

requested, and the petitioner's arguments in favor of relief.

### City of Crystal Lake, Illinois

[Waiver Petition Docket Number FRA-2009-0013]

The City of Crystal Lake, Illinois (City) seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, Title 49 CFR part 222. The City is seeking a waiver from the rule that requires active grade crossing warning devices at public crossings within a quiet zone be equipped with constant warning time devices. Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.35(b)(1), so that the active grade crossing warning devices at Prairie Street are not required to be equipped with constant warning time devices.

49 CFR 222.35(b)(1) reads as follows: "Each public highway-rail grade crossing in a New Quiet Zone established under this part must be equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators." The purpose of constant warning time devices (CWT) is so that the crossing warning devices provide the same amount of warning time regardless of the speed of the approaching train.

The City is in the process of establishing a new quiet zone along the Union Pacific Railroad's (UP) McHenry Subdivision, which would extend from approximately Milepost (MP) 58.21 to MP 59.35. The quiet zone will consist of two public at-grade crossings, one of which is at IL Route 176 (DOT # 178 803B) and the other is at Prairie Street (DOT #178 802 U).

Prairie Street is a two lane, 40 foot wide, asphalt road with an average daily traffic of 1,450 and a posted speed limit of 30 miles per hour (mph). The crossing has two railroad tracks, one of which is the main track and the other is an industrial track. There are nine train movements per day (six on the main track and three on the industrial track) with a maximum timetable speed of 20 mph. The automatic warning devices at the crossing are standard flashing lights with gates. CWT is present for detecting trains on the main track and DC circuits are used on the industrial track.

The lack of CWT on the industrial track was first raised at a diagnostic

review meeting on February 22, 2008. Since that date, the City has attempted to resolve the question as to whether or not CWT was "reasonably practical" as used in the rule with the Railroad, FRA and the Illinois Commerce Commission (ICC) without success. An FRA representative indicated that it usually leaves the determination of this up to the State agency responsible for crossing safety, which is ICC in this case and the railroad. Neither party in this instance is willing to make a determination.

The City cites the Manual on Uniform Traffic Control Devices Section 8D.06 which states that CWT shall be used where the speed of trains on a given track vary considerably under normal operation. The City also refers to the Illinois Department of Transportation Bureau of Local Road's manual chapter 40-2.04, which provides in part that CWT should be considered where trains operate at variable speeds on the line.

The City's position is that CWT is not reasonably practical for a number of reasons. There are relatively few trains through the crossing and they travel at a low constant speed. Prairie Street is a low volume street which has not had a crossing collision within the last 5 years. The City is working on removing the on-the-street bike route in the future which will enhance safety. It also states that a quiet zone can be established without making any improvements at Prairie Street and notes that UP did not raise the issue of the crossing not having CWT during the 60 day comment period on the Notice of Intent to establish a quiet zone. Lastly, the City points out that the money necessary to install CWT would be taking away funds that could be used to improve the City's roadways which are in need of improvements.

The City states that it attempted to reach an agreement with UP in regard to their requirement for CWT through numerous correspondence; however, no resolution was attained. Due to the unresolved issue, the City is not filing a joint waiver. It is the opinion of the City that the absence of a joint waiver that included UP would not significantly contribute to public safety as is described in its petition.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0013) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if 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 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on August 6, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions

involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**City of Pendleton, Oregon (Waiver Petition Docket Number FRA-2008-0120)**

The City of Pendleton, Oregon (City), seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The City is seeking a waiver from the rule that requires a train-automobile collision that occurred on June 12, 2006, be counted as a "relevant collision" for the purpose of determining whether there has been a "relevant collision" pursuant to 49 CFR 222.41(a)(1)(iii). Specifically, the City is seeking a waiver from the provisions of 49 CFR 222.9, wherein "relevant collision" is defined. The waiver petition requests that FRA stay any action to revoke the City's quiet zone until 120 days after the final decision on this waiver to allow the City to address supplemental safety measures that could be installed if the waiver is denied.

49 CFR 222.9 defines a relevant collision as follows: Relevant collision means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision in which the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. With respect to the Pre-Rule Partial Quiet Zones, a relevant collision shall not include collisions that occur during the time period within which the locomotive horn is routinely sounded.

The City received a letter from FRA dated August 15, 2008, informing that the annual risk review required under 49 CFR 222.51(b)(1) for its quiet zone had revealed that the Quiet Zone Risk Index (QZRI) was 20,454.05 and that the current value of the National Significant Risk Threshold (NSRT) was 17,610. Since the QZRI was less than twice the NSRT (35,220) and there had been a relevant collision on June 12, 2006, at the S.W. Frazier Avenue and 9th Street S.W. crossing (DOT Number 809 011 C), the quiet zone was no longer qualified per 49 CFR 222.51(b)(2)(iii) and that the quiet zone would terminate in 6 months unless the City took the steps required in 49 CFR 222.51(b)(4). In order to retain its quiet zone, the City would be required to provide FRA within 6 months a written commitment to lower the risk in the quiet zone and detail the specific steps that would be taken. The

City would have to implement the steps to reduce the risk no later than August 15, 2011, or the quiet zone would be terminated. The quiet zone would have remained qualified if the collision of June 12, 2006, had not been deemed a relevant collision.

The City claims that due to the unusual circumstances of this collision, it should not be classified as a relevant collision. If this was the case, then the quiet zone would still be in compliance and the City would not have to take the actions required in 49 CFR 222.51(b)(4).

The collision in question occurred at the S.W. Frazier Avenue and 9th Street S.W. crossing. S.W. Frazier Avenue is a one-way street with traffic traveling east that has flashing lights and gates that completely block the street when the gates are lowered. The flashing lights and gates are located immediately west of the track. 9th Street S.W. is a two-way street that runs north and south and has flashing lights and a gate for northbound traffic only. The Union Pacific Railroad's (UP) track runs diagonally through the intersection of the two streets from the southeast to the northwest with a slight curve towards the north. The crossing is within the City's quiet zone.

The vehicle that was involved in the collision was backing out of a driveway located on the north side of S.W. Frazier Avenue immediately east of the UP's tracks. According to a citizen witness, the conductor and engineer, the vehicle backed out of the driveway and stopped on the crossing immediately before the locomotive entered the crossing. The engineer and conductor stated that the train was traveling between 23 and 25 miles per hour. The locomotive was approximately 20 feet from the crossing when the vehicle began to back out and the vehicle was traveling at a high rate of speed before stopping on the crossing. The engineer then sounded the locomotive's horn and initiated an emergency application of the train's brakes. The driver indicated that she had backed out farther than anticipated due to her foot slipping off the clutch. She stated that she tried to put the car into a forward gear and "missed it." The vehicle was struck by the lead locomotive while the vehicle was stopped on the crossing. The automatic warning devices (flashing lights and gates) that were located on the west side of the tracks operated as intended.

The City argues the presence or absence of additional safety measures on this, or any other crossing in the quiet zone, would not have affected this collision. According to the police report, the train horn did sound but the driver did not respond. The City feels that the

presence of train horns at this or other crossings in the vicinity would not likely have changed the incident. The City states that where the collision is independent of the train horn or supplement safety measures, the collision should not be considered a "relevant collision."

The City states that it made several efforts to obtain UP's support for the waiver but failed to reach an agreement and thus was not able to file a joint waiver. The City sent an e-mail on October 2, 2008, to UP's Manager of Industry and Public Projects that has responsibility in Oregon, to notify the railroad of its intent to file a waiver and asking for help in identifying the appropriate contact on the railroad to whom discussions could be directed. The request was resent on October 8, 2008, via fax along with a draft copy of the waiver. On October 9, 2008, the City had a conversation with the manager who stated that he could not state at that time whether the railroad would join in the application. The City tried to contact him again on October 14, 2008, without success.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2008-0120) and may be submitted by any of the following methods:

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above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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Issued in Washington, DC on August 6, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35281]

#### CSX Transportation, Inc.—Trackage Rights Exemption—Commonwealth Railway Incorporated

Pursuant to a written trackage rights agreement,<sup>1</sup> Commonwealth Railway Incorporated (CWRY) has agreed to grant non-exclusive overhead trackage rights to CSX Transportation, Inc. (CSXT), over CWRY's line of railroad between Suffolk, VA, milepost 16.50, and Churchland, VA, milepost 9.90, a distance of approximately 6.60 miles.<sup>2</sup>

The earliest this transaction may be consummated is August 26, 2009, the effective date of the exemption (30 days after the amendment to the notice of

<sup>1</sup> A redacted version of the proposed trackage rights agreement between CSXT and CWRY was filed with the notice of exemption. The full version of the draft agreement was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision. As required by 49 CFR 1180.6(a)(7)(ii), the parties must file a copy of the executed agreement within 10 days of the date the agreement is executed.

<sup>2</sup> On July 27, 2009, CSXT filed an amendment to its verified notice of exemption to comply with the information required by 49 CFR 1180.4(g)(4)(i), thereby making July 27, 2009, the official filing date for the notice. Parties are reminded that, when filing a notice of exemption for transactions that may limit future interchange with a third-party connecting carrier, parties must provide the following additional information: (1) Disclose the existence of the provision or agreement that limits or restricts interchange; (2) disclose the affected interchange points; and (3) file a confidential, complete version of the documents containing the provision or agreement that limits or restricts interchange.

exemption was filed). The purpose of the trackage rights agreement is to improve CSXT's access to the Maersk Terminal in the port of Norfolk and to provide competitive service for intermodal and other traffic originating at, and destined for, the port.

Pursuant to 49 CFR 1180.4(g)(i), CSXT discloses that the agreement contains a provision prohibiting CSXT from using the line for interchange with any third-party carrier, wherever one may connect with, and create an interchange point on, the line.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 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.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed at least 7 days before the exemption becomes effective.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35281, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Steven C. Armbrust, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202 and Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

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

Decided: August 6, 2009.

By the Board,  
**Rachel D. Campbell,**  
*Director, Office of Proceedings.*

**Kulunie L. Cannon,**  
*Clearance Clerk.*

[FR Doc. E9–19258 Filed 8–11–09; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 23 and Form 23–EP

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 23, Application for Enrollment to Practice Before the Internal Revenue Service, and Form 23–EP, Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

**DATES:** Written comments should be received on or before October 13, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at [Allan.M.Hopkins@irs.gov](mailto:Allan.M.Hopkins@irs.gov).

#### SUPPLEMENTARY INFORMATION:

**Title:** Application for Enrollment to Practice Before the Internal Revenue Service. Application for Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).

**OMB Number:** 1545–0950.

**Form Number:** Form 23 and Form 23–EP.

**Abstract:** Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue