

EMERGENCY ORDER No. 14

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0094 on April 7, 1990, to Midland Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 8, 1990.

Robert G. Lineberry,

Associate Administrator for Investment.

[FR Doc. 90-13838 Filed 6-13-90; 6:45 am]

BILLING CODE 8025-01-0

(License No. 09/09-0387)

Sundance Venture Partners, L.P.; Issuance of Small Business Investment Company License

On September 27, 1989, a notice was published in the Federal Register (54 FR 39620) stating that an application had been filed by Sundance Venture Partners, L.P. 3000 Sand Hill Road, Building 4 # 130, Menlo Park, California 94025 with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies. (13 CFR 107.102 (1989)), for a license to operate as a small business investment company.

Interested parties were given until the close of business October 27, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0387 on April 23, 1990, to Sundance Venture Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 4, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-13839 Filed 6-13-90; 3:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 14]

Eureka Southern Railroad Co., Inc.; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels issuance of this Emergency Order prohibiting passenger service and hazardous material transportation on a line of track owned by the Eureka Southern Railroad Company Inc. between Willits and Eureka, California (milepost 142.5 to milepost 284.1).

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. The Eureka Southern Railroad Company Inc. is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 431(e), 438, as amended. Under 45 U.S.C. 432(a), FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury." This order may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation."

FRA's track safety regulations (49 CFR part 213) prescribe minimum safety requirements for railroad track. There are six classifications of track defining maximum speed and minimum maintenance requirements. For example, Class 6 allows the highest speed and, correspondingly, requires adherence to the most stringent standards. By designating track as a certain class, a railroad commits to maintaining that track to the standards established in part 213 for that class. However, if the segment of track does not at least meet the requirements of Class 1, it may be designated as "excepted" track under § 213.4 (i.e., track not maintained to meet the standards set for Class 1 in subparts B, C, D, and E) so long as, among other things, no passenger service is operated over that segment § 213.4(e)(2).

On the Willits to Eureka line, the Eureka Southern currently operates two passenger excursion trains per week and conducts daily freight operations that include approximately four tank cars of liquefied petroleum gas per month. Liquefied petroleum gas is a regulated hazardous material under 49 CFR parts 171-179.

The Eureka Southern Railroad's line of track between Willits, California, and Eureka, California, clearly fails to meet Class 1 standards, the lowest class of track over which passenger traffic is permitted by FRA regulation.

During the week of April 16, 1990, FRA carefully inspected the track in question and found 271 instances of noncompliance with the standards for Class 1 track, which were immediately reported to the railroad. Eight of these defects were recommended for civil penalties. The defects included 25 locations of insufficient ballast, 28 locations of defective or inadequate crossties, and 72 locations where wide gage was measured. These defects pose particularly serious threats to safety. Effective ballast and crossties provide the lateral and vertical support of the rail to prevent trains from derailing. Without this support wide gage can develop. Track gage is defined as the distance between the inside faces of the rail heads. Gage that is wider than allowed by FRA regulation greatly increases the possibility of derailment due to car or locomotive wheels dropping between the rails.

On May 4, 1990, the California Public Utilities Commission authorized the Eureka Southern to operate an excursion train between Willits and Eureka, conditioned on the railroad's compliance with all applicable FRA standards.

As a result, FRA conducted a second track inspection from May 19 to 25, 1990, of 68.5 miles of the 141.6 miles between Willits and Eureka. This inspection revealed 259 instances of noncompliance, including 91 locations of wide gage, numerous defective poor crossties, and 25 center cracked joint bars. Eleven of the defects were recommended for civil penalties; nine of these had been reported to the railroad during FRA's April inspection but not repaired.

Prior FRA inspections in 1987, 1988, and 1990 disclosed many critical defects that evidenced a continued failure by the Eureka Southern to adequately maintain its track. In 1989 the railroad experienced two derailments reportable to FRA under 49 CFR Part 225 that were caused by track defects on the Willits to Eureka line. These track caused accidents resulted in \$45,500 in track and equipment damage. The railroad's consistent failure to comply with the standards for the lowest class of track on which passenger service is authorized has convinced FRA that continued operation of passenger trains over this line poses an urgent and unacceptable threat to public safety.

FRA's April and May inspections also found many points of the Willits to Eureka line seriously damaged by erosion or embankment slippage caused by rain and the Eel River, along which much of the track runs. This erosion and embankment slip has washed out or removed sections of the subgrade and related ballast supporting the river-side rail of the track. If a train were to derail at this point it could easily roll down a steep ravine into the Eel River. In addition, rock and land slides blocked the track in two locations during the May inspection.

FRA is gravely concerned with the conditions found at Tunnel 40 on this line. Tunnel 40 is heavily damaged from movement of the surrounding earth ("overburden"). Both walls of the tunnel have buckled with the west wall pushed inward 21 inches. The ceiling has wide cracks and evidence of water damage. The overburden at the south portal of the tunnel shows clear signs of slippage, and FRA's May inspection found additional movement since April.

If the conditions at Tunnel 40 continue to deteriorate, FRA may take further steps to assure public safety.

Order

I find that, given the unsafe track conditions on the Willits to Eureka line, the transportation of passengers would create an emergency involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 delegated to me by the Secretary of Transportation (49 CFR 1.49(m)), it is ordered:

1. That the Eureka Southern Railroad Company Inc. shall not conduct or permit the operation of any passenger service of any kind over the line of track between Willits and Eureka, California, (milepost 142.5 to milepost 284.1) unless and until that track is maintained to FRA class 1 standards as set forth in 49 CFR part 213.

2. That the Eureka Southern Railroad Company Inc. shall not conduct or permit the transportation of any material that is required to be placarded as hazardous under 49 CFR parts 171-179 over the line of track between Willits and Eureka, California (mileposts 142.5 to milepost 284.1) unless and until either (i) that track is maintained to FRA class 1 standards, or (ii) that track is designated "excepted" as provided in 49 CFR 213.4 and only if such transport of hazardous materials complies with § 213.4(e)(3).

Relief

Relief from this order may be obtained by:

1. Properly designating the Willits to Eureka line, or portion of that line, as excepted track under § 213.4 and indicating in writing to the FRA Administrator, with a copy to Regional Director Harry T. Paton. All conditions for such a designation must be met and adhered to by the Eureka Southern. FRA will respond in writing within seven days and, if FRA is satisfied that this condition has been fully met, that response will lift the order as it pertains to hazardous materials transportation from the entire Willits-to-Eureka line or a designated portion; or

2. Informing in writing the FRA Administrator, with a copy to Regional Director Paton, that the Willits to Eureka line, or portions of the line, are in compliance with Class 1 standards. Within twenty-eight days, or less if the railroad provides the use of a "hy-rail" vehicle, of receipt of this notice, FRA will inspect the line, or certified portion, and within seven days of such inspection will inform the railroad in writing whether this order is lifted. If FRA does not lift the order, the written response will specifically describe what additional measures need to be taken to bring the track into compliance.

Penalties

Each train movement in violation of this Order shall subject the respondent committing such violation to a civil penalty of up to \$20,000. 45 U.S.C. 432, 438, as amended.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code.

Issued in Washington, DC, June 7, 1990.
Gilbert E. Carmichael,
Administrator.
[FR Doc. 90-13737 Filed 6-13-90; 8:45 am]
BILLING CODE 4910-06-M

[FRA Emergency Order No. 13]

New York & Lake Erie Railroad; Industrial Development Agency of Cattaraugus County; Emergency Order Prohibiting Passenger Service

The Federal Railroad Administration (FRA) of the United States Department of Transportation (DOT) has determined that public safety compels issuance of this Emergency Order prohibiting passenger service and hazardous materials transportation on a segment of the New York and Lake Erie Main Line (Main Line) owned by the Industrial

Development Agency of Cattaraugus County (Development Agency) and operated by the New York and Lake Erie Railroad (NYLE) between Gowanda, New York, milepost 32.9, and Cherry Creek, New York, milepost 48.2.

Authority to enforce the Federal railroad safety laws has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. See 49 CFR 1.49. The New York and Lake Erie Railroad is a "railroad" subject to FRA's safety jurisdiction pursuant to the Federal Railroad Safety Act of 1970 (Safety Act), 45 U.S.C. 421, 431(e), 438, as amended. The Development Authority is a "person" subject to the Safety Act's enforcement provisions. See 45 U.S.C. 438. Under section 203(a) of the Safety Act, FRA is authorized to issue emergency orders where an unsafe condition or practice or a combination thereof, creates "an emergency situation involving a hazard of death or injury." This order may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation."

FRA's track safety regulations (49 CFR part 213) prescribe minimum safety requirements for railroad track. There are six classifications of track defining maximum speed and minimum maintenance requirements. For example, class 6 allows the highest speed and, correspondingly, requires adherence to the most stringent standards. By designating track as a certain class, a railroad commits to maintaining that track to the standards established in part 213 for that class. However, if the segment of track does not at least meet the requirements of Class 1, it may be designated as "excepted" track under § 213.4 (i.e., track not maintained to meet the standards set for Class 1 in subparts B, C, D and E) so long as, among other things, no "passenger service" is operated over that segment (§ 213.4(e) (2)).

The New York and Lake Erie Railroad's line of track between Gowanda, New York and Cherry Creek, New York, clearly fails to meet Class 1 standards, the lowest class of track over which passenger traffic is permitted. As of May 1990, however, the NYLE has been running daily passenger service, with one round trip excursion per weekday and two round trip excursions each Saturday and Sunday. (Freight traffic is anticipated to be 700 cars during 1990).

Since June, of 1989, FRA and New York State personnel have performed five detailed inspections of this track, most recently on May 22 and 23, 1990. Each inspection disclosed hundreds of