



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-2008-0136, Notice No. 8]

RIN 2130-ZA13

**Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for
Calendar Year 2016**

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) 2016 that FRA's accident/incident reporting regulations require to be reported to the agency. FRA is maintaining the reporting threshold at the same level it did in CY 2015, and CY 2014, because, in part, the wage and equipment data for the second-quarter of 2015 (i.e., the data used to calculate the threshold) changed only slightly (about 1 percent) from second-quarter 2014 values. In addition, FRA is maintaining the monetary threshold for CY 2016 at the CY 2015 level while it reexamines the method for calculating the monetary threshold.

DATES: This final rule is effective January 1, 2016.

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). See 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 in appendix B to 49 CFR part 225 (Appendix B) to reflect any cost increases or decreases.

In this rule, FRA is keeping the monetary threshold for CY 2016, at \$10,500, the same as the monetary threshold for CY 2014 and CY 2015. FRA is maintaining the reporting threshold at the same level as CY 2015 because, in part, the wage and equipment data for the second-quarter of 2015 (i.e., the data used to calculate the threshold) changed only slightly (about 1 percent) from second-quarter 2014 values. FRA believes that the wage and equipment data support keeping the reporting threshold the same for CY 2016. Also, FRA anticipates making changes to the methodology for calculating the reporting threshold in the coming year.

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 FRA 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 FRA used in the calculation. Consequently, FRA substituted railroad employee wage data the Surface Transportation Board (STB) collects for the data BLS ceased to collect. See 70 FR 75414, Dec. 20, 2005. In 2016, 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 new

methodologies for calculating the threshold are available. FRA believes updating its methodology to include these advances will ensure the reporting threshold reflects changes in equipment and labor costs as accurately as possible.

Maintaining Current Reporting Threshold

Approximately one year has passed since FRA reviewed the rail equipment accident/incident reporting threshold. See 79 FR 77397, Dec. 24, 2014. Consequently, FRA reviewed the threshold as 49 CFR 225.19(c) requires, and found that costs for labor remained the same and costs for equipment increased only slightly relative to approximately one year ago.

In reviewing the threshold, FRA gathered wage and equipment data from the STB and BLS respectively. Under the procedure in Appendix B, FRA averaged the wages for Group No. 300 (Maintenance of Way and Structures) and Group No. 400 (Maintenance of Equipment and Stores employees). FRA averaged the monthly equipment indices from the Producer Price Index (PPI) to produce a quarterly average. Consistent with Appendix B, FRA utilized data from the second-quarter of 2014 to the second-quarter of 2015.

To determine the changes in wages and prices over this time period, FRA calculated the quarter-to-quarter changes (i.e., changes between each consecutive quarter from the second-quarter of 2014 to the second-quarter of 2015). In addition, FRA calculated the quarter-over-quarter change (i.e., the change using only the beginning and ending quarters of the selected time period). The results are illustrated in the table below.

Considering the wage input to the threshold first, the average quarter-to-quarter change in wages is 0 percent, although individual quarter-to-quarter changes ranged from negative 3 percent to 5 percent. The quarter-over-quarter change in wages is negative 0.1 percent (rounded to 0 percent in the table). Based on no overall change in wages, the reporting threshold would not change for 2016.

Examining the change in equipment PPI over the same time period shows an average quarter-to-quarter increase of 0.5 percent. The quarter-over-quarter change is about 2 percent. The 2 percent change, when applied to the current \$10,500 reporting threshold, would indicate an increase of about \$200. However, the formula for calculating the reporting threshold weights the wage input to the formula by 40 percent and the equipment input by 60 percent. The weights in the formula cause the impact of the equipment index to be reduced to 1.2 percent, or about one-half the 2 percent quarter-to-quarter increase. The 1.2 percent change applied to the current threshold would yield a new reporting threshold of \$10,600, a relatively small change. Considering that such a change would only affect accidents/incidents with damages near this reporting threshold amount, FRA expects the number of affected accidents/incidents to be small. Only accidents/incidents that occurred in 2015 which were slightly below the current \$10,500 reporting threshold may become reportable in 2016.¹ Given FRA's intent to reexamine its method for calculating the reporting threshold in 2016, the small changes in wages and equipment during the current analysis period, and the and the resulting minimal effect on

¹ For example, if an accident/incident occurred in 2015 that resulted in damages of \$10,450, it would not be reportable. Given a potential increase in equipment and wages of 1.2 percent (weighted), reported damages for that same accident if it occurred in 2016 would be \$10,575 ($\$10,450 * 1.012 = \$10,575$). If FRA increased the threshold to \$10,600 for 2016, that accident/incident would still not be reportable. However, if FRA keeps the threshold at \$10,500, that accident will be reportable in 2016.

the reporting threshold for CY 2016, FRA is maintaining the current reporting threshold of \$10,500 for reporting rail equipment accidents/incidents that occur in CY 2016.

Table: Small Changes in Wages and Equipment Indices

Quarter	Wage*	Percent Change	Equipment Index*	Percent Change
Q2 2014	\$29.65		196.6	
Q3 2014	\$28.76	-3%	198.0	1%
Q4 2014	\$29.78	0%	199.6	1%
Q1 2015	\$30.31	5%	200.3	0%
Q2 2015	\$29.60	-2%	200.6	0%
Average Change Quarter-to-Quarter		0%		0.5%
Percent Change Quarter-over-Quarter (Q2 2014 to Q2 2015)		0%		2%

*Source for wage is STB. Source for equipment index is BLS.

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. See 70 FR 75414. FRA finds 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.

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 believes that issuing this 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, 2016.

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. See 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 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 779 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 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 railroads reported 1,902 rail equipment accidents/incidents in 2010, with small railroads reporting 303 of them. Data for 2011 show that railroads reported 2,022 rail equipment accidents/incidents, with small railroads reporting 307 of them. In 2012, railroads reported 1,760 rail equipment accidents/incidents, with small railroads reporting 292 of them. In 2013, railroads reported 1,824 rail equipment accidents/incidents, with small railroads reporting 299 of them. In 2014, railroads reported 1,758 rail equipment accidents/incidents, with small railroads reporting 247 of them. On average over those five calendar years, small railroads reported about 16 percent of the total number of rail equipment accidents/incidents, ranging from 14 percent to 16 percent annually. FRA notes that this data is accurate as of the date of issuance of this final rule, and is subject to minor changes due to additional reporting.

This rulemaking maintains the monetary reporting threshold at the CY 2014 and CY 2015 level of \$10,500. Increasing the reporting threshold would have potentially slightly decreased the reporting burden for railroads in 2016. However, only accidents/incidents with reportable damages near the reporting threshold will be affected. 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 2016. Railroads would potentially incur a small reporting burden, but not the burden to gather this accident/incident information. Also, overall wage rates have not increased, and equipment costs have increased only about 1 percent from the second-quarter of CY 2015 compared to the second-quarter of CY 2014, according to the average PPI Series WPU144 for group transportation equipment and item railroad equipment the BLS published for April, May, and June 2015. Therefore, the overall effect of this rule likely will be neutral or minimal. 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 or additional information collection requirements associated with this final rule. FRA's collection of accident/incident reporting and recordkeeping information is currently approved under OMB No. 2130-0500. Therefore, FRA is not required to provide an estimate of a public reporting burden in this document.

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 analyzed this final rule under the principles and criteria 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 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 did not prepare a federalism assessment.

Environmental Impact

FRA evaluated this rule 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.), other environmental statutes, Executive Orders, and related regulations require. FRA 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. See 64 FR 28545, 28547, May 26, 1999. Under section 4(c) and (e) of FRA’s Procedures, FRA further

concluded that no extraordinary circumstances exist with respect to this rule that might trigger the need for a more detailed environmental review. Accordingly, FRA finds this rule 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 BLS’ Consumer Price Index for All Urban Consumers, the equivalent value of \$100,000,000 in year 2014 dollars is \$155,000,000.² The final rule will not

² See U.S. Department of Transportation guidance at, “2015 Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995,” May 6, 2015 (update), <http://www.transportation.gov/office-policy/transportation-policy/2015-threshold-significant-regulatory-actions-under-unfunded>.

result in the expenditure, in the aggregate, of \$155,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

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 continues 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, \$10,500 for calendar year 2015, and \$10,500 for calendar year 2016) to railroad

on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(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, \$10,500 for calendar year 2015, and \$10,500 for calendar year 2016. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

* * * * *

Issued in Washington, DC, on December 21, 2015.

Sarah Feinberg,
Administrator.

[FR Doc. 2015-32545 Filed: 12/24/2015 8:45 am; Publication Date: 12/28/2015]