



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-2008-0136, Notice No. 7]

RIN 2130-ZA12

Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2015

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

ACTION: Final rule.

SUMMARY: This rule maintains the rail equipment accident/incident monetary reporting threshold at \$10,500 for railroad accidents/incidents involving property damage that occur during calendar year (CY) 2015 that FRA's accident/incident reporting regulations require to be reported to the agency. FRA is maintaining the reporting threshold at the CY 2014 level because, in part, wage data for the second-quarter of 2014, (the data used to calculate the threshold) was abnormally high due to retroactive payment of wage increases resulting from labor contract agreements affecting several railroads. FRA believes that the data does not accurately reflect the changes in labor costs for the second-quarter of 2014 and leads to an overinflated threshold calculation for CY 2015. In addition, FRA is maintaining the monetary threshold for CY 2015 at the CY 2014 level while it reexamines the method for calculating the monetary threshold it last updated in 2005.

DATES: This final rule is effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Kebo Chen, Staff Director, U.S.

Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-314, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202-493-6079); or Sara Mahmoud-Davis, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W33-435, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202-366-1118).

SUPPLEMENTARY INFORMATION:

Background

A “rail equipment accident/incident” is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c) and 225.21(a). Paragraphs (c) and (e) of 49 CFR 225.19 further provide that FRA will adjust the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents, if necessary, every year under the procedures outlined in appendix B to part 225 (Appendix B) to reflect any cost increases or decreases.

In this rule, FRA is keeping the monetary threshold for CY 2015, at \$10,500, the same as the monetary threshold for CY 2014. FRA is maintaining the reporting threshold at the CY 2014 level, because, in part, wage data for the second-quarter of 2014 (the data used to calculate the threshold) was abnormally high due to large, lump sum retroactive payments of wage increases resulting from labor contract agreements affecting several railroads. FRA believes the data does not accurately reflect the changes in labor costs for CY 2014.

In addition to periodically reviewing and adjusting the annual threshold under Appendix B, FRA periodically amends its method for calculating the threshold. In 49 U.S.C. 20901(b) Congress requires that we base the threshold on publicly available information obtained from the Bureau of Labor Statistics (BLS), other objective government source, or be subject to notice and comment. In 1996 FRA adopted a new method for calculating the monetary reporting threshold for accidents/incidents. See 61 FR 60632, Nov. 29, 1996. In 2005, FRA again amended its method for calculating the reporting threshold because the BLS ceased collecting and publishing the railroad wage data used by FRA in the threshold calculation. Consequently, FRA substituted railroad employee wage data the Surface Transportation Board collected for the BLS data that was no longer collected (70 FR 75414, Dec. 20, 2005). In 2015, FRA intends to evaluate and amend, if appropriate, its method for calculating the monetary threshold for accident/incident reporting and, as a result, the formula utilized to calculate the threshold may change. FRA intends to reexamine its method for calculating the reporting threshold because, since 2005, new data sources and methodologies for calculating the threshold

have become available and updating the formula to include these advances will ensure it appropriately reflects changes in equipment and labor costs.

Maintaining Current Reporting Threshold

Approximately one year has passed since FRA revised the rail equipment accident/incident reporting threshold (78 FR 77601, Dec. 24, 2013). Consequently, FRA reviewed the threshold, as 49 CFR 225.19(c) requires and found that costs for labor increased but costs for equipment decreased relative to one year ago. However, for the reasons explained above related to the wage data used to calculate the threshold, FRA has determined it will continue to use the current reporting threshold of \$10,500, which applied to rail equipment accidents/incidents that occurred in calendar year 2014, to rail equipment accidents/incidents that occur in calendar year 2015.¹

Notice and Comment Procedures

In this rule, FRA is maintaining the current monetary reporting threshold for the reasons explained above, and, under the final rule published December 20, 2005, 70 FR 75414. FRA has found this rule imposes no additional burden on any person, but rather is intended to provide a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to a final rule.

¹ Although FRA is maintaining the reporting threshold at the 2014 level, for reference the specific inputs to the equation set forth in Appendix B of Part 225 (i.e., $T_{new} = T_{prior} * [1 + 0.4(W_{new} - W_{prior})/W_{prior} + 0.6(E_{new} - E_{prior})/100]$) are:

$T_{prior} = \$10,500$; $W_{new} = \$29.64700$; $W_{prior} = \$26.93344$; $E_{new} = 196.56667$; $E_{prior} = 197.23333$.

Where: T_{new} = New threshold; T_{prior} = Prior threshold (with reference to the threshold, “prior” refers to the previous threshold rounded to the nearest \$100, as reported in the Federal Register); W_{new} = New average hourly wage rate, in dollars; W_{prior} = Prior average hourly wage rate, in dollars; E_{new} = New equipment average Producer Price Index (PPI) value; E_{prior} = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (T_{new}) is \$10,881.15, which would be rounded to the nearest \$100 for a potential final new reporting threshold of \$10,900.

As appropriate, FRA regularly recalculates the monetary reporting threshold using the formula published in Appendix B near the end of each calendar year. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule no later than December of each calendar year and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data to calculate the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA finds that it has good cause to make this final rule effective January 1, 2015.

REGULATORY IMPACT

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this rule under existing policies and procedures, and determined it to be non-significant under both Executive Orders 12866 and 13563 in addition to DOT policies and procedures (44 FR 11034, Feb. 26, 1979).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), FRA has issued a final policy statement that formally establishes “small entities” are railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the

same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. Id.

FRA considers about 730 of the approximately 775 railroads in the United States small entities. FRA certifies this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and, therefore, also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 1,912 rail equipment accidents/incidents were reported in 2009, with small railroads reporting 328 of them. Data for 2010 show that 1,903 rail equipment accidents/incidents were reported, with small railroads reporting 303 of them. In 2011, 2,022 rail equipment accidents/incidents were reported, and small railroads reported 307 of them. In 2012, 1,760 rail equipment accidents/incidents were reported, with small railroads reporting 292 of them. In 2013, 1,818 rail equipment accidents/incidents were reported, with small railroads reporting 302 of them. On average over those five calendar years, small railroads reported about 16% of the total number of rail equipment accidents/incidents, ranging from 15% to 17% annually. FRA notes that this data is accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting.

This rulemaking maintains the monetary reporting threshold at the CY 2014 level of \$10,500. Increasing the reporting threshold would have potentially slightly decreased the reporting burden for railroads in 2015. In any case, railroads still maintain records of accountable accidents/incidents that are below the reporting threshold, thus minimizing any potential additional burden to report these accidents to FRA caused by keeping the threshold the same in CY 2015. Railroads would potentially incur a small reporting burden, but not the burden to gather this accident/incident information. Also, although wage rates have increased atypically, equipment costs have decreased during CY 2014 compared to the same time period in CY 2013, according to the average Producer Price Index Series WPU144 for group transportation equipment and item railroad equipment the Bureau of Labor Statistics published for April, May, and June 2014. Therefore, the overall effect of this rule likely will be neutral or minimal in effect. Any change in recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, FRA is not required to provide an estimate of a public reporting burden.

Federalism Implications

Executive Order 13132, entitled, "Federalism," signed on August 4, 1999, requires that each agency "in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provide[] to the Director of the

Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met." FRA has analyzed this rulemaking action under the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Therefore, FRA has not prepared a federalism assessment.

Environmental Impact

FRA has evaluated this regulation under its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as the National Environmental Policy Act (42 U.S.C. 4321 et seq.) requires, other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Under section 4(c) and (e) of FRA's

Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as the Bureau of Labor Statistics published, the equivalent value of \$100,000,000 in year 2012 dollars is \$151,000,000.² The final rule will not result in the expenditure, in the aggregate, of

² See U.S. Department of Transportation guidance at, “Reform Act of 1995,” February 24, 2014 (update), <http://www.dot.gov/office-policy/transportation-policy/threshold-significant-regulatory-actions-under-unfunded-mandates>.

\$151,000,000 or more in any one year, and thus preparation of such a statement is not required.

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355, May 22, 2001. Under the Executive Order, a “significant energy action” is defined as “[a]ny action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.” FRA has evaluated this final rule under Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

Privacy Act

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system

of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (i.e., \$6,700 for calendar years 2002 through 2005, \$7,700 for calendar year 2006, \$8,200 for calendar year 2007, \$8,500 for calendar year 2008, \$8,900 for calendar year 2009, \$9,200 for calendar year 2010, \$9,400 for calendar year 2011,

\$9,500 for calendar year 2012, \$9,900 for calendar year 2013, \$10,500 for calendar year 2014, and \$10,500 for calendar year 2015) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

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(e) The reporting threshold is \$6,700 for calendar years 2002 through 2005, \$7,700 for calendar year 2006, \$8,200 for calendar year 2007, \$8,500 for calendar year 2008, \$8,900 for calendar year 2009, \$9,200 for calendar year 2010, \$9,400 for calendar year 2011, \$9,500 for calendar year 2012, \$9,900 for calendar year 2013, \$10,500 for calendar year 2014, and \$10,500 for calendar year 2015. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

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Issued in Washington, DC, on December 18, 2014.

Joseph C. Szabo,
Administrator.

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