maximum use of on-line reporting, with the on-line system limiting the questions presented for completion, making maximum use of drop-down menus, *etc.*

Response: PHMSA agrees. The new regulation requires on-line reporting. The purpose of the paper form is to collect public comments. The on-line system will use ''smart navigation'' that will screen later questions based on information entered earlier. Drop down menus will be used whenever possible.

C2. API–AOPL expects the time it takes to complete the form to exceed the 15 minutes PHMSA proposed by up to three times as much.

Response: Completion of the OPID Assignment Request form is intended to be a one-time effort to collect as much as possible of the operator's information that PHMSA needs. Once this information is completed, PHMSA does not require the operator to undertake this effort again. The Operator Registry Notification form will be used to update any pertinent information that may have changed based on PHMSA's notification requirements since the OPID was originally issued. Operators will not have to complete the entire form. They will only update the section that is applicable to the change for which PHMSA is being notified. Given that most companies know this information prior to informing PHMSA, we estimate that the average time for completing these forms will be 15 minutes.

C3. API–AOPL commented that the forms request information not specified in the rule or discussed in the rulemaking (*e.g.,* the counties through which involved pipeline is routed). They noted that this could be construed as rulemaking without notice and comment.

Response: The rule did not specify the particular information that must be submitted for each type of notification. That is the purpose of these forms, and the forms have been subjected to notice and comment.

C4. API–AOPL suggested that PHMSA expand the instructions, where possible, to include more detail and specific examples. They noted that operators want to submit all of the information the agency needs and that more detailed instructions would help facilitate this.

Response: PHMSA appreciates API–AOPL's comments on these forms and pipeline operators' efforts to submit information as needed. PHMSA has revised the instructions to include more specificity and details. PHMSA invites stakeholders to submit suggestions for additional changes at any time, which will be considered for future revisions of these instructions.

D. Master Meter and Small Petroleum Gas Systems

The form will specify that operators of master meter systems or operators that solely operate petroleum gas systems which serve fewer than 100 customers from a single source (small petroleum gas operators) do not need to follow the Operator Registry requirements in 49 CFR 191.22 and 195.64. However, this exception does not extend to operators of these systems who also operate other system types. Small petroleum gas operators that do not have an OPID and are required to file an incident report will be able to request an OPID during the incident filing process.

III. Proposed Information Collection Revisions and Request for Comments

The forms to be created as a result of this information collection are the OPID Assignment Request form and the Operator Registry Notification form. The burden hours associated with these information collections are specified as follows:

Title of Information Collection: National Registry of Pipeline and Liquefied Natural Gas Operators.

OMB Control Number: Pending.

Type of Request: New information collection.

Abstract: PHMSA is requiring each operator to have an OPID number. The OPID number will contain detailed information on the operator. In addition, PHMSA is requiring that an operator provide PHMSA with update notifications for certain changes to information initially provided by the operator.

Affected Public: Pipeline Operators.

Recordkeeping:

Estimated Number of Respondents: 2,753.

Estimated Total Annual Burden Hours: 5,506.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on November 3, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–29084 Filed 11–8–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0294 (PDA–35(R)]

New Jersey Regulations on Transportation of Regulated Medical Waste

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to comment on an application by the Healthcare Waste Institute (Institute) for an administrative determination as to whether Federal hazardous material transportation law preempts regulations of the New Jersey Department of Environmental Protection (NJDEP) which apply to the transportation of regulated medical waste in commerce, including the packaging of regulated medical waste for transportation; marking and labeling of containers of regulated medical waste offered for transportation or transported; the description of regulated medical waste on documents accompanying shipments of regulated medical waste and the use and retention of such documents; and the marking of vehicles which transport regulated medical waste.

DATES: Comments received on or before December 27, 2011 and rebuttal comments received on or before February 8, 2012 will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The Institute's application and all comments received may be reviewed in the Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The application and all comments are available on the U.S. Government Regulations.gov Web site: *http://www.regulations.gov.*

Comments must refer to Docket No. PHMSA–2011–0294 and may be

submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–(202) 493–2251.
- *Mail:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Docket Operations Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

A copy of each comment must also be sent to (1) Alice P. Jacobson, Esq., Director, Healthcare Waste Institute, 4301 Connecticut Avenue NW., Suite 300, Washington, DC 20008, and (2) Mary Jo M. Aiello, Administrator, New Jersey Department of Environmental Protection, Solid and Hazardous Waste Management Program, Mail Code 401–02C, P.O. Box 420, Trenton, NJ 08625–0420. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Mses. Jacobson and Aiello at the addresses specified in the **Federal Register**.'')

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 a comment 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 (65 FR 19477–78), or you may visit *http://www.regulations.gov.*

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA's home page at *http://www.phmsa.dot.gov.* From the home page, click on ''Hazmat Safety Community,'' then on ''Regulations,'' then on ''Preemption Documents'' under ''Chief Counsel's Decisions.'' A paper copy of the index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of Chief Counsel (PHC–2), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone No. (202) 366–4400; facsimile No. (202) 366–7041.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Institute has applied to PHMSA for a determination whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts requirements in Subchapter 3A of Title 7, Chapter 26 of the New Jersey Administrative Code, on the transportation of regulated medical waste in commerce regarding:

- Packaging regulated medical waste for transport off-site, in Sections 7:26–3A.10 (segregation of sharps, fluids (greater than 20 cc), and ''other'' regulated medical waste); 7:26–3A–11 (''oversized'' regulated medical waste that is ''too large to be placed in a plastic bag or standard container''); and 7:26–3A.27(g) (conditions when a transporter must comply with ''pre-transport'' requirements).
- Labeling and marking containers of regulated medical waste with additional information, in Sections 7:26–3A.14 and 7:26–3A.15, respectively, and 7:26–3A.28(c) (additional labeling by a ''subsequent transporter'' when ''regulated medical waste is handled by more than one transporter'').
- Preparation, use, and retention of a ''tracking form'' describing a shipment of regulated medical waste, in Sections 7:26–3A.19, 7:26–3A.21, 7:26–3A.28, 7:26–3A.31 through 7:26–3A.34, 7:26–3A.41, and (with respect to rail transporters) 7:26–3A–45 & 7:26–3A.46.[1]
- Preparation and retention of ''exception reports,'' in Sections 7:26–3A.21, 7:26–3A.22, and 7:26–3A.36.
- Marking a motor vehicle used to transport regulated medical waste with additional information, in Section 7:26–3A.30.

In summary, the Institute contends that these requirements are preempted because they are (1) not ''substantively the same as'' requirements in the Federal hazardous material transportation law or the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, on the transportation of regulated medical waste, or (2) otherwise an ''obstacle'' to accomplishing and carrying out Federal hazardous material transportation law and the HMR, as the NJDEP requirements are enforced and applied. The Institute notes that certain non-Federal requirements on the transportation of medical waste have been found to be preempted in Preemption Determination (PD) No. 23(RF), ''Morrisville, PA Requirements for Transportation of 'Dangerous Waste,''' 66 FR 37260 (July 17, 2001), decision on petition for reconsideration, 67 FR 2948 (Jan. 22, 2002), and PD–29(R), ''Massachusetts Requirements on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste,'' 69 FR 34715 (June 22, 2004). As explained in those decisions, DOT regulates the transportation of regulated medical waste as a Division 6.2 hazardous material. PD–23(RF), 66 FR at 37260–61; PD–29(R), 69 FR at 34717.[2] *See also* 49 CFR 173.134(a)(5).

II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2320), 49 U.S.C. 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian Tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under § 5125(e)—if

(1) Complying with a requirement of the State, political subdivision, or Tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) The requirement of the State, political subdivision, or Tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that PHMSA's predecessor agency, the Research and Special Programs Administration, had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria

[1] In its application, the Institute refers to Section 7:26–3A.47 (''Alternative or innovative technology authorization''), but it seems clear that it meant to refer to Section 7:26–3A.46 (''Rail shipment tracking form requirements'').

[2] In 1991, after a two-year demonstration program, the U.S. Environmental Protection Agency (EPA) decided not to regulate medical waste, so that medical waste is not a ''hazardous waste'' under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq. Id.*

are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material.[3]

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).[4]

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. chapter 51. Public Law 103–272, 108 Stat. 745 (July 5, 1994).) A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian Tribe) directly affected by a requirement of a State, political subdivision or Tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. See 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(f)(1). A State, local or Indian Tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on ''Preemption'' (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. The President's May 20, 2009 memorandum sets forth the policy ''that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts the New Jersey regulations on the transportation of regulated medical waste in commerce. Comments should specifically address the preemption criteria discussed in Part II above.

[3] Subparagraph (E) was editorially revised in Sec. 7122(a) of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which is Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, 119. Stat. 1891 (Aug. 10, 2005). Technical corrections to cross-references in subsections (d), (e), and (g) were made in Public Law 110–244, Sec. 302(b), 122 Stat. 1618 (June 6, 2008).

[4] Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. *See* 49 U.S.C. 5125(c) and (f). *See also* 49 CFR 171.1(f) which explains that a ''facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.''

Issued in Washington, DC, on November 7, 2011.

Vanessa L. Allen Sutherland,

Chief Counsel.

[FR Doc. 2011–29155 Filed 11–9–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 713X)]

CSX Transportation, Inc.—Abandonment Exemption—in Monroe County, AL

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 1.5-mile rail line on its Southern Region, Atlanta Division, Southern Alabama Subdivision, between mileposts 0RA 676.27 and 0RA 677.79 at the end of the track, in Hybart, Monroe County, AL. The line traverses United States Postal Service Zip Code 36481.

CSXT 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(c) (environmental report), 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 Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 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 December 10, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 21, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 30, 2011, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

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

CSXT has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 15, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service 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), CSXT 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 CSXT's filing of a notice of consummation by November 10, 2012, 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 4, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–29095 Filed 11–9–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35559]

Saratoga and North Creek Railway, LLC—Operation Exemption—Tahawus Line

Saratoga and North Creek Railway, LLC (Saratoga),[1] a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate an approximately 29.71-mile line of railroad, known as the Tahawus Line. Saratoga states that the Tahawus Line currently is private track owned by NL Industries, Inc. (NL), an industrial concern which is selling the line to Saratoga in the very near future.[2] The rail line extends between the existing connection with Saratoga at milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 at Newcomb. Saratoga intends to provide common carrier rail service over the subject line connecting to its existing trackage at North Creek and extending to its connection with CP at Saratoga Springs.

Saratoga certifies that as a result of this transaction its projected annual

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[1] Saratoga is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is owned by Iowa Pacific Holdings, LLC (IPH). IPH and Permian formed Saratoga for the purpose of operating the entire Tahawus Line between Newcomb, N.Y., on the north and Saratoga Springs, N.Y., on the south, interchanging traffic with the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific (CP) at Saratoga Springs. In 2 previous proceedings, the Board authorized Saratoga to operate between Saratoga Springs and North Creek. *See Saratoga & N. Creek Ry.—Acquis. & Operation Exemption—Del. & Hudson Ry.,* Docket No. FD 35500 (STB served June 1, 2011) and *Saratoga & N. Creek Ry., LLC—Operation Exemption—Warren Cnty., N.Y.,* Docket No. FD 35500 (Sub-No. 1) (STB served June 1, 2011).

[2] Saratoga states that the subject trackage is exempt from Board regulation and has never been operated in common carrier service and therefore it does not need any Board authority to acquire this trackage as such property is outside the Board's jurisdiction. Saratoga cites *B. Willis, C.P.A., Inc.—Petition for Declaratory Order,* FD No. 34013 (STB served Oct. 3, 2001) (*B. Willis*)., *aff'd sub nom. B. Willis, C.P.A., Inc.* v. *STB,* 51 Fed Appx. 321 (D.C. Cir. 2002) in support of this proposition. Saratoga states that it has executed an agreement to acquire the line from NL and that it anticipates consummating the acquisition before the exemption in this proceeding becomes effective.