

County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: October 30, 2015.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: November 17, 2015.

Stephanie L. Richardson,
Secretary to the Commission.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Minnesota

AGENCY: Federal Highway Administration (FHWA), US DOT.

ACTION: Notice of limitations on claims for judicial reviews by FHWA.

SUMMARY: This notice announces actions taken by FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, United States Highway 53 between Virginia and Eveleth, in Saint Louis County in the State of Minnesota. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of the final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 18, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Philip Forst, Environmental Specialist, FHWA, Minnesota Division, 380 Jackson Street, Suite 500, Saint Paul, MN 55101, phil.forst@dot.gov, Phone: (651) 291–6100. For the United States Army Corps of Engineers (USACE): Daryl Wierzbinski, Saint Paul District Regulatory Project Manager Duluth Office, 600 South Lake Avenue, Suite 211, Duluth, MN 55802, Phone: (218)720–5291. For the Minnesota Department of Transportation, Pat Huston, Project Director, Minnesota Department of Transportation (MnDOT), District 1, 1123 Mesaba Avenue, Duluth, MN 55811, Phone: (218) 725–2707.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and USACE have taken final agency actions by issuing approvals for the following transportation project in the State of Minnesota: US 53 between Virginia and

Eveleth from the south end of the Midway neighborhood to the existing MN 135 exit ramp for the start of new four-lane construction. The new alignment, consisting of approximately two and one-half miles of new four-lane roadway and non-motorized accommodations, responds to the loss of roadway easement for existing US 53, meets regional and inter-regional system performance targets, and maintains local connectivity.

The FHWA signed a combined Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the project on September 10, 2015. On September 25, 2015, FHWA published a “Notice of Availability for the combined FEIS and ROD in the **Federal Register** [80 FR 57807]. The USACE has taken final agency actions with the meaning of 23 U.S.C. 139(l)(1) by issuing a Section 404 permit for the project. The actions by FHWA and USACE, associated final actions by other Federal agencies, and the laws under which such actions were taken, are described in the FHWA and USACE decisions and its project records, referenced as FHWA Final EIS Number 20150270 and USACE Permit Number 2011–00769–DWW. That information is available by contacting FHWA or USACE at the address provided above.

Information about the project and project records are also available from MnDOT at the addresses provided above. The FEIS and ROD can be viewed at and downloaded from the MnDOT project Web site (<http://www.dot.state.mn.us/d1/projects/hwy53relocation/eis.html>). The Section 404 permit is available from USACE contact above and is typically posted at the USACE Saint Paul District Web site (<http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>). This notice applies to the FEIS and ROD [80 FR 57807] as well as all Federal agency final actions taken since the issuance of the **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671q]
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16. U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c].

6. Social and Economic: Farmland Policy Protection Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 6, 2015.

David J Scott,
Assistant Division Administrator, Saint Paul, Minnesota.

[FR Doc. 2015–29412 Filed 11–19–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Information and Guidance on the Inspection, Testing, and Maintenance of Emergency Window Exits on Railroad Passenger Cars

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

ACTION: Notice.

SUMMARY: FRA has become aware of occurrences when emergency window exits on passenger cars did not operate

as intended because the emergency pull handle became detached from the window gasket when pulled, the gasket tore into multiple pieces, or the gasket was otherwise difficult to remove. While investigating these occurrences, FRA discovered that some railroads were not following, or did not clearly understand, the existing Federal regulations on the inspection, testing, and maintenance (ITM) of these window exits, particularly the requirement that a railroad must utilize a test sampling method that conforms with a formalized statistical test method. FRA does not believe any of these occurrences involved passengers or precluded passengers from opening a window in an emergency situation. However, in light of these concerns, FRA is issuing this document to provide information and guidance to railroads operating passenger train service on the existing regulatory requirements regarding ITM of emergency window exits.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Knote, Staff Director, Passenger Rail Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (631) 965-1827; or Mr. Michael Hunter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493-0368.

SUPPLEMENTARY INFORMATION:

I. Historical Background on Existing Requirements

The current ITM requirements for emergency window exit operability are found in Title 49 Code of Federal Regulations (CFR) 238.113(e) and 238.307(c)(4)(i)(B).¹ These sections require each passenger railroad to test (at an interval not to exceed 184 days, as part of the periodic mechanical inspection) a representative sample² of its passenger car emergency window exits to determine they “operate as intended” and “properly operate,” respectively. Title 49 CFR 238.113(e) further requires the sampling method to “conform with a formalized statistical test method.”

As FRA explained in Emergency Order 20 (EO 20), a February 16, 1996,

¹ Before FRA’s November 29, 2013, Passenger Train Emergency Systems II final rule (78 FR 71786), the requirement to test a representative sample of emergency window exits was in 49 CFR 239.107(b)(2) and required each passenger railroad “to verify that they are operating properly.”

² The requirement to test a representative sample of emergency window exits, which was based in large part on Emergency Order No. 20 (EO 20), was codified by FRA’s May 4, 1998, Passenger Train Emergency Preparedness final rule (E-Prep final rule). See 63 FR 24630, 24669–24670; EO 20, Notice No. 1, 61 FR 6876, 6881, Feb. 22, 1996, and Notice No. 2, 61 FR 8703, Mar. 5, 1996.

passenger train accident in Silver Spring, Maryland, involving a cab car on fire that filled with smoke, raised concerns that at least some of the train occupants could not exit through the windows.³ This accident demonstrated why emergency windows must be readily identifiable and operable when needed.

FRA has continually reminded railroads that these windows “provide an additional means of egress in life-threatening situations requiring very rapid exit, such as an on-board fire or submergence of the car in a body of water.” See Passenger Train Emergency Systems (PTES) II final rule (78 FR 71786, 71802). In FRA’s February 1, 2008, PTES final rule, FRA reminded railroads of the requirement to test emergency window exits using commonly accepted sampling techniques⁴ to determine how many windows to test. See 73 FR 6370, 6384. In doing so, FRA reemphasized that sampling should be conducted to meet a 95-percent confidence level that no defective units remain after completing the tests for the windows in the sample. See *id.* Further, in the Passenger Train Emergency Preparedness (E-Prep) final rule, FRA stated that each railroad should “properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair.” 63 FR 24669. FRA also made clear its expectations regarding the inspection and maintenance of emergency exits:

Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice

³ The National Transportation Safety Board’s (NTSB) Railroad Accident Report on this accident reported that it took a Safety Board investigator several minutes to remove the left-side, front emergency window exit of the last passenger coach in the train’s consist. See NTSB/RAR-97/02 report at 17 (July 3, 1997). An NTSB investigator could not remove the same car’s right-side, rear emergency window exit, which was later removed by another investigator after approximately 3 minutes of physical exertion. The report further noted that the lubricant used to install these windows had hardened over time.

⁴ Railroads should conduct their sampling under either Military Standard MIL-STD-105(E), “Sampling for Attributes” (formally cancelled by the U.S. Department of Defense, but still acceptable for FRA’s representative sampling purposes) or acceptable non-Government, standard sampling procedures and tables for inspection by attributes, such as the American National Standards Institute (ANSI)/ASQC Z1.4-1993, “Sampling Procedures for Inspections by Attributes.” See 73 FR 6370, 6384.

and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

Id.

II. FRA Review of Railroads’ Emergency Window Testing Programs

When FRA reviewed various railroads’ emergency window exit testing programs, it discovered that some railroads were not following, or did not clearly understand, the Federal regulations on the ITM of emergency window exits. This was particularly true with respect to adopting a sampling method that conforms with a formalized statistical test method and to recording window test failures. As a result, FRA is providing this guidance to ensure all railroads have in place an appropriate window testing program and understand which window tests they must record as failures.

Specifically, FRA considers a window to have failed testing if the window or a window component (e.g., gasket, pull handle) does not operate as intended, considering both the window design and whether the window removal was “rapid and easy” when opened in a manner simulating a passenger trying to remove the window in an emergency (e.g., to escape a car on fire). Examples of window test failures some railroads were not categorizing as such include situations where the emergency pull handle separated from the gasket, or where the gasket tore or needed to be removed in multiple pieces.⁵ In addition, FRA observed one railroad testing its windows by carefully pulling out the window gasket to try to avoid detaching the handle or damaging the gasket. FRA recognizes that many railroads prefer to reinstall the same gaskets and handles for the emergency windows after performing the tests.

However, FRA makes clear it does not consider such a careful test to be properly conducted because a passenger would not act that way in an emergency.

FRA also discovered that some railroads believed they were not required to formally adopt a sampling program because they were testing 100 percent of their emergency window exits over a 1- to 2-year period. FRA

⁵ FRA makes clear that for any window that is intentionally designed with one or more counter-intuitive features (such as an emergency pull handle that separates from the gasket when pulled, or a gasket that needs to be removed in multiple pieces), the railroad must ensure that such features are clearly explained in the required operating instructions posted for the affected emergency window exits.

appreciates these railroads' efforts for what they believed was going above and beyond what is considered a reasonable sample size. However, FRA makes clear that for a railroad to truly test 100 percent of its windows, the railroad would need to test all of the emergency windows in each of its cars at least once during a 184-day period. FRA also clarifies that simply testing 100 percent of the emergency window exits does not necessarily ensure that the windows will operate as intended when needed in an emergency situation. As discussed in this document, it is how a railroad characterizes the results of those tests and what a railroad does with the results of those tests that will help ensure the windows will operate as intended.

Choosing the number of windows to test (whether it is 20 percent or 100 percent) is only the first step. Second, if testing fewer than 100 percent of the windows in a 184-day period, railroads must also ensure the sample is representative of the various window types in its fleet or fleets.⁶ Third, even if a railroad is testing 100 percent of its emergency window exits, it must have a program in place that requires monitoring of the tests to determine whether the test results demonstrate a 95-percent confidence level that all emergency window exits operate as intended. Although EO 20, Notice No. 1, would have required testing all window exits on a specific series or type of car if one such car had a defective window exit, the amended order, Notice No. 2, permitted the use of commonly accepted sampling techniques to determine how many additional windows to test. See 61 FR 8703, 8705. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows the railroad will have to test.

FRA expects all railroads to: (1) Conduct periodic reviews of records of window testing using an acceptable attribute sampling method to determine whether they are achieving a 95-percent confidence level that no defective units remain;⁷ (2) assess the probable cause of any window test failures; and (3) address any such failures. In setting up their testing programs, railroads must

⁶ Railroads can easily set up a simple spreadsheet (using off-the-shelf software) to generate a random sample that includes windows representing all of the window types in a railroad's fleet or fleets.

⁷ Although the goal is to have no defective units remaining in a railroad's emergency window population, FRA recognizes that because the railroad is performing a statistical sample that achieves a 95-percent confidence level, there will always be a possibility that some defective units remain.

set the confidence level of the sample at 95 percent or more and set the defect (failure) rate at less than 5 percent.⁸ To perform their analyses, railroads must review the test results at the end of a sampling period (at a minimum) and take further action if the testing reveals that 5 percent or more of the windows in the sample are defective. When assessing the probable cause(s) of any window test failures, railroads should consider whether the failures are a result of design issues, useful life issues, or other systemic issues common to a particular window design or windows in service of a similar age. If the test failure appears to be due to a systemic issue, then the potential exists for the failure to repeatedly present itself. In such cases, FRA strongly urges that the railroad consider replacing all the emergency windows or window components of like design or similar service age, as applicable.

As stated in the E-Prep final rule, a railroad must repair any window found to be broken, disabled, or otherwise incapable of performing its intended safety function before the railroad may return the car to passenger service. See 63 FR 24669. This remains true even when the number of windows that failed is below the 5-percent defect rate threshold. Railroads should also document the remedial action(s) planned or taken to address the window test failures, and create a timetable for window inspection and replacement for the window type or car series to remedy the problem in the most expedient manner.

III. Maintenance of Emergency Window Exits

As noted above, FRA expects railroads to periodically perform visual inspections to verify no emergency window exit has a broken release mechanism or other overt indication that would render it unable to function in an emergency. Ideally, railroads would incorporate these visual inspections as part of the interior calendar day mechanical inspections of passenger cars, since they already need to inspect the window markings daily to ensure that the safety-related signage is in place and legible. See 49 CFR 238.305(c)(7). As demonstrated by the 1996 accident that led to EO 20 (in which some of the window gaskets could not readily be pulled out due to lack of lubrication and maintenance), it is important that maintenance, including lubrication or scheduled replacement of degraded parts or

⁸ These numbers are not intended always to add up to 100.

mechanisms, be performed using standard industry practice and/or manufacturer recommendations to ensure that window exits will operate as intended during an emergency. This will also help to prevent a situation where a passenger in an emergency would panic or be delayed by trying to determine how to remove a window after the pull handle breaks off or a piece of the gasket tears off, for example.

Finally, FRA discovered in its investigations that some employees were installing the window gaskets with a sharp tool (such as a screwdriver), which may have damaged the gaskets and may explain why, when pulled, the gaskets were not coming out in one piece as designed. Therefore, to ensure that railroads perform proper maintenance, the railroads should ensure that employees have and use proper tools when installing emergency windows to avoid damaging the window gaskets.

As noted previously, FRA is issuing this document to provide basic information and guidance to railroads operating passenger train service to ensure that they understand the existing regulatory requirements regarding the ITM of emergency window exits. FRA believes that compliance with the existing emergency window exit regulatory requirements will help ensure the safety of the Nation's railroad employees, passengers, and the general public. FRA may take other appropriate actions it deems necessary to ensure the highest level of safety, including pursuing other corrective measures under its rail safety authority.

Issued in Washington, DC, on November 17, 2015.

Robert C. Lauby,

*Associate Administrator for Railroad Safety
Chief Safety Officer.*

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DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 2:00 p.m. to 4 p.m. (EDT) on Tuesday, December 15, 2015, via conference call at the SLSDC's Policy Headquarters, 55 M Street SE., Suite 930, Washington, DC 20003.