

[Federal Register: August 11, 2004 (Volume 69, Number 154)]  
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[DOCID:fr11au04-129]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2004-03

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

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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](mailto: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](mailto: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]