

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

[Docket No. NHTSA-2002-13332; Notice 2]

## Decision That Nonconforming 1993 Mercedes Benz S Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1993 Mercedes Benz S Series passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1993 Mercedes Benz S Series passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1993 Mercedes Benz S Series), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective as of the date of its publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

**SUPPLEMENTARY INFORMATION:****Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition.

At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import L.C. of Cape Coral, Florida (Registered Importer 01-289) petitioned NHTSA to decide whether 1993 Mercedes Benz S Series passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 23, 2002 (67 FR 59594) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice of the petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

**Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-395 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

**Final Decision**

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Mercedes Benz S Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Mercedes Benz S Series passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 17, 2002.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*  
[FR Doc. 02-32143 Filed 12-19-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 34267]

Morristown & Erie Railway, Inc.—  
Operation Exemption—Somerset  
Terminal Railroad Corporation

Morristown & Erie Railway, Inc. (M&E), a Class III rail carrier, has filed an amended verified notice of exemption<sup>1</sup> under 49 CFR 1150.41 to operate over approximately 1.25 miles of rail line located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, that is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey Transit's commuter line. In the amended notice, M&E states that it proposes to obtain rights from Somerset Terminal Railroad Corporation (STRC), a Class III rail carrier, to operate over this line of railroad that is owned by Joseph C. Horner.<sup>2</sup>

M&E states that, as provided in an assignment of contracts agreement dated October 1, 2002, between M&E and STRC, STRC proposes to assign M&E rights which will permit M&E to operate the line.<sup>3</sup> By letters filed on October 17, 2002, November 20, 2002, and November 26, 2002, Standard Terminal Railroad of New Jersey, Incorporated (Standard), alleged that STRC does not actually possess the rights it seeks to assign to M&E and requested that the exemption be stayed. By decision served on November 27, 2002, in this proceeding, the request for stay was denied.

Publication of this notice and effectiveness of the exemption does not

<sup>1</sup> M&E originally tendered a notice of exemption for filing on October 7, 2002, but additional and corrected information was subsequently filed on November 20, 2002.

<sup>2</sup> In *Somerset Terminal Railroad Corporation—Operation Exemption—A Line of Railroad Owned by Joseph C. Horner*, STB Finance Docket No. 33999 (STB served Feb. 13, 2001), STRC, then a noncarrier, was granted an exemption under 49 CFR 1150.31 to operate the line pursuant to a perpetual, irrevocable, exclusive and assignable easement.

<sup>3</sup> In addition, STRC will assign the right for M&E to operate over a railroad bridge that crosses the Raritan River, which connects the properties on which STRC has its easement. STRC is a party to a Land Use Agreement with Mr. Horner, dated May 1, 2000, and holds an easement to operate over the properties of Mr. Horner. Pursuant to the assignment of contracts agreement, M&E's operating rights will be for a term of 15 years, subject to renewal, extension, and termination. M&E proposes to operate the line to connect with CSX Transportation, Inc., and Norfolk Southern Railway Company.

constitute any finding by the Board concerning the ownership of the property involved. The exemption merely permits M&E and STRC to consummate the described transaction if and when they, in fact, have the legal capacity to do so. The question of whether or not STRC possesses the rights it wishes to assign is currently pending in the United States Bankruptcy Court. *In the Matter of Bridgewater Resources, Inc.*, No. 00-60057 (WHG) (D.N.J.).

M&E certifies that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual freight revenues are not projected to exceed \$5 million.

M&E states that operations will not commence until all of the contingencies contained in the assignment of contracts agreement are met.<sup>4</sup> The earliest the exemption could have been consummated was November 27, 2002, the effective date of the exemption (7 days after the amended exemption was filed).

This transaction is exempt under 49 CFR 1150.41(c).<sup>5</sup> 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 transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34267, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: December 16, 2002.

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

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 02-32076 Filed 12-19-02; 8:45 am]

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<sup>4</sup> These contingencies include a court's determination that STRC possesses the rights it intends to assign to M&E and the consent of Mr. Horner.

<sup>5</sup> In order to qualify for a change in operators exemption, an applicant must give notice to shippers on the line. See 49 CFR 1150.42(b). To ensure that shippers are informed of the change of operators on the line, M&E is directed to provide notice of the change to any shippers on the line and to certify to the Board that it has done so.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34283]

#### RailAmerica, Inc. et al.—Corporate Family Reorganization Exemption—Western Illinois Railway Company

RailAmerica, Inc. (RailAmerica), a noncarrier holding company, and its noncarrier subsidiary, Palm Beach Rail Holdings, Inc. (PBRH), filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(3) for them to continue in control of the Western Illinois Railway Company (WIRC), when it becomes a rail carrier.

The transaction was expected to be consummated on or shortly after November 27, 2002.

In a related matter, *Western Illinois Railway Company—Acquisition Exemption—Toledo, Peoria & Western Railway Company*, STB Finance Docket No. 34282, WIRC filed a notice of exemption to acquire from the Toledo, Peoria & Western Railway Corporation (TP&W) the rail, ties, and certain improvements on a 71.5-mile rail line in Hancock, McDonough, Fulton, and Peoria Counties, IL.<sup>1</sup>

RailAmerica controls one Class II and 31 Class III railroads that operate in the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Vermont, Virginia, and Washington.

Applicants state that there will not be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. Applicant also states that the transaction will not result in any adverse change in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of this transaction is to improve the financial viability of the applicants.

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. Because the transaction

<sup>1</sup> On November 26, 2002, RailAmerica, PBRH, and WIRC jointly filed a motion to dismiss both the continuance in control in this case and the acquisition in STB Finance Docket No. 34282 for lack of Board jurisdiction. The motion will be handled in a separate decision.

involves the control of one Class II rail carrier and one or more Class III rail carriers, the transaction will be made subject to the employee protective conditions described in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997).

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 stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34283, 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: Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: December 16, 2002.

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

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 02-32075 Filed 12-19-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Finance Docket No. 34079]

#### San Jacinto Rail Limited—Construction Exemption—And The Burlington Northern and Santa Fe Railway Company—Operation Exemption—Build-Out to the Bayport Loop Near Houston, Harris County, TX

**AGENCIES:** *Lead:* Surface Transportation Board. *Cooperating:* U.S. Coast Guard, Federal Aviation Administration, National Aeronautics and Space Administration.

**ACTION:** Extension of comment period for the Draft Environmental Impact Statement.

**SUMMARY:** Comments on the Draft Environmental Impact Statement (Draft EIS) issued by the Surface Transportation Board's Section of Environmental Analysis (SEA) and the three cooperating agencies on December 6, 2002 in this proceeding were to be submitted by January 27, 2003. In response to a number of written requests for an extension of the comment period, SEA is advising all interested persons that the comment period will be