

On October 21, 2009, BNSF, a Class-I rail carrier operating in the western United States, replied to AECC's petition contesting, among other things, AECC's underlying presumption that the Tariff provisions are injurious to coal shippers. BNSF states that coal dust contaminates the ballast and can impact ballast integrity, ultimately causing derailments. Therefore, BNSF claims the Tariff provisions are intended to promote the safe, efficient, and uninterrupted flow of coal from mine to generating station. BNSF itself requests the Board issue a declaratory order stating that (1) BNSF is entitled to establish rules designed to inhibit the dispersion of coal dust over its lines in the interest of safe and efficient rail operations and of reliability of service on its rail lines; and (2) BNSF's Tariff provisions are not unreasonable.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by AECC and BNSF merit further consideration. A declaratory order proceeding is thus instituted in this proceeding.

We received, on October 22, 2009, a letter from WCTL requesting that we accept public input on the declaratory order proceeding.⁴ Due to the significance of this matter to coal shippers, railroads, and other interested parties, we are opening this declaratory order proceeding for public participation. Any person who wishes to participate in this proceeding as a POR must file, no later than December 11, 2009, a notice of intent to participate and must adhere to the procedural schedule established in the Appendix. To ensure each POR receives all filings, the Board will serve, as soon after as practicable, a notice containing the

official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not parties of record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

In their filings, AECC and BNSF discuss the alleged adverse effects of coal dust on rail roadbeds and ballast, implicating safety and environmental issues. Because the Board's consideration of the issues raised in this proceeding could relate to other Federal agencies' areas of expertise, any agency with an interest in the outcome of these issues is encouraged to comment.

Both AECC and BNSF request that a procedural schedule be adopted. They both request that we allow for a 60-day period of discovery. While the legal nature of a declaratory order proceeding might not always necessitate discovery, due to the factually intense nature of the dispute here we will permit discovery among BNSF, AECC, and any other shippers potentially affected by the tariff, including shipper organizations that represent those shippers. These

entities may conduct discovery pursuant to the Board's regulations at 49 CFR 1114.21, *et seq.* In the interests of ensuring the necessary discovery is obtained in a timely and efficient manner, we will assign and authorize a Board employee to act as a discovery facilitator to entertain and rule upon all disputes concerning discovery in this proceeding. Any appeals of decisions by the discovery facilitator must be filed within 3 business days of the date of the action and responses to appeals must be filed within 3 business days thereafter. Appeals will be governed by the standard at 49 CFR 1115.1(c).⁵

Board decisions, notices, and filings in this and other Board proceedings are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 30, 2009.

It is ordered:

1. A declaratory order proceeding under 5 U.S.C. 554 and 49 U.S.C. 721 is instituted.
2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.
4. The special appellate procedures set forth in this decision will apply to rulings made by the Board employee assigned to act as a discovery facilitator in this matter.
5. This decision is effective on December 1, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Kulunie L. Cannon,
Clearance Clerk.

Appendix
Procedural Schedule

December 1, 2009	Declaratory order proceeding instituted.
December 11, 2009	Notices of intent to participate due.
February 1, 2010	Close of discovery.
March 16, 2010	Opening evidence and argument due from all PORs.
April 30, 2010	Reply evidence and argument due from all PORs.
May 17, 2010	Rebuttal evidence and argument due from all PORs.

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DEPARTMENT OF TRANSPORTATION
Surface Transportation Board
Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604-8-11/

18/09) for permission to use certain data from the Board's 2008 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data;

⁴ WCTL also requested leave to intervene, to which UP replied on October 28, 2009. In a separate filing on October 21, 2009, UP also requested leave to intervene. Because we are inviting public

participation in this proceeding, we need not address the requests for leave to intervene, but we have made the requesting parties PORs.

⁵ 49 CFR 1115.1(c) states, in relevant part, that "appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice."

therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245-0330.

Kulunie L. Cannon,
Clearance Clerk.

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UNITED STATES MINT

Pricing Methodology for Numismatic Products Containing Gold and Platinum Coins; Expansion of Schedule Range

AGENCY: United States Mint.

ACTION: Notice.

SUMMARY: The United States Mint published a document in the **Federal Register** of January 6, 2009, outlining the new pricing methodology for numismatic products containing gold and platinum coins. The document contained schedules for pricing based

on a range of average prices of gold and platinum. These schedules now need to be expanded to higher ranges to accommodate rising prices of gold and platinum.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW., Washington, DC 20220; or call 202-354-7500.

SUPPLEMENTARY INFORMATION: The gold and platinum schedules, published in the **Federal Register** of January 6, 2009 (74 FR 493), in FR Doc. E8-31424, are updated to read as follows:

BILLING CODE P