

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.*

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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]

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