

filed a waiver request seeking to delay the August 25, 2008 implementation date of amendments to Title 49, CFR, § 40.67, which was issued by the Department of Transportation (DOT) on June 25, 2008 (73 FR 35961). Part 40 is incorporated by reference in § 219.701 of Title 49, CFR, Part 219, *Control of Drug and Alcohol Use in Railroad Operations*. The amendments to § 40.67 apply to drug tests where a direct observation of the urine collection is required (e.g., the employee presented a cold specimen at the collection site; had an invalid test result without a legitimate medical reason; had a positive or adulterated test result which had to be cancelled because the required test of the employee's split specimen could not be performed; or had a prior positive or refusal to test and was subject to return-to-duty and follow-up testing).

As amended, § 40.67 will require an employee to raise his/her shirt and lower his/her pants and undergarments to show an observer that he or she does not have a prosthetic device which could be used to affect the validity of the test; the direct observer must be of the same gender as the employee because of privacy concerns. In their petition, the AAR and ASLRRRA state that the railroad industry is comprised mainly of male employees, while the majority of their current contract collectors are female, and that they need additional time to arrange for more male contract collectors and to complete training on the new direct observation procedures.

For the reasons stated above, the petitioners ask FRA to waive until November 1, 2008, § 219.701's incorporation by reference of Part 40 to the extent that it incorporates § 40.67's new requirements for directly observed collections. Although the specific relief requested is a waiver of Part 219's incorporation of the August 25, 2008 effective date of § 40.67 as applied to return-to-duty and follow-up tests, the petitioners elsewhere state that their purpose is to seek "a delay in the effective date until November 1, 2008, for amendments to 49 CFR 40.67 issued by the Department of Transportation on June 25, 2008." FRA therefore infers that petitioners are also seeking to defer the effective date of Part 219's incorporation of § 40.67 as applied to mandatory direct observations triggered by employee behavior at the collection site. The petitioner also requests that DOT and the FRA reassess whether the new direct observation requirements are necessary, by monitoring observed drug tests over the next two years.

The petitioners have sent a very similar petition to the Office of the Secretary of Transportation (OST). Both petitions focus on portions of the direct observation provisions of 49 CFR Part 40, an OST regulation applicable to all DOT agencies having drug testing programs, making parallel arguments concerning these provisions. FRA will fully coordinate its response to the petition sent to FRA with OST's response to the petitions sent to OST, and FRA's response will be consistent with that of OST with respect to the issues involved.

Comments should reference Docket No. FRA 2008-0092, 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.
- *Mail*: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand Delivery or Courier*: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax*: (202) 493-2251.

All documents in the public docket, including the AAR/ASLRRRA joint waiver request and all comments received, will be posted without change to <http://www.regulations.gov>, including any personal information provided. Because of the necessity for expedited processing of this petition, FRA does not anticipate scheduling a public hearing in connection with this request for a waiver of certain regulatory provisions. Communications received by Aug. 21, 2008 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

For access to the docket, go to <http://www.regulations.gov> anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets, where you may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on August 12, 2008.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.
[FR Doc. E8-19037 Filed 8-15-08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35151]

GNP Rly Inc.—Modified Rail Certificate—In Snohomish County, WA

On July 14, 2008, GNP Rly Inc. (GNP)¹ filed an application for a modified certificate of public convenience and necessity under 49 CFR Part 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity* (modified certificate), to lease and operate a segment of a line of railroad in the City of Snohomish, Snohomish County (County), WA. The segment is owned by the County and extends from milepost 39.1 to milepost 39.3, a distance of approximately 0.2 miles. On August 7, 2008, Mayor Randy Hamlin, on behalf of the City of Snohomish (City), filed a letter in response to GNP's application.

The segment is part of a line of railroad authorized to be abandoned pursuant to a decision issued by the Board's predecessor agency, the Interstate Commerce Commission, in *Burlington Northern Railroad Company—Exemption—Abandonment in Snohomish County, WA*, Docket No. AB-6 (Sub-No. 280X) (ICC served Mar. 12, 1986).² GNP states that the County acquired the segment on October 20, 1992.³

The County leased the segment to GNP by agreement dated May 23, 2008. GNP states that it will lease the segment for an initial term beginning January 1, 2008, and ending December 31, 2039, with a 31-year renewal term. GNP states that the segment will be used for the reconstruction of 350 yards of sidings and service tracks for storage and maintenance of locomotives and cars and as a base of operations for trains, motive power, and rolling stock to be

¹ GNP was previously known as Altac Terminals Washington, Inc. GNP changed its corporate name through an amendment to its articles of incorporation filed with the Secretary of State of the State of Washington on September 10, 2007.

² The line of railroad approved for abandonment pursuant to that decision extended from milepost 39.00 to milepost 47.11, a distance of approximately 8.11 miles.

³ We note that the County does not appear to own the segment covering milepost 39.0 to milepost 39.1 of the line.

operated by GNP. GNP states that it will also provide commuter rail service and common carrier freight rail service over the segment as provided in its agreement with the County.⁴ GNP states that the segment at issue here is the first small piece of a larger segment that GNP hopes to operate.

The City requests that the Board deny GNP's application. The City opposes passenger rail operations on the segment, citing safety and noise concerns. In particular, the City complains about the negative impact rail service would have on several public facilities located near the segment, the danger to pedestrians and automobiles at the 11 crossings along the segment, and the close proximity of

the segment to many new multifamily residences. Further, the City argues that the safety of the Snohomish River Bridge has not been evaluated. Finally, the City argues that there is no apparent need for additional commuter rail service.

The rail segment qualifies for a modified certificate of public convenience and necessity, which was designed to promote the continuation of rail service over marginal lines. See *Common Carrier Status of States, State Agencies*, 363 I.C.C. 132, *aff'd sub nom. Simmons v. ICC*, 697 F.2d 326 (D.C. Cir. 1982).

Although the County supports the proposal, the City does not, and the City raises safety issues that it believes could arise if request rail service were to develop. It is not at all clear that the more extensive proposal, of which this proposal is a part, will materialize, in that GNP does not now have, and may never obtain, the ability to operate over any track beyond the 0.2-mile segment at issue here. Thus, the safety issues that the City raises may never arise as a result of the permissive authority sought here. In any event, any holder of a modified certificate must operate in accordance with all Federal Railroad Administration (FRA) safety regulations. The FRA regulations cover such areas as grade crossings, noise, and the safety of tracks and bridges. Thus, the City's concerns, should GNP's plans come to fruition, can be addressed under the appropriate regulations.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, section 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.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

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

Decided: August 12, 2008.

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

Anne K. Quinlan,

Acting Secretary.

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⁴ The rail line involved in Docket No. AB-6 (Sub-No. 280X) connects with a 0.99-mile line of railroad owned by BNSF Railway Company (BNSF), between milepost 38.01 and milepost 39.0 in Snohomish (BNSF line). The BNSF line was the subject of a notice of exemption to abandon and discontinue service in *BNSF Railway Company—Abandonment Exemption—In Snohomish County, WA*, STB Docket No. AB-6 (Sub-No. 422X) (STB served July 2, 2004). By decision served on December 18, 2007, in STB Docket No. AB-6 (Sub-No. 422X), the consummation deadline for BNSF's abandonment of the line at issue in that proceeding was extended until December 31, 2008. GNP states that BNSF has not consummated the abandonment of the BNSF line and that the line may be acquired by a public authority. However, by subsequent letter received on July 21, 2008, BNSF advised the Board that it has consummated the abandonment of the BNSF line between milepost 38.25 and milepost 39.00, and that the remainder of the line (between milepost 38.01 and milepost 38.25) would be retained for railroad purposes.