

such submissions from the AAR, ASLRA, and the principal labor organizations (or a filing from any other party offering alternative approaches), FRA would then evaluate which course of action to take. Among the options available to FRA are the following:¹

1. Initiate a public regulatory conference to discuss development of one or more alternative approaches.
2. Without further proceedings, issue a supplemental notice incorporating the alternative approaches submitted by the parties and/or developed by FRA.
3. Establish a new final date for submission of comments on the original NPRM, after which a final rule would be issued.

If parties submit alternative approaches which lack the substance for producing further discussion or development, FRA may act in accordance with the third alternative and provide a relatively short comment period and move this proceeding toward the issuance of a final rule. However, given the objections expressed to the NPRM, FRA would prefer to act in a manner consistent with the first or second of these alternatives. If possible, safety regulations should be structured

¹ FRA does not at this time believe that it would be practical to conclude this rulemaking within a reasonable period as a formal negotiated rulemaking. The conduct of a negotiated rulemaking requires establishment of a Federal Advisory Committee, which involves significant lead time. Where outside facilitation is employed, the process also involves cost that must be accommodated within strict limitations imposed on total Federal Advisory Committee expenditures under the Department of Transportation and Related Agencies Appropriation Act, 1994. Also it is unclear that a committee of workable size could be formed that would adequately represent the interests of all parties (e.g., shippers, car owners, existing equipment manufacturers, small suppliers, several rail labor organizations, and railroads with varying characteristics). Finally, based upon the positions of the principal parties to date, FRA questions whether complete agreement can be reached on issues that have so long divided the industry. The fact that a process under the Negotiated Rulemaking Act is not practicable, however, does not exclude the use of less formal procedures providing free access by all interested parties.

to meet with the general acceptance of regulated entities. This enhances materially the likelihood that good compliance will result and offers further assurance than unnecessary burdens have not been imposed.

However, FRA wishes to emphasize that completion of this proceeding and issuance of final rules remains a very high priority. By law, a final rule was to have been issued not later than December 31, 1993.

FRA also stresses that FRA currently does not intend to defer implementation of the requirement for 2-way end-of-train telemetry devices (2-way EOTs) beyond an effective date of December 31, 1997, as contemplated by the Congress, for any main line freight train operating at greater than 30 miles per hour or operating in mountain grade territory on a Class 1 railroad. The Rail Safety Enforcement and Review Act provided that 2-way EOTs "acquired for use on trains" prior to the date of promulgation of the final rule must be "grandfathered" (deemed to comply with any final rule). 49 U.S.C. § 20141. Accordingly, carriers should have little reason to complain. Indeed, railroads should already have begun to make incremental purchases in order to avoid shortages approaching the effective date.

The need for carriers to acquire and utilize 2-way EOTs was underscored when, on December 14, 1994, an Atchison, Topeka and Santa Fe Railway intermodal train experienced insufficient braking effort descending from the Cajon Pass. The Santa Fe train collided with a Union Pacific Railroad train near Victorville, California, seriously injuring two employees and extensively damaging railroad and shipper property. Although the accident is under investigation, every present indication suggests that presence of a 2-way EOT would have prevented this occurrence. The accident occurred just after an Amtrak passenger train cleared the main line. Although the Santa Fe intends to institute use of 2-way EOTs

on its trains over this territory, similar safety exposure exists elsewhere on the rail system. As Canadian railroads have already done, U.S. railroads should be moving to take advantage of this technology, beginning with trains required to negotiate heavy, long grades.

Passenger Service Issues

Comments on the passenger safety elements of the NPRM presented a stark contrast to those on the freight elements. Passenger service commenters focused on constructive comment directed at improvement of the agency's proposal. Commuter service entities agreed to submit additional, concrete alternatives to certain elements of this proposal. In order to take full advantage of the parties' undertakings while moving this phase of the rulemaking forward as quickly as possible, FRA will request that alternative approaches and initial comments regarding strictly passenger service issues be submitted by February 27, 1995.

FRA recognizes that there are several issues which cut across both passenger and freight service (e.g., training) thus, FRA would expect alternative approaches regarding these issues to be submitted by the deadline established for freight service issues. Commenters interested in passenger service issues will retain the option to file any additional comments that might be appropriate until the final comment closing date for this docket, which will be established by a future notice. However, FRA will utilize the alternative proposals and comments filed by February 27, 1995 to assist in evaluating whether it is necessary to issue any further notice or convene any further discussions regarding strictly passenger service issues in this proceeding.

Jolene M. Molitoris,

Administrator.

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