

small business manufacturers can manufacture and supply a specific proprietary holster system to the Federal government. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item(s), regardless of the business size of the manufacturer, on a Federal contract set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), historically underutilized business zones (HUBZone), or participants in the SBA's 8(a) Business Development (BD) program.

**DATES:** Comments and source information must be submitted by February 24, 2020.

**ADDRESSES:** You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Carol Hulme, Program Analyst, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

**FOR FURTHER INFORMATION CONTACT:** Carol Hulme, Program Analyst, by telephone at 202-205-6347; or by email at [Carol-Ann.Hulme@sba.gov](mailto:Carol-Ann.Hulme@sba.gov).

**SUPPLEMENTARY INFORMATION:** Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts (except those valued between \$3,500 and \$250,000) set aside for small business, service-disabled veteran-owned small business SDVOSB, WOSB, EDWOSB, HUBZone, or (BD) program participants provide the product of a small business manufacturer or processor if the recipient of the set-aside is not the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a "class of products" for which there are no small business manufacturers or

processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

The SBA defines "class of products" based on a combination of (1) the six digit North American Industry Classification System (NAICS) code, (2) the four digit Product Service Code (PSC), and (3) a description of the class of products.

The United States Air Force (USAF) has requested that SBA provide a class waiver for a specific holster system. Specifically, the USAF has requested a class waiver for a unique and proprietary holster system that will be required following the receipt of M18 handguns. The details outlining why this particular holster will be required can be found in USAF's Small Arms and Weapons Accessories Approval List. The specific holster that is required per the USAF is the Safariland 7390 Modular Holster System with Automatic Locking System (ALS) and ALS Guard. This holster is the required duty holster and accessory authorized for use by Security Forces personnel. According to the USAF this specific holster system provides two levels of retention to reduce the chance of the weapon from being grabbed or falling from the holster during combat. The USAF has informed SBA that it is imperative for the safety and for risk mitigation to ensure all Security Force members are using a single standard holster for the M18, and that a standard holster with a standard retention system maximizes the ability of Security Force members to achieve their objectives.

The USAF's market research has found that the holster system that meets its needs is the Safariland 7390 Modular Holster System with Automatic Locking System (ALS) and ALS Guard, and that the system is patented by Safariland. As such, the USAF has found that there are no small business concerns that can provide this holster system to the Federal Government, and has requested a class waiver.

SBA invites the public to comment on this pending request to waive the NMR for leather holsters (M18 System) and accessories under NAICS code 316998/PSC 8465. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30

days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

**David Loines,**

*Director, Office of Government Contracting.*

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## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36186; Docket No. FD 36186 (Sub-No. 1)]

### Texas Railway Exchange LLC—Construction and Operation Exemption—Galveston County, Tex.; Petition of Texas Railway Exchange LLC for Issuance of a Crossing Order Pursuant to 49 U.S.C. 10901(D)

On November 21, 2018, Texas Railway Exchange LLC (TREX) filed a petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate approximately one-half mile of rail line in Galveston County, Tex. (the Line), to provide Texas International Terminals Ltd. (TI Terminals) with a connection to BNSF Railway Company (BNSF) (Petition for Exemption). TREX also requested that the Board conditionally grant its petition within 90 days, subject to the issuance of a final Board decision on the proposed construction after completion of the environmental review.

By decision served on February 15, 2019, the Board instituted a proceeding under 49 U.S.C. 10502(b). The Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (EA) on February 22, 2019, examining the potential environmental impacts of TREX's proposal and requesting public comments, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370(f).<sup>1</sup> After considering the comments received in response to the Draft EA, OEA issued a Final EA on May 2, 2019. Based on its analysis, OEA recommended environmental conditions to avoid, minimize, or mitigate the potential environmental impacts of the proposed construction and operation.

On February 22, 2019, TREX filed a petition for issuance of a crossing order

<sup>1</sup> Because TREX would need to cross the UP line to implement the proposed construction project, OEA's environmental analysis assessed both the proposed construction and operation of the Line and the planned crossing of UP's tracks.

pursuant to 49 U.S.C. 10901(d) (Crossing Petition) to allow the proposed Line to cross tracks owned by Union Pacific Railroad Company (UP).

After considering both the rail transportation and environmental issues, the Board will grant the Petition for Exemption subject to the recommended environmental mitigation measures in the Final EA. Consequently, the Board will deny as moot TREX's request for a conditional grant of the exemption. The Board will also grant the Crossing Petition subject to the recommended environmental mitigation measures in the Final EA that pertain to the crossing, and require the parties to negotiate the compensation and any remaining terms for the crossing.

## Background

TREX is a corporate affiliate of TI Terminals, which owns and operates a liquid and dry bulk terminal in Galveston, Tex. In its Petition for Exemption, TREX states that the purpose of the proposed Line is to provide direct and permanent railroad service between BNSF's Valley Yard and TI Terminals' loop track. (Pet. for Exemption 3 & Sullivan V.S. ¶¶ 38–39.) According to TREX, TI Terminals' customers currently rely on reciprocal switching service from UP for BNSF trains to access TI Terminals. TREX states that UP's reciprocal switching entails restrictive operating conditions and rules that require several unnecessary train movements that result in significant delays. (*Id.* at 3 & Sullivan V.S. ¶¶ 14, 16–31, 32.) TREX states that direct access to TI Terminals would eliminate the need for the existing reciprocal switching service and the associated difficulties arising from multiple train movements and car switching events between the BNSF Valley Yard, the UP Interchange Yard, and TI Terminals' industry and loop tracks. (*Id.* at 4.)

On March 14, 2019, UP filed its reply to TREX's Petition for Exemption. UP argues that this is not a routine construction case and opposes issuance of a conditional grant, because the proposed Line must cross UP's tracks and extend laterally over other property owned by UP. (UP Reply 2, Mar. 14, 2019.) UP objects to TREX's characterization of UP's current service to TI Terminals, although UP acknowledges that service issues are normally irrelevant in construction cases. (*Id.* at 3 (citing *Midwest Generation, LLC—Exemption from 49 U.S.C. 10901—for Constr. in Will Cty., Ill.*, FD 34060, slip op. at 4 (STB served Mar. 21, 2002).)) According to UP, TREX fundamentally misrepresents the

physical constraints on UP's ability to switch cars delivered by BNSF into TI Terminals' facility. (UP Reply 3, Mar. 14, 2019.) UP further states that TREX misrepresents UP's responses to TI Terminals' requests for special switches. (*Id.* at 4.)

The Board has received letters in support of TREX's Petition for Exemption from United States Representative Randy Weber, Canadian Advantage Petroleum Corporation, and Archer Daniels Midland Company.

Pursuant to the procedural schedule for the Crossing Petition, set by the Board in a decision served April 4, 2019, UP filed its reply to the Crossing Petition on June 18, 2019. In its reply, UP consents to the issuance of the crossing order and states that it is prepared to negotiate with TREX the terms of operations and the amount of payment. On June 28, 2019, TREX filed its rebuttal, asserting that UP's consent establishes that TREX has fully satisfied the Board's section 10901(d) standards.

Subsequently, counsel for TREX indicated to OEA that TREX was considering modifying the type of crossing to be used in crossing UP's tracks. On August 5, 2019, the Board issued a decision directing TREX to file a report updating the Board on the status of discussions with UP regarding the possible modification of the proposed crossing configuration. TREX filed its report on August 15, 2019, stating that the parties had held discussions on the proposed routing, crossing, and operations, as well as related matters, and were engaged in further discussions. On November 7, 2019, following an October 11, 2019 Board order requesting an update on the parties' discussions, TREX submitted a status report stating that the parties' discussions have not resulted in an agreement to modify the type of crossing or routing specified in the Crossing Petition, and that TREX has elected to move forward with the proposed crossing configuration in its Crossing Petition.

On January 6, 2020, Representative Weber filed a letter requesting the Board promptly issue final decisions on TREX's Petition for Exemption and Crossing Petition. On January 7, 2020, TREX filed a request that the Board issue final decisions as soon as possible, and by no later than January 31, 2020.

## Discussion and Conclusions

### Petition for Exemption

**Rail Transportation Analysis.** The construction and operation of new railroad lines requires prior Board authorization, either through issuance of

a certificate under 49 U.S.C. 10901 or, as requested here, through an exemption under 49 U.S.C. 10502 from the formal application procedures of section 10901. Section 10901(c) directs the Board to grant rail construction proposals unless it finds the proposal "inconsistent with the public convenience and necessity." *See Alaska R.R.—Constr. & Operation Exemption—Rail Line Extension to Port MacKenzie, Alaska*, FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013).

Under section 10502(a), the Board must exempt a transaction or service from regulation when it finds that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the proposal is of limited scope, or (b) regulation is not needed to protect shippers from an abuse of market power.

Based on the record, the Board concludes that the proposed construction and operation of the Line qualifies for an exemption under section 10502 from the formal application procedures of section 10901.<sup>2</sup> The formal application procedures of 49 U.S.C. 10901 are not necessary in this case to carry out the rail transportation policy. The requested exemption would minimize unnecessary expense associated with the preparation and filing of a formal construction application, expedite regulatory decisions, and reduce regulatory barriers to entry for the Line. *See* 49 U.S.C. 10101(2), (7), (15). Moreover, construction and operation of the Line would allow more effective competition for business at TI Terminals, thereby advancing the development and continuation of a sound rail transportation system with effective competition among rail carriers. 49 U.S.C. 10101(1), (4). Other aspects of the rail transportation policy would not be adversely affected.

In addition, consideration of the proposed rail line under section 10901 is not needed to protect shippers from an abuse of market power. The construction and operation of the proposed Line by TREX would enhance competition by providing a new rail

<sup>2</sup> As TREX acknowledges, upon construction of the Line, TREX will have a common carrier obligation to provide service on the Line. (Pet. for Exemption 5.) TREX states that it expects to enter into overhead trackage rights arrangements for BNSF to operate over the Line to serve TI Terminals. Alternatively, if necessary, TREX would either contract with a short line railroad or provide its own service directly to any customers located on the Line, or enter into arrangements with TI Terminals to provide private switching of BNSF trains to TI Terminals. (*Id.*)

option for TI Terminals<sup>3</sup> and allowing more efficient movement of trains between BNSF's tracks and TI Terminals.<sup>4</sup>

UP's opposition to the Petition for Exemption is based on (1) TREX's characterization of UP's service to TI Terminals, and (2) TREX's request for a conditional grant of the exemption. These concerns do not warrant denying TREX's Petition for Exemption. First, the Board need not make, and is not making here, a determination as to the adequacy of UP's current service to TI Terminals. “[T]he rail transportation policy of 49 U.S.C. [ ] 10101 contemplates competition as a means of ensuring that shippers receive reasonable service at reasonable rates. A showing that the incumbent railroad's service is inadequate is simply not necessary to obtain authority for construction of a competing line.” *Midwest Generation*, FD 34060, slip op. at 9. Second, as noted above, the Board is denying as moot TREX's request for a conditional grant of the exemption.

For these reasons, the Board concludes that the evidence on the transportation-related aspects of this case demonstrates that the proposed construction and operation of the Line qualifies for an exemption from the prior approval requirements of section 10901. Given the statutory presumption favoring rail construction and the evidence presented, the requested exemption from section 10901 has met the standards of section 10502 on the transportation merits.

**Environmental Analysis.** NEPA requires federal agencies to examine the environmental effects of proposed federal actions and to inform the public concerning those effects. *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to

<sup>3</sup> UP argues that the Board should not credit TREX's claims that the proposed construction will improve BNSF's competitive position in relationship to UP, as such claims are inconsistent with TREX's claim that the project should not increase the total volume of traffic moving to TI Terminals. (UP Reply 6.) However, as TREX explains, the purpose of the proposed construction is to provide direct and permanent railroad service between BNSF's Valley Yard and TI Terminals' loop track to replace the existing reciprocal switching arrangement, not to increase the total volume of rail traffic moving to TI Terminals. (Pet. for Exemption 3, 6; *see also* UP Reply, Attachment D at 2-4.)

<sup>4</sup> Because regulation of the proposed construction and operation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a)(2).

authorize a railroad construction project as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). Thus, once the adverse environmental effects have been adequately identified and evaluated, the agency may conclude that other values outweigh the environmental costs. *Id.*

**The Environmental Review Process.** On February 22, 2019, OEA issued for public review and comment a Draft EA, addressing the potential environmental impacts of the proposed project, including both the construction and operation of the Line and the proposed crossing of UP's line. The Draft EA considered three alternatives in detail: (1) The No-Action Alternative; (2) the Green Alternative (with two potential designs, Option A and Option B); and (3) the Blue Alternative (with two potential designs, Option A and Option B).<sup>5</sup> (Draft EA ES-11 to ES-12.)

The Draft EA concluded that the Green and Blue Alternatives, and Options A and B associated with each of those alternatives, would have similar, but not significant, environmental impacts if the mitigation measures set forth in the Draft EA were imposed. (Draft EA 6-1 to 6-2.) Accordingly, OEA determined that the Environmental Impact Statement (EIS) process is unnecessary. (*Id.* at 6-1 to 6-2.)

In response to the Draft EA, comments were received from TREX; the Texas Department of Transportation, Rail Division (TxDOT); the Texas General Land Office; and the Texas Parks and Wildlife Department (TPWD). (Final EA 1-11 to 1-12; 2-1 to 2-10.) On May 2, 2019, OEA issued a Final EA concluding the environmental review process. In response to the comments received, OEA revised certain mitigation measures preliminarily recommended in the Draft EA and added one new mitigation measure. OEA's final recommended mitigation measures also reflect TREX's proposed modifications to address the concerns raised by TxDOT and TPWD in those agencies' comments. (See Final EA 3-1 to 3-9.) Based on its review of the available information, OEA concluded that, if the recommended mitigation measures detailed in the Final EA are imposed, neither the Green Alternative nor the Blue Alternative (including the two design options for each alternative

(Options A and B)) would result in any significant environmental impacts. (Final EA 3-1.) OEA recommended that the Board authorize both the Green and Blue Alternatives, although if TREX is able to obtain the access over UP's tracks needed to construct the Blue Alternative, OEA recommended that TREX construct and operate that alternative to minimize impacts to wetlands and waterways. (Final EA 3-2.) In the event TREX is unable to obtain the access needed to construct and operate the Blue Alternative, then OEA recommended the Green Alternative. (Final EA 3-2.)

**The Board's Analysis of the Environmental Issues.** The Board will adopt the analysis and conclusions made by OEA. As such, the Board adopts the Draft EA (as modified by the Final EA) and Final EA, including the final recommended mitigation measures. The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the proposed construction and operation of the Line and properly determined that, with the recommended environmental mitigation in chapter 3 of the Final EA, the proposed project will not have potentially significant environmental impacts, and that preparation of an EIS is unnecessary.

#### Crossing Petition

Under 49 U.S.C. 10901(d)(1), a rail carrier may not block any construction or extension authorized by the Board under 49 U.S.C. 10901 by refusing to permit the crossing of its property if: (A) The construction does not unreasonably interfere with the operation of the crossed line, (B) the operation does not materially interfere with the operation of the crossed line, and (C) the owner of the crossing line compensates the owner of the crossed line.

UP consents to issuance of the crossing order requested by TREX, and the parties indicate that they are prepared to negotiate to reach an agreement on the compensation due to UP and terms for operations. (UP Reply 2, June 18, 2019; Crossing Petition 32-33.) If the parties are unable to agree on the amount of payment, or any remaining terms, either party may submit the matters in dispute to the Board for determination. 49 U.S.C. 10901(d)(2).

#### Conclusion

After considering the various rail transportation and environmental issues and the record as a whole, the Board finds that the petition for exemption to allow construction and operation of the

<sup>5</sup> Each of the alternatives is also discussed in the Final EA. (See Final EA 1-2 to 1-3.)

Line should be granted, subject to compliance with the environmental mitigation set forth in the Final EA, for either the Green Alternative (Option A or B) or the Blue Alternative (Option A or B).<sup>6</sup> The Board will also grant the unopposed Crossing Petition.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. TREX's petition for an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct and operate the Line is granted as discussed above.

2. TREX's request for a conditional grant of the petition is denied as moot.

3. The Board adopts the environmental mitigation measures set forth in the Final EA and imposes them as conditions to the exemption granted here.

4. TREX's petition for issuance of a crossing order pursuant to 49 U.S.C. 10901(d) is granted.

5. Notice will be published in the **Federal Register** on January 23, 2020.

6. Petitions for reconsideration must be filed by February 6, 2020.

7. This decision is effective on the date of service.

Decided: January 16, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

**Brendetta Jones,**  
*Clearance Clerk.*

[FR Doc. 2020-01095 Filed 1-22-20; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2001-11213, Notice No. 24]

#### Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2020

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notification of determination.

**SUMMARY:** This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered employees and

<sup>6</sup> The mitigation conditions apply both to the construction and operation of the Line and the proposed crossing over UP's tracks. As previously noted, OEA considered the potential impacts from both the Line and the possible crossing in the Draft and Final EA.

for maintenance-of-way (MOW) employees for calendar year 2020.

**DATES:** This determination takes effect January 23, 2020.

**FOR FURTHER INFORMATION CONTACT:** Gerald Powers, FRA Drug and Alcohol Program Manager, W33-310, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone 202-493-6313); or Sam Noe, FRA Drug and Alcohol Program Specialist, Federal Railroad Administration (telephone 615-719-2951).

**SUPPLEMENTARY INFORMATION:** FRA is announcing the 2020 minimum annual random drug and alcohol testing rates for covered service employees, and the 2020 minimum annual random drug and alcohol testing rates for MOW employees. For calendar year 2020, the minimum annual random testing rates for covered service employees will continue to be 25 percent for drugs and 10 percent for alcohol, while the minimum annual random testing rates for MOW employees will continue to be 50 percent for drugs and 25 percent for alcohol.

To set its minimum annual random testing rates for each year, FRA examines the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). The rail industry's random drug testing positive rate for covered service employees (employees subject to the hours of service laws and regulations) remained below 1.0 percent for 2017 and 2018. The Administrator has therefore determined the minimum annual random drug testing rate for the period January 1, 2020, through December 31, 2020, will remain at 25 percent for covered service employees. The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2017 and 2018. Therefore, the Administrator has determined the minimum random alcohol testing rate will remain at 10 percent for covered service employees for the period January 1, 2020, through December 31, 2020. Because these rates represent minimums, railroads may conduct FRA random testing at higher rates.

MOW employees became subject to FRA random drug and alcohol testing in June 2017. The Administrator has determined that the minimum annual random testing rates initially established for MOW employees will remain in effect because FRA does not have MIS data for two consecutive years that represents their industry-wide performance rates. Specifically, MOW

employees became subject to FRA random testing effective June 12, 2017, and the resulting 2017 MIS data FRA received reflected industry-wide MOW random testing rates that were below the annual minimum rates of 50 percent (drugs) and 25 percent (alcohol) for MOW employees. Therefore, for the period January 1, 2020, through December 31, 2020, the minimum annual random drug testing rate will continue to be 50 percent for MOW employees, and the minimum annual random alcohol testing rate will continue to be 25 percent for MOW employees. As with covered service employees, because these rates represent minimums, railroads may conduct FRA random testing of MOW employees at higher rates.

Issued in Washington, DC.

**Ronald L. Batory,**  
*Administrator, Federal Railroad Administration.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of calendar year 2020 random drug and alcohol testing rates.

**SUMMARY:** This notice announces the calendar year 2020 drug and alcohol random testing rates for employer's subject to 49 CFR part 655. The minimum random drug testing rate will remain at 50 percent and the random alcohol rate will remain at 10 percent.

**DATES:** Applicable Date: January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Iyon Rosario, Drug and Alcohol Program Manager in the Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202-366-2010 or email: [Iyon.Rosario@dot.gov](mailto:Iyon.Rosario@dot.gov)).

**SUPPLEMENTARY INFORMATION:** On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions, and submit annual reports by March 15 of each year beginning in 1996 pursuant to drug and alcohol regulations adopted by FTA at 49 CFR parts 653 and 654 in February 1994. The annual report includes the number of employees who had a verified positive for the use of