

passenger vehicles with a gross vehicle weight rating (GVWR) of 3,856 kilograms (kg) (8,500 pounds (lb)) or less, to submit a report, and maintain records related to the report, concerning the number of such vehicles that are certified as complying with S19, S21, and S23 of FMVSS No. 208 (49 CFR 571.208) when using the child restraint systems specified in Appendix A-1 of this standard.

§ 585.32 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A-1 of that standard.

§ 585.33 Applicability.

This part applies to manufacturers of passenger cars, and of trucks, buses and multipurpose passenger vehicles with a GVWR of 3,856 kg (8,500 lb) or less.

§ 585.34 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) Bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car, and truck are used as defined in § 571.3 of this chapter.

(c) Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

(d) Limited line manufacturer means a manufacturer that sells three or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

§ 585.35 Response to inquiries.

At any time during the production year ending August 31, 2010, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model and vehicle identification number) that have been certified as complying with the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A-1 of that standard. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

§ 585.36 Reporting Requirements.

(a) *Phase-in reporting requirements.* Within 60 days after the end of the production year ending August 31, 2010, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with requirements of

Standard No. 208 when using the child restraint systems specified in Appendix A-1 of that standard for its vehicles produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in section 585.2 of this part.

(b) *Phase-in report content—*

(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, in each of the three previous production years. A new manufacturer that is, for the first time, manufacturing passenger cars, trucks, multipurpose passenger vehicles or buses for sale in the United States must report the number of passenger cars, trucks, multipurpose passenger vehicles or buses manufactured during the current production year.

(2) *Production of complying vehicles.* Each manufacturer shall report on the number of vehicles that meet the requirements of Standard No. 208 when using the child restraint systems specified in Appendix A-1 of that standard.

§ 585.37 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.36 until December 31, 2013.

Issued on: October 30, 2008.

David Kelly,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[STB Ex Parte No. 385 (Sub-No. 6)]

Waybill Sample

AGENCY: Surface Transportation Board.

ACTION: Final Rule.

SUMMARY: The Board is adopting a final rule to require all carriers that submit carload-waybill-sample information (Waybill Sample) under 49 CFR 1244 to report fuel surcharge revenue in a separate waybill field created by the Board for that purpose, commencing with the Waybill Sample filed for January 2009. The Board will revise the waybill-file-record layout to reflect this change.

DATES: *Effective Dates:* This regulation is effective January 1, 2009. The

incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 1, 2009.

FOR FURTHER INFORMATION, CONTACT:

Paul Aguiar, (202) 245-0323 or aguiarp@stb.dot.gov. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: A carload waybill is a document describing the characteristics of an individual rail shipment: originating and terminating freight stations, the names of all railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car types, movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR Part 1244, a railroad is required to file a Waybill Sample for all line-haul revenue waybills terminating on its lines if, in any of the three preceding years, the railroad terminated 4,500 or more carloads, or it terminated at least 5% of the total revenue carloads that terminate in a particular state.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminated in the United States. Of particular importance, the Board relies on the data in the "Total Freight LH Revenue" (also referred to as "Freight Revenue") field to compute its "Revenue Shortfall Allocation Method" (RSAM) benchmarks. The RSAM benchmarks, which are used in adjudicating certain rate disputes, measure how much a carrier would need to charge its potentially captive traffic in order to obtain adequate revenues overall.

In the last few years, questions have been raised about how railroads reported fuel surcharge revenue in the Waybill Sample. The Board sought to address those questions, and to provide for consistency in the reporting of fuel surcharge revenue in the Waybill Sample, by clarifying that all railroads that are required to submit a Waybill Sample under 49 CFR Part 1244 should report fuel surcharge revenue as part of total freight revenue in the "Freight Revenue" field in the waybill-file-record layout. *Waybill Sample*, STB Ex Parte No. 385 (Sub-No. 6) (*Clarification*) (published at 72 FR 72000 on December 19, 2007).

In a request for reconsideration filed on December 31, 2007, the National Industrial Transportation League (NITL) argued that the Board's *Clarification* made it more difficult to identify fuel surcharge revenue in the Waybill Sample and, therefore, did not promote transparency as to the use of fuel surcharges by rail carriers. NITL, with

the support of several other shippers, shipping groups, and other interests, asked the Board to require all carriers that submit a Waybill Sample to report fuel surcharge revenue separately in a Waybill Sample field established for that purpose. No rail carrier objected or even responded to NITL's petition.

In a decision served on June 16, 2008, the Board initiated a rulemaking to require all carriers that submit a Waybill Sample to report fuel surcharge revenue in a separate waybill field created by the Board for that purpose, rather than reporting such revenue within the general freight revenue field, commencing with the Waybill Sample filed for January 2009. The Board reasoned that reporting fuel surcharge revenue in a separate field in the Waybill Sample will increase transparency about the use of fuel surcharges by rail carriers without detracting from the Board's ability to obtain consistent results for the purposes of including such revenue in its RSAM calculations. A notice requesting comments regarding the Board's proposal was published in the **Federal Register** on June 26, 2008 (73 FR 36294). No comments were received.

The Board is adopting the proposed requirement. Statement No. 81-1, Procedure for Sampling Waybill Records by Computer, will be modified to require fuel surcharge revenues to be reported in a new field created for that purpose. The new field (Field 33) will be a 9-byte record. Therefore, the computerized Waybill Sample reported by the railroads will increase from a 228-byte record layout to a 237-byte record layout. To keep reporting consistent within each calendar year, the new field will be required for Waybill Samples commencing with the Waybill Sample filed for January 2009. For consistency and administrative convenience, in addition to reporting in Field 33, carriers are asked to include fuel surcharge revenue as part of total freight revenue in the "Total Freight LH Revenue" field (Field 15), as previously directed in *Clarification*.

The Board's decisions in this proceeding are available on the Board's Web site at www.stb.dot.gov. Copies of the decisions will also be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC, or (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0235 or 395 E Street, SW., Washington, DC 20423-0001.

The Director of the Federal Register has approved the Board's request for incorporation by reference of Statement No. 81-1, Procedure for Sampling

Waybill Records by Computer (2009 edition). Such approval by the Director requires the insertion of certain language into the regulatory text of the rule as detailed below.

Pursuant to 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping, Incorporation by reference.

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

Decided: November 3, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Kulunie L. Cannon,
Clearance Clerk.

■ For the reasons set forth in the Supplemental Information above, the Surface Transportation Board amends part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 1. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

■ 2. In § 1244.4, revise paragraph (c) (1) to read as follows:

* * * * *

(c) *The Computerized System.* (1) The tape shall be required to conform to the standards and format specified in Statement No. 81-1, *Procedure for Sampling Waybill Records by Computer* (2009 edition), issued by the Surface Transportation Board. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any editions other than those specified in this section, the STB must publish notice of change in the **Federal Register** and the material must be available to the public. You may obtain or inspect a copy of these standards from the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; from the Surface Transportation Board Web site at <http://www.stb.dot.gov>; or by calling (202) 245-0323. You may also inspect a copy at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0810061316-81420-02]

RIN 0648-XL11

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state waters off of Texas (extending offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32' W. long.). The previous 30-day variance of the TED requirements was from October 8 through November 7, 2008. This action is necessary because environmental conditions resulting from Hurricane Ike persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

DATES: Effective from November 8, 2008, through December 7, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida