

of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

18. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than twenty-five (25) pages and reply comments be no longer than fifteen (15) pages. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading.

19. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, N.W., Room 544, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

D. Ordering Clauses

20. Accordingly, it is ordered that pursuant to Sections 1, 4, 201-205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218 and 220, a notice of Proposed Rulemaking is hereby adopted.

21. It is Further Ordered that, the Secretary shall send a copy of this notice of Proposed Rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96-3917 Filed 2-20-96; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB-9, Notice No. 5]

RIN 2130-AA73

Power Brake Regulations: Two-way End-of-Train Telemetry Devices

AGENCY: Federal Railroad Administration (FRA).

ACTION: Notice of public regulatory conference.

SUMMARY: FRA is scheduling a public regulatory conference to further discuss issues related to two-way end-of-train telemetry devices (2-way EOTs) previously developed in its notice of proposed rulemaking (NPRM) on power brakes published on September 16, 1994. By earlier notice, FRA indicated that it would defer action on the NPRM for a short period; however, FRA also stressed that it did not intend to defer implementation of the requirement for 2-way EOTs beyond the effective date contemplated by Congress. Consequently, FRA has decided to separate proposals regarding 2-way EOTs from the rest of the proposed power brake revisions and proceed with this public regulatory conference in order to clarify and resolve those issues related to 2-way EOTs and issue a final rule on this subject as soon as practicable. FRA urges railroads to immediately begin acquiring and equipping trains with 2-way EOTs to enhance the safety of their operations rather than waiting until issuance of the final rule.

DATES: (1) *Written Comments:* Written comments must be received no later than April 15, 1996. Comments received after that date will be considered to the extent practicable without incurring additional expense or delay.

(2) *Public Regulatory Conference:* A public regulatory conference to discuss issues related to 2-way EOTs will be held March 5, 1996 beginning at 8:30 a.m. in Washington, D.C. Any person wishing to participate in the public regulatory conference should notify the Docket Clerk at the address provided below at least five working days prior to the date of the conference. This notification should identify the party the person represents and the particular issues the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the conference

of persons who fail to provide such notification.

ADDRESSES: (1) *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public Regulatory Conference:* The public regulatory conference will be held at the following location and date:

Location: Nassif Building, Conference Room 2230, 400 Seventh Street SW, Washington, D.C. Date: March 5, 1996. Time: 8:30 a.m.

FOR FURTHER INFORMATION CONTACT: Thomas Peacock, Motive Power and Equipment Division, Office of Safety, RRS-14, Room 8326, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-9186), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION:

Background

In 1992, Congress amended the Federal rail safety laws by adding certain statutory mandates related to power brake safety. See 49 U.S.C. 20141 (formerly contained in Section 7 of the Rail Safety Enforcement and Review Act, Pub. L. No. 102-365 (September 3, 1992), amending Section 202 of the Federal Railroad Safety Act (FRSA) of 1970, formerly codified at 45 U.S.C. 421, 431 *et seq.*). In these amendments, Congress instructed the Secretary of Transportation (Secretary) to promulgate regulations requiring the use of 2-way EOTs. Congress' mandate sets out various minimum requirements that any promulgated rule must contain and specifically lists various types of operations that are to be excluded from the requirements, leaving the Secretary with discretion to exclude other types of operations if it is in the public interest and consistent with railroad safety. See 49 U.S.C. 20141. Congress mandated that the rules be promulgated by the end

of 1993, and envisioned a date for implementation of the requirements of no later than December 31, 1997. In addition to the statutory mandate, FRA received recommendations from the National Transportation Safety Board (NTSB) and petitions from the United Transportation Union, the Brotherhood of Locomotive Engineers, the Oregon Public Utilities Commission, the Washington Utilities and Transportation Commission, and the Montana Public Service Commission to require 2-way EOTs on all cabooseless trains operating in certain territories.

In response to the statutory mandate, the various recommendations, and due to its own determination that the power brake regulations were in need of revision, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) on December 31, 1992 (57 FR 62546). A section of the ANPRM was specifically designed to elicit comments, information, and views on 2-way EOTs and a portion of the public hearings covered this topic. See 57 FR 62550-62551. Based on the comments and information received, FRA published an NPRM regarding revision of the power brake regulation which contained specific requirements related to 2-way EOTs. See 57 FR 47700, 47713-14, 47731, 47734, and 47743.

Following publication of the NPRM in the Federal Register (59 FR 47676), FRA held a series of public hearings in 1994 to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. Public hearings were held in Chicago, Illinois on November 1-2; in Newark, New Jersey on November 4; in Sacramento, California on November 9; and in Washington, D.C. on December 13-14, 1994. These hearings were attended by numerous railroads, organizations representing railroads, labor organizations, and state governmental agencies. Due to the strong objections raised by a large number of commenters, FRA announced by notice published on January 17, 1995 that it would defer action on the NPRM and permit the submission of additional comments prior to making a determination as to how it would proceed in this matter. 60 FR 3375. In the January notice, FRA also stressed that it did not intend to defer implementation of the requirement for 2-way EOTs beyond an effective date of December 31, 1997.

In the ANPRM and the NPRM, FRA identified eleven recent incidents that might have been avoided had the involved trains been equipped with 2-way EOTs. See 57 FR 62550; 59 FR 47713-14. In addition, on December 14, 1994, in Cajon Pass, an intermodal train

operated by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) collided with the rear end of a unit coal train operated by the Union Pacific Railroad Company resulting in the serious injury of two crew members and total estimated damages in excess of \$4 million. After investigation of this incident, the NTSB concluded that had the train been equipped with a 2-way EOT the collision could have been avoided because the engineer could have initiated an emergency brake application from the end of the train. On December 15, 1995, based on the conclusion reached above, the NTSB made the following recommendation to FRA:

Separate the two-way end-of-train requirements from the Power Brake Law NPRM, and immediately conclude the end-of-train device rulemaking so as to require the use of two-way end-of-train telemetry devices on all cabooseless trains. (Class II, Priority Action)(R-95-44).

Furthermore, on February 1, 1996, again in Cajon Pass, a westward Santa Fe freight train derailed on a descending 3-percent grade. The incident resulted in fatal injuries to two of the crew members, serious injuries to a third, and the derailment of 45 of 49 cars and four locomotives. Although investigation of this incident is currently in progress, it appears as though it could have been avoided had the train been equipped with a means for the train crew to have effected an emergency brake application from the rear of the train. The two aforementioned incidents resulted in FRA's issuance on February 6, 1996, of Emergency Order No. 18, 61 FR 5058, which requires the affected railroad to ensure that its train crews have the ability to effect an emergency brake application from the rear of the train on all westward freight trains operating through Cajon Pass.

Consequently, based on these considerations and after review of all the comments submitted, FRA has determined that in order to limit the number of issues to be examined and developed in any one proceeding it will proceed with the revision of the power brake regulations via three separate processes. In light of the testimony and comments received on the NPRM, emphasizing the differences between passenger and freight operations and the brake equipment utilized by the two, FRA will propose to separate passenger equipment power brake standards from freight equipment power brake standards. As passenger equipment power brake standards are a logical subset of passenger equipment safety standards, the passenger equipment safety standards working group will

assist FRA in developing a second NPRM covering passenger equipment power brake standards. See 49 U.S.C. 20133(c). In addition, it is FRA's intention to have a second NPRM covering freight equipment power brake standards developed with the assistance of the Railroad Safety Advisory Committee, which FRA is in the process establishing, subject to Administration approval. Furthermore, in the interest of public safety and due to statutory as well as internal commitments, FRA intends to separate the issues related to 2-way EOTs from both the passenger and freight issues, address them in the public regulatory conference being announced by this notice, and issue a final rule on the subject as soon as practicable. FRA feels that an informal public regulatory conference would prove advantageous in the development of regulations related to 2-way EOTs. FRA also believes that the quality of the agency's final rule will be improved by facilitating an exchange of ideas that may lead to solutions acceptable to all interested parties.

Methodology

In accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the public regulatory conference is a continuation of the power brake rulemaking proceeding. A court reporter will take a verbatim transcript of the conference which will be placed in the public docket for this rulemaking. The format of the discussions will be informal and will employ a topical, interactive approach. The public regulatory conference is currently scheduled for one day. FRA believes the time allotted for this conference will prove more than adequate. Of course, the conference will conclude earlier than planned if, based upon advice from the participants in attendance the agency concludes that the major issues have been adequately addressed.

Participants

FRA invites all affected parties, including small entities, to participate in the public regulatory conference. FRA believes that extensive comment from all interested parties is necessary to develop the most effective and reasonable final regulation. For this conference to be successful, participants should be prepared to discuss, at a minimum, the issues identified below and provide reasonable alternatives, if necessary. FRA also encourages participants to bring supporting documentation where appropriate.

Issues for Discussion

In 1992, Congress amended the Federal rail safety laws by adding specific statutory mandates related to 2-way EOTs which state:

(r) POWER BRAKE SAFETY.

* * * * *

(3)(A) The Secretary shall require 2-way end of train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The Secretary shall promulgate rules as soon as possible, but not later than December 31, 1993, requiring such 2-way end of train devices. Such rules shall at a minimum—

(i) Set standards for such devices based on performance;

(ii) Prohibit any railroad, on or after the date that is one year after promulgation of such rules, from acquiring any end of train device for use on trains which is not a 2-way device meeting the standards set under clause (i);

(iii) Require that such trains be equipped with 2-way end of train devices meeting such standards not later than 4 years after promulgation of such rules; and

(iv) Provide that any 2-way end of train device acquired for use on trains before such promulgation shall be deemed to meet such standards.

(B) The Secretary may consider petitions to amend the rules promulgated under subparagraph (A) to allow the use of alternative technologies which meet the same basic performance requirements established by such rules.

(C) In developing the rules required by subparagraph (A), the Secretary shall consider data presented under paragraph (1).

(4) The Secretary may exclude from the rules required by paragraphs (1), (2), and (3) any category of trains or rail operations if the Secretary determines that such an exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for granting any such exclusion. The Secretary shall at a minimum exclude from the requirements of paragraph (3)—

(A) Trains that have manned cabooses;

(B) Passenger trains with emergency brakes;

(C) Trains that operate exclusively on track that is not part of the general railroad system;

(D) Trains that do not exceed 30 miles per hour and do not operate on heavy grades, except for any categories of such trains specifically designated by the Secretary; and

(E) Trains that operate in a push mode.

Pub. L. No. 102-365, § 7; codified with some differences in language at 49 U.S.C. 20141 (formerly codified at 45 U.S.C. 431(r)).

FRA has already received a substantial number of comments on 2-way EOTs, either through testimony provided or written comments submitted in connection with the ANPRM and the NPRM that were previously issued. This public regulatory conference is designed to afford interested parties an opportunity to expand on those comments and further discuss the issues related to 2-way EOTs. After review of the comments received, FRA has identified seven major issues for discussion which include: the definition of "mountain grade territory"; the handling of en route failures of the devices; the operations to which the requirements will be applicable; initial terminal requirements; design requirements; calibration requirements; and cost/benefit information. The following discussion is intended to highlight FRA's proposals regarding 2-way EOTs contained in the NPRM and to provide a brief overview of some of the comments received on those proposals. For the exact wording of any of the proposed requirements or for more detailed discussion of the proposals, individuals should refer directly to the NPRM. Furthermore, the listing of issues contained below is not intended to be exhaustive; we solicit comments on all issues relevant to 2-way EOTs.

A. Definition of "Mountain Grade Territory"

In Appendix C of the NPRM, FRA proposed a definition of mountain grade territory as a section of track of distance, D, with an average grade of 1.5 percent or more over that distance which satisfies the relationship:

$$(30/V)^2 G^2 D \leq 12$$

Where:

G=average grade x 100

D=distance in miles over which average grade is taken

V=speed of train

See 59 FR 47719,47753. FRA also provided a chart containing mountain grade territory curves based on an application of the definition. See 59 FR 47753. FRA developed this empirical relationship based on most commenters' suggestions that some type of formula be developed based on a variety of factors, including train tonnage, speed, length of grade, percent of grade, and distance of grade. FRA determined that the three most important variables in defining

mountain grade were: (i) The speed of the train (V); (ii) the steepness of the grade (G); and (iii) the length of the grade (D).

According to the empirical relationship proposed by FRA, no one of these variables determines mountain grade operating conditions; it takes a combination of the three. The $(30/V)^2$ term is the ratio of the train's speed to the reference speed of 30 mph, and it is squared because the speed of the train is a dominant variable in the relationship. The V term is in the denominator because as the speed of the train increases the ratio decreases, which makes satisfying the overall inequality defining mountain grade operating conditions more likely. The G term is squared because the steepness of the grade is a dominant variable. The G term is in the numerator because a steeper grade makes satisfying the overall inequality more likely. The D term is not squared because the length of the grade is less dominant than either the speed of the train or the steepness of the grade. The D term is in the numerator because a longer distance of grade makes satisfying the overall inequality more likely. The number 12 was selected because it yields a range of reasonable results for the definition.

Many commenters stated that FRA's definition was confusing, inaccurate, and impractical. These commenters suggested that the definition would result in known mountain grades not being covered by the 2-way EOT requirement, while other areas never before believed to be mountain grades would fall within the requirement. Several commenters also recommended that the definition be eliminated and that the 2-way EOT requirements apply solely to trains operating in excess of 30 mph. The California Public Utilities Commission suggested that short of requiring the devices on every train, the fundamental criterion should be the ability of the train to stop within a safe distance. Other commenters suggested that other criteria be used to define mountain grade territory and that the formula be simplified. One commenter recommended that the proposed definition be eliminated, and that the 2-way EOT requirements be applied to trains operating over 30 mph and to heavy tonnage and long trains as defined in the proposal.

(1) FRA recognizes that the definition contained in the NPRM may be somewhat confusing and may lead to anomalous results. FRA also recognizes that a definition of mountain grade that uses speed as a variable may be inappropriate because if a significant portion of the braking system becomes

inoperative on a long, steep grade a runaway can occur regardless of the speed that the train started down the grade. Consequently, FRA is open to alternate suggestions to simplify or clarify the definition of mountain grade territory. However, FRA does not believe discarding the concept of mountain grade territory would be consistent with the safety objectives of the statute.

(2) FRA is interested in any alternative methods or formulas for defining mountain or heavy grade territory. For example:

Mountain grade territory could be defined as: any portion of a railroad with an average grade of 1% or greater where the product of the average percent grade (as a decimal) and the distance over which the grade persists (in miles) is greater than or equal to .03. Thus a 1% (.01) average grade for 3 miles or a 2% (.02) average grade for 1.5 miles would meet the definition for mountain grade territory.

FRA encourages all interested parties to develop and be prepared to discuss their alternatives for defining mountain grade territory.

(3) Several railroads include definitions of mountain grade territory in their operating rules, for example, Burlington Northern Railroad Company's Air Brake and Train Handling Rules define mountain grade as 1.8 percent grades and greater. For what purpose do railroads use these definitions of mountain grade, and could these definitions be used as a basis for defining mountain grade territory in this rule?

B. En Route Failures

In the NPRM, FRA proposed that if a 2-way EOT or equivalent device becomes incapable of initiating an emergency brake application from the rear of the train while the train is en route, then the speed of that train would be limited to 30 mph. See 59 FR 47714, 47743. FRA's rationale for this limitation was that two-way EOT devices are not required on trains that travel less than 30 mph. Thus, operating with a non-functional two-way EOT device is the same as not having a device; consequently, trains operating with failed two-way EOT devices should be subjected to this same limitation. Furthermore, FRA suggested that the concerns raised by several railroads regarding train delays, missed deliveries, and safety were not justified. The Association of American Railroads (AAR) as well as several railroads commented that these devices are very reliable and have an extremely low failure rate, if properly maintained. Consequently, FRA believed that the concerns of the railroads were

outweighed by the potential harm to both the public and railroad employees caused by trains being allowed to operate without the devices at speeds which Congress and FRA feel require the added safety benefits provided by these devices.

Several railroads commented on FRA's proposal reinforcing the view that such a limitation could cause serious train delays and missed deliveries and would actually produce additional safety hazards due to the bunching of trains. Commenters also suggested that FRA failed to include the cost of this limitation in its analysis. Other commenters noted that subsequent to the drafting of the NPRM, Canada eliminated its speed restriction for failure of a 2-way EOT en route.

(1) Are there alternative operating limits that could be imposed when a failure of a 2-way EOT occurs en route providing a degree of safety similar to the proposed speed limitation?

(2) Can the costs of train delays and missed deliveries attributable to the proposed speed limitation be quantified? What are they?

(3) Has Canada's elimination of a similar speed restriction resulted in a reduction in safety? What has been the result of the elimination?

(4) To what extent should failures en route in mountain grade territory trigger special restrictions?

C. Applicability

Based on the statutory mandate and after review of the comments received and the accidents relied on for support of the use of 2-way EOTs, FRA in the NPRM proposed that the devices be required equipment on trains that operate at speeds in excess of 30 mph and on trains that operate in mountain grade territories. See 59 FR 47743. (A discussion of FRA's definition of "mountain grade territory" is contained in Section A). In addition to those operations specifically excluded from 2-way EOT requirements by the statute (49 U.S.C. 20141), FRA found sufficient safety justification for excluding two other types of operations: (i) freight trains equipped with a locomotive capable of initiating a brake application located in the rear third of the train length; and (ii) trains equipped with fully independent secondary braking systems capable of safely stopping the train in the event of failure of the primary system. In order to provide the industry with time to acquire a sufficient number of 2-way EOTs and to ease the economic impact of acquiring the devices, FRA proposed that the requirement that all road trains not specifically excepted be equipped with

either a 2-way EOT or an alternate technology device performing the same function not become effective until December 31, 1996. See 59 FR 47713, 47743. FRA also proposed that all 2-way EOTs purchased prior to the effective date of the final rule would be deemed to meet the design requirements contained in the proposal. See 59 FR 47713, 47743.

Other than FRA's definition of "mountain grade territory," there were very few comments specifically addressing the applicability requirements contained in the NPRM other than stylistic suggestions. One commenter did recommend that the exception for trains operating in a push mode be amplified to require that the control cab on the rear of train be occupied, display a reading of the brake pressure, and be capable of making an emergency application.

(1) Is there a safety justification for excluding other types of operations not currently contemplated? What are they?

(2) As it has been over three years since Congress issued the statutory mandate regarding 2-way EOTs and because the data relied on by FRA in developing the NPRM is close to two years old, FRA would like updated information regarding the number of 2-way EOTs currently in use, the number currently on order with manufacturers, the current cost of 2-way EOTs meeting the proposed design requirements, and the reliability of the devices currently in use.

(3) Subsequent to the drafting of the NPRM, FRA has learned that some traditional passenger operations are considering the operation of mixed passenger and freight trains. How should these types of operations be handled with regard to the use of 2-way EOTs? Is there a safety justification for excepting these operations from the requirements?

D. Initial Terminal Requirements

At the ANPRM stage, FRA received several comments regarding the batteries used in 2-way EOTs. Several commenters suggested that the most frequent cause of failure of 2-way EOTs is battery failure. These commenters also indicated that this problem could be cured by replacing batteries at initial terminals. Other commenters suggested that some minimum charge be required at initial terminals and that inspections be performed at all brake tests and crew change points. Several commenters also suggested that interchangeable battery packs were necessary because some railroads were unable to charge the devices that come onto their lines from other railroads.

Based on these comments, FRA proposed that any train equipped with a 2-way EOT or its equivalent shall not depart from the point where the train is originally assembled unless (i) the device is capable of initiating a brake application from the rear of the train and (ii) the batteries of the device are charged to at least 75 percent of watt-hour capacity. See 59 FR 47734. Although FRA did not receive any comments on this provision subsequent to the issuance of the NPRM, FRA feels this was due to most commenters focusing on some of the broader issues contained in the NPRM.

Due to the period of time since hearings on the ANPRM were conducted, FRA requests the following:

- (1) Information regarding the operating life of batteries currently used in 2-way EOTs;
- (2) Information regarding the reliability and interchangeability of these batteries; and
- (3) Opinions on whether the proposed requirements are necessary based on the experiences of those parties currently using 2-way EOTs on a regular basis.

E. Design Requirements

In order to maintain uniformity in the performance of 2-way EOT devices, FRA proposed basic performance and design requirements for these devices in the NPRM. As 2-way EOTs that are currently in production meet the design requirements already established for one-way devices contained at 49 CFR 232.19, FRA intended to retain those requirements, apply them to 2-way EOTs and establish other specific requirements to ensure two-way communication and the ability to make an emergency brake application from the rear of the train. The additional proposed requirements include the following:

(a) An emergency brake application command from the front unit shall activate the emergency air valve at the rear of the train within one second.

(b) The rear unit shall send an acknowledgment message to the front unit immediately upon receipt of a brake application command. The front unit shall listen for this acknowledgment and repeat the brake application command if the acknowledgment is not correctly received.

(c) The rear unit, on receipt of a properly coded command, shall open a valve in the brake line and hold it open for a minimum of 15 seconds. This opening of the valve shall cause the brake line to vent to the exterior.

(d) The valve opening and hose diameter shall have a minimum

diameter of 3/4 inch to effect an emergency brake application.

(e) Restoring of the braking function (recharging the air brake system) shall be enabled automatically by the rear equipment, no more than 60 seconds after it has initiated an emergency.

(f) The front unit shall have a manually operated switch which, when activated, shall initiate an emergency brake transmission command to the rear unit. The switch shall be labeled "Emergency" and shall be protected so that there will exist no possibility of accidental activation.

(g) The availability of the front-to-rear communications link shall be checked automatically at least every 10 [seconds]*.

(h) Means shall be provided to confirm availability and proper functioning of the emergency valve.

(i) Means shall be provided to arm the front and rear units to ensure the rear unit responds only to an emergency command from its associated front unit.

See 59 FR 47731. *(Section 232.117(g) of the NPRM inadvertently contained "10 minutes" for this requirement; it should have read "10 seconds." See 59 FR 47731). FRA recognizes that currently available 2-way EOTs have several optional features that could prove beneficial to railroads and although FRA recommends that railroads obtain as many of the optional features as they can when purchasing the devices, FRA does not intend to mandate their use and feels each railroad is in the best position to determine which features benefit its operation.

Several commenters suggested that the provision requiring the automatic restoration of the brake function after 60 seconds should be eliminated. These commenters stated that the brake function should not be restored until the train has come to a complete stop and/or that the locomotive engineer should retain control of the restoration. One commenter recommended that a separate labeled and protected emergency switch should not be mandated if the EOT's emergency application could be integrated into the existing emergency brake controls.

(1) Are the proposed design requirements sufficient to ensure uniformity in the devices' design? Do they unduly restrict technological advances?

(2) FRA is interested in any information regarding any technological advancements or design changes, that may have been made in the area of 2-way EOTs in the last two years, that would necessitate a change in or

addition to the proposed design requirements.

(3) FRA is also interested in any information from railroads currently using 2-way EOTs regarding the procedures or practices they have adopted for testing and inspecting the devices to ensure that the devices are armed and operational prior to a train's departure. Could or should these practices and procedures form the basis of such requirements in this rule?

(4) Based on information obtained in investigating the recent accident near Cajon Pass, FRA is interested information regarding problems with maintaining communication between the front and rear units. What procedures or operations have been developed to overcome these communication problems? Could or should these be incorporated in this rule? Are there additional design requirements that could cure these communication problems? Minimum wattage requirements? Requiring repeater stations where necessary?

F. Calibration Requirements

In the NPRM, FRA proposed to extend the calibration period for all EOTs from 92 days to 365 days. See 59 FR 47700, 47731. FRA based this proposed extension not only on its own experience but also on the comments received from several parties that the devices are fairly reliable and can operate for years without calibration. Furthermore, FRA believes that the 92-day calibration period was established at a time when there was little experience with the devices. Since that time, not only has calibration of the devices not proven to be a problem, but technology has further improved the reliability of the devices. Although several commenters, both at the ANPRM and NPRM stage, commented on the unreliability of the devices, these comments generally addressed either the failure of the railroads to properly perform the calibrations or the misuse of the devices.

(1) FRA is interested in information and operating experiences regarding the reliability and accuracy of recently manufactured EOTs.

G. Cost/Benefit Information

Based on information collected and additional research conducted subsequent to the issuance of the NPRM, FRA has updated its Regulatory Impact Analysis regarding 2-way EOTs. See FRA's Regulatory Impact Analysis: Two-way End-of-Train Devices. (This document will be distributed to all interested parties at the public regulatory conference, or copies may be

obtained by contacting the individuals previously identified.) FRA currently estimates that the proposed requirements regarding 2-way EOTs would cost the industry approximately \$214 million over 20 years at a 7 percent discount rate. This estimate is based on the following assumptions: (i) unit purchase and installation cost of \$7,000 per unit (front and rear); (ii) annual maintenance and calibration cost of \$415 per unit; (iii) Class I railroads would be required to purchase 16,375 units; and (iv) Class II and Class III railroads would be required to purchase 1,096 units.

Although FRA did not quantify the safety benefits that would be achieved

by requiring 2-way EOTs in its original Regulatory Impact Analysis of the NPRM, FRA is in the process of developing an analysis to include safety benefits of the proposed requirements. See FRA's Regulatory Impact Analysis: Two-way End-of-Train Devices. FRA currently estimates that the quantifiable safety benefits from the proposal would be approximately \$46 million over 20 years at a 7 percent discount rate. However, it should be noted that the benefits currently estimated by FRA are extremely conservative and are based on a limited number of cost factors arising as a result of an accident. FRA's conservative benefit estimate does not

capture many of the costs associated with an accident such as: wreck clearance; damage to lading; train delay, emergency response, or environmental clean-up. FRA looks forward to receiving information and suggestions from commenters on methods for capturing or estimating these additional costs. FRA's Office of Safety, Accidents Reports Division, has identified 26 accidents since 1990 which potentially could have been prevented had the trains been equipped with 2-way EOTs. The accidents and railroad property damages associated with the potentially preventable accidents are contained in Table 1 below.

TABLE 1—POTENTIALLY PREVENTABLE ACCIDENTS*

Date	Place	Listed Cause**	Injuries	Fatalities	RR Property updated to 12/95 \$	Rate of effectiveness	Accidents preventable Benefit
900429	Yardley, WA	Automatic Brake, other improper use.	1	0	\$46,560	0.9	\$41,904
901004	Devore, CA	Use of brakes, other	0	0	7,857	0.9	7,071
901022	Esbon, KS	use of brakes, other	1	0	90,016	0.9	81,014
900517	Nampa, WY	Obstructed brake pipe	0	0	151,319	0.9	136,187
910918	Spague, WA	Obstructed brake pipe	0	1	4,275,873	0.9	3,848,286
910304	Waterfall, WY	Use of brakes, other	2	0	980,075	0.5	882,068
910304	Waterfall, WY	Use of brakes, other	0	0	646,407	0.5	581,767
911021	Vernon, IA	Other brake defects, cars	0	0	24,755	0.5	22,280
920307	Kansas City, MO.	Obstructed brake pipe	2	0	430,432	0.9	387,389
920307	Kansas City, MO.	Obstructed brake pipe	0	0	61,875	0.9	55,688
920611	Money, MS	Improper operation of line air	0	0	224,778	0.5	202,300
920611	Money, MS	Improper operation of line air	2	0	452,334	0.5	407,101
920913	Benton, WY	Other brake defects, loco	0	0	15,579	0.5	14,021
921016	Sterling, IL	Other brake defects, loco	0	0	148,998	0.5	134,098
921203	Hillcrest, ID	Automatic brake, insufficient	2	0	7,071	0.5	6,364
921203	Hillcrest, ID	Automatic brake, insufficient	0	0	71,819	0.5	64,638
931001	Keystone, NB	Obstructed brake pipe	0	0	10,572	0.9	9,515
931001	Keystone, NB	Obstructed brake pipe	2	0	2,642,466	0.9	2,378,219
931004	Faust, UT	Use of brakes, other	0	0	14,801	0.9	13,321
931011	Fulton, KY	Improper operation of line air	0	0	3,172	0.5	2,854
931011	Fulton, KY	Improper operation of line air	0	0	11,418	0.5	10,276
931221	Wood, IA	Improper operation of line air	0	0	321,600	0.5	289,440
931221	Wood, IA	Improper operation of line air	0	0	106,936	0.5	96,242
931223	Grenada, MS	Improper operation of line air	0	0	5,815	0.5	5,233
931223	Grenada, MS	Improper operation of line air	0	0	5,286	0.5	4,757
940909	Cajon, CA	Automatic brake other improper use.	0	0	73,331	0.9	65,998
940909	Cajon, CA (San B).	Automatic brake, insufficient	0	0	2,353	0.9	2,117
941214	Cajon, CA	Obstructed brake pipe	1	0	1,293,484	0.9	1,164,135
941214	Cajon, CA	Obstructed brake pipe	2	0	2,765,060	0.9	2,488,554
950209	Nelsons, WI	Use of brakes, other	0	0	25,025	0.9	22,522
950209	Nelsons, WI	Use of brakes, other	1	0	5,702	0.9	5,132
950406	Argonne, MI	Improper operation of line air	0	1	268,798	0.9	241,918
960201	Cajon, CA	Unknown	1	2	Unknown		Unknown
TOTAL			17	4	16,540,459		14,886,413

* A double entry showing more than one accident on the same date and at the same location indicates that the equipment or other property of two railroads were involved.

** Cause listed in the Rail Equipment Accident/Incident Report filed with FRA, pursuant to 49 CFR Part 225, by the railroad involved.

The accidents range in severity from those having very little monetary damages to those involving death, serious injury, the release of hazardous

materials and the subsequent closure of a major federal highway and evacuation of a nearby town. The values for railroad property and track damages are shown

updated to December 1995 dollars using the Engineering News Record index for heavy machinery and equipment.

Furthermore, there is a wide variety of qualitative safety benefits which could be gained from prevention of accidents by using 2-way EOTs. These types of qualitative benefits would include risk reduction of accidents involving hazardous materials and the associated costs, as well as reduced anxiety for residents of communities along railroad tracks, a safer environment for their families, and improved quality of life. Unfortunately, we do not have the type of information necessary to quantify the safety impact of many of these elements.

(1) Are the assumptions used by FRA in its updated Regulatory Impact Analysis valid?

(2) What is the current purchase and installation cost of a 2-way EOT required by FRA's proposal?

(3) Are the estimated annual maintenance costs accurate?

(4) Is FRA's estimate of the number of units required to be purchased accurate? How many 2-way units are currently in operation? How many are currently on order with a manufacturer?

(5) What is the en route failure rate of 2-way devices currently in use?

(6) What is the average useful life of currently available 2-way EOTs? Front units? Rear units?

(7) What is the estimated cost per hour of delay for a given train?

(8) On average, how long does it take to calibrate newer (post-1992) 2-way EOTs?

(9) Should any of the accidents/incidents identified in Table 1 not be considered potentially preventable? Why? Are there other accidents/incidents, not identified in Table 1, occurring since 1990 that should be added to the list of potentially preventable accidents/incidents? Provide specifics.

(10) FRA's ability to analyze accident/incident costs contained in Table 1 has been limited to data supplied by the industry. This information does not include costs such as wreck clearance, damage to lading, train delay, emergency response, and environmental cleanup. Consequently, FRA encourages commenters to provide any suggestions or information they have for capturing, or estimating, these additional costs.

H. Compliance Plans

Unlike most FRA safety rulemaking proceedings, this proceeding is principally concerned with defining exceptions to an otherwise absolute statutory command. Thus, whatever the final rule may provide, railroads must plan well in advance of December 31, 1997 (the date by which the statute requires all covered trains to be equipped with 2-way EOTs) to procure

large numbers of 2-way EOTs, equip their trains with them, and train their employees to install, maintain, and use them. FRA, therefore urges railroads to immediately begin acquiring and equipping trains with 2-way EOTs to enhance the safety of their operations rather than waiting until the issuance of the final rule. FRA is interested in knowing in the greatest detail available what plans railroads currently have in place for complying with the statute.

Issued in Washington, D.C., on February 15, 1996.

Jolene M. Molitoris,
Administrator.

[FR Doc. 96-4017 Filed 2-20-96; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95-87; Notice 1]

RIN 2127-AF78

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to Standard No. 108, the Federal motor vehicle standard on lighting, which would adopt new photometric requirements for motorcycle headlamps and which would improve the objectivity of the aiming of their upper beam. The new photometric requirements would be those of Society of Automotive Engineers (SAE) Standard J584 OCT93, added as a new Figure 31 to Standard No. 108. They would exist simultaneously with the current photometric requirements of SAE J584 April 1964, for a short time, and would become mandatory between two and four years after issuance of the final rule. When being tested for photometric compliance with Figure 31, the upper beam of motorcycle headlamps would be aimed photoelectrically rather than visually, as at present.

The amendments should enhance motor vehicle safety by improving visibility for the motorcycle operator, and detectability of his or her machine.

DATES: Comments are due April 22, 1996.

ADDRESSES: Comments should refer to Docket No. 95-87; Notice 1 and be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW.,

Washington, DC 20590. Docket hours are from 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Safety Performance Standards, NHTSA (Tp: 202-366-5276; FAX: 202-366-4329).

SUPPLEMENTARY INFORMATION: Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, specifies requirements for motorcycle headlamps. Principally, these are the specifications of SAE Standard J584 April 1964, which have been incorporated by reference into Standard No. 108.

Motorcycle safety remains a principal concern of NHTSA. There are over 6 times as many motorcycles on the road today as there were 35 years ago. Figures from the National Center for Health Statistics (NCHS), Department of Health and Human Services, and State Accident Summaries show 574,000 registered motorcycles in 1960, as compared with 3,718,127 in 1994, according to the Fatal Accident Reporting System (FARS). During roughly the same period, the annual number of motorcycle fatalities increased slightly, from 2,170 in 1967, according to the NCHS, to 2,304 in 1994, as indicated in the FARS.

The Motorcycle Industry Council (MIC) has petitioned for rulemaking to amend Standard No. 108 to allow SAE Standard J584 OCT93 as an alternative to SAE J584 April 1964. According to MIC, motorcycle headlamps designed to conform to SAE J584 April 1964 have difficulty in providing sufficient lower beam illumination directly in front of the motorcycle, a need met by SAE J584 OCT93. Further, adoption of the 1993 requirements would allow manufacturers to install the same headlamp design on motorcycles sold in the United States as are currently being installed on motorcycles sold in 50 other countries.

Although NHTSA has granted MIC's petition, SAE J584 OCT93 is inappropriate for incorporation in full because it divides motorcycles into classes and sets forth different specifications applicable to particular classes. In Standard No. 108, NHTSA regulates motorcycles as a single class, with some requirements applicable to a sub-category of smaller, less powerful machines called "motor driven cycle". Further, the permanent co-existence of two SAE standards, which prescribe different minima for the same test points, would undermine efforts to enforce the new, higher set of requirements.

Upon review, NHTSA has tentatively concluded that adoption of the