payment methods through periodic notice in the **Federal Register**. Paragraph (c)(4) is being redesignated as (c) and revised to allow the Data Bank the flexibility: (1) to streamline and automate its approach to fee collection; and (2) to offer a greater variety of payment options to its users, thereby improving customer service. Paragraphs (c)(1), (2), and (3) are deleted.

Justification for Omitting Notice of Proposed Rulemaking

Since these amendments to the Data Bank regulations are of a technical nature and only amend the regulations to reflect the fee payment practices of the Data Bank, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective data of these regulations.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, or incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issue, require special analysis.

The Department believes that the resources required to implement the requirements in these regulations are minimal. This final rule simply removes restrictions on the number of options available to users of the Data Bank. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a ''significant'' rule under Executive Order 12866.

Paperwork Reduction Action of 1980

These amendments do not affect the recordkeeping or reporting requirements in the existing regulations for the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners.

List of Subjects in 45 CFR Part 60

Health professions, Insurance companies, Malpractice, Reporting and recordkeeping requirements.

Dated: April 11, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: May 19, 1995.

Donna E. Shalala,

Secretary.

Accordingly, 45 CFR part 60 is amended as set forth below:

PART 60— NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152.)

2. Section 60.12 is amended by revising paragraph (c) to read as follows:

§ 60.12 Fees applicable to requests for information.

* * * * *

(c) *Assessing and collecting fees.* The Secretary will announce through notice in the **Federal Register** from time to time the methods of payment of Data Bank fees. In determining these methods, the Secretary will consider efficiency, effectiveness, and convenience for the Data Bank users and the Department. Methods may include: credit card; electronic fund transfer; check; and money order.

[FR Doc. 95–12907 Filed 5–25–95; 8:45 am]

BILLING CODE 4160–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–51; RM–8466]

Radio Broadcasting Services; Mamou and Jonesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a petition for reconsideration filed by Simla B. Ellis, d/b/a SoTo Broadcasting, permittee of Station KAHK(FM), Channel 266A, Mamou, Louisiana. The Commission substitutes Channel 266C3 for Channel 266A at Mamou, Louisiana, and modifies the construction permit of Station KAHK(FM) to specify operation on the higher powered channel. To accommodate the upgrade at Mamou, the Commission also substitutes Channel 286A for vacant Channel 266A at Jonesville, Louisiana. *See* 59 FR 51153, October 7, 1994. Both channels can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 266C3 at Mamou has a site restriction of 12.2 kilometers (7.6 miles) east to accommodate Ellis' desired site. The coordinates for Channel 266C3 at Mamou are North Latitude 30–39–42 and West Longitude 92–17–52. The coordinates for Channel 286A at Jonesville are North Latitude 31–35–38 and West Longitude 91–45–23.

With this action, this proceeding is terminated.

EFFECTIVE DATE: July 7, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Report*, MM Docket No. 94–51, adopted May 11, 1995, and released May 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sec. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 266A and adding Channel 266C3 at Mamou; and by removing Channel 266A and adding Channel 286A at Jonesville.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–12959 Filed 5–25–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. LI–7; Notice 6]

RIN 2130–AA53

Event Recorders

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration, FRA is amending its regulation on event recorders. FRA is removing the requirement that, following an accident reportable to the National Transportation Safety Board, the railroad must refrain from extracting or analyzing event recorder data for a period of 8 hours or until that agency notifies the railroad that it will not conduct an investigation, whichever comes first. FRA is also amending the definition of ''lead locomotive'' to provide greater latitude for the location of event recorders and is simplifying the requirements for removing event recorders from service.

DATES: This rule is effective May 26, 1995. The final rule, as published in the **Federal Register** for July 8, 1993 (58 FR 36605), was effective November 5, 1993. The date for compliance with the duty to have an in-service event recorder in the lead locomotive of any train operated faster than 30 miles per hour (§ 229.135(a)) is May 5, 1995.

FURTHER INFORMATION CONTACT: Rolf Mowatt-Larssen, Chief, Motive Power and Equipment Division, Office of Safety Enforcement, RRS–14, Room 8326, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–4094), or Thomas A. Phemister, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0635).

SUPPLEMENTARY INFORMATION: On July 8, 1993, FRA published a Final Rule in this docket in the **Federal Register**. 58 FR 36605. That rule requires trains operated at speeds in excess of 30 miles per hour to be equipped with an event recorder in the lead locomotive, requires maintenance of event recorders, and requires post-accident security for data in the recorder. FRA received petitions for reconsideration and requests for clarification from several parties. This notice is the agency's response, arranged by topic.

Compliance Date

The original publication of this rule included a mistakenly calculated date for compliance with the duty to equip the lead locomotive on a train operated faster than 30 miles per hour. A correction was published in the **Federal Register** for July 28, 1993 (58 FR 40468), but that correction has not been published in the bound volume of the Code of Federal Regulations. The correct date for compliance with the duty to equip locomotives was 18 months after the effective date of the final rule in this docket, or May 5, 1995. This notice rewrites § 229.135(a) to include that date.

Post-Accident Data Security

On July 8, 1993, FRA published a Final Rule in this docket in the **Federal Register**. 58 FR 36605. That rule, at § 229.135(d)(1), stated

Accidents Reportable to the National Transportation Safety Board. If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to the National Transportation Safety Board (see 49 CFR Part 840), the railroad using the locomotive shall make no attempt, except by the direction of a representative of the Board, or as may be necessary to preserve the data from destruction, to extract or analyze the recorded data until 8 hours have passed from the time the accident is reported to the National Response Center, or until the Board declares that it will not conduct an investigation of the accident, whichever comes first. If, within the 8- hour period, the Board notifies the railroad that an investigation will be conducted, the railroad will be governed by the Board's instructions; if the Board notifies the railroad that an investigation will not be conducted, or if the Board fails to give notification within the 8-hour period, the railroad may extract the data consistent with the preservation requirements of paragraph (d)(2) of this section.

FRA adopted this requirement in consideration of the comments made in writing in response to the Advance Notice of Proposed Rulemaking (November 23, 1988, 53 FR 47557) and the Notice of Proposed Rulemaking (June 18, 1991, 56 FR 27931) and at the hearings held as part of both earlier notices and after consulting with the National Transportation Safety Board (Safety Board). It was FRA's understanding that this provision advanced railroad transportation safety and met the Safety Board's needs.

The Association of American Railroads (AAR), in its petition for reconsideration, argues that FRA does not have the power to issue § 229.135(d)(1) and that, if it has the power, it has exercised that power unlawfully. AAR also urges FRA to facilitate the railroads' needs for access to event recorder data as soon as possible after an accident. Finally, AAR states its opinion that FRA's actions in this regard are ''not a good idea'' as a matter of policy.

Union Pacific Railroad Company (UP) also included the issue of post-accident data security in its petition for reconsideration, arguing that railroads should have immediate access to event recorder data at all times. UP buttresses its argument by stating that railroads need event recorder data to facilitate their own accident investigations. Quick access to event recorder data may, for instance, lead to immediate operational improvements or may aid in pinpointing physical evidence that needs to be examined before the track is restored to service or, presumably, before rail equipment is removed from the scene.

Canadian Pacific Legal Services, filing a petition for reconsideration on behalf of CP Rail System (CPRS), echoes the need to have immediate access to event recorder data in the wake of an accident.

While the Safety Board both urged and endorsed the data security rule quoted above, it has re-evaluated this language in light of its own Notice of Proposed Rulemaking, published June 19, 1991 (56 FR 28132). In a letter to FRA dated October 1, 1993, the Board said that it believes that the language of § 229.135(d)(1) ''may place a regulatory burden on both the Safety Board and the railroad industry that goes beyond that required for the efficient discharge of the Safety Board's accident investigation program.'' In light of a reassessment of FRA's rule and considering the comments filed in response to its own notice, the Board has decided to explore a revision to its earlier proposal and has requested that FRA withdraw § 229.135(d)(1).

FRA finds no merit in AAR's arguments that FRA does not have the power to act as it did or that it exercised that power unlawfully. Because FRA is granting the relief sought by AAR and others, this issue need not be explored further, but AAR's statement about FRA's ''power'' misses the impact of the Federal railroad safety laws, and the delegations under them. These enactments, for instance, extend to FRA the authority to prescribe regulations for every area of railroad safety (49 U.S.C. 20103). Certainly post-accident data security is one such area.

FRA, however, agrees with railroads' need for early access to event recorder data and believes that the current

§ 229.135(d)(2) will provide the data security it needs while at the same time facilitating the railroad's own legitimate accident investigation priorities. For the reasons stated, FRA grants the petitions for reconsideration insofar as they request withdrawal of § 229.135(d)(1) and amends the regulations accordingly. The language now in § 229.135(d)(2) will survive as a new paragraph (d)(1) and the explanation of the relation of this regulation to other laws, now in paragraph (d)(3), will be preserved as a new § 229.135(d)(2).

Lead Locomotive

The final rule, at § 229.135(a), states:

(a) *Duty to equip*. Effective [insert a date 18 months after the effective date of a final rule in this docket], and except as provided in paragraph (b) of this section, any train operated faster than 30 miles per hour shall have an in-service event recorder in the lead locomotive. For the purpose of this section ''train'' includes a locomotive or group of locomotives with or without cars and ''lead locomotive'' means the locomotive from whose cab the crew is operating the train and, when cab control locomotives and/or MU locomotives are coupled together, is the first locomotive proceeding in the direction of movement.

Several interested parties, including the Association of American Railroads (AAR), the American Public Transit Association (APTA), Union Pacific Railroad Company (UP), Metro-North Commuter Railroad Company (MN), and The Long Island Rail Road Company (LIRR) requested FRA to clarify the term ''lead locomotive'' so that it would accommodate the operations of carriers using cab control cars, married pairs of cars, and other similar configurations.

FRA stated in the preamble (58 FR 36610–11) that the agency ''has determined that the recorder will be most helpful if it records the events happening in the locomotive occupied by the engineer, that is, the lead locomotive.'' FRA also noted that it was

Aware that push-pull commuter operations don't have a traditional 'locomotive' at the lead in one direction and that this may present problems in some cases. The ideal solution would be for the actions taken at the engineer's stand in the control car to be recorded on the device in the locomotive.

FRA's primary concern is still as it was when the preamble was written: to provide the best data for analysis, the recorder must capture what the engineer sees and does.

In light of the submissions since the final rule was published, FRA recognizes that its definition of ''lead locomotive'' is unnecessarily geographically strict. The definition in the current § 229.135(a) will be amended by adding the following sentence:

The duty to equip the lead locomotive may be satisfied with an event recorder located elsewhere provided that such event recorder monitors and records the required data as though it were located in the lead locomotive.

Notice of Equipped Status/Removal from Service

Several parties requested clarification on the proper means for indicating that a locomotive is equipped with an event recorder or that the recorder is, or has been taken, out of service. These parties also asked whether a locomotive, once equipped with an event recorder, must always remain equipped with an event recorder.

FRA's final event recorder rule does not impose any burden to keep event recorders on locomotives merely because they were once so equipped. The rule very clearly mandates a recorder on the lead locomotive of all trains operated faster than 30 miles per hour. Thus, a railroad deciding to limit certain locomotives to slow speed service, where they would not operate faster than 30 miles per hour, is permitted to remove the recorders from that equipment.

The current rule contains no specific requirement that an *equipped* locomotive be marked in any way. FRA is aware that there are many ways to tell if a locomotive is recorder-equipped, from the physical presence of an apparatus to the ''Canadian'' method, in which the locomotive is limited so that it *cannot* assume the lead position unless the recorder is operative according to its own self-test. As noted in the next section on testing and maintaining recorders, block 15, item 5 of the cab card (FRA Form 6180–49A) will note the successful completion of periodic testing and maintenance on the event recorder. FRA believes that the best way to be certain that a locomotive has an event recorder is to note that fact on the reverse side of the cab card, under the ''**REMARKS:**'' section. Section 229.135(a) is amended to require annotating the cab card when a locomotive is equipped with an event recorder unless the recorder is designed to prohibit the locomotive from assuming the lead position if it is not functioning.

The current rule does, however, contain a requirement at § 229.135(c) that an out-of-service recorder be tagged, and the tag described in § 229.9(a)(3) is given as an example of a proper method of marking a malfunctioning recorder. While ''tagging'' may be suitable for older recorders, it does not serve a purpose where the recorder is buried within the electrical panel or fully integrated into the electrical system. Since the final rule was issued, it has become clear that more flexibility is necessary to accommodate different types of event recorders. Accordingly, FRA is amending current § 229.135(c) so that annotating the cab card (Form FRA F6180–49A), on the reverse side, under ''**REMARKS:**'' becomes the method of noting the out-of-service status of a recorder. Part 229 requires each locomotive to have a cab card to record the results of periodic inspections so there will be no burden to apply an extra tag. As a matter of enforcement policy, FRA will instruct its inspectors to look on the cab card first for notes about the event recorder status of a locomotive.

Once equipped, always equipped? The inquiries about departure testing at the conclusion of the periodic inspection also raise the issue about whether or not a locomotive, equipped with an event recorder, must always remain equipped. The primary requirement of the rule, as it relates to equipment, is that the lead locomotive of a train operated faster than 30 miles per hour must have an event recorder (from and after May 5, 1995). Section 21 of the Rail Safety Improvement Act of 1988 (RSIA), Pub.L. 100–342, 102 Stat. 624 (June 22, 1988), now codified at 49 U.S.C. 20138, prescribed rules ''to prohibit the willful tampering with, or disabling of * * * railroad safety or operational monitoring devices,'' including event recorders. In its final rule proscribing tampering with safety devices, published February 3, 1989 (54 FR 5485) (the rules appear at Subpart D of Part 218), FRA required installed event recorders to be operative unless the locomotive was being hauled dead-in-tow or unless the event recorder became inoperative enroute, in which case FRA imposed a notification requirement similar to that used for certain signal-related equipment that controls or restricts train operations. The AAR filed a petition for reconsideration in that Docket. The final rule in this docket responded in part to that petition.

While this rule requires event recorders to be in operating order at the time the locomotive is cleared from the quarterly inspection, these devices, like any mechanical or electronic device, are subject to random failures. FRA sees no safety benefit in severely restricting the operation of a locomotive costing upwards of a million dollars because of the failure of a fifty-dollar part in a blackbox. The final rule in this docket permits operation of a locomotive with

an event recorder known to have failed, but it cannot be the sole power, nor the lead locomotive, on a train operated faster than 30 miles per hour. Section 229.135(c) is amended to read:

(c) *Removal from Service.* A railroad may remove an event recorder from service, and, if a railroad knows that an event recorder is not monitoring or recording the data specified in § 229.5(g), shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall cause to be recorded the date the device was removed from service on Form FRA F6180–49A, under the REMARKS section. An event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its removal from service noted on Form FRA F6180–49A.

This rule will ensure the integrity of the periodic inspection because, when the person conducting the inspection on electrical equipment signs the cab card, that signature will attest to the fact that the event recorder is in working order. At the same time, the rule will permit railroads, for operational reasons of their own, to have event recorders in fewer than all of their locomotives. Simply put, if a locomotive is equipped with an event recorder, the recorder must be in operating order before the locomotive is released from the periodic inspection. If the flexibility FRA has designed into this rule is abused by the railroads, FRA will not hesitate to impose a stricter standard.

Testing and Maintaining Recorders

The current regulations require inspection at the quarterly intervals specified in § 229.25. The recorder must be tested prior to performing any maintenance work and, if it fails, must be repaired and tested until a subsequent test is successful. A record of the inspection and test, including a copy of the data verification results, must be maintained until the next quarterly interval.

APTA, the Southeast Pennsylvania Transit Authority (SEPTA), AAR, Canadian National Railways (CN), and CP Rail System expressed concern about these requirements as they relate to micro-processor based event recorders. Such recorders, and they appear to be the standard on Canadian locomotives, constantly self-test and, if a self-test fails, force a penalty brake application on the locomotive until it is taken out of the lead position. For these recorders, it is argued, a separate test in the shop conducting the periodic inspection is neither necessary nor productive. FRA agrees and is amending the requirements at § 229.25(e)(2) to count a self-testing micro-processor event recorder that has not indicated a failure as having ''passed'' the pre-maintenance inspection requirement.

Several interested parties have suggested that the results of the periodic inspections be simply noted on the cab card. While the *fact* that a recorder has been successfully inspected, tested, and maintained is noted on the cab card (FRA Form 6180–49A, Block 15, Item Code 5), the event recorder regulation also calls for a copy of the ''data verification results.'' With a magnetic tape machine, the ''results'' are, physically, the printout of the tape reading; similarly with a micro-processor, the ''results'' are also a readable representation of what the machine has recorded. FRA agrees with those who urge the electronic filing of the ''data verification results'' and notes that the rule does not limit the means by which the results ''shall be maintained.'' Electronic filing is permissible, but FRA requires that the electronic filing be reduced to writing upon demand.

Events To Be Recorded

The definition of an event recorder, at § 229.5(g), is of a device

That monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations) and, where the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Derived data: A device that ''monitors and records data on'' various aspects of the operation of a train does not necessarily have to record data on each separate aspect of operations. ''Train speed,'' ''time,'' and ''distance,'' for instance, are mutually dependent and any one of these parameters can be derived from the other two. The event recorder rule does not prohibit derived data, and whether an event is recorded directly or derived is largely a matter left to the railroad, so long as the calculated or derived data offer the same accuracy, reliability and precision as data recorded directly.

Throttle position/brake applications: Several interested parties requested clarification about the requirement to record throttle position and brake application and operations. In their powered phase of operations, diesel-electric locomotive event recorders typically capture several stages of throttle position, ''idle'' and notches 1 and 2 as a group and notches 3–8 individually. The heavy electric commuter railroads have referred to a 5-position controller on multiple-unit (MU) cars; while this has fewer positions than that of a diesel-electric locomotive, an event recorder that captured each of these positions would comply with the rule. A device that monitored and recorded only one position of forward motion would not. In the braking phase of operations, current diesel-electric locomotive recorders monitor dynamic brake set up and brake pipe pressure reductions if different amounts, depending on the railroad and the event recorder. Independent brake applications are, typically, recorded as ''on/off'' with 15 psi as the dividing line. An MU locomotive event recorder that records degrees or steps of braking power, and that shows the on/off application of the independent brake, complies with the event recorder rule. FRA does not see a problem just because certain heavy electric commuter equipment has ''blended brakes,'' in which both air and dynamic braking occur automatically with the movement of a single lever.

Traction motor current/dynamic braking current: APTA and CN inquired about the recording of traction motor current and dynamic brake current. The rule does not require the recording of traction motor current in either the powered or the dynamic brake phase, although, on some commuter equipment, it is one way to provide the required data on brake operations and equivalent throttle position or motoring mode.

Direction of motion: Section 229.5(g) lists ''direction of motion'' as a required parameter. Unless the information can be derived from other data, it must be directly recorded. FRA notes that, in the typical freight locomotive, the position of the reverser handle is a recorded parameter.

The ''48-hour'' rule: Several parties asked FRA to reduce the interval for recording data. The regulation, at § 229.5(g), requires monitoring and recording data ''over the most recent 48 hours of operation of the electrical system of the locomotive.'' There is an exception, not relevant here, for recorders installed prior to the effective date of the rule. Several types of recorders capture data at set intervals or whenever the operations of the locomotive change. A road locomotive used in switching, for instance, has frequent changes in direction, speed, and brake system actuation. The concern of those pushing for a shorter interval is that operations like switching will overtax the memory capacity of a recorder. FRA chose the 48-hour rule to be on the safe side of ensuring capture of the initial terminal brake test.

Information from the initial terminal test proved important in the investigation of the May 12, 1989, accident at San Bernardino, California, as discussed in the preamble to the final rule. (58 FR 36606). Other than the initially granted grandfather rights, FRA is not aware of any reason with an equivalent level of safety to reduce the required recording duration.

Cab signals—Northeast Corridor 9-aspect system: Cab signals, for locomotives so equipped, will continue to be a required parameter, including the new 9-aspect system on the Northeast Corridor.

Cab signals-joint operations: Several railroads operate over joint territory and use each other''s cab signals. An earlier practice was to marshall locomotives so that a unit belonging to the home railroad was always in the lead or was swapped into the lead at the border between the railroads. This method of operating allowed the ''home'' locomotive to respond to the signals controlling its operation. Union Pacific Railroad (UP) and Chicago and Northwestern Railway Company (CNW) currently conduct joint operations over hundreds of miles of each other''s cab signal territory. Their power pool arrangements are such that a locomotive of either railroad may be in the lead and it would be detrimental to service to change lead locomotives at the property line. The problem is that the two carriers have incompatible cab signal systems, a condition they have mitigated by having dual cab signals in the pooled locomotives. Either railroad''s locomotives can read the signals of the other, but their event recorders are not equipped with the capacity to record other than the signals of the home road. The rationale for requiring cab signal recording was that it was a vital part of accident investigation and that, because the signal was already on board, it would not be overly difficult to record it. That rationale is still valid, and FRA does not contemplate amending this portion of the event recorder rule. UP and CNW are welcome to petition for a waiver, or for an extension of time to expand the recording capacity of their event recorders, but this notice makes no change in the requirement as published.

Cab signals—separate recorders: Delaware and Hudson Railway Company operates a small number of locomotives with cab signal equipment. That equipment has a built-in device that records, in real time, date, speed, cab signal aspects, distance, and the status of the automatic equipment test. Proprietary software is used to download this information into a portable computer. This equipment complies with the event recorder rule, provided that the two recordings can be synchronized with a common parameter.

Speed

APTA requested clarification on the ''over 30 miles per hour'' parameter for requiring recorders; does it, for instance, exclude trains that are restricted by a railroad's operating rules and/or policy to speeds of 30 miles per hour or less? FRA does not restrict the methods railroads use to set the speeds of the trains they operate. Whether a train is restricted to 30 miles per hour or less by the class of track on which it operates or by company policy is immaterial. Effective May 5, 1995, if a train is operated faster than 30 miles per hour, it must have an event recorder in the lead locomotive—slower than that, the requirement does not apply.

Accuracy

Several parties requested clarification on accuracy and data resolution. FRA believes that accuracy, together with refinements in sampling intervals, are issues for future activity. As the agency said in the preamble to the final rule (58 FR 36609),

> Some commenters raised issues about the recorder's sampling intervals and sampling accuracy. FRA certainly expects that event recorders will be as accurate as present standards for speed indicators and for air gauges, but the agency realizes that more developmental work needs to be done in this area. FRA has decided not to further delay the requirement to have event recorders on trains and will postpone for now standards that would require resolution of technological issues that are intertwined with the extended development of solid state recorders and with recommendations that event recorders be standardized as to size, location, and crash worthiness.

Event Recorder Maintenance

Remote inspection: Kansas City Southern (KCS), D&H, and Soo Line requested clarification of and relief from the blackbox maintenance rules. Some of their locomotives are maintained at facilities without the equipment to read and analyze the data tapes from the recorders, and they seek to perform the recorder pre-maintenance inspection at a location remote from the shop where the rest of the periodic inspection work is performed. The rule does not specify where periodic recorder maintenance must be done, but only that it be performed every periodic inspection. The operative principles are (1) locomotives shall not leave the periodic inspection point with an inoperative event recorder—unless the cab card is annotated to show the locomotive as ''unequipped,'' (2) testing of recorders must precede maintenance work on them, and (3) trains operated over 30 miles per hour must have an in-service event recorder in the lead locomotive. In order to provide necessary flexibility, FRA will consider an event recorder test done up to 5 calendar days prior to the periodic inspection as complying with the requirements of this rule. If a railroad finds that it cannot complete testing and maintenance on an event recorder prior to the completion of the periodic inspection, it has the option of taking the recorder out of service and noting that fact on the cab card, following procedures allowed in § 229.135(c). FRA had been requested to allow a 5-day ''grace'' period—before or after the periodic inspection— for event recorder testing and maintenance where data analysis and/or recorder repair took place other than at the facility performing the period inspection. The agency understands the practical problems associated with providing every point performing periodic inspections with the sophisticated electronic equipment necessary to test and maintain event recorders. At the same time, FRA must maintain the integrity of its periodic inspection requirements. Section 229.23(d) has not been amended by this rule. The person conducting an inspection signs the card and that person's supervisor certifies that the work was done. In the case of event recorders, as noted earlier, the fact that a recorder has been successfully inspected, tested, and maintained is noted on the cab card (FRA Form 6180–49A, Block 15, Item Code 5). This means that a locomotive can depart the periodic inspection in one of three ways: without an event recorder, with a working event recorder, or with an event recorder properly taken out of service.

Ninety percent effective: In the preamble to the final rule, FRA stated:

> FRA has no desire to create unnecessary maintenance burdens on the railroads on the one hand, but, on the other, it cannot condone event recorders which fail for lack of effective maintenance. Testimony and comments by representatives of the railroads and of the suppliers demonstrate agreement that a properly maintained recorder will operate from one quarterly inspection to the next without failure, virtually all of the time. The final rule recognizes what industry has said and, accordingly, requires event recorders to be maintained so well that 90 percent of them are still functioning as intended when they arrive at the quarterly inspection. If this level of performance cannot be met on a month-to-month basis, the final rule then requires maintenance

intervals and practices to be adjusted so that it can.

APTA asked if the ''90 percent functional'' requirement applied to all parameters recorded by a particular carrier's blackbox or only to those required by the rule. Because the rule defines event recorders in relation to particular, required parameters, and because pre-maintenance testing requires ''cycling all required parameters,'' the rule clearly aims only at maintaining the operability of the required parameters. A recorder with a non-functioning, but non-defining parameter may still be both an ''in-service'' recorder under § 229.5(I) and ''fully functional'' under § 229.25.

Post-periodic inspection departure testing: The event recorder rule, at § 229.25(e)(3), states:

> (3) If this test does not reveal that the device is recording all the specified data and that all recordings are within the designed recording parameters, this fact shall be noted on the data verification result required to be maintained by this section and maintenance and testing shall be performed as necessary until a subsequent test is successful.

The blackboxes used by the Canadian railroads are interchangeable, and if one is discovered with a fault, it is swapped out for a known good one and the defective unit is returned to the factory for repair. (Part of the installation procedure includes entry into the computer of the identification of the locomotive on which the unit is located.) Section 229.25(e)(3) could be read as requiring successful repair of the unit *currently installed on the locomotive* before that locomotive departs the 92-day inspection. Such an interpretation strains against industry practices and injects an unnecessary layer of regulation into the system. FRA supports the change-out of bad units for good as part of the post-periodic departure check-out.

Removal from service—calendar day inspection: One of the commuter railroads asked if a locomotive found at the Monday morning inspection with the recorder ''fault light'' on can be used as a lead locomotive until Tuesday morning. Assuming the railroad complies with the requirements for taking a recorder out of service, § 229.135(b) allows the use of the locomotive as a lead unit until the next calendar day inspection.

New and Rebuilt Locomotives

AAR and The American Short Line Railroad Association (ASLRA) seek to have the event recorder requirements apply to new and rebuilt locomotives only. This is in accord with industry practices, and according to data presented by the railroads during the rulemaking process, 62 percent of Class I road locomotives are currently equipped with a qualifying event recorder. Based on industry information and testimony presented before the final rule was issued, 90 percent or more of the road trains are equipped with a recorder. While it is not always clear exactly what types of trains are being counted in these figures, it is clear that not all locomotives need to be equipped to achieve full compliance with a rule requiring event recorders on the lead locomotive of all trains operated faster than 30 miles per hour.

FRA considered the new/rebuilt option and concluded, in concert with safety, policy, and legal offices at the agency and Departmental level, that a rule requiring event recorders on new and rebuilt locomotives only does not reflect the best interpretation of the mandate in RSIA to equip trains where doing so will enhance safety. FRA believes that the option it chose, requiring event recorders on the lead locomotive of trains operated faster than 30 miles per hour, does satisfy the best interpretation of a statutory mandate to ''issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders * * *.'' (RSIA, section 21) The safety enhancements of recorders were fully discussed in the preamble to the final rule and need not be repeated here. In addition, FRA became aware, during the development of this rule, that several railroads believe the number of recorder equipped locomotives in their fleets will enable them to comply with a requirement for an event recorder in the lead locomotive of every train operated faster than 30 miles per hour. For these railroads, a requirement to equip each new or rebuilt locomotive with an event recorder would be an unjustified burden.

Another party to this proceeding, NTSB, urged that *all* locomotives in a train should be equipped (the ultimate result of equipping new and rebuilt locomotives) in order to permit accident investigators to determine the performance of each locomotive in the consist. In addition to the obvious cost implications of this suggestion, there are sound reasons for not attempting to mandate equipping all locomotives at this time. FRA knows that event recorder technology is likely to advance rapidly. Accordingly, rather than establish a rule that would eventually require an event recorder meeting today's standard on every locomotive (except those traveling so slowly they do not even need speed indicators), FRA believes that it is wise to wait to see whether the recorders themselves become significantly better than they now are. FRA believes that, as recorder technology advances, standards will be set for sampling intervals, the ranges of recorded parameters, the accuracy of recording, accident survivability, and data extraction protocols. As good as these ideas are, FRA cannot bring them into being simply by mandating them; FRA's option of equipping fast trains rather that all new and rebuilt locomotives will allow time to bring these concepts to mature and practical fruition.

In analyzing costs, FRA used the best data it had. As noted in its ''Final Rule Regulatory Impact Analysis,''

> Under normal railroad operations, where many trains are powered by multiple power units, 100% coverage is possible with significantly less than 100% of the units being equipped with a recorder.
>
> There is a point, however, at which the efforts to manage, reassign, and shift power to assure full coverage may cost more that the installation of additional recorders. Unfortunately, FRA does not have the type of individualized, proprietary information necessary to analyze these trade-offs and arrive at the perfect cost-minimalization strategy. We have therefore employed what we believe to be a conservative approach in a deliberate effort not to understate costs.

''Event Recorders Final Rule Regulatory Impact Analysis,'' February 12, 1993, p. 9.

Finally, as FRA discussed in the preamble to the final rule (58 FR 36607), the primary safety benefit of event recorders lies in their use as a tool to diagnose train handling accidents, to continue building a knowledge base of accident causation, and, through sampling actual train movements, to evaluate changes in methods of train operation. Event recorders also provide a way to sample the train-handling ability of an engineer in a real-world environment. FRA has determined that event recorders enhance railroad safety. Whether they are used to aid accident analysis, to monitor locomotive engineers' performance, or to monitor equipment performance, event recorders provide data that are free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. The data extracted from recorders can be played over and over as part of the analysis process without losing their consistency. Event recorders provide FRA with a growing pool of verifiable factual information about how trains are operated and what happens when they become part of an accident. Even the presence of event recorder data will not ensure the

discovery of the cause of every accident nor eliminate all sources of controversy about causation, but as shown in the Southern Pacific's San Bernardino derailment, event recorder data can help direct the attention of an accident investigator to possible causes not at first suspected. In addition, by reducing the potential for bias from accident investigations, the data from event recorders can help pinpoint operational changes that may prevent the next accident.

FRA does not find merit in the argument that event recorders should only be required on new and rebuilt locomotives and rejects the requests filed by AAR and ASLRA to so amend the final rule.

Recording While Stationary

FRA's event recorder rule states, at § 229.5(g),

''Event recorder'' means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, dynamic brake applications and operations) and, where the locomotive is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed. A device, designed to resist tampering, that monitors and records the specified data only when the locomotive is in motion shall be deemed to meet this definition provided the device was installed prior to November 5, 1993, and records the specified data for the last eight hours the locomotive was in motion.

CN is concerned about the ''installed prior to * * *'' language, because its present recorders record only while the locomotive is in motion but, because its recorders are interchangeable, a particular unit may be ''installed'' and ''uninstalled'' as necessary to keep an operating recorder on the locomotive in the lead. The purpose of the cut-off date was to prevent additional purchases of ''motion only'' recorders and to give railroads owning such recorders time to phase out these units in the normal course of business. FRA is aware that CN has embarked on a program to upgrade their recorders when factory maintenance is performed. Unless a pattern of abuse comes to FRA's attention, FRA sees no need to change its flexible approach: ''motion only'' event recorders in a carrier's service, whether in inventory or installed on a locomotive, as of November 5, 1993, are deemed to comply.

Extensions of Time

APTA said that ''it would be helpful for * * * FRA to elaborate on some of the general criteria it expects to use and the minimum supporting documentation it expects to receive in considering * * *'' requests for an extension of time to comply with the event recorder rule. Unfortunately, there is no cookbook recipe for a petition for waiver of a safety rule, other than as published in 49 CFR Part 211. Railroads seeking waivers are advised to state their real needs as clearly as possible and to carefully follow the procedures in §§ 211.7 and 211.9.

Regulatory Impact

This rule has been evaluated under Executive Order 12688 and the DOT policies and procedures. Although the original rule met the criteria for being a significant rule under those policies and procedures, these amendments are not considered significant since they either delete requirements concerning procedural matters or allow for greater flexibility in complying with the rule.

The economic impact of this change will be to reduce the cost of compliance with FRA regulations. That cost reduction will be of a minimal nature and does not alter FRA's original analysis of the costs and benefits associated with the basic rule. FRA certifies that this amendment will not have a significant impact on small entities. Similarly, this amendment will not alter the information collection requirements of this regulation; will have no identifiable environmental impact; and will have no effect on the states or the distribution of power and responsibilities among various levels of government.

As provided for in 5 U.S.C. 553(d), FRA finds that there is good cause for making this rule effective in less that 30 days from publication. Efforts to comply with certain requirements being deleted by this rule might generate an undue burden on the Safety Board and the railroad industry. Prompt amendment of the provision dealing with post-accident data security will avoid unwarranted confusion within the regulated community concerning their legal obligation in the event of an accident. The other amendments made by this notice recognize the enforcement policy of the agency.

List of Subjects in 49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

Therefore, in consideration of the foregoing, FRA amends Part 229, Chapter II, Subtitle B of Title 49, Code of Federal Regulations as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. Chapters 201, 207, and 213; 49 U.S.C. 103; Pub. L. 100–342; Pub. L. 102–365; Pub. L. 102–533; Pub. L. 103–272; 49 CFR 1.49 (c), (g), and (m).

2. By revising § 229.5(i) to read as follows:

§ 229.5 Definitions.

(i) *In-service event recorder* means an event recorder that was successfully tested as prescribed in § 229.25(e) and whose subsequent failure to operate as intended, if any, is not actually known by the railroad operating the locomotive on which it is installed.

* * * * *

3. By revising § 229.25(e)(2) to read as follows:

§ 229.25 Tests: every periodic inspection.

* * * * *

(e) * * *

(2) The event recorder shall be tested prior to performing any maintenance work on it. At a minimum, the event recorder test shall include cycling all required recording parameters and determining the full range of each parameter by reading out recorded data. A micro-processor based event recorder, equipped to perform self-tests, has passed the pre-maintenance inspection requirement if it has not indicated a failure.

* * * * *

4. By revising § 229.135 (a) through (d) to read as follows:

§ 229.135 Event Recorders.

(a) *Duty to equip.* Effective May 5, 1995, and except as provided in paragraph (b) of this section, any train operated faster than 30 miles per hour shall have an in-service event recorder in the lead locomotive. The presence of the event recorder shall be noted on Form FRA F6180–49A, under the REMARKS section, except that an event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its presence noted on Form FRA F6180–49A. For the purpose of this section, ''train'' includes a locomotive or group of locomotives with or without cars, and ''lead locomotive'' means the locomotive from whose cab the crew is operating the train and, when cab control locomotives and/or MU locomotives are coupled together, is the first locomotive proceeding in the direction of movement. The duty to equip the lead locomotive may be met

with an event recorder located elsewhere than the lead locomotive provided that such event recorder monitors and records the required data as though it were located in the lead locomotive.

(b) *Response to defective equipment.* A locomotive on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain as the lead locomotive only until the next calendar-day inspection. A locomotive with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9, and notwithstanding any other requirements in this chapter, inspection, maintenance, and testing of event recorders is limited to the requirements set forth in § 229.25(e).

(c) *Removal from service.* A railroad may remove an event recorder from service and, if a railroad knows that an event recorder is not monitoring or recording the data specified in § 229.5(g), shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall cause to be recorded the date the device was removed from service on Form FRA F6180–49A, under the REMARKS section. An event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its removal from service noted on Form FRA F6180–49A.

(d) *Preserving accident data.* For the purposes of this section, the term ''event recorder'' includes all locomotive-mounted recording devices designed to record information concerning the functioning of a locomotive or train regardless of whether the device meets the definition of ''event recorder'' in § 229.5.

(1) *Accidents required to be reported to the Federal Railroad Administration.* If any locomotive equipped with an event recorder is involved in an accident that is required to be reported to FRA, the railroad using the locomotive shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by the device for analysis by FRA. This preservation requirement permits the railroad to extract and analyze such data; *provided* the original or a first-order accurate copy of the data shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire 30 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis.

(2) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation[s] of State criminal law[s] and nothing in this chapter is intended to alter in any way the priority of National Transportation Safety Board investigations under 49 U.S.C. 1131 and 1134, nor the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

* * * * *

Issued in Washington, D.C., on May 19, 1995.

Jolene M. Molitoris,

Administrator.

[FR Doc. 95–12963 Filed 5–25–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950206038–5038–01; I.D. 051595E]

Summer Flounder Fishery; Adjustments to 1995 State Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota adjustment.

SUMMARY: NMFS announces adjustments to the commercial quota for the 1995 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP), which require that annual quota overages landed in any state be deducted from that state's quota for the following year. The public is advised that a quota adjustment has been made and is informed of the revised state quotas. The Director, Northeast Region, NMFS (Regional Director), has also determined that there is no Federal summer flounder quota available for those coastal states that did not receive a portion of the annual commercial summer flounder quota. Vessels issued a Federal moratorium permit for the summer flounder fishery may not land summer flounder in these states.

EFFECTIVE DATE: May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 625 (57 FR 57358, December 4, 1992). The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20. The commercial summer flounder quota for the 1995 calendar year, adopted to ensure achievement of the appropriate fishing mortality rate of 0.53 for 1995, is set to equal 14,690,407 lb (6.7 million kg) (60 FR 8958, February 16, 1995).

Section 625.20(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other available information, NMFS has determined that the States of Massachusetts and Rhode Island have exceeded their 1994 quota by 17,707 lb (8.8 kg) and 60,670 lb (27.4 kg), respectively. The remaining States of Maine, New Hampshire, Connecticut, New Jersey, New York, Delaware, Maryland, and North Carolina did not exceed their 1994 quotas. A complete summary of quota adjustments for 1995 is in Table 1.

The Commonwealth of Virginia collects landings data from the summer flounder fishery conducted in its waters, and the landings for the fourth quarter of 1994 have not yet been compiled. If those final figures result in landings in excess of the 1994 quota, a further adjustment will be required and a notification will be published in the **Federal Register**.