

REGULATORY ACTION SUMMARY

1. Subject:

Emergency Notification Systems (ENS) (retitled “Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings”)

2. Action:

FRA Final rule (amendments to FRA Grade Crossing rules, 49 CFR Part 234)

3. Tourist Railroad Applicability:

Applicable to tourist railroads (general and non-general system) which control rail operations over grade and “pathway” crossings (“pathway crossings” are specifically defined, and include only formally established crossings, not informal “trespasser” crossings). Rule applies to both public and private crossings

4. Overview:

The Rail Safety Improvement Act of 2008 requires FRA to adopt rules covering this subject. The final rule establishes the following requirements:

(a) Signage – A railroad must post emergency notification signage at each of its highway and pathway grade crossings (note, again, that “pathway” crossings include only formally established crossings). The sign specifications (size, color, information, placement, etc) are stated in the rule (sec. 234.309 and 234.311) Note that this will effectively require a tourist road to obtain DOT Grade Crossing Inventory numbers (if it does not already have them) for all of its covered crossings, since this information must be shown on the signs.

(b) Response Capability and Coverage – FRA made major modifications to these requirements based, in large part, on proposals made by ARM/TRAIN in the rulemaking proceeding. As a result, the requirements as to tourist railroads and many short lines are much less onerous than the universal 24/7 live person coverage that FRA originally proposed. While a Class I railroad or other railroad that operates 24/7 must still have 24/7 live person coverage, most (if not all) tourist roads will fall under one of the following exceptions (sec 234.303(b)):

(i) 20 mph exception (my term) – Applies to a railroad (including a tourist road) which operates no faster than 20 mph over its grade crossings. The main requirements are:

- Answering machine coverage when the railroad is not in operation;

- > Railroad must check answering machine for emergency messages immediately before beginning operation each day (and respond as appropriate);
 - > No requirement for live coverage even when the railroad is in operation (according to the preamble, FRA regards the 20 mph maximum speed over crossings as sufficient).
- (ii) Intermittent operations exception (my term) – Applies to a railroad which operates faster than 20 mph over one or more crossings, but does not operate 24/7 (including seasonal operations). The main requirements are:
- > Answering machine coverage when the railroad is not in operation;
 - > Railroad must check answering machine for emergency messages immediately before beginning operations each day (and respond as appropriate);
 - > Live person coverage when the railroad is in operation.
- (c) **Response Requirements** - The rule (sec 234.305) specifies what a railroad must do in response to an emergency notification, which varies depending on the type of problem that's reported. Since emergency notifications are likely to be very rare on most tourist roads, the best compliance approach may be to develop a form to be used when a notification is received which shows the required response and also serves as the documentation required by the rule's recordkeeping provisions ('d' below).
- (d) **Recordkeeping** – The rule (sec 234.313) specifies records that a railroad must keep showing the emergency notifications it receives and its response to those notifications.
- (e) **Other Requirements** – The above summary covers only the main features of the rule. The rule contains many other provisions governing things such as use of third party answering contractors, multiple railroads operating over a crossing, and the like. These are unlikely to apply to most tourist roads, but they could apply to some

5. Effective / Compliance Dates:

The rule is nominally effective on August 13, 2012. However the compliance deadline for most tourist roads is September 1, 2015. A tourist road that already has some form of ENS signage or response system may have different compliance dates, depending on what it already has, see sec 234.317.

6. References:

The final rule (including FRA's explanatory preamble)¹ is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-12/pdf/2012-13843.pdf>

The ARM/TRAIN comments (May 3, 2011) are available at:

<http://www.regulations.gov/#!documentDetail;D=FRA-2009-0041-0019>

Last update: June 16, 2011 (RTO)

¹ Here's a tip on how to read a large (34 page) rulemaking document like this. The actual rule is at the end of the document (pp. 35190-35197). Read this first. Everything that precedes the rule text is explanatory material. Some of this material is very useful (for example, FRA's discussion of how particular rule requirements will work). Much of it, however, is not relevant to a reader interested only in rule compliance.