Regulatory Flexibility Act

Removal of these rules will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

List of Subjects in 48 CFR Parts 5243 and 5252

Government procurement.

Dated: April 22, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

Under the authority of Sec. 810 of Pub. L. 105–85, and for the reasons set forth in the preamble, remove and reserve part 5243 and Sections 5252.243–9000 and 5252.243–9001 of title 48 of the Code of Federal Regulations.

[FR Doc. 98–11592 Filed 4–30–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9, Notice No. 11]

RIN 2130–AB22

Two-Way End-of-Train Telemetry Devices and Certain Passenger Train Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is revising the regulations regarding the use and design of two-way end-of-train telemetry devices (two-way EOTs) to specifically address certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train's consist. Trains of this nature are currently being operated by the National Railroad Passenger Corporation (Amtrak), and these revisions are intended to clarify and address the applicability of the two-way EOT requirements to these types of operations.

EFFECTIVE DATE: This rule is effective May 1, 1998.

ADDRESSES: Any petition for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS–14, FRA, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20590 (telephone 202–632–3367), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

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 trains pursuant to 1992 legislation, and by establishing minimum performance and operational standards related to the use and design of the devices. *See* Pub. L. No. 102–365 (September 3, 1992); 49 U.S.C. 20141.

The regulations published on January 2, 1997, regarding two-way EOTs, provided an exception from the requirements for ''passenger trains with emergency brakes.'' *See* 49 CFR 232.23(e)(9). The language used in this exception was extracted in total from the statutory exception contained in the statutory provisions mandating that FRA develop regulations addressing the use and operation of two-way EOTs or similar technology. *See* 49 U.S.C. 20141(c)(2). A review of the legislative history reveals that there was no discussion by Congress as to the precise meaning of the phrase ''passenger trains with emergency brakes.'' Consequently, FRA is required to effectuate Congress' intent based on the precise language used in that and the other express exceptions and based on the overall intent of the statutory mandate. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Furthermore, any exception contained in a specific statutory mandate should be narrowly construed. *See Chesapeake & Ohio Ry.* v. *United States,* 248 F. 85 (6th Cir. 1918) *cert. den.*, 248 U.S. 580; *DRG R.R.* v. *United States,* 249 F. 822 (8th Cir. 1918); *United States* v. *ATSF Ry.*, 156 F.2d 457 (9th Cir. 1946).

The intent of the statutory provisions related to two-way EOTs was to ensure that trains operating at a speed over 30 mph or in heavy grade territory were equipped with the technology to effectuate an emergency application of the train's brakes starting from both the front and rear of the train. The specific exceptions contained in the statute were aimed at trains (i) that do not operate within the express parameters or (ii) that are equipped or operated in a fashion that provides the ability to effectuate an emergency brake application that commences at the rear of the train without the use of a two-way EOT. *See* 49 U.S.C. 20141(c)(1)–(c)(5). Based on the intent of the statute and based upon a consistent and narrow construction of the specific language used by Congress in the express exceptions, FRA believes it is clear that Congress did not intend the phrase ''passenger trains with emergency brakes'' to constitute a blanket exception for all passenger trains. If that was Congress' intent, it would not have added the qualifying phrase ''with emergency brakes.''

In FRA's view, this language limits the specific statutory exception to passenger trains equipped with a separate emergency brake valve in each car throughout the train and, thus, to passenger trains possessing the ability to effectuate an emergency application of the train's brakes from the rear of the train. Therefore, passenger trains that include RoadRailers®, auto racks, express cars, or other similar vehicles designed to carry freight that are placed at the rear of the train, that are not equipped with emergency brake valves, would not fall within the specific statutory or regulatory exception as they are incapable of effectuating an emergency brake application that commences at the rear of the train. Further, FRA does not believe that Congress envisioned a significant number of express or intermodal cars being hauled at the rear of passenger trains when the specific exception was included in the statute.

FRA believes that Congress intended to except only those trains traditionally considered to be passenger trains, which would include passenger trains containing baggage and mail cars as these have consistently been considered passenger equipment with emergency brakes. However, passenger trains which operate with numerous inaccessible baggage or mail cars attached to the rear of the train that lack any ability to effectuate an emergency brake application from the rear of the

train would, in FRA's view, fall outside the specific statutory and regulatory exception for ''passenger trains with emergency brakes.''

Subsequent to the issuance of the final rule on two-way EOTs published on January 2, 1997 and the period permitted for the submission of petitions for reconsideration of that rule, Amtrak raised concerns regarding the applicability of the final rule to some of its passenger train operations, particularly those which recently began to operate with numerous express, material handling cars, or RoadRailers® entrained in the consist. These concerns focused on FRA's enforcement guidance provided to its field inspectors, which stated that the exception for ''passenger trains with emergency brakes'' was intended to apply only to trains traditionally considered to be passenger trains, a category that would include passenger trains containing a limited number of baggage and mail cars at the rear of the train. This guidance was based on the reasoning provided in the preceding discussion. Amtrak contended that FRA's interpretive guidance was an improper reading of the statutory and regulatory exception and did not adequately consider the superior braking capabilities of passenger equipment. Although FRA disagrees that its guidance was improper, FRA did agree that a closer examination of the applicability of the two-way EOT requirements to passenger trains needed to be performed in light of the superior braking ratios of passenger cars and the presence of emergency brake valves on the passenger cars in mixed train consists, which provide certain safety assurances that are not present in traditional freight operations. Consequently, FRA agreed that the mixed passenger and ''express'' service currently being operated by Amtrak is unique and needed to be handled separately from traditional freight operations.

Amtrak currently operates a number of trains that include numerous material handling cars, express cars, auto racks, mail cars, and/or RoadRailer® equipment. These types of rolling equipment are either not equipped with emergency brake valves or, if equipped with such valves, they are not accessible to any member of the train crew.

Amtrak expects that the operation of this type of rolling equipment will continue to grow and that many of its trains will eventually have a number of these vehicles in their consists. As noted above, FRA believes that a passenger train operated with this rolling equipment falls outside the statutory and regulatory exception to the two-way EOT requirement for ''passenger trains with emergency brakes,'' and thus, would be required under the existing rules to be equipped with an operative two-way EOT or alternative technology. However, FRA also recognizes the unique nature of these types of mixed operations and realizes that the safety assurances provided by the braking ratios and the presence of emergency brake valves at various locations through much of the consist on certain mixed passenger trains make requiring the use of a two-way EOT unnecessary.

To gain a perspective on the stopping characteristics and safety implications of the mixed passenger train operations, FRA requested the Volpe National Transportation Systems Center (Volpe) to review the information and procedures used by Amtrak in developing various stopping distance calculations submitted to FRA. In addition, FRA requested that Volpe develop and analyze its own data regarding these types of mixed passenger trains. In making their calculations, both Volpe and Amtrak used variables of grade; train configuration; and the number, weight, and types of cars and locomotives expected to be used in these types of operations. Although all of the calculations were based on worse-case scenarios (e.g., the angle cock was assumed to be closed just behind the last car with an accessible emergency brake valve, and only friction braking—tread or disc brakes of locomotives and cars—was considered available to stop the train), all stops were achieved on the specified grade used in the calculation.

In making its calculations Volpe used a MathCad program to compute stopping distances. Volpe used the results of its calculations as a check against the results Amtrak had produced and submitted to FRA. Volpe concluded that Amtrak's procedures predicted longer (more conservative) stopping distances than the approach taken by Volpe. Amtrak's results were also compared to the requirements of the Amtrak Communication and Signal Department, Specification S–603, Curve 8, which is used to determine stopping distances for passenger equipment for signal block spacing. Curve 8 values for stopping distances are augmented by a factor of 25 percent to account for conditions which may impair brake performance. The absolute (actual) signal block spacing on the Northeast Corridor is actually greater than any of the stopping distances produced by either Volpe or Amtrak in their calculations. Therefore, stopping distances within established signal blocks should not be a problem. The process Amtrak used was sufficiently conservative so that predicted stopping distances were greater than would be experienced in reality. Nevertheless, FRA worked with Amtrak to define further limitations adequate to ensure safety under identified worst-case conditions, and these limitations were set forth in this proposal.

Based on the information provided by Amtrak and the independent calculations conducted by Volpe, FRA published an NPRM on January 16, 1998, proposing to revise the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist. *See* 63 FR 2647 (January 16, 1998). In the NPRM, FRA stated that swift action was necessary with regard to the provisions proposed and that a lengthy comment period would be impracticable, unnecessary, and contrary to the public interest. It was noted that a number of freight railroads were expressing concern and apprehension over permitting these mixed passenger trains to operate over their rails in light of FRA's above-mentioned interpretive guidance. In fact, at least one instance was found in which a mixed Amtrak train was detained for six hours by a freight railroad until a two-way EOT was applied because the freight railroad refused to permit the train to operate without the device. FRA also believed that requiring Amtrak to acquire a number of two-way EOTs and operate under the provisions of the current regulatory scheme during a lengthy comment period would impose a substantial and unwarranted financial and operational burden without improving the safety of Amtrak operations. Furthermore, the proposals contained in the NPRM included certain restrictions on the operation and make-up of certain passenger trains that were proposed for exception from the two-way EOT requirements, restrictions that FRA believe will enhance the safety of those operations and that are not currently mandated.

In addition to the concerns discussed above, FRA also believed that swift action was necessary because Amtrak is continuing to take delivery of express and other equipment and to build this line of business in order to close its operating deficit and to support continued intercity rail passenger service in a time of declining support from the public treasury. The public's interest in continued rail passenger service warrants reasonable flexibility to achieve this business objective. This

development corresponded with the implementation of two-way EOT requirements, rapidly complicating what appeared at the outset to be a relatively straightforward issue. Prior to the effective date of the two-way EOT rule, Amtrak implemented a two-way EOT system on its AutoTrain, previously the only Amtrak train operated with any significant number of unoccupied cars at the rear of the train. Anticipating the need to equip other trains as the express business grows, Amtrak is in the process equipping over 100 locomotives and deploying rear-end units at appropriate points along its lines where trains are built. Amtrak also committed to FRA to operate cars with cables for head-end power transmission (such as mail and baggage cars) at the front of trains where practicable given constraints on loading and unloading, in order limit the number of cars to the rear of the train that are beyond the last car with an accessible emergency valve. However, as Amtrak's express service grows and Amtrak builds trains responsive to that growth (a phenomenon that is well underway), there is an increased danger that Amtrak's own internal policies for use of available two-way EOT systems would not be honored in the field through oversight. Thus, FRA believed that having clear and certain Federal requirements regarding the use of two-way EOTs were essential to public safety.

Based on the concerns noted above, FRA issued the NPRM with a comment period of only 15 days in order to quickly address the applicability of the two-way EOT requirements to mixed passenger train operations. FRA made clear that if no substantive adverse comments were received on the NPRM within the 15-day comment period, it would immediately issue a final rule containing the provisions of the proposal. FRA also made clear in the NPRM that it intended for any final rule issued to take effect immediately upon publication.

Written comments on the NPRM have been received from Amtrak, Consolidated Rail Corporation (Conrail), and the Brotherhood of Locomotive Engineers (BLE). The relatively brief comments received from Amtrak and Conrail do not substantively affect the approach taken in the NPRM and primarily relate to clarifying the language used in the proposed provisions of the NPRM or the discussion contained in the section-by-section analysis of the NPRM. Therefore, these specific comments will be directly addressed in the section-by-section analysis of this final rule. In Amtrak's written comments, Amtrak also requests that trains consisting of six or fewer mail or express cars be specifically excepted from the requirements for the use of a two-way EOT. As the NPRM and this final rule are specifically and narrowly focused on mixed passenger train operations, FRA believes that this rulemaking is not the appropriate forum for addressing Amtrak's request. Furthermore, such a request has much broader industry-wide implications than the issues addressed in this rulemaking and would involve consideration of additional safety concerns and the performance of detailed research not focused on or contemplated in this proceeding.

In its written comments, Conrail raises a concern regarding the responsibility and potential liability of a host railroad if a passenger train operates on its line while not in compliance with the requirements of this rule. The responsibilities of the host railroad with regard to this rule are the same as they are for any of the requirements contained in part 232. *See* 232.0(e). As a matter of policy, enforcement actions for noncompliance with this rule will generally be imposed on the railroad or individuals responsible for the operation of the train (i.e., Amtrak in most cases), unless the host railroad causes the violation of such requirements.

The BLE submitted brief written comments on the NPRM, generally objecting to any amendments to the two-way EOT regulations. The BLE agrees with FRA that Congress did not discuss the potential for mixed passenger train operations and generally asserts that when passenger equipment is used in conjunction with freight equipment it should be equipped with a two-way EOT. The BLE does not provide any specific data or cite to any potential safety or operational problems involved with excepting certain mixed passenger trains from the requirements for use of a two-way EOT. Furthermore, the BLE does not object either to the data assembled and assessed by FRA regarding mixed passenger trains or to the additional safety assurances that exist on these types of trains that are not present in traditional freight operations. Consequently, based on the discussion above and contrary to the broad assertions of the BLE, FRA believes that it would be in the public interest and that there is more than sufficient safety justification for excepting certain mixed passenger trains from the requirements related to the use of two-way EOTs.

After reviewing the above noted comments received on the NPRM, FRA concludes that no substantive adverse comments have been provided that cause FRA to further consider or delay the implementation of the requirements proposed in the NPRM. Furthermore, FRA has received no requests for a public hearing on the NPRM. Consequently, the final rule that is being issued by FRA revising the regulations on two-way EOTs to specifically address certain passenger train operations where numerous freight-type cars, material handling cars, or express cars are part of a train's consist is virtually identical to the proposal contained in the NPRM published on January 16, 1998.

Section-by-Section Analysis

FRA is amending § 232.23 by revising paragraphs (e) and (g) and by adding a new paragraph (h) to specifically address passenger train operations that include using cars that do not have readily accessible emergency brake valves.

Paragraph (e) of § 232.23 contains a listing of the trains that are excepted from the two-way EOT requirements. Conforming changes have been made to paragraphs (e)(8) and (e)(9). In paragraph (e)(9) FRA retains the exception for passenger trains in which all of the cars in the train are equipped with a readily accessible emergency brake valve, as discussed in detail above.

In paragraph (e)(10) FRA adds an exception to the requirements regarding two-way EOTs for passenger trains that operate with a car placed at the rear of the train that is equipped with an emergency brake valve readily accessible to a crew member in radio communication with the locomotive engineer of the train. FRA intends for this exception to be applicable to passenger trains containing cars that do have a readily accessible emergency brake valve at the rear of the train. FRA believes this exception is justified as it is virtually identical to the exception granted to freight trains with an occupied caboose (contained in paragraph (e)(3)) since it would permit an emergency application of brakes to be initiated from the occupied car at the rear of the passenger train.

In paragraph (e)(11) FRA provides an exception for certain passenger trains that have cars placed at the rear of the train that do not have readily accessible emergency brake valves. This exception is intended to recognize the safety of these types of trains if configured and operated in accordance with the provisions of this exception. The exception contained in this subparagraph applies only to trains of twenty-four (24) cars or fewer. Therefore, passenger trains that have

more than 24 cars in the consist and that do not fall within the exceptions contained in subparagraphs (e)(9) or (e)(10) would be required to be equipped with an operative two-way EOT device or alternative technology. It should be noted that a locomotive that is used for power and/or controlling purposes and is not designed to carry passengers will not be considered a car for purposes of these calculations. Therefore, locomotives hauled dead in tow would be required to be counted as a car for purposes of these calculations.

In the NPRM, FRA proposed that each bogie used in RoadRailer® operation be counted as a car for purposes of calculating the number of cars in a passenger train consist. *See* 63 FR 2649. In its written comments, Amtrak objected to this method of calculating the number of cars in a train as it would artificially inflate the number of cars in a train. Amtrak stated that a string of RoadRailer® equipment will always have at least one more bogie than the total number of RoadRailer® vans since bogies include at least one couplermate. It was not FRA's intention to artificially inflate the number of cars in the train by proposing such a method of calculation. FRA's use of the term ''bogie'' was intended to refer to the intermediate bogies not the couplermates. However, after consideration of Amtrak's comments, FRA believes it would be confusing and possibly lead to incorrect calculation of the number of cars in a train if bogies are used as the determining factor. Consequently, in order to avoid confusion and clarify the intent of the final rule, FRA will calculate the number of cars in a train containing RoadRailer® equipment by counting each RoadRailer® van as a car. It should be noted that this method of calculation is solely for the purpose of applying the exception contained in this paragraph. In order to accurately calculate the percentage of operative brakes pursuant to §§ 232.1 and 232.12, it is necessary to consider the brakes on all the bogies in the train.

Based on data and information submitted by Amtrak and reviewed by Volpe and based upon Volpe's independent analysis regarding passenger train braking ratios and the response of passenger train brakes, FRA believes that certain mixed passenger trains can be safely operated without being required to be equipped with a two-way EOT or alternative technology, provided certain operational and train configuration restrictions are maintained. Paragraph (e)(11)(i) requires that if the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a consist containing twelve (12) cars, the sixth (6th) car (or a car closer to the rear) in the consist must have a readily accessible emergency brake valve; likewise, in an eleven (11) car consist, the sixth (6th) car (or a car closer to the rear) must have a readily accessible emergency brake valve, since all half numbers will be rounded up. Paragraph (e)(11)(ii) requires that if the total number of cars in a passenger train consist is from thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member. For example, in a twenty-one (21) car consist, the fourteenth (14th) car (or a car closer to the rear) must have a readily accessible emergency brake valve.

In addition to these train-configuration requirements, paragraphs (e)(11)(iii) and (iv) contain certain operating requirements that must be followed by any passenger train operating pursuant to this specific exception. Such trains are required to have a train crew member occupy the rearmost car equipped with a readily accessible emergency brake valve and remain in constant radio communication with the locomotive engineer whenever the train is operating over a section of track with an average grade of two percent or higher over two continuous miles. FRA recommends that the engineer alert the train crew member approximately ten (10) minutes prior to descending the heavy grade, so the crew member will be in place at the crest of the grade. Furthermore, the final rule requires that the crew member not leave his or her position until the locomotive engineer advises that the train has traversed the grade. FRA believes that these operational requirements will ensure that immediate action can be taken by a member of the train crew to effectuate an emergency brake application whenever the train is descending a heavy grade.

FRA is also amending paragraph (g) to indicate that the operating limitations that will be imposed on a passenger train required to be equipped with a two-way EOT that experiences an en route failure of the device will be contained in paragraph (h). It should be noted that FRA intends the criteria contained paragraph (g) for determining when a loss of communication between the front and rear units will be considered an en route failure to be applicable to passenger train operations.

Paragraph (h) contains the operational limitations and restrictions that are being placed on passenger trains that experience en route failures of two-way EOTs. Conrail, in its written comments, voiced concern that the language contained in the proposed rule text did not accurately reflect the operating restrictions discussed in the preamble. Consequently, in this final rule FRA has rewritten and reorganized paragraph (h) to make it more understandable and to clarify FRA's intent.

Due to the time-sensitive nature of passenger operations, FRA believes that placing a speed restriction on passenger trains is not the most effective method of handling en route failures of a two-way EOT. Rather than delaying the movement of a passenger train that experiences an en route failure of a device, FRA believes that certain operating restrictions can be imposed on the train and its crew to ensure the safety of these trains, particularly in non-heavy-grade territory. However, FRA believes that in order to realize the benefits of a two-way EOT as contemplated by Congress, the device must be operative when the train descends a heavy grade. Thus, FRA will only permit a passenger train to continue to operate under the operating restrictions contained in this paragraph in other than heavy grade territory. Consequently, paragraph (h)(1) has been slightly modified from the NPRM and is intended to strictly prohibit a passenger train that is required to be equipped with an operable device, from descending an average grade of two percent or more for two continuous miles until an operable device is installed or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

Paragraph (h) has been further modified to make clear that the operating restrictions contained in paragraph (h)(2) are applicable to all passenger trains that experience en route failures of the two-way EOT and that are operating on other than heavy grade territory (i.e., two percent for two continuous miles). Paragraph (h)(2) is intended to permit passenger trains that develop an en route failure of the two-way EOT to continue to operate over track that is not in heavy grade territory as long as a crew member occupies the rearmost car with a readily accessible emergency brake valve and remains in constant radio communication with the locomotive engineer. In addition, FRA believes that since the train no longer

has the safety assurances provided by a two-way EOT, the engineer must periodically test the braking characteristics of the train by making running brake tests. If the engineer suspects the brakes are not functioning properly, immediate action shall be taken to bring the train to a stop until corrections can be made. Paragraph (h)(3) requires that all en route failures of the devices must be corrected either at the next location where the necessary repairs can be made or at the next location where a required brake test of the train is to be conducted, whichever point the train arrives at first.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that this final rule does not constitute a significant rule under either Executive Order 12866 or DOT's policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the requirements contained in this final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA has concluded that there are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This final rule does not change any information collection requirements.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this final rule does not have any effect on the quality of the environment.

Federalism Implications

This final rule does not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 232

Penalties, Railroad power brakes, Railroad safety, Reporting and recordkeeping requirements, Two-way end-of-train devices.

The Rule

In consideration of the foregoing, FRA amends part 232, title 49, Code of Federal Regulations as follows:

PART 232—RAILROAD POWER BRAKES AND DRAWBARS

1. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102, 20103, 20107, 20108, 20110–20112, 20114, 20133, 20141, 20301–20304, 20701–20703, 21301, 21302, 21304, and 21311; and 49 CFR 1.49(c), (g), and (m).

2. Section 232.23 is amended by revising paragraphs (e) introductory text, (e)(8), and (e)(9) and adding a new sentence to the beginning of the introductory text of paragraph (g), and adding new paragraphs (e)(10), (e)(11), (g)(2) and (h) to read as follows:

§ 232.23 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(e) *Exceptions.* The following types of trains are excepted from the requirement for the use of a two-way end-of-train device:

* * * * *

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

(9) Passenger trains in which all of the cars in the train are equipped with an emergency brake valve readily accessible to a crew member;

(10) Passenger trains that have a car at the rear of the train, readily accessible to one or more crew members in radio contact with the engineer, that is equipped with an emergency brake valve readily accessible to such a crew member; and

(11) Passenger trains that have twenty-four (24) or fewer cars (not including locomotives) in the consist and that are equipped and operated in accordance with the following train-configuration and operating requirements:

(i) If the total number of cars in a passenger train consist is twelve (12) or fewer, a car located no less than halfway through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(ii) If the total number of cars in a passenger train consist is thirteen (13) to twenty-four (24), a car located no less than two-thirds (⅔) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until the train has completely traversed the heavy grade.

* * * * *

(g) *En route failure of device on a freight or other non-passenger train.* Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph. * * *

* * * * *

(2) [Reserved]

(h) *En route failure of device on a passenger train.* (1) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train or an alternative method of initiating an emergency brake application from the rear of the train is achieved.

(2) Except as provided in paragraph (h)(1) of this section, a passenger train

required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(i) A member of the train crew shall be immediately positioned in the car which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer; and

(ii) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(3) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, ''Schedule of Civil Penalties,'' is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
* *	* *	*
232.23 Operating standards:		
* *	* *	*
(g) En route failure, freight or other non-passenger	5,000	7,500
(h) En route failure, passenger	5,000	7,500
* *	* *	*

Issued in Washington, D.C., on April 24, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–11408 Filed 4–30–98; 8:45 am]

BILLING CODE 4910–06–P