



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2017-0061]

Petition for Waiver of Compliance

Under Part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that on June 28, 2017 the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations in 49 CFR part 214. FRA assigned the petition docket number FRA-2017-0061.

Amtrak is requesting relief from the definition of “fouling a track” found at 49 CFR 214.7 at certain locations within Amtrak’s New York Penn Station. The waiver is sought for the express purpose of increasing the number of areas considered a “place of safety” under 214.329 to improve the safety and efficiency of roadway maintenance procedures at that location. Safety will be improved by reducing the distance roadway workers must move and lessening the number of live tracks they may have to cross to reach a place of safety upon receiving warning of an approaching train. Efficiency of roadway maintenance procedures will be improved by increasing the number of clearing locations, thereby reducing time spent moving to and from places of safety.

The area under consideration in New York Penn Station lies between the Hudson River and Empire Connection tunnels to the west and the East River tunnels to the east when certain

conditions, identified below, are met. If approved, when train approach warning is used as the method of protection, roadway workers may move to a previously arranged place of safety designated as a “clearance area” that may be slightly less than four feet from the near running rail but, due to track and station structure configurations, provide a safe haven from the risk of being struck by moving trains or on-track equipment.

Amtrak’s waiver request states that it faces operational problems complying with new provisions in 49 CFR 214.329(a), effective April 1, 2017, while operating an average of approximately 1,100 weekday, and 700 weekend departures and arrivals. Penn Station has 21 tracks fed by seven tunnels (the two Hudson River Tunnels, the four East River Tunnels, and the single Empire Connection tunnel). It is at the center of the Northeast Corridor as well as the main intercity railroad station in New York City. Intercity trains are operated by Amtrak, which owns the station, while commuter rail services are operated by the Long Island Rail Road and New Jersey Transit. In its waiver request, Amtrak also states that, prior to the new rule, Amtrak roadway workers using train approach warning as a method of protection in Penn Station would clear to another track as their place of safety when the Watchman/Lookout provided a warning of an impending movement on the track which they occupied or fouled. In addition, Amtrak’s waiver request states that the revised rule now prohibits making the place of safety another track unless working limits are established on that track and movement authority is withheld or not authorized by the roadway worker-in-charge. Finally, the waiver request states that the additional constraints and disruption of movement, and subsequent delays to trains and passengers required to establish working limits, could be significantly offset if Amtrak could utilize existing places of refuge that do not meet the requirements of the regulation.

Amtrak explains in its request that New York Penn Station was built between 1901 and 1910, and is entirely underground. As such, Amtrak asserts the architecture and track configurations within the station area provide several locations where it is physically impossible to be struck by moving equipment despite being within four feet of the near rail. Amtrak believes these areas provide the same level of safety as a tunnel niche without the restrictions of a confined space. Amtrak explains that except for the use of tunnel niches and clearing bays provided for in 49 CFR 214.317(d), the 214.7 definition of “fouling a track” prevents the use of other infrastructure configurations that may create a similar safe haven outside the clearance area but less than four feet from the near running rail. While the regulation only focuses on tunnel niches, Amtrak believes there are niches outside of tunnels that provide the same level of safety, and railroads have a long history of safely utilizing such areas. Amtrak’s request for relief is intended to provide for the opportunity to use additional locations of safety within the New York Penn Station, which, are locations of safety due to the physical configuration of the track and station structures.

Should FRA grant the waiver request, Amtrak will designate specific areas that are slightly less than four feet from the near running rail but nonetheless provide a place of safety as a “clearance area” and Amtrak will comply with the following conditions prior to designating any space as a clearance area:

1. Ensure there is adequate sight distance at that location to permit a roadway worker or lone worker to occupy that place of safety at least 15 seconds prior to the arrival of a train or other on-track equipment;
2. Identify clearance areas with clearly visible signage;

3. Direct a roadway-worker-in-charge to visually inspect each applicable clearance area to ensure it is suitable for use as a place of safety;
4. Ensure the use of such clearance areas is discussed in the job briefing prior to any roadway worker fouling the track;
5. Ensure it has and procedures that state the roadway-worker-in-charge or lone worker has the absolute right to designate an alternate place of safety as a location other than, or to establish working limits.
6. Ensure it has and procedures that state any roadway worker has the right to a good faith challenge of the use of a clearance area if there is a reasonable belief the area does not provide an adequate level of protection;
7. Ensure it has and procedures that state all affected roadway workers will receive instruction prior to the use of clearance areas.
8. Amtrak will publish and distribute the above procedures in Amtrak's Roadway Worker Bulletins, and address them in a training blitz or job safety briefing, and document them in Amtrak's Total Efficiency and Safety Tests System (T.E.S.T.S) using Test 198. In addition, Amtrak will immediately add the procedures to the annual training curriculum at the affected locations.

Amtrak believes the requested relief is completely safe and will greatly improve the efficiency of roadway maintenance in one of the busiest stations in North America.

A copy of the petition, as well as any other written communications concerning the petition, is available for review online at www.regulations.gov and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., S.E., W12-140,

Washington, D.C. 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

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 parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590.
- Hand Delivery: 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by [INSERT DATE 30 DAYS FROM PUBLICATION OF THIS NOTICE] will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or

signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacyNotice> for the privacy notice of www.regulations.gov.

Robert C. Lauby
Associate Administrator for Railroad Safety
Chief Safety Officer

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