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P100 First-Class Mail

P200 Periodicals

P500 Express Mail

P600 Standard Mail

P700 Special Postage Payment Systems

P710 Manifest Mailing System (MMS)
P720 Optional Procedure (OP) Mailing System
P730 Alternate Mailing Systems (AMS)
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P760 First-Class or Standard Mail Mailings With Different Payment Methods

R—Rates and Fees

R000 Stamps and Stationery

R100 First-Class Mail

R200 Periodicals

R500 Express Mail

R600 Standard Mail

R900 Services

S—Special Services

S000 Miscellaneous Services

S010 Indemnity Claims
S020 Money Orders and Other Services
S070 Mixed Classes
S500 Special Services for Express Mail

S900 Special Postal Services

S910 Security and Accountability
S911 Registered Mail
S912 Certified Mail
S913 Insured Mail
S914 Certificate of Mailing
S915 Return Receipt
S916 Restricted Delivery
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S920 Convenience
S921 Collect on Delivery (COD) Mail
S922 Business Reply Mail (BRM)
S923 Merchandise Return Service
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I010 Summary of Changes
I020 References
I021 Forms Glossary
I022 Subject Index

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–14571 Filed 6–3–97; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 7]

RIN 2130–AA73

Two-Way End-of-Train Telemetry Devices

AGENCY: Federal Railroad Administration (FRA).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On January 2, 1997, FRA published a final rule revising the regulations governing train and locomotive power braking systems at 49 CFR part 232 to include provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The revisions were intended to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains, in accordance with legislation enacted in 1992, and by providing minimum performance and operational standards related to the use and design of the devices. In this document, FRA responds to concerns raised in two petitions for reconsideration of the final rule.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Peacock, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3345), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION: On January 2, 1997, FRA published a final rule amending the regulations governing train and locomotive power braking systems at 49 CFR part 232 to add provisions pertaining to the use and design of two-way end-of-train telemetry devices (two-way EOTs). *See* 62 FR 278. The purpose of the revisions was to improve the safety of railroad operations by requiring the use of two-way EOTs on a variety of freight trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. In response to the final rule, two petitions for reconsideration were submitted.

On February 11, 1997, the Alaska Railroad Corporation (ARC) requested reconsideration of the July 1, 1997, effective date contained in the final rule based on the limited availability of the hardware necessary for compliance. On March 4, 1997, the American Short Line Railroad Association (ASLRA), on behalf of its member railroads, filed a petition for reconsideration seeking an extension of the effective date to December 1, 1997, and seeking elimination of the tonnage limitation contained in the rule's definition of ''local and work train.'' *See* 49 CFR 232.23(a)(3) and 232.23(a)(4). As the ARC is specifically named in the petition submitted by the ASLRA and

because both petitions seek an extension of the effective date of the final rule on similar grounds, FRA will address ARC's petition primarily in the context of the ASLRA's petition for reconsideration.

A. Summary of Concerns Raised in the Petitions for Reconsideration and FRA's Responses

FRA's rules of practice at 49 CFR part 211 state that FRA must decide to grant or deny, in whole or in part, each petition for reconsideration not later than four months after receipt by FRA's Docket Clerk. *See* 49 CFR 211.31. In this case, FRA's decision on the petitions for reconsideration is due no later than June 11, 1997. If FRA grants a petition for reconsideration, a notice of this decision must appear in the **Federal Register**. To provide a fuller explanation of the issues, this document addresses both grants and denials of the petitions for reconsideration. Accordingly, a copy of this document is being mailed to all petitioners.

1. Extension of the Effective Date of the Final Rule to December 1, 1997 for Class II and Class III Railroads

Both the ASLRA and the ARC submitted petitions for reconsideration seeking an extension of the effective date of the final rule. Currently, the final rule becomes effective for all covered railroads on July 1, 1997. The ASLRA requested an extension of the effective date to December 1, 1997 for all Class II and Class III railroads. *See* Surface Transportation Board regulations at 49 CFR part 1201; General Instructions 1–1 for a description of Class II and III railroads. The ASLRA specifically named 12 railroads,[1] including the ARC, in its petition, claiming they are representative of all Class II and Class III railroads affected by the final rule. The petition cites several reasons why an extension of the effective date for these operations is necessary. The petition contends that the current effective date does not provide sufficient time for these smaller railroads to purchase and obtain a sufficient number of two-way EOTs due to the limited number of suppliers and the volume of acquisition orders submitted by Class I railroads. The petition also appears to allege that the current effective date imposes a financial hardship on some small railroads in that these operations are not being provided sufficient time to generate the necessary cash flow needed for the acquisition and installation of the devices. The ASLRA petition further contends that because most smaller railroads have a limited number of locomotives in their fleets, the ability to schedule the out-of-service time necessary for the installation of the front unit of a two-way EOT within the time frame of the current effective date of the final rule imposes additional operational and financial hardships on these smaller railroads. Lastly, although not raised in the ASLRA petition, the ARC notes that smaller railroads need some time to train their employees on the use, installation, and testing of the devices once they are received.

In the preamble to the final rule, FRA recognized that Class I, II, and III railroads voluntarily committed to equip the vast majority of the trains covered by the final rule by the effective date of the requirements. *See* 62 FR 288–289. However, it should be noted that the final rule requires the use of two-way EOTs on a larger number of trains than the industry voluntarily committed to equip by the effective date of the final rule. Furthermore, FRA stated that it would consider extending the effective date of the final rule in the event that manufacturing delays result in a railroad's inability to secure an adequate number of the devices, but would not extend the effective date beyond the statutorily mandated date of December 31, 1997. *Id.*, 49 U.S.C. 20141. The concerns and hardships alleged in the ASLRA and ARC petitions for reconsideration are based on the inability of Class II and III railroads to acquire a sufficient number of devices within a reasonable time period prior to the effective date of the final rule in order to properly install the equipment and adequately train their employees on the use of the devices. Consequently, the burdens that the petitions allege are being imposed on Class II and III railroads are precisely the type of concerns FRA stated it would consider in determining whether to grant an extension of the effective date of the final rule. Furthermore, ASLRA's petition proposes an extension of the effective date only to December 1, 1997, which is still 30 days prior to the statutorily mandated date.

In order to verify the concerns raised in the petitions for reconsideration, FRA conducted its own investigation of the impact of the effective date on Class II and III railroads. Although ASLRA's petition seeks an extension of the effective date for all Class II and Class III railroads, FRA has determined that some larger Class II railroads, particularly those reporting two million or more man-hours to FRA for calendar year 1995, have acquired or will acquire a sufficient number of two-way EOTs to equip all of the trains covered by the final rule well before the July 1, 1997 effective date. Therefore, FRA will not extend the effective date of the final rule for those Class II and III railroads that reported two million or more man-hours for calendar year 1995 pursuant to 49 CFR part 225. Consequently, FRA specifically denies ASLRA's petition as it relates to an extension of the effective date of the final rule for Class II or III railroads reporting two million or more man-hours to FRA for calendar year 1995.

However, as noted above, the final rule does require a greater number of short line trains to be equipped with two-way EOTs than these railroads envisioned and planned for when they voluntarily committed to equip their fleets by July 1, 1997. As a result, many of the short line operations covered by the final rule did not order a sufficient number of devices to equip all the trains that are now covered by the final rule. In addition, some short line operations that were not originally covered by the industry's voluntary commitment have just recently discovered that some of their trains will require the use of the devices. Furthermore, the ability of these smaller operations to generate the capital necessary for acquiring the devices on such short notice is somewhat limited. Therefore, many of the Class II and Class III railroads covered by the final rule have just recently ordered the devices from the manufacturers or, due to financial limitations, will be ordering the devices in the near future as soon as sufficient capital is available.

After discussions with the manufacturers' of two-way EOTs, it appears that the delivery time for the devices from receipt of an order ranges anywhere from 60 to 120 days or more, depending on the manufacturer. Therefore, if the short line railroads were forced to order the devices from the manufacturer with the shortest lead time, then most likely a two or three month extension of the effective date would probably be sufficient. However, FRA recognizes that forcing railroads to acquire the devices based solely on delivery time is not necessarily good business practice and may not enhance safety in the long term. Railroads should not only have the ability to benefit from competitive procurement, but should

[1] The following railroads were specifically named in ASLRA's petition: Birmingham Southern Railroad Company; the Bay Line Railroad, L.L.C.; Iowa Interstate Railroad Ltd.; Central Railroad of Indiana; Central Railroad Company of Indianapolis; Alaska Railroad Corporation; St. Lawrence & Atlantic Railroad Company; Gateway Western Railway; Northeast Kansas & Missouri Railroad; Wheeling & Lake Erie Railway Company; Dequeen & Eastern Railroad Company; and Lake Superior & Ishpeming Railroad Company.

also be afforded the ability to acquire a device which best suits their operation and existing equipment. For example, the most readily available device may not be compatible with the devices a railroad has already acquired or may not provide the options most desired by a railroad.

In addition to a delivery time that could exceed four months, FRA also agrees that these smaller railroads need some extra time to install the devices once they are delivered. As the petition points out, most smaller railroads have very limited locomotive fleets and, thus, will need extra time to schedule out-of-service time in order to install the front units of the devices. Furthermore, some additional time must also be afforded for these smaller railroads to adequately train their employees on the use, installation, and testing of the devices. Consequently, after careful consideration of the petitions for reconsideration and for the reasons set forth above, FRA has decided to grant ARC's petition to extend the effective date of the final rule and ASLRA's petition to extend the effective date of the final rule specifically to December 1, 1997 for all Class II and Class III railroads reporting less than two million man-hours to FRA for calendar year 1995 pursuant to 49 CFR part 225.

2. Eliminate the Tonnage Limitation in the Definitions of Local and Work Trains.

The ASLRA's petition for reconsideration also objects to the final rule's definitions of local and work train, which contain a limitation of 4,000 trailing tons. For the reasons stated below, FRA denies this request in the ASLRA petition. The ASLRA petition contends that the tonnage limitation fails to recognize the inherent operating characteristics of local and work trains and that FRA ignored the clear intent of Congress to exclude these types of operations. The petition further contends there is no basis in the hearing record or any safety statistics that supports the definitions contained in the final rule. The petition stresses the impracticality of requiring the use of two-way EOTs in local train operations. The ASLRA notes that a typical local train will drop off and pick up cars at various points, thus reducing and increasing the train length and tonnage several times throughout its operation. The petition contends that the removal and reinstallation of the rear-end device in each instance is time consuming and creates the potential for damaging the rear-end device. Finally, the petition asserts that FRA should not have used the final rule on two-way EOTs to decide the definition of local train, as it could have unknown consequences in future regulatory proceedings, and should allow the issue to be argued in the pending freight power brake rulemaking.

In the statutory provision, Congress stated that two-way EOTs shall be required ''on road trains other than locals, road switchers, or work trains * * *.'' *See* 49 U.S.C. 20141(b)(1). However, the statute does not define the terms ''locals, road switchers, or work trains'' and does not include them in the specific exclusions contained in the legislation. *See* 49 U.S.C. 20141(c). As stated in the preamble to the final rule, FRA does not believe Congress intended to except trains merely based on a label placed on the operation. FRA believes that Congress intended for the terms ''locals, road switchers, or work trains'' to be narrowly construed by FRA and not so broadly defined that the requirements for two-way EOTs are rendered meaningless in many circumstances. Therefore, contrary to the assertions contained in the petition, FRA has effectuated Congress' intent by narrowly defining the terms ''local'' and ''work train'' to ensure consistent and logical application of the requirements for the use of two-way EOTs.

In the NPRM on power brakes, FRA attempted to narrowly construe the ''local and work train'' exception by proposing to require the use of two-way EOTs on local or work trains that exceeded 30 mph. *See* 59 FR 47726 (September 16, 1994). At the Public Regulatory Conference conducted on March 5, 1996, several parties, including the ASLRA, objected to the speed limitation placed on the local and work train exemption contending it was inconsistent with the statutory mandate. Other participants, however, strongly recommended that the terms local and work trains be narrowly defined in order to prevent the creation of a loophole wherein a carrier could designate all their trains as local and, thus, circumvent the two-way EOT requirements. Furthermore, several commenters also objected to special treatment of local and work trains as they incur similar operational difficulties and pose the same threat to safety as road trains. Therefore, not only did FRA propose a narrow exception for local and work trains in the NPRM but there was substantial discussion regarding the exception of local and work trains at the Public Regulatory Conference conducted prior to the issuance of the final rule. *See* transcript of public hearing, March 5, 1996. Although it is clear from the above that FRA as well as other commenters sought to narrowly construe the local and work train exception, not one commenter in a written submission, including the ASLRA, provided any alternative method for defining the terms which would address the concerns raised by various parties noted above, nor does the ASLRA propose such an alternative in its petition. Consequently, FRA in the final rule reconsidered the exception for local and work trains based upon the limited written comments received on the issue, its own review of the accident data, and its extensive knowledge of railroad operations.

After a review of the available accident data, FRA determined that the trains which are most likely to benefit from the use of two-way EOTs are heavier tonnage trains and trains that operate over heavy grades. The accident data also indicated that the vast majority of the potentially preventable accidents involved trains that were operating with greater than 4,000 trailing tons or that were operating on grades of two percent or greater and that, as the tonnage of the train increased, the steepness of the grade became a more important factor. Furthermore, in FRA's view there is no logical or rational basis for concluding that a local or work train operating with greater than 4,000 trailing tons or in heavy grades is any less susceptible to the operational problems and difficulties faced by any other road train. Consequently, FRA believes the definition of local and work train is consistent with the accident data, Congress' intent, and FRA's rationale expressed with regard to defining heavy grades. Furthermore, FRA believes the definitions recognize the operational necessity for the services these types of trains provide and the nature of the duties they engage in when en route, while preventing the potential for confusion or abuse of the terms local or work train, and ensuring that those trains most likely to benefit from the added safety provided by two-way EOTs are so equipped.

Although FRA recognizes that the final rule's definitions of local and work train may impose some additional operational burdens on the railroads, FRA believes that the ASLRA has overstated the operational impact of the requirements on Class II and III railroads. In its written submissions to FRA, the ASLRA indicated that the vast majority of Class II and III railroads operate trains with less than 4,000 trailing tons. In addition, contrary to the contention contained in the petition, the rear-end unit of an EOT device would not have to be removed and reinstalled every time a local train picks up or drops off cars. If the rear car, on which

the rear unit of the EOT is attached, remains a part of the train after conducting these switching operations, the communication between the front unit and the rear unit should remain intact even after a cut of cars is added or removed from the train. Furthermore, many local trains currently operate with rear-end marking devices or one-way EOTs which would have to be reinstalled if the rear car were removed from the train. Additionally, if a train is not equipped with a one-way EOT then an inspection of the ''set and release'' of the rear car must performed when cars are added or removed from a train; thus, someone would have to be at the rear to conduct this inspection. *See* 49 CFR 232.13. Consequently, in FRA's view, the increased time burdens and the potential damage to the rear units are greatly overstated in the petition when compared with current practice. We believe these actual and potential costs can be greatly minimized and should be incurred in only a limited number of circumstances.

FRA further considers to be without merit the ASLRA's contention that the definition of local train should not have been decided in the context of the proceeding to issue the two-way EOT final rule. The final rule text explicitly states that the definition of local train is intended solely for the purpose of identifying operations subject to the requirements for the use of two-way EOTs. *See* 62 FR 294. FRA does not intend for the definitions used in this final rule to change or otherwise impinge on other possible definitions of the term local train when used in another context. Therefore, the definition used in this final rule should have no impact on future regulatory proceedings. Consequently, after careful consideration of the ASLRA's petition for reconsideration and for the reasons set forth above, FRA has decided to deny ASLRA's request to change the definitions of local and work trains contained in § 232.23(a)(3) and (a)(4) of the final rule on two-way EOTs.

Issued in Washington, DC, on May 29, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–14497 Filed 6–3–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 119]

RIN 2127–AG82

Federal Motor Vehicle Safety Standards; Occupant Crash Protection, Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This document amends Standard No. 213, ''Child Restraint Systems,'' to modify the air bag warning label that child seats which can be used in a rear-facing position (''rear-facing child seats'') are now required to bear. The required label warns that the rear-facing child restraint must never be placed in the front seat with an air bag. On April 17, 1997, NHTSA issued an interim final rule which allowed the phrase ''unless air bag is off'' to be added to the end of the warning, if the child seat automatically deactivates the air bag and activates a specified telltale light in the vehicle. On further examining the issue in response to a request from Porsche Cars North America Inc. (Porsche), NHTSA has tentatively determined that the phrase ''unless air bag is off'' may be added to child seats regardless of the means by which they deactivate the air bag so long as deactivation can be achieved, and that specified telltale requirements are unnecessary so long as an audible or visual signal is provided to the driver that the air bag has been disabled. This document makes final on an interim basis the amendment requested by Porsche, and supplements the amendments made by the April 17, 1997 interim rule. The agency also solicits comments on today's amendment.

DATES: This rule is effective June 4, 1997. Comments must be received by July 21, 1997. Because this amendment will clarify the required warning label and will relieve a restriction currently imposed by the standard, NHTSA has determined that it is in the public interest to make the changes effective immediately on an interim basis. Assuming that a final rule is issued, the final rule would respond to any comments and would be effective upon publication in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Mary Versailles, Office of Safety Performance Standards, NPS–31, telephone (202) 366–2057.

For legal issues: Deirdre Fujita, Office of Chief Counsel, NCC–20, telephone (202) 366–2992.

Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: This document amends Standard No. 213, ''Child Restraint Systems,'' on an interim basis to modify the air bag warning label which rear-facing child seats must bear effective May 27, 1997. This document also solicits comments on this amendment. It is the second interim final rule modifying the warning label.

Original Final Rule

The requirement for the label was adopted by a November 27, 1996 final rule (61 FR 60206) [1], which also adopted new warning label requirements for vehicles with air bags. The requirement for the enhanced child seat label is set forth in S5.5.2(k) of Standard 213. The requirement specifies, among other things, the exact content of the message that must be provided by the label. The message of the label must be preceded by a heading (''WARNING''), with an alert symbol, and state the following:

DO NOT place rear-facing child seat on front seat with air bag.
DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under. Also required for the label is a pictogram showing a rear-facing child seat being impacted by an air bag, surrounded by a red circle with a slash across it. Flexibility as to the content of the label is not provided; thus, wording other than that specified in the standard is not permitted.

First Interim Final Rule

On April 17, 1997 (62 FR 18723), NHTSA amended S5.5.2(k) to permit, for some child restraints, the addition of the phrase ''unless air bag is off'' after the sentence stating ''DO NOT place rear-facing child seat on front seat with air bag.'' The amendment responded to

[1] Corrected December 4, 1996 (61 FR 64297), December 11, 1996 (61 FR 65187), and January 2, 1997 (62 FR 31).