

appropriate video programming distributor. The video programming distributor must respond in writing to the Commission and the complainant within 30 days of the receipt of the complaint from the Commission.

(3) Complaints sent to a video programming distributor regarding programming by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, shall be forwarded by the video programming distributor within seven (7) days of receipt to the entity responsible for closed captioning of the programming at issue. The video programming distributor must also notify the complainant and the Commission that it has forwarded the complaint. Entities receiving forwarded complaints must respond in writing to the complainant within 30 days of the forwarding date of the complaint.

(4) If a complaint is first filed with the video programming distributor, the video programming distributor must respond in writing to the complainant within thirty (30) days after receipt of a closed captioning complaint. If a video programming distributor fails to respond to the complainant within thirty (30) days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within thirty (30) days after the time allotted for the video programming distributor to respond. If a consumer re-files the complaint with the Commission (after filing with the distributor), the Commission will forward the complaint to the distributor, and the distributor shall respond to the Commission and the complainant within thirty (30) days of receipt of the complaint from the Commission.

(5) In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules.

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(i) *Contact information.* (1) Video programming distributors shall make available contact information for the receipt and handling of immediate closed captioning concerns raised by consumers while they are watching a program. Programming distributors must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding immediately to any closed captioning concerns. Video programming distributors should ensure that any staff reachable through this contact

information has the capability to immediately respond to and address consumers' concerns. To the extent that a distributor has personnel available, either on site or remotely, to address any technical problems that may arise, consumers using this dedicated contact information must be able to reach someone, either directly or indirectly, who can address the consumer's captioning concerns. This provision does not require that distributors alter their hours of operation or the hours during which they have staffing available; at the same time, however, where staff is available to address technical issues that may arise during the course of transmitting programming, they also must be knowledgeable about and be able to address closed captioning concerns. In situations where a distributor is not immediately available, any calls or inquiries received, using this dedicated contact information, should be returned or otherwise addressed within 24 hours. In those situations where the captioning problem does not reside with the distributor, the staff person receiving the inquiry should refer the matter appropriately for resolution.

(2) Video programming distributors shall make contact information available for the receipt and handling of written closed captioning complaints that do not raise the type of immediate issues that are addressed in paragraph (i)(1) of this section. The contact information required for written complaints shall include the name of a person with primary responsibility for captioning issues and who can ensure compliance with our rules. In addition, this contact information shall include the person's title or office, telephone number, fax number, postal mailing address, and e-mail address. Distributors shall include this information on their Web sites (if they have a Web site), in telephone directories, and in billing statements (to the extent the distributor issues billing statements). Distributors shall keep this information current and update it within 10 business days for Web sites, by the next billing cycle for billing statements, and by the next publication of directories.

(3) Video programming distributors shall file the contact information described in this section with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau, or by sending the information to [CLOSEDCAPTIONING\\_POC@fcc.gov](mailto:CLOSEDCAPTIONING_POC@fcc.gov). After compiling and posting the list on the FCC's Web site, Commission staff shall prepare a Public Notice advising consumers and other interested parties how to obtain access to the contact

information. This information shall also be available by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 213

[Docket No. FRA-2008-0158]

#### Policy on the Safety of Railroad Bridges

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

**ACTION:** Amendment to Final Statement of Agency Policy.

**SUMMARY:** FRA is amending its statement of agency policy on the safety of railroad bridges. The policy outlines suggested criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks. This amendment adds provisions that will guide railroads in developing their own implementing programs that will ensure conformity with the provisions of this policy.

**DATES:** *Effective Date:* This amendment to the statement of policy is effective February 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gordon A. Davids, P.E., Bridge Engineer, Office of Safety Assurance and Compliance, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (Telephone: 202-493-6320), or Sarah Grimmer Yurasko, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (Telephone 202-493-6047).

**SUPPLEMENTARY INFORMATION:** FRA published its "Statement of Agency Policy on the Safety of Railroad Bridges" ("Policy") on August 30, 2000 (65 FR 52667). The Policy Statement, included in the Federal Track Safety Standards (Title 49, Code of Federal Regulations, Part 213) as Appendix C, includes non-regulatory guidelines based on good practices which were prevalent in the railroad industry at the time the Policy was issued. This notice amends those guidelines by

incorporating changes proposed by the Rail Safety Advisory Committee (RSAC) on September 10, 2008.

### Railroad Safety Advisory Committee (RSAC) Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The RSAC includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

American Association of Private Railroad Car Owners (AARPCO);  
 American Association of State Highway & Transportation Officials (AASHTO);  
 American Chemistry Council;  
 American Petrochemical Institute;  
 American Public Transportation Association (APTA);  
 American Short Line and Regional Railroad Association (ASLRRA);  
 American Train Dispatchers Association (ATDA);  
 Association of American Railroads (AAR);  
 Association of Railway Museums (ARM);  
 Association of State Rail Safety Managers (ASRSM);  
 Brotherhood of Locomotive Engineers and Trainmen (BLET);  
 Brotherhood of Maintenance of Way Employees Division (BMWED);  
 Brotherhood of Railroad Signalmen (BRS);  
 Chlorine Institute;  
 Federal Transit Administration (FTA)\*;  
 Fertilizer Institute;  
 High Speed Ground Transportation Association (HSGTA);  
 Institute of Makers of Explosives;  
 International Association of Machinists and Aerospace Workers;  
 International Brotherhood of Electrical Workers (IBEW);  
 Labor Council for Latin American Advancement (LCLAA)\*;  
 League of Railway Industry Women\*;  
 National Association of Railroad Passengers (NARP);  
 National Association of Railway Business Women\*;  
 National Conference of Firemen & Oilers;  
 National Railroad Construction and Maintenance Association;  
 National Railroad Passenger Corporation (Amtrak);  
 National Transportation Safety Board (NTSB)\*;  
 Railway Supply Institute (RSI);  
 Safe Travel America (STA);  
 Secretaria de Comunicaciones y Transporte\*;

Sheet Metal Workers International Association (SMWIA);  
 Tourist Railway Association Inc.;  
 Transport Canada\*;  
 Transport Workers Union of America (TWU);  
 Transportation Communications International Union/BRC (TCIU/BRC);  
 Transportation Security Administration (TSA); and  
 United Transportation Union (UTU).  
 \*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

### Railroad Bridge Working Group

RSAC agreed with FRA on February 20, 2008, to accept the task of reviewing FRA's railroad bridge safety policies and activities, and to make appropriate recommendations for FRA to improve

the bridge safety program. RSAC accordingly established a Railroad Bridge Working Group (RBWG), composed of representatives of the various organizations on the RSAC and including persons with particular expertise in railroad bridge safety and management. The RBWG met on April 24–25, 2008, June 12, 2008, and August 7, 2008. On September 10, 2008, the full RSAC voted on the RBWG's report, and recommended that FRA implement the RBWG's proposal of a set of "Essential Elements of Railroad Bridge Management Programs," (Essential Elements) in FRA's Agency Policy on the Safety of Railroad Bridges.

Developing the Essential Elements composed the bulk of the RBWG's work. The purpose of these Essential Elements is to provide railroad bridge owners with a uniform, comprehensive set of components for recommended inclusion in their bridge management programs. With this information, a bridge owner may develop a single, comprehensive set of instructions, information and data as guidance for his employees who are responsible for the management, inspection, maintenance and safety of railroad bridges.

In the course of developing these Essential Elements, the members of the RBWG combined their experience in determining the items to be included. The RBWG members also recognized that, although most railroads were already performing these functions to varying degrees, it would be useful to have the recommended Essential Elements available in a central location so that all concerned may see the railroad's full program, and also to determine that no essential element is overlooked. FRA agrees with this recommendation by the RSAC, which is the agency's basis for now incorporating the "Essential Elements of Railroad Bridge Management Programs" into Appendix C of the Track Safety Standards.

On October 16, 2008, President Bush signed into law, the Railroad Safety Improvement Act of 2008 (Pub. L. 110–423) (Act"). Section 417 of the Act directs FRA to issue, by October 16, 2009, regulations requiring railroad bridge owners to adopt and follow specific procedures to protect the safety of their bridges. FRA plans to conform to that legislative mandate. A close reading and study of the specific requirements of the bridge safety provisions mandated by the Act shows that they closely parallel the Essential Elements of RSAC's September 10, 2008, recommendation. FRA therefore finds that this amendment of the Statement of Agency Policy on the

Safety of Railroad Bridges, which FRA is completing expeditiously as a non-regulatory proceeding, will benefit railroad bridge owners by giving them prompt advice regarding the development of their bridge safety programs, and that the early work to be done railroad bridge owners in conformance with this recommendation will benefit the owners and the public when FRA issues regulations conforming to the legislative mandate.

#### *Effect of the Amendment to This Statement of Policy*

This amendment to Policy contains guidelines for the development of effective programs for the management and safety of railroad bridges. It is meant to be advisory in nature. It does not have the force of regulations under which FRA ordinarily issues violations and assesses civil penalties. The guidelines contained herein represent the general criteria against which FRA will evaluate each railroad's bridge inspection and management program.

Even without specific bridge safety regulations, FRA maintains authority to perform safety inspections of any railroad facility and to issue emergency orders under 49 U.S.C. 20104, 49 U.S.C. 20107, and 49 CFR part 209. This amendment to the Policy does not change FRA's statutory emergency order authority with respect to railroad bridge safety. This emergency order authority permits FRA, if necessary, to remove from service, or otherwise impose conditions on any railroad operation which, in the judgment of the agency, poses an emergency situation involving a hazard of death or personal injury. FRA will not hesitate to use this authority if circumstances warrant.

#### **List of Subjects in 49 CFR Part 213**

Penalties, Railroad safety, Railroads.

#### **PART 213—[AMENDED]**

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 14 is added to Appendix C, Part 213 to read as follows:

#### **Appendix C to Part 213—Statement of Agency Policy on the Safety of Railroad Bridges**

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#### *14. Railroad Implementation of Bridge Safety Programs*

FRA recommends that each track owner or other entity which is responsible for the integrity of bridges which support its track

adopt and implement an effective and comprehensive program to ensure the safety of its bridges. The bridge safety program should incorporate the following essential elements, applied according to the configuration of the railroad and its bridges. The basis of the program should be in one comprehensive and coherent document which is available to all railroad personnel and other persons who are responsible for the application of any portion of the program.

The program should include:

(a) Clearly defined roles and responsibilities of all persons who are designated or authorized to make designations regarding the integrity of the track owner's bridges. The definitions may be made by position or by individual;

(b) Provisions for a complete inventory of bridges that carry the owner's track, to include the following information on each bridge:

(1) A unique identifier, such as milepost location and a subdivision code;

(2) The location of the bridge by nearest town or station, and geographic coordinates;

(3) The name of the geographic features crossed by the bridge;

(4) The number of tracks on the bridge;

(5) The number of spans in the bridge;

(6) The lengths of the spans; and

(7) Types of construction of:

(i) Substructure;

(ii) Superstructure; and

(iii) Deck;

(8) Overall length of the bridge.

(9) Dates of:

(i) Construction;

(ii) Major renovation; and

(iii) Strengthening;

(10) Identification of entities responsible for maintenance of the bridge or its different components;

(c) Known capacity of its bridges as determined by rating by competent engineer or by design documents;

(d) Procedures for the control of movement of high, wide or heavy loads exceeding the nominal capacity of bridges;

(e) Instructions for the maintenance of permanent records of design, construction, modification, and repair;

(f) Railroad-specific procedures and standards for design and rating of bridges;

(g) Detailed bridge inspection policy, including:

(1) Inspector Qualifications.

(i) Bridge experience or appropriate educational training.

(ii) Training on bridge inspection procedures.

(iii) Training on Railroad Workplace Safety.

(2) Type and frequency of inspection.

(i) Periodic (at least annually).

(ii) Underwater.

(iii) Special.

(iv) Seismic.

(v) Cursory inspections of overhead bridges that are not the responsibility of the railroad.

(3) Inspection schedule for each bridge.

(4) Documentation of inspections.

(i) Date.

(ii) Name of inspector.

(iii) Reporting Format.

(iv) Coherence of information.

(5) Inspection Report Review Process.

(6) Record retention.

(7) Tracking of critical deficiencies to resolution;

(h) Provide for the protection of train operations following an inspection, noting a critical deficiency, repair, modification or adverse event and should

(1) Include a listing of qualifications of personnel permitted to authorize train operations following an adverse event; and

(i) Detailed internal program audit procedures to ensure compliance with the provisions of the program.

Issued in Washington, DC, on January 7, 2009.

**Clifford C. Eby,**

*Acting Administrator.*

[FR Doc. E9–436 Filed 1–12–09; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 216 and 300**

[Docket No. 070717339–81648–02]

**RIN 0648–AV37**

#### **International Fisheries; Pacific Tuna Fisheries; Revisions to Regulations for Vessels Authorized to Fish for Tuna and Tuna-like Species in the Eastern Tropical Pacific Ocean and to Requirements for the Submission of Fisheries Certificates of Origin**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise regulations governing vessels authorized by the United States to fish for tuna and tuna-like species in the eastern tropical Pacific Ocean (ETP). This final rule updates and clarifies regulations promulgated by NMFS to implement the Marine Mammal Protection Act, the Tuna Conventions Act, the Dolphin Protection Consumer Information Act, and resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP). This rule modifies the procedures and requirements for the Vessel Register, the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Requirements for the submission of certifications by importers are also revised. This rule is intended to clarify the regulations, facilitate management of U.S. vessels,