policy Advisory Committee and Chile's Advisory Committee held the first ever exchange between FTA-related trade and environment advisory committees.

At the upcoming fifth meeting of the Council, the Council will review the status of implementation of Chapter 19 and receive reports on levels of environmental protection (Article 19.1), enforcement of environmental laws (Article 19.2), opportunities for public participation (Article 19.4), the environment roster (Article 19.7), procedural matters (Article 19.8) and principles of corporate stewardship (Article 19.10). The Council will also assess the progress of projects outlined in Annex 19.3, the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, and the 2009–2010 Work Program Pursuant to the ECA. At its third meeting, the Commission, during a Joint Public Session with the Council, will receive reports on progress of implementing the 2007–2008 ECA Work Program and review and approve a new work program. At these meetings, the Council and Commission will also consider recommendations for future bilateral environmental cooperation. The public is advised to refer to the State Department Web site at <http://www.state.gov/g/oes/env/trade/chile/index.htm> and the USTR Web site at <http://www.USTR.gov> for further information.

Dated: November 30, 2009.

**Willem H. Brakel,**

*Acting Director, Office of Environmental Policy, Department of State.*

[FR Doc. E9–28877 Filed 12–2–09; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF STATE

[Public Notice: 6803]

### Policy on Review Time for License Applications

AGENCY: Department of State.

**ACTION:** Notice.

In National Security Presidential Directive–56, Defense Trade Reform, signed January 22, 2008, the Department of State was directed to complete the review and adjudication of license applications within 60 days of receipt, except in cases where national security exceptions apply. The President further directed that these exceptions be published. A **Federal Register** notice entitled “Policy on Review Time for License Applications” was published on April 15, 2008 (73 FR 20357) stating five national security exceptions.

Experience in the last nineteen months has indicated that a sixth exception is required. It has been noted in reviews that events may require the Department of State to initiate a review of an established export policy relevant to license applications. By the nature of the established deadline, this might result in cases that have been approvable before the review being returned without action to the applicant while the review is ongoing. Enforcement of the deadline without being able to account for these situations might result in another applicant's license, submitted after the first license but that had not reached the 60-day deadline, being approved once the review is complete; inadvertently creating an unlevel playing field. As such, the Directorate of Defense Trade Controls has added a sixth exception to account for this issue. In accordance with NSPD–56, the following six national security exceptions are applicable:

(1) When a Congressional Notification is required: The Arms Export Control Act Section 36 (c) and (d) and the International Traffic in Arms Regulations, 22 CFR 123.15, requires a certification be provided to Congress prior to granting any license or other approval for transactions, if it meets the requirements identified for the sale of major defense equipment, manufacture abroad of significant military equipment, defense articles and services, or the re-transfer to other nations. Notification thresholds differ based on the dollar value, countries concerned and defense articles and services.

(2) Required Government Assurances have not been received. These would include, for example, Missile Technology Control Regime Assurances, and Cluster Munitions assurances.

(3) End-use Checks have not been completed. (Commonly referred to as “Blue Lantern” checks. End-use checks are key to the U.S. Government's prevention of illegal defense exports

and technology transfers, and range from simple contacts to verifying the bona fides of a transaction to physical inspection of an export.)

(4) The Department of Defense has not yet completed its review.

(5) A Waiver of Restrictions is required. (For example, a sanctions waiver.)

(6) When a related export policy is under active review and pending final determination by the Department of State.

Dated: November 23, 2009.

**Robert S. Kovac,**

*Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political Military Affairs, Department of State.*

[FR Doc. E9–28875 Filed 12–2–09; 8:45 am]

BILLING CODE 4710–25–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

[Docket No. FHWA–2009–0123]

#### Notice of Funding Availability for Applications for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program; Clarification of TIFIA Selection Criteria; and Request for Comments on Potential Implementation of Pilot Program To Accept Upfront Payments for the Entire Subsidy Cost of TIFIA Credit Assistance

**AGENCY:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Notice of Funding Availability; Clarification of Selection Criteria; Request for Comments.

**SUMMARY:** The DOT's TIFIA Joint Program Office (JPO) announces the availability of a limited amount of funding in fiscal year (FY) 2010 to support new applications for credit assistance. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects of regional or national significance. Projects must meet statutorily specified criteria to be selected for credit assistance.

Because demand for the TIFIA program now exceeds budgetary resources, the DOT hereby formally

announces the suspension of the program's open application process and the return to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against program objectives. This notice outlines the process that applicants must follow for Federal FY 2010.

Additionally, the DOT provides new language clarifying its use of the TIFIA selection criteria, incorporating explicit consideration of these policy objectives: livability, economic competitiveness, safety, sustainability, and state of good repair. Finally, in light of constrained resources vis-à-vis demand for TIFIA assistance, the DOT requests comments regarding the potential implementation of a pilot program to accept, from qualified borrowers, an upfront fee payment to offset the entire subsidy cost of TIFIA credit assistance.

**DATES:** For consideration in the FY 2010 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 31, 2009, using the revised form on the TIFIA Web site: [http://tifa.fhwa.dot.gov/guide\\_apps/](http://tifa.fhwa.dot.gov/guide_apps/). Applicants that have previously submitted Letters of Interest must restate them with additional information as outlined below.

The application due date will be established after consultation between the TIFIA JPO and the applicant.

Comments regarding the potential pilot program must be submitted by 4:30 p.m. EST on December 31, 2009. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Submit all Letters of Interest to the attention of Mr. Duane Callender via e-mail at: [TIFIAcredit@dot.gov](mailto:TIFIAcredit@dot.gov). Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via e-mail, as provided above, shall be deemed properly filed.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 1200 New Jersey Avenue, SE., Washington, DC 20590 or fax comments to (202) 493-2251. Provide two copies of comments submitted by mail or courier. Alternatively, comments may be submitted via the Federal eRulemaking Portal at <http://www.regulations.gov>. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those

desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78).

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice please contact Duane Callender via e-mail at [TIFIAcredit@dot.gov](mailto:TIFIAcredit@dot.gov) or via telephone at 202-366-9644. A TDD is available at 202-366-7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: <http://tifa.fhwa.dot.gov>.

#### **SUPPLEMENTARY INFORMATION:**

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##### **I. Background**

The Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 241, (as amended by sections 1601-02 of Pub. L. 109-59) established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements.<sup>1</sup> On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(b)(6)). The TIFIA Joint Program Office (JPO), a component of

<sup>1</sup> The TIFIA regulations have not been updated to reflect changes enacted in Public Law 109-59, SAFETEA-LU. Where the statute and the regulation conflict, the statute takes precedence. See the TIFIA Program Guide for updated program information.

the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the thresholds and expanding eligibility for TIFIA credit assistance. SAFETEA-LU authorized \$122 million annually from the Highway Trust Fund (HTF) for fiscal years 2005 to 2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. After reductions for administrative expenses and application of the annual obligation limitation, TIFIA has approximately \$110 million available annually to provide credit subsidy support to projects. Although dependent on the individual risk profile of each loan, collectively, this budget authority represents approximately \$1.1 billion in annual lending capacity. As detailed below, the TIFIA JPO is able to provide a limited amount of credit assistance to new applicants in FY 2010.

##### **II. Eligible Projects**

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. Additionally, SAFETEA-LU expanded eligibility to private rail facilities providing public benefit to highway users, and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. See the revised definition of "project" in 23 U.S.C. 601(a)(8) and Chapter 3 of the TIFIA Program Guide for a description of eligible projects.

##### **III. Types of Credit Assistance**

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 601 and 49 CFR 80.3. Subject to certain conditions, the TIFIA credit facility can hold a subordinate lien on pledged revenues. The maximum amount of TIFIA credit assistance to a project is 33 percent of eligible project costs.

##### **IV. Threshold Requirements**

Projects seeking TIFIA assistance must meet certain statutory threshold requirements. Generally, the minimum size for TIFIA projects is \$50 million of eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is

\$15 million. Each project seeking TIFIA assistance must apply to the DOT, and must satisfy the applicable state and local transportation planning requirements. Each application must identify a dedicated revenue source to repay the TIFIA loan, and each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. These eligibility requirements are detailed in 23 U.S.C. 602(a) and Chapter 3 of the TIFIA Program Guide.

#### V. Rating Opinions

The senior debt obligations for each project receiving TIFIA credit assistance must obtain an investment grade rating from at least one nationally recognized credit rating agency, as defined in 23 U.S.C. 601(a)(10) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade rating.

To demonstrate this potential, each application must include a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project (for example, those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the default risk of the TIFIA credit instrument, and that concludes there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the applicant. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

Letters of Interest submitted pursuant to this notice do not need to include the preliminary rating opinion letter. Only those invited to submit applications will be required to obtain the preliminary rating opinion letter.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of the TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at [http://tifa.fhwa.dot.gov/guide\\_apps/](http://tifa.fhwa.dot.gov/guide_apps/).

#### VI. Letters of Interest and Applications

Because the demand for credit assistance now exceeds budgetary

resources, it is no longer feasible for DOT to maintain, as it has since 2002, an open process whereby the TIFIA JPO accepts applications on a "first come, first serve" basis as defined by the optimal schedule of the applicant. Instead, pursuant to this notice, the DOT returns to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program objectives.

Applicants seeking TIFIA credit assistance for FY 2010 must submit a Letter of Interest describing the project fundamentals and addressing the TIFIA selection criteria. For consideration in the FY 2010 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 31, 2009, using the newly revised form on the TIFIA Web site: [http://tifa.fhwa.dot.gov/guide\\_apps/](http://tifa.fhwa.dot.gov/guide_apps/). Applicants that have previously submitted Letters of Interest must restate them using the newly revised form. For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. Although the public agency would not become the TIFIA borrower, nor even have yet identified the TIFIA applicant, it must provide information sufficient for the DOT to evaluate the project against the TIFIA program objectives. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance) for the highest-rated projects. The application due date will be established after consultation between the TIFIA JPO and the applicant.

An invitation to apply for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation based on TIFIA's statutory credit standards and the successful negotiation of all terms and conditions.

#### VII. Fees

There is no fee to submit a Letter of Interest. Unless otherwise indicated in a subsequent notice published in the **Federal Register**, each invited applicant must submit, concurrent with its application, a non-refundable fee of \$50,000, an amount based on historical costs incurred by the TIFIA JPO for financial advisory services to help

evaluate TIFIA applications. The FHWA no longer accepts paper checks, so payments should be made via ACH, at <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=18446839>.

For successful applicants, this fee will be credited toward final payment of a credit processing fee (also referred to as a transaction fee), to be assessed at financial close, to reimburse the TIFIA JPO for actual financial and legal costs.

For projects that enter credit negotiations, the DOT and the applicant will execute a term sheet that, among other conditions, will require the borrower to pay at closing or, in the event no final credit agreement is reached, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of outside financial advisors and legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. Typically, the amount of this fee has ranged from \$200,000 to \$300,000, although it has been greater for projects that require complex financial structures and extended negotiations.

As described below, the DOT may charge the borrower a supplemental upfront fee to reduce the subsidy cost to the Federal Government of providing credit assistance. The subsidy cost calculation, also described below, is based on anticipated risk to the Federal Government. This fee is paid by or on behalf of the borrower at the DOT's point of obligation, usually at the execution of the credit agreement.

The TIFIA JPO charges each borrower an annual fee for loan servicing activities associated with each TIFIA credit instrument. The current fee, adjusted annually per the Consumer Price Index, is \$11,500 per year.

Finally, the TIFIA credit agreements will allow the TIFIA JPO to charge, as incurred, a monitoring fee equal to its costs of outside advisory services required to assist the TIFIA JPO to modify or enforce the agreement.

Applicants may not include any of the fees described above—or any expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter)—among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

#### VIII. Clarification of Selection Criteria

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and assigned relative weights via regulation at 49 CFR 80.15. The criteria

are restated below with (where appropriate) clarifying language indicating how the DOT will interpret them. In general, these clarifications indicate the DOT's desire to give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. The clarifying language is provided *in italics*.

Listed in order of relative weight, the TIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. *This includes consideration of livability: providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: improving the safety of U.S. transportation facilities and systems and the communities and populations they impact.* Relative weight: 20 percent.

(ii) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment. Relative weight: 20 percent.

(iii) The extent to which the project helps maintain or protect the environment. *This includes sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems; and the state of good repair: improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials.* Relative weight: 20 percent.

(iv) The creditworthiness of the project, including a determination by the Secretary of Transportation that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment. Relative weight: 12.5 percent.

(v) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. Relative weight: 12.5 percent.

(vi) The extent to which the project uses new technologies, including

intelligent transportation systems, to enhance the efficiency of the project. Relative weight: 5 percent.

(vii) The amount of budget authority required to fund the Federal credit instrument made available under TIFIA. Relative weight: 5 percent.

(viii) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project. Relative weight: 5 percent.

Note that, when evaluating the Letters of Interest, the information needed to address criterion (iv), creditworthiness, and criterion (vii), budget authority, is unlikely to be available in sufficient detail. Therefore, the DOT will not employ these two criteria when reviewing the Letters of Interest. However, DOT will consider these criteria when reviewing project applications.

#### **IX. Potential Pilot Program**

As noted above, SAFETEA-LU authorized \$122 million annually from the HTF for fiscal years 2005–2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. As of the publication date of this notice, two short-term extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through FY 2009, and the expectation is that Congress will reauthorize an equivalent amount of budget authority for the TIFIA program in FY 2010. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year.

Beginning in FY 2008, for the first time since the inception of the TIFIA program, the total credit requests from TIFIA applicants exceeded available resources. This new imbalance immediately proved substantial, as requests far exceeded the remaining authority provided by SAFETEA-LU, as well as an additional year (for example, FY 2010) funded at the equivalent level. In response, the Department suspended its consideration of new applications and reserved the anticipated fiscal years 2009 and 2010 appropriations with the expectation that several, if not all, of the existing applicants would—for the first time—contribute to the Government's cost of providing credit assistance in the

form of an upfront fee as contemplated by the authorizing statute and the implementing regulation.

As stated in 23 U.S.C. 603(b)(7), 603(e) and 604(b)(9), the DOT may establish fees at a level sufficient to cover all or a portion of its costs of making a secured loan, loan guarantee, or line of credit. From this authority, 49 CFR 80.17(c) states:

If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount [of eligible TIFIA assistance].

Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget (OMB), the subsidy cost of a loan is affected by recovery assumptions, allowance for defaults, the borrower's interest rate, and fees. The factors that most heavily influence the subsidy cost of a TIFIA loan fall into the recoveries category (for example, the repayment pledge and whether the debt is senior or subordinate) and the allowance for defaults category (including the credit rating on the debt and the degree of back-loading). The borrower's interest rate will also affect the subsidy cost of the TIFIA loan. The final subsidy cost estimate is expressed as a percentage of the principal amount of the credit assistance.

By charging borrowers an upfront fee, the DOT is able to support more projects than under its previous policy—established when budget resources were ample—of funding a portion of the subsidy cost with its own monies. In fact, to meet existing applicant demand, the DOT used this authority to limit the maximum amount of funds it would obligate for any single project's subsidy cost, thus requiring borrowers in several instances to pay an upfront fee to offset the subsidy cost of TIFIA credit assistance. Even with this limitation, the DOT has had to reserve much of its anticipated FY 2010 TIFIA budget authority to support these projected commitments, relying primarily on future years' authorizations and appropriations to fund more credit assistance.

Several potential applicants, however, rather than waiting to compete for scarce TIFIA funds in FY 2010 and beyond, have indicated an interest in

the option of paying a fee to offset the entire budgetary cost to the Federal Government. As a result, the DOT hereby announces that it is exploring the potential of implementing a pilot program under which the DOT would accept applications for projects where the borrowers are willing and able to pay a fee to offset the entire subsidy cost of TIFIA credit assistance. The purpose of this pilot program would be to extend credit, consistent with policy objectives, to qualified projects that the DOT otherwise might not select for TIFIA assistance merely due to insufficient budgetary resources. This pilot program would be undertaken under authority of 23 U.S.C. 603(a)(7), 603(e), (604)(b)(9), and 49 CFR 80.17(c), which allow successful applicants to pay a fee to reduce the cost to the Federal Government associated with the credit assistance provided to the project. Such a project would be evaluated based on satisfaction of the same TIFIA selection criteria, as clarified in this notice, which apply to all applicants.

The DOT will take all comments regarding the potential pilot program into consideration and, if it decides to proceed with the pilot program, may revise some elements of this notice. Depending on the nature of the comments and the number of Letters of Interest submitted, the DOT may invite applications without publishing a supplemental notice. If the DOT decides to proceed with the pilot program, qualified applicants that have responded to this notice would become eligible to pay an upfront fee to offset the entire cost of providing TIFIA credit assistance.

**Authority:** 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: November 20, 2009.

**Victor M. Mendez,**

*Administrator.*

[FR Doc. E9–28860 Filed 12–2–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35306]

#### Lassen Valley Railway LLC— Acquisition and Operation Exemption—Union Pacific Railroad Company

Lassen Valley Railway LLC (LVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 22.34 miles of rail line owned by Union

Pacific Railroad Company (UP): (1) the Flanigan Industrial Lead, between milepost 338.33 near Flanigan, NV, and milepost 360.10 near Wendel, CA, and (2) the Susanville Industrial Lead, between milepost 358.68 and milepost 359.25, near Wendel.<sup>1</sup>

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35307, *Kern W. Schumacher—Continuance in Control Exemption—Lassen Valley Railway LLC*, wherein Kern W. Schumacher seeks to continue in control of LVR, upon LVR becoming a Class III rail carrier.

The transaction is expected to be consummated on or shortly after December 17, 2009 (the effective date of the exemption).

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

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 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.

If the verified 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. Petitions for stay must be filed no later than December 10, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35306, must be filed with

<sup>1</sup> According to LVR, the rail lines involved were the subject of an abandonment petition in *Union Pacific Railroad Company—Abandonment Exemption—in Lassen County, CA, and Washoe County, NV*, STB Docket No. AB–33 (Sub-No. 230X) (STB served Jan. 26, 2007). An offer of financial assistance (OFA) was filed by Robert Alan Kemp d/b/a Nevada Central Railroad to acquire a 220-foot segment of UP’s Flanigan Industrial Lead (beginning at milepost 338.33). The OFA was rejected by decision served September 19, 2008. On September 29, 2008, Mr. Kemp filed an appeal of the Board’s decision, which was denied by decision served January 27, 2009. It is indicated that Mr. Kemp has petitioned for judicial review of the Board’s January 27 decision, and that petition is pending before the United States Court of Appeals for the Ninth Circuit.

the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW. (8th Floor), Washington, DC 20036.

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

Decided: November 25, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–28803 Filed 12–2–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35307]

#### Kern W. Schumacher—Continuance in Control Exemption—Lassen Valley Railway LLC

Kern W. Schumacher (Schumacher), a noncarrier, has filed a verified notice of exemption to continue in control of Lassen Valley Railway LLC (LVR) upon LVR’s becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35306, *Lassen Valley Railway LLC—Acquisition and Operation Exemption—Union Pacific Railroad Company*. In that proceeding, LVR seeks an exemption under 49 CFR 1150.31 to acquire and operate approximately 22.34 miles of rail line between Flanigan, NV, and Wendel, CA, owned by Union Pacific Railroad Company.

The parties intend to consummate the transaction on or after December 17, 2009, the effective date of the exemption.

Mr. Schumacher currently controls six Class III rail carriers: Tulare Valley Railroad Company (TVR), Kern Valley Railroad Company (KVR), V&S Railway, Inc. (V&S), Gloster Southern Railroad Company LLC (GLSR), Grenada Railway LLC (GRYR), and Natchez Railway LLC (NTZR). TVR owns 5.9 miles of rail line in California; KVR owns 2 miles of rail line in Colorado; V&S owns 27 miles of rail line in Kansas and 122 miles of rail line in Colorado; GLSR owns 34.8 miles of rail line in Mississippi and Louisiana; GRYR owns 186.82 miles of rail line in Mississippi; and NTZR owns 65.6 miles of rail line in Mississippi.

As represented, Mr. Schumacher has many years of experience managing short line railroads. Mr. Schumacher anticipates that, with the substantial