

## 28. Mitchell A. Webb

Mr. Webb, 52, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/400. His optometrist examined him in 2003 and stated, "In my opinion, Mr. Webb has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle." Mr. Webb reported that he has driven straight trucks for 30 years, accumulating 900,000 miles, and tractor-trailer combinations for 20 years, accumulating 100,000 miles. He holds a Class A CDL from Virginia. His driving record for the past 3 years shows no crashes or convictions for moving violations in a CMV.

## 29. Jerry L. Wilder

Mr. Wilder, 39, lost the vision in his right eye due to trauma in 1984. The visual acuity in his left eye is 20/20. Following an examination in 2003 his ophthalmologist stated, "It is clear that Mr. Wilder has normal vision in the left eye, and I see no reason why he cannot drive safely using the mirrors that are the standard operating equipment in a truck/vehicle cab. It is clear that Mr. Wilder has been driving safely commercially for several years, and I feel that he is well adapted to continue to do so." Mr. Wilder reported that he has driven straight trucks for 4 years, accumulating 376,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.4 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

## Requests for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 12, 2003.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 03-31752 Filed 12-23-03; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## Denial of Motor Vehicle Defect Petition, DP03-004

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Denial of petition for a defect investigation.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate alleged increased vehicle stopping distance due to certain failures of the EC-17, Version 2.3 (EC-17), antilock braking system electronic control unit (ABS ECU) and the Dura Drain M-12 modulator (M-12), both manufactured by Bendix Commercial Vehicle Systems, LLC (Bendix). The petition is identified as DP03-004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5226.

**SUPPLEMENTARY INFORMATION:** In June 2003, Mr. Jing Tang (Petitioner) filed a petition for a defect investigation alleging that potential safety defects existed in both the EC-17, Version 2.3 (EC-17), antilock braking system electronic control unit (ABS ECU) and the Dura Drain M-12 modulator (M-12), both manufactured by Bendix Commercial Vehicle Systems, LLC (Bendix). The Petitioner asserted that the defects in both components resulted in extended vehicle stopping distances. Both components are used in the pneumatic antilock braking systems of commercial type vehicles. The EC-17 is an electronic controller for the antilock braking system of large trucks, truck tractors and buses, while the M-12 is a modulator and relay valve combination used on large trailers. The Petitioner, a former staff control engineer with the Bendix Braking Control Group, cited his personal familiarity with the components as the basis for his allegations.

The Petitioner contacted ODI in September 2002 to convey his concerns regarding these components. During the intervening months, prior to the submission of his petition, ODI monitored its consumer complaint database and attempted to follow up with possible complainants.

After receiving the petition for a defect investigation, ODI reviewed and analyzed data and information from

multiple sources that included material provided by the Petitioner, vehicle owner complaints contained within the NHTSA consumer complaint database, and information provided by Bendix in response to an ODI inquiry.

## EC-17 ECU Issue

## Background

In July 2000, Bendix initiated a recall (NHTSA #00E-041) of the EC-17 1030R ECU primarily because the unit's software was unable to differentiate false incoming signals. The controller's interpretation of the signals activated the antilock feature, which extended braking distances under certain conditions. The EC-17 1030R was manufactured between November 3, 1997 and August 16, 2000.

At the time NHTSA was notified of the recall decision, Bendix reported that they had conducted an investigation and identified the underlying issues that prompted the action. The Bendix investigation concluded that the EC-17 1030R controller was receiving "false" signals through the wheel speed sensor input. The controller was then interpreting these false signals as impending wheel lock-up. In response to the impending wheel lock-up interpretation, the controller would command the reduction of pneumatic pressure to the vehicle brake chamber at the affected wheel. Under such conditions, with the braking system antilock feature now activated, the vehicle could experience an extended stopping distance.

Bendix identified two potential sources of the false wheel speed signals. The first source was identified as chafing to the wheel speed sensor wire due to contact with other moving or rotating components. The other source of aberrant signals was identified as damaged or displaced wheel components, such as tone rings.

Bendix concluded that by itself, the EC-17 1030R controller was not defective, but in the presence of false or aberrant wheel speed signals, the controller lacked the sufficient software codes to differentiate these signals from otherwise valid signals. Beginning mid-June 2000, Bendix introduced the EC-17 Version 2.3,<sup>1</sup> which contained software that adequately addressed the issue of wheel speed signal differentiation. The EC-17 Version 2.3 controller was introduced to replace the recalled EC-17 1030R controllers. In addition, Bendix introduced the EC-30 in mid-2001 to supersede the EC-17 series. As the EC-30 controller was introduced, it

<sup>1</sup> Production of 210,913 units between 06/13/00 and 09/25/01.

was also used as a remedy part for the EC-17 1030R recall.

The Petitioner alleges that the algorithm used in the EC-17 Version 2.3 only corrected for potential low speed (less than 12 MPH) braking problems on rough road surfaces. His concern is that extended vehicle braking distances could otherwise occur at higher speeds on rough surfaces. To illustrate his concern, the Petitioner referenced a "hardware-in-loop simulation" that depicted an extended vehicle braking distance on a washboard-type surface. During the simulation, the Petitioner reported that there was no air "pressure in the brake chamber for the first 15 seconds." The Petitioner also referenced a Kansas City area customer who complained of "non-effective brakes" when the vehicle was operated on a rough surface as a possible example of such an occurrence.

#### **Bendix Response**

Subsequent to the recall, Bendix continued to monitor complaints of extended vehicle braking distances and identified the potential for extended vehicle stopping distances on unpaved and "severely bumpy" road surfaces, such as those occasionally found in rural areas. The company's analysis, which included individual contact with complainants, revealed that an extended braking distance event was only likely to occur on severely rough road surfaces that extended for more than 100 feet. During field-testing, Bendix was unable to reproduce an extended braking event on a typical "washboard" <sup>2</sup> surface.

Regarding the Petitioner's allegation that extended braking distances could occur at high speeds on washboard surfaces, Bendix reported that such occurrences have not materialized in field testing or through owner complaints. Bendix advised that the Petitioner's allegations are based upon computer simulations "involving artificially induced electronic inputs" that "are more extreme even than worst case scenarios." According to Bendix, although "many of these signals are not realistic or real world conditions," they are often bench-tested with an ECU <sup>3</sup> to assist engineers with evaluating possible algorithm changes. Bendix concludes that although the Petitioner cites potential scenarios of extended braking distances, the basis for his conclusions involve conditions not applicable to "real world" conditions.

Regarding the Petitioner's allegation that a Kansas City-area complaint concerned extended vehicle braking distances on rough road surfaces, Bendix noted that at the time of the complaint, the remedy for the EC-17 1030R recall had not been performed on several vehicles from the fleet in question. Bendix reported satisfactory resolution of the complaint upon completion of the recall remedy and, for two of the vehicles, the correction of foundation brake problems.

Bendix reasserted that potential events of extended braking distances are only likely to occur on severe rough roads where the "washboard" surface extends more than 100 feet. The company concludes that such conditions are atypical highway conditions and that the potential can be mitigated through driver intervention. Bendix stated that investigation of the few complaints of extended braking distances revealed that the vehicles were being operated on unpaved surfaces and that by assuring increased driver awareness of ABS operation the complaints or concerns were resolved.

In consideration of these "extreme conditions," Bendix introduced the EC-30 ABS controller in June 2001. The company reports that the EC-30 Version 2.02 "provides improved performance on extreme washboard surfaces." In sum, Bendix asserts that there is no safety defect with the EC-17 Version 2.3 controller.

Bendix reported no knowledge of any crashes or injuries attributable to poor performance of either EC-17 version. Although Bendix did acknowledge the occurrence of a property damage collision <sup>4</sup> wherein an ABS-equipped bus rear ended another bus, separate investigations by law enforcement, the local school system, and Bendix all concluded that the sole cause was unrelated to the brake system operation and was attributed to driver inattention.

#### **Bendix Complaint and Warranty History**

ODI queried Bendix with regard to complaints and warranty claims that referenced the EC-17 controller, excluding those that referenced the model 1030R that was recalled. Bendix reported that it has received 18 complaints (including reports of incidents or inquiries) regarding poor performance, including extended braking distances (complaint rate equals to 8.5 per 100,000 units). Of the 18 complaints, only four specifically mentioned performance issues related to the vehicle being operated on a rough or

"washboard" surface (corrected complaint rate 1.8 per 100,000 units). Within these complaints, where the surface condition was known, it was described as unpaved. Of the remaining 14 complaints, five were conclusively identified as unrelated to the ABS ECU. The nine remaining complaints were resolved through other component repairs or by providing additional information to the complainant (presumably the complainant used the information to resolve the complaint).

Bendix identified a total of 10th <sup>5</sup> warranty claims related to the EC-17 ABS control unit between September 2000 and January 2003. <sup>6</sup> Although the basis for the warranty claims are not identified, at least two claims were identified as involving the 1030R model in circumstances where the recall remedy had not been installed.

#### **ODI Actions**

ODI research of the NHTSA vehicle owner (or consumer) complaint database revealed no complaints regarding malfunction, failure, or extended vehicle braking distance with regard to a Bendix brand pneumatic antilock braking system component.

ODI also communicated informally with International and Blue Bird (two manufacturers that participated in the 1030R recall) and was advised that these manufacturers had not received any new complaints after the recall remedy was performed.

#### **M-12 Modulator Issue**

##### **Background**

The Petitioner alleges that his review and work on the modulator revealed that it could become ineffective at maintaining pneumatic brake pressure under cold ambient temperatures (less than 20-degrees Fahrenheit). The Petitioner stated that his research revealed that under cold ambient temperatures, the rubber diaphragm in the modulator could become rigid, thereby not permitting it to effectively seal the pilot chamber drain hole during a brake application. Should the drain not seal, sufficient pneumatic pressure may not be delivered to the brake chamber. The Petitioner reported that "an internal test" confirmed his suspicion of the diaphragm becoming rigid at cold temperatures.

##### **M-12 Modulator and Relay Valve Assembly**

Bendix describes the M-12 as a combination modulator and relay valve

<sup>2</sup> Bendix advised ODI that there is not an industry "benchmark" for the evaluation of rough road or "washboard" performance.

<sup>3</sup> Defined as "hardware in loop" simulation.

<sup>4</sup> March 2002, West Virginia—paved, straight, level, dry road surface at a controlled intersection.

<sup>5</sup> Corrected warranty rate is 3.7 per 100,000 units.

<sup>6</sup> As of June 2003.

assembly<sup>7</sup> for the pneumatic antilock brake system on large trailers. Information provided by Bendix indicates that the M-12 was manufactured between November 1997 and March 2001 with a total production of approximately 78,509 units. Additional information indicates that the M-12 underwent four modifications during the years of production. Those modifications are summarized in the table below.

Date	Modification
March 1998 .....	Change in solenoid supplier.
August 1998 .....	Dura Drain Feature Added.
September 1999 .....	Housing Casting Improved.
October 2000 .....	Dura Drain Feature Discontinued.

With regard to the defect petition, the most applicable modification would appear to be the introduction of the Dura Drain feature, which was added as a product improvement. Bendix reported an approximate production of 50,778 units (approximately 64% of the total units) with this feature. The Dura Drain feature was subsequently discontinued, reportedly as a means to reduce cost. Production of the M-12/MC-12 was discontinued approximately 5 months later (March 2001), as it was replaced by the MC-30 modulator/ECU assembly.

#### *M-12—Bendix Response*

Bendix advised ODI that with regard to the defect alleged by the Petitioner, the company conducted an investigation that consisted of multiple tests and studies. This investigation began in November 2000 after a Bendix representative, while on a routine customer contact visit, was informed of an issue that was described as “inconsistent trailer braking.” The customer, a vehicle fleet owner with facilities near the Bendix headquarters, regularly participated in the evaluation

of Bendix products. According to Bendix, the complaint concerned reports of three fleet drivers who described an occurrence of “trailer push,” in which the vehicle driver senses that the trailer brakes appear to operate more slowly or less effectively than the tractor brakes. The ensuing investigation determined that the likely cause was a diminished build up of air pressure in the trailer brake system.

During the early stages of the investigation, the Petitioner’s allegation and analysis that diaphragm rigidity due to cold ambient temperatures was considered as a possible cause. Bendix reported that further evaluation and testing “cast doubt” on the Petitioner’s contentions. The company reported that there had been no similar complaints during the winter months of 1998, 1999 and early 2000. Furthermore, the compound used in the M-12 diaphragm was specified for adequate performance to –40 degrees Fahrenheit. Bendix reported that testing at cold ambient temperatures could not “consistently replicate the predicted (poor) performance” due to a rigid diaphragm.<sup>8</sup>

Nonetheless, Bendix continued to receive trailer-braking complaints, many outside of winter months. As Bendix conducted detailed inspections of the M-12 modulators, the company observed “a strong correlation (of braking complaints) to the presence of solid or fibrous contamination in the air intake valve area.” The company also observed that the complaints “were regionally clustered” and “specific to certain vehicle (trailer) makes.” The conclusion of their investigation was that contamination in the intake port of the valve and not the rigidity of the diaphragm was the most likely cause for a majority of the “trailer push” or extended braking distance complaints. Bendix also noted that an evaluation of some complaints revealed other causes such as kinked air lines or external

valve damage. Regarding the source of the contamination, Bendix cited the observation of material consistent with insect infiltration or hibernation as well as possible maintenance practices.

Bendix reported no known occurrences of crashes or injuries associated with the lack of performance or failure of the M-12 modulator.

#### *Bendix Complaint and Warranty History*

ODI queried Bendix with regard to complaints and warranty claims that referenced the M-12. Bendix provided ODI with data indicating that between April 1999 and early August 2003, the company received complaints on 139 M-12 units<sup>9</sup> that were in use on trailers owned by seven (7) fleets. Nearly 70% of the complaints were received from one large fleet described by Bendix as one that regularly participates in product evaluations. A second large fleet accounted for approximately 18% of the complaints, revealing that nearly 88% of the complaints originated with two fleet operations.

Bendix reported that in those cases in which it was able to investigate the basis for the complaint, contamination of the air system was identified in approximately 94% of the complaints. With regard to the contamination, Bendix reported that the majority consisted of evidence of insect nesting and fibrous/cloth material likely to have been introduced during vehicle assembly or maintenance.

For all but 27 complaints, Bendix provided information on the month and year of the complaint (identified as the date of occurrence). Review of the data revealed that more than half of the complaints were received during 2001. The data also revealed that less than one half of the complaints occurred during the winter months of November through February. These trends are illustrated in the tables below.

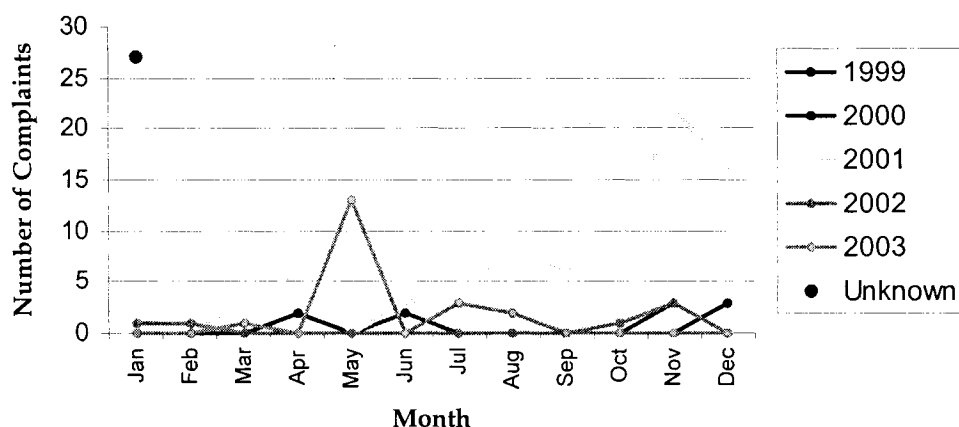
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<sup>7</sup> The M-12 also carries the designation of MC-12 when an ECU is combined with the modulator/relay valve assembly.

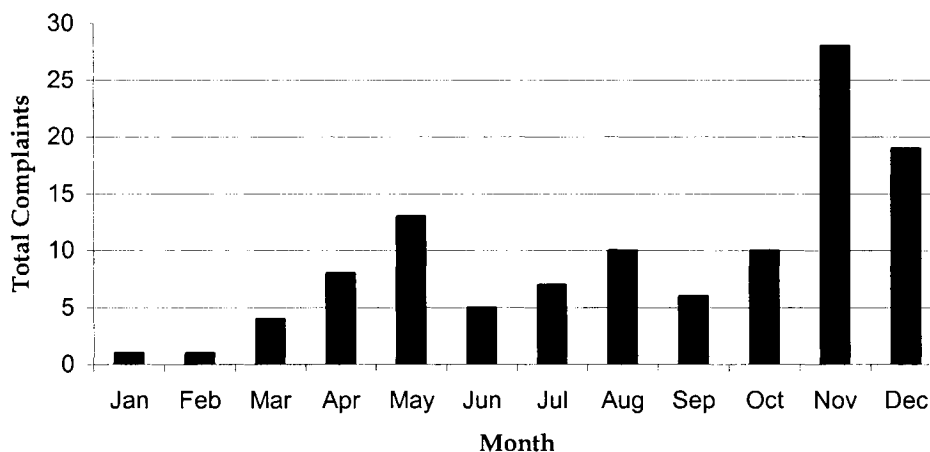
<sup>8</sup> Data provided by Bendix does indicate that some early testing revealed occasional leakage of Dura Drain at colder temperatures when the antilock system is active. Additionally, Bendix concedes that a rigid diaphragm could lead to degradation in antilock brake performance.

<sup>9</sup> Complaints appear to reflect all M-12 units. There was no differentiation between units produced with and without the Dura Drain feature, resulting in an overall complaint rate of 17.7 per 10,000 units.

Complaints Received - Month/Year



Complaints by Month



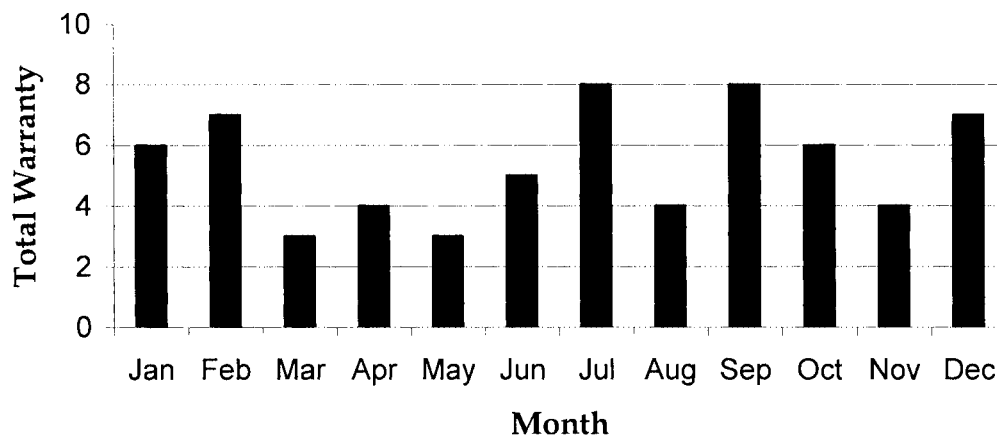
Bendix reported processing 65 warranty claims<sup>10</sup> between October 1999 and June 2003. Review of the data indicates that less than one half of the warranty claims were processed during the winter months of November through

February. Information provided with the warranty claims offered few analytical details regarding the reason for the warranty claim. It is also noteworthy that the product descriptions for warranty claims reference both the M-12 (9.5% of the claims) and the MC-12 (90.5% of the claims). Since the MC-12

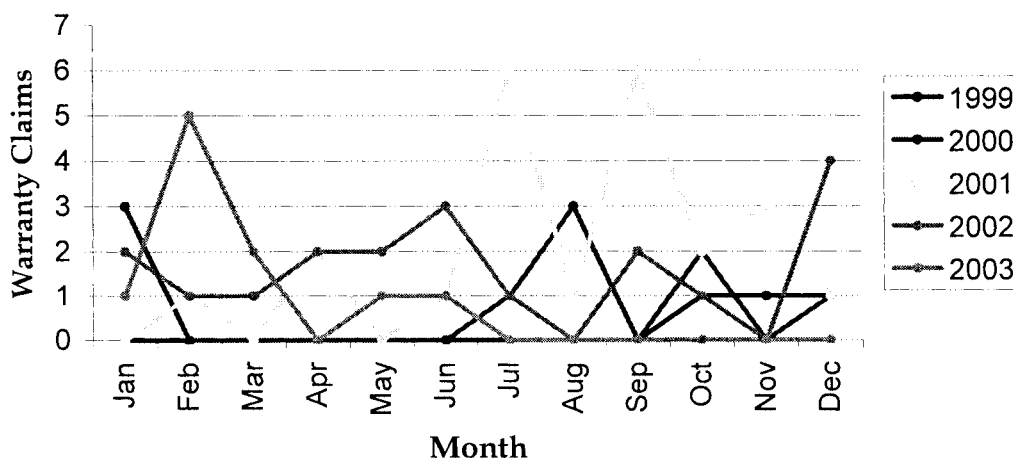
also contains the ECU, some of the claims may be related to components other than the Dura Drain feature. The warranty data provided no differentiation between units equipped or not equipped with the Dura Drain feature. Warranty trends are illustrated in the tables below.

<sup>10</sup> Warranty rate of 8 per 10,000 units.

Warranty Claims by Month



Warranty Claims - Month/Year



## BILLING CODE 4910-59-C

## ODI Actions

Review of the NHTSA vehicle owner complaint database revealed no complaints regarding the M-12 modulator or extended trailer stopping distances. ODI staff did contact one of the vehicle fleet owners identified by the Petitioner. The fleet representative advised ODI that although Bendix evaluated the performance of their trailers, driver training appeared to be the greater problem. The fleet had no continuing concerns.

## Conclusion

ODI acknowledges the Petitioner's personal involvement in the evaluation of the performance of both the EC-17

Version 2.3 ABS controller and the M-12 modulator assembly. Although the Petitioner offers information that is not entirely disputed by Bendix, his contention that the components contain defects that relate to motor vehicle safety is not supported by the available data.

With regard to the EC-17 Version 2.3 ABS controller, data provided by Bendix revealed that extended braking distances were only likely on extremely rough surfaces (over long distances) characteristic of unpaved surfaces. Although the company's next generation ECU reportedly improves performance in this type of setting, Bendix reported that enhanced vehicle driver awareness has mitigated the issue for the EC-17.

ODI has no independent information that contradicts this assertion.

With regard to the M-12 modulator, data provided by Bendix revealed that although diaphragm rigidity (due to cold ambient temperatures) may degrade antilock performance (*i.e.*, extend braking distance during an ABS event), the company's investigation and analysis failed to consistently replicate the poor performance. Furthermore, Bendix provided data that showed a greater number of complaints and warranty claims occurring during warmer weather. Their analysis also identified the presence of air system contamination in an overwhelming number of complaints.

Upon review of the available data it is unlikely that NHTSA would issue an order requiring the notification and remedy of a safety-related defect in either the EC-17 Version 2.3 or the M-12 modulator at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

**Authority:** 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 18, 2003.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

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**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34075]

#### **Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Juab and Salina, UT**

**ACTION:** Notice of availability of draft Scope of Analysis for the Environmental Impact Statement.

**SUMMARY:** On July 30, 2001, the Six County Association of Governments (SCAOG), a regional association representing Juab, Millard, Sevier, Sanpete, Piute, and Wayne counties in central Utah, filed a Petition for Exemption with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction and operation of a new rail line between Juab and Salina, Utah. The project would involve approximately 43 miles of new rail line and ancillary facilities to serve shippers in central Utah, particularly Southern Utah Fuels Company (SUFCO) coal operations. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA held public scoping meetings as part of the EIS process, as discussed in the Notice of Scoping Meetings and Request for Comments published by the Board on October 20, 2003. As part of the scoping process, SEA has developed a draft Scope of Analysis for the EIS.

SEA has made available for public comment the draft Scope of Analysis contained in this notice. SEA will issue a final Scope of Analysis shortly after

the close of the comment period.

Written comments on the Scope of Study are due January 26, 2004.

**Filing Environmental Comments:** Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to: Surface Transportation Board, Case Control Unit, STB Finance Docket No. 34075, 1925 K Street, NW., Washington, DC 20423-0001, with the following designation written in the lower left-hand corner of the envelope: Attention: Phillis Johnson-Ball, Environmental Project Manager, Environmental Filing. **FOR FURTHER INFORMATION CONTACT:** Ms. Phillis Johnson-Ball, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. The Web site for the Surface Transportation Board is [www.stb.dot.gov](http://www.stb.dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Draft Scope of Analysis for the EIS**

###### *Proposed Action and Alternatives*

The proposed action, known as the Central Utah Rail project, involves the construction and operation of approximately 43 miles of new rail line connecting the existing Union Pacific Railroad (UPRR) line near Juab, Utah, to a proposed coal transfer terminal facility near Salina, Utah. Implementation of the proposed project would restore rail service to the Sevier Valley, providing a more direct connection to rail service for the coal industry (primarily SUFCO), provide rail service to other shippers in the Sevier Valley, and reduce the number of trucks on highways in the Sevier Valley.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) construction and operation of the proposed project, (2) the no-action alternative, and (3) alternative alignments identified during the scoping process.

##### **Environmental Impact Analysis**

###### *Proposed New Construction*

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

###### *Impact Categories*

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy

resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category as described below:

##### **1. Land Use**

The EIS will:

- Describe existing land use patterns within the project area and identify those uses that would be potentially impacted by proposed rail line construction.
- Describe the potential impacts associated with the proposed new rail line construction on land uses identified in the project area. Such impacts may include impacts on farming and ranching activities, incompatibility with existing land uses, and conversion of land to railroad uses.
- Propose mitigative measures to minimize or eliminate potential project impacts on land use, as appropriate.

##### **2. Biological Resources**

The EIS will:

- Describe existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and federal and state threatened or endangered species, and the potential impacts on those resources resulting from construction and operation of proposed rail facilities.
- Describe any wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and potential impacts on these resources resulting from construction and operation of the proposed rail line and ancillary facilities.
- Propose mitigative measures to minimize or eliminate potential project impacts on biological resources, as appropriate.

##### **3. Water Resources**

The EIS will:

- Describe the existing surface and groundwater resources within the project area, including lakes, rivers, streams, ponds, wetlands, and flood plains, and the potential impacts on these resources resulting from construction and operation of the proposed rail line and ancillary facilities.
- Describe the permitting requirements for the proposed new rail line construction regarding wetlands, stream and river crossings, water