

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarks that the entity that ultimately controls Lotus Cars is “the Malaysian company Perusahaan Otomobil Nasional Berhad.” However, Lotus’ balance sheets and income statements do not indicate that this Asian entity, itself a motor vehicle manufacturer, makes capital contributions to Lotus or otherwise participates in the management of this British company. Lacking these indicia of control, NHTSA has decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption. In 1999, Lotus produced 2,569 Lotus automobiles; in 2000, 2,993 Lotus automobiles plus 127 Opel/Vauxhall automobiles; and in 2001, 5,181 Lotus automobiles and 3,046 for Opel/Vauxhall. Over the same three-year period it exported 112,162, and 48 vehicles respectively to the United States. Notwithstanding the increase in production, Lotus submitted financial information on September 16, 2002, indicating a total operating loss of 7,513,000 pounds for its fiscal year 2001–2002, a loss of 20,244,000 pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 pounds, or \$24,622,400 computed at a rate of \$1.6=1 pound.

Lotus had intended to cease production of the exemption Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but “was unable to launch itself.” By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, “an additional 241 employees were made redundant.” However, it had located “an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles.” The company stated that its “only hope for keeping the U.S. market alive [is] to build the additional 140 Esprits, ending production on December 31, 2003,” the period for which it has requested an exemption. No further exemption will be requested for the Esprit as its V8 engine is not designed to meet Model Year 2004 U.S. emissions standards. It hopes to “find a way to finance” the M260 project for introduction in the U.S. in 2004. Lotus’s petition thus implies that the M260 is

being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Lotus simply said that “the extension will continue to be consistent with the public interest and the objectives of the Safety Act.” In the past, Lotus argued that after many years of sales of the Esprit with its current body shape, the company knew of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads.

If Lotus USA is required to close because of a denial, its employees will be out of work. In its new application, the company adds that its “image and credibility would be ruined.” An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus’s Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Docket Management Facility, room PL-401, 400 Seventh Street, SW., Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. You may submit your comments by hand, mail, fax (202–493–2251) or electronically: log onto the DMS Web site, <http://dms.dot.gov>, and click on “Help and Information” or “Help/Info” to obtain instructions.

We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at Web site <http://dms.dot.gov>. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 3, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30733 Filed 12–3–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 191X)]

Union Pacific Railroad Company—Abandonment Exemption—in Davis and Weber Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 23.69-mile line of railroad from milepost 754.31 near Valencia, to milepost 778.00 near Ogden, in Davis and Weber Counties, UT.¹ The line traverses United States Postal Zip Codes 84010, 84014, 84015, 84025, 84041, 84067, 84087, and 84401.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 (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.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

¹ UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA’s corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board’s jurisdiction, and UTA’s dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. See *Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

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 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mark H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

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

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565-1552. [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), UP 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 UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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

Decided: November 25, 2002.

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

Vernon A. Williams,
Secretary.

[FR Doc. 02-30690 Filed 12-3-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 192X)]

Union Pacific Railroad Company— Abandonment Exemption—in Salt Lake and Utah Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.23-mile portion of a line of railroad of the Provo Industrial Lead, from milepost 772.00 near Cutler, to milepost 775.23 near Mount, in Salt Lake and Utah Counties, UT.¹ The line traverses United States Postal Zip Codes 84003 and 84020.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 (Board) or with any U.S. District Court or has been

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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.

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³ Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

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