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.

New Jersey Transit

[Docket Number FRA–2004–18577]

New Jersey Transit (NJ Transit) seeks a waiver of compliance from the provisions of the Federal Track Safety Standards, 49 CFR Section 213.345, Subpart G, regarding certain high speed vehicle qualification testing requirements. The waiver would provide relief from having to use instrumented wheel set (IWS) tests in order to qualify its new COMET V coach equipment for speeds up to 100 mph.

The petitioner recently placed in service 230 of its new COMET V coach cars on AMTRAK's Northeast Corridor (NEC) at speeds up to 90 mph. The petitioner claims that the equipment has been designed and tested in accordance with the Federal Passenger Equipment Safety Standards (CFR Part 238) and that its suspension system specifically meets the requirements for Tier I equipment described in CFR Part 238.227(a). The petitioner also claims that the truck and suspension systems on the COMET V are virtually identical to the COMET IV cars that have operated at up to 100 mph on the NEC since 1996 [and are grandfathered under CFR Part 213.345(a)]. Because of the similarity between the COMET V and COMET IV, NJ Transit considered the COMET V to be qualified to run at 100 mph and requested permission from the FRA in July of 2002.

The FRA's analysis determined that there are enough physical differences between the COMET V and COMET IV which, when considered cumulatively, prevent the FRA from considering these vehicles as equivalent for the purposes of ''grandfathering'' under CFR Part 213.345(a), Subpart G. In its April 9, 2003 letter, FRA approved the petitioner's plan to conduct an equivalency test for the purpose of gathering data necessary to document a Request for Waiver under CFR Section 213.317 Waivers. During the week of August 11–15, 2003, the petitioner, in cooperation with AMTRAK and under the observation of the FRA, conducted equivalency testing of the COMET V and COMET IV on the NEC between Newark, NJ and Philadelphia, PA at speeds up to 110 mph in non-revenue service. The petitioner submitted favorable test results to the FRA on March 8, 2004 which confirm that the COMET V and COMET IV are equivalent. The petitioner feels that the equivalency testing is sufficient to warrant the operation of the COMET V on the NEC at up to 100 mph in lieu of the IWS tests required in CFR Part 213.345.

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 communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–18577) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 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://dms.dot.gov.*

Anyone is able to search the electronic form of all 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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 5, 2004.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 04–18296 Filed 8–10–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2004–03

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 2004–3 addressing the importance of restoring failed or malfunctioning highway-rail grade crossing warning systems to proper operation ''without undue delay.'' This safety advisory supplements Safety Advisory 2002–01 issued on January 16, 2002, which addressed the importance of clear, precise, unambiguous railroad safety procedures to ensure the safety of highway-rail grade crossing warning systems or wayside signal systems that are temporarily removed from service.

FOR FURTHER INFORMATION CONTACT: Mark Jones, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW., Washington, DC, 20590 (telephone 202–493–6232), e-mail *mark.jones@fra.dot.gov,* or Kathy Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6063), e-mail *kathryn.shelton@fra.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Highway-rail grade crossing active warning systems serve a critical role in providing for the safety of highway users at highway-rail grade crossings. Highway users rely on the proper functioning and integrity of these systems to provide accurate and credible warning of the approach of a train. The failure or malfunction of even one of these systems has the potential for catastrophic consequences, including injury or death.

In the interest of public safety, FRA regulations at 49 CFR Part 234 (''Grade Crossing Signal System Safety'') provide minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems. Today's highway-rail grade crossing warning systems have proven to be extremely reliable. Despite this

high degree of reliability, there are instances when these systems may fail or malfunction. Therefore, FRA regulations also contain provisions governing the actions that railroads are required to take in response to credible reports of highway-rail grade crossing warning system malfunction.

This safety advisory specifically addresses the requirements of 49 CFR 234.207(a), which states that ''when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.'' While there is no specific time limit associated with this requirement, FRA expects that railroads will make every effort to restore the system to proper operation in as timely a manner as possible.

FRA recognizes that there may be circumstances in which a malfunctioning warning system cannot be repaired immediately. However, when issuing 49 CFR Part 234, FRA intended to ensure that remedial action would begin as soon as possible. As explained in the preamble discussion of 49 CFR 234.207,

> [i]t is of paramount importance that remedial action begin as soon as possible after a credible report of a malfunction is received by a railroad. In general, adjustment, repair, or replacement without undue delay will require that remedial action be taken in as timely a manner as possible. Successful, practical application of these general principles may be the objective of this regulatory proceeding that is most crucial to the safety of the motoring public; and the safety of employees and rail operations is also implicated. Because of the great variety of factors involved with malfunctioning warning systems, including the location of the crossing, frequency of train movements, type of corrective action needed, availability of personnel, and other competing emergency situations we are unwilling at this time to establish specific time limits for actions.

59 Fed. Reg. 50086, 50096 (1994).

Although FRA did not establish specific time limits for warning system repair or replacement, the rule prohibits any delay that is undue (*i.e.*, unjustifiable or excessive). While 49 CFR 234.207(b) provides alternative methods for warning highway users until the malfunctioning warning system is repaired, it is not intended to provide a permanent alternative to the warning provided by a fully functioning active warning system. The only situation in which an active warning system may remain permanently out of service is addressed by 49 CFR 234.103(c), which states that ''repair of a warning system [is not required], if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the traveling public and railroad employees.''

Notwithstanding situations in which a railroad has proceeded to discontinue or dismantle a malfunctioning active warning system in accordance with applicable State law, FRA expects that railroads will make every effort to return a malfunctioning active warning system to proper operation in as timely a manner as possible. FRA will take firm enforcement action, which could include civil penalties against the companies and/or individuals responsible, in those situations in which a warning system is not in service for an extended period of time due to the failure of a railroad to make necessary repairs to the system.

Recommendation

In recognition of the need to assure safety, FRA strongly recommends the following:

(1) Each railroad with maintenance responsibility for one or more highway-rail grade crossing active warning systems should conduct system wide surveys for the purpose of locating and repairing any active warning systems that are malfunctioning and/or temporarily removed from service.

(2) Each railroad with maintenance responsibility for one or more highway-rail grade crossing active warning systems should have specific policies or procedures in place requiring the restoration of highway-rail grade crossing active warning systems to proper operation in a timely manner.

Issued in Washington, DC on August 5, 2004.

Grady C. Cothen Jr.

Acting Associate Administrator for Safety.

[FR Doc. 04–18295 Filed 8–10–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No.: MARAD 2004—17114]

Availability of a Draft Environmental Assessment

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice of the availability of a Draft Environmental Assessment.

SUMMARY: The purpose of this notice is to make available for public review and comment the Draft Environmental Assessment (DEA) for the Port of Anchorage, Marine Terminal Redevelopment Project. The DEA analyzes the potential impacts on the natural and manmade environment associated with the proposed Marine Terminal Redevelopment Project. This environmental documentation supports the proposed expansion of the Port of Anchorage (POA), which includes a variety of activities to enhance the transportation of goods and people within the State of Alaska.

DATES: Comments on the DEA must be received by September 10, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska, Jr., Environmental Protection Specialist, Office of Environmental Activities, U.S. Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–0714, fax (202) 366–6988.

SUPPLEMENTARY INFORMATION: Comments should refer to the docket number that appears on the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Note that all comments received will be posted without change including any personal information provided in the comment. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. No comments will be accepted after September 10, 2004. In addition, copies of the DEA are available for public viewing on the Port of Anchorage Web site (*http://www.portofanchorage.org*) or at the Loussac Library in Anchorage.

(Authority: 49 CFR 1.66.)

Dated: August 6, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–18358 Filed 8–10–04; 8:45 am]

BILLING CODE 4910–81–P