

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-2009-0029) 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 September 14, 2009.

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

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

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## 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 from 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.

#### Tri-County Metropolitan Transportation District of Oregon (Waiver Petition Docket Number FRA-2009-0072)

The Tri-County Metropolitan Transportation District of Oregon (TriMet) seeks two waivers of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229, and the Use of Locomotive Horns at Public Highway-Rail Grade Crossings, 49 CFR part 222. TriMet is seeking waivers to allow the volume of locomotive horns to be lower than the minimum requirement of 96 dB(A) and to not be required to routinely sound locomotive horns when approaching public highway-rail grade crossings on a specific line segment. Specifically, TriMet is seeking: (1) A 5-year waiver from the provisions of 49 CFR 229.129(a), which require the lead locomotive to be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel; and (2) a permanent waiver from the provisions of 49 CFR 222.21(a) and 222.21(b)(2), which require locomotive horns to be sounded when approaching public highway-rail grade crossings, using the "long-long-short-long" pattern that begins 15 to 20 seconds before the locomotive reaches the crossing, but no further than 1/4 mile from the crossing.

TriMet is a municipal corporation that was created in 1969 for the purpose of taking over the local bus systems and providing regional transit in the Portland, OR, metropolitan area. Its district is composed of the Greater Portland area, including Multnomah, Clackamas and Washington counties. TriMet's systems include buses, light rail, and beginning in 2009, commuter rail. On February 2, 2009, TriMet began Westside Express Service (WES) operations over a 14.7-mile rail line

between Wilsonville and Beaverton. WES service uses self-propelled diesel multiple-unit rail cars. WES currently runs 32 trains per weekday. The Portland & Western Railroad (P&W) also operates four to five freight trains per day over the line. P&W operates WES trains and also dispatches the trains for both railroads. The waiver petition applies only to WES trains.

Since commencement of WES revenue service, TriMet has received numerous complaints from citizens regarding locomotive horn noise at crossings. There are 34 public highway-rail grade crossings on the rail line. Newspaper articles and correspondences from State legislators have expressed complaints and urged that TriMet take action to quiet the horns. TriMet continues to work with the local cities to find ways to lessen the impact of locomotive horns. This includes investigating and demonstrating the use of wayside horns and planning for the creation of quiet zones. The purpose of the waiver is to seek temporary relief while these remedies are put in place.

Title 49 CFR 229.129(a) reads as follows: "Each lead locomotive shall be equipped with a locomotive horn that produces a minimum sound level of 96 dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The locomotive horn shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive." TriMet is requesting a 5-year waiver of the decibel requirements. It proposes to equip WES trains with an electronic warning device that generates both a horn and bell sound that can be sounded continuously; the horn will sound at 80 dB(A) at a distance of 100 feet. The trains are also equipped with a 96 dB(A) horn that the operator will have discretion to sound in cases of emergencies or other situations. The bell will ring at a minimum of 60 dB(A) at a distance of 100 feet. When the locomotive on a WES train approaches a public highway-rail grade crossing, the horn on the lead locomotive will begin to sound at 80 dB(A) in the required long-long-short-long blast pattern at least 15 seconds (but no more than 20 seconds) before the locomotive enters the crossing.

TriMet asserts that this will not compromise safety because an alternative procedure for equivalent safety will be in place. WES trains will sound an 80 dB(A) horn and follow the sounding procedures as provided in 49 CFR 222.21, except in the Lombard segment (see the second part of the

waiver petition). WES trains are equipped with a 96 dB(A) horn that can be used in an emergency. TriMet points out that WES trains are equipped with FRA-compliant headlights and auxiliary lights that form a triangular pattern for conspicuity to motorists. All of the public crossings are equipped with automatic warning devices consisting of flashing lights and gates, except for four crossings that do not have gates. WES and P&W trains will both sound the locomotive horns in the same pattern, thus providing a consistent warning to motorists and pedestrians. In an emergency, WES train engineers will retain the ability to sound the FRA-compliant horn of 96 dB(A). TriMet believes that these alternative audible warnings, coupled with the crossing protections and operating conditions, provide an equivalent level of safety.

Title 49 CFR 222.21(a) reads as follows: "Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together." Title 49 CFR 222.21(b)(2) reads as follows: "Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with § 229.9 of this chapter, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing. It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for whatever reason."

TriMet is requesting a permanent waiver from these two subsections of 49 CFR 222.21 for trains operating on the Lombard segment. WES operates in the street for approximately 2,000 feet outside the Beaverton Transit Center (the Lombard segment). Freight trains do not operate on the Lombard segment. There are three crossings on the Lombard segment. One is equipped with crossing warning devices consisting of

bells, flashing lights, and gates. The other two crossings are equipped with traffic signals, flashing lights, and bells. The maximum train speed on the Lombard segment is 10 mph. TriMet proposes that when the lead unit on a WES train approaches a grade crossing on the Lombard segment, the bells on the lead unit will begin to sound at 60 dB(A) at least 15 seconds before the lead car enters the crossing. The bells will sound continuously, in lieu of the locomotive horn, until the last car in the WES train clears the grade crossing.

TriMet states that safety is not compromised as the alternative procedure previously described will provide an equivalent level of safety. TriMet asserts that the bell sounding procedure described, plus the fact that all three crossings are equipped with automatic warning devices, will provide the same level of safety. Furthermore, WES trains operate at a maximum of 10 mph over the Lombard segment and are equipped with a 96 dB(A) horn that may be used in an emergency.

TriMet requests expedited consideration in order to provide relief as soon as possible. There have been a large number of complaints received about the train horns. Since the establishment of quiet zones takes significant time and considerable expense, the approval of this waiver petition is the quickest source of relief.

TriMet states that it is not filing a joint waiver petition with the involved public authorities in the interest of expediency. The waiver petition includes letters of support from Washington County and the Cities of Beaverton, Tigard, and Tualatin. TriMet has also provided copies of the waiver petition to the Oregon Department of Transportation, P&W, and the City of Wilsonville, and asked that these entities provide FRA with letters of support.

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