



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-2008-0136, Notice No. 9]

RIN 2130-ZA14

**Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for
Calendar Year 2017**

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

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident monetary reporting threshold (reporting threshold) from \$10,500 to \$10,700 for railroad accidents/incidents involving property damage that occur during calendar year (CY) 2017 that FRA's accident/incident reporting regulations require railroads to report to the agency. This action is needed to ensure FRA's reporting requirements reflect cost increases that have occurred since FRA last published the reporting threshold in December 2015.

DATES: This final rule is effective January 1, 2017.

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 Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-124, 1200 New Jersey Ave., SE, Washington, DC 20590 (telephone 202-493-1381).

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). A railroad must report each rail equipment accident/incident 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, 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 addition to periodically reviewing and adjusting the reporting 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 reporting 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 reporting threshold for rail equipment 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 a separate rulemaking, FRA intends to evaluate and amend, if appropriate, its method for calculating the reporting threshold and, as a result, the formula used to calculate the reporting 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.

New Reporting Threshold

Approximately one year has passed since FRA reviewed the reporting threshold. See 80 FR 80683, Dec. 28, 2015. Consequently, FRA has recalculated the reporting threshold under 49 CFR 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of \$10,500, which applies to rail equipment accidents/incidents that occur during CY 2016, should increase by \$200 to \$10,700 for rail equipment accidents/incidents occurring during CY 2017. The specific inputs to the equation set forth in Appendix B (i.e., $T_{new} = T_{prior} * [1 + 0.4(W_{new} - W_{prior})/W_{prior} + 0.6(E_{new} - E_{prior})/100]$) are:

<i>Tprior</i>	<i>Wnew</i>	<i>Wprior</i>	<i>Enew</i>	<i>Eprior</i>
\$10,500	\$29.99942	\$29.80388	203.33333	200.63333

Where: *Tnew* = New threshold; *Tprior* = Prior threshold (with reference to the threshold, “prior” refers to the previous threshold rounded to the nearest \$100, as reported in the Federal Register); *Wnew* = New average hourly wage rate, in dollars; *Wprior* = Prior average hourly wage rate, in dollars; *Enew* = New equipment average Producer Price Index (PPI) value; *Eprior* = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (*Tnew*) is \$10,697.669, which is rounded to the nearest \$100 for a final new reporting threshold of \$10,700 for CY 2017.¹

Notice and Comment Procedures

In this rule, FRA has recalculated the reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005. See 70 FR 75414, Dec. 20, 2005. FRA finds both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. 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

¹ On June 12, 2013, Union Pacific Railroad Company filed a revised 2nd Quarterly Report of Wage A&B Data (Form A Wage Statistics Summary – 0100) for 2012 with the Surface Transportation Board, following the publication of the 2013 threshold. Based upon the revised data, the 2013 threshold would have been \$10,000 ($T_{new} = 9500 * (1 + 0.4 * (26.10 - 24.93) / 24.93 + 0.6 * (191.5 - 186.37) / 100.00) = 9970.76$). The current method for calculating the current threshold requires using the prior threshold as published in the Federal Register. Even though the corrected threshold for 2013 would have been higher at \$10,000, leading to a higher *Tprior* in the calculation for 2014, the end result for 2014 is still \$10,500 using the current formula.

comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to a final rule.

FRA regularly reviews and recalculates the reporting threshold using the formula published in Appendix B near the end of each CY. Therefore, any person affected by this rule should anticipate the on-going adjustment of the reporting threshold and has reasonable time to make any minor changes necessary to come into compliance with the reporting requirements. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next CY. FRA has found that issuing the rule no later than December of each CY and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data when calculating 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, 2017.

REGULATORY EVALUATION

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this final rule under existing policies and procedures and determined it is non-significant under both Executive Orders 12866 and 13563, and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979.

Regulatory Flexibility Act

FRA developed this rule under Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote

compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities, unless the Secretary certifies the rule will not have a significant economic impact on a substantial number of small entities. Under Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), Federal agencies may adopt their own size standards for small entities in consultation with SBA and in consultation with public comment. Under that authority, FRA has published a final statement of agency policy formally establishing for FRA's regulatory purposes "small entities" as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1 (\$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less). See 49 CFR part 209, appendix C. FRA used this definition for this rulemaking.

About 743 of the approximately 792 railroads in the United States are considered small entities by FRA. FRA certifies that 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 employing thousands of employees and operating 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, FRA data indicate railroads reported 2,029 rail equipment accidents/incidents in 2011, with small railroads reporting 276 of them. Data for 2012 show railroads reported 1,765 rail equipment accidents/incidents, with small railroads reporting 254 of them. Data for 2013 show that 1,849 rail equipment accidents/incidents were reported, with small railroads reporting 271 of them. In 2014, 1,870 rail equipment accidents/incidents were reported, and small railroads reported 230 of them. In 2015, 1,912 rail equipment accidents/incidents were reported, with small railroads reporting 253 of them. On average over those five calendar years, small railroads reported about 14% (ranging from 12% to 15%) of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting. Absent this rulemaking (i.e., absent increasing the reporting threshold), the number of reportable accidents/incidents in CY 2017 would likely increase, as keeping the 2016 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden will not be significant and will affect the large railroads more than the small railroads, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Furthermore, FRA has determined the RFA does not apply to this rulemaking. Given this rule merely updates the reporting threshold for CY 2017 using the formula

developed through notice and comment rulemaking and published in Appendix B, FRA finds notice and public comment is unnecessary and would serve no public benefit. The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2012, p.55), provides:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)] If an NPRM is not required, the RFA does not apply.

Because this rulemaking does not require a Notice of Proposed Rulemaking, the RFA does not apply.

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, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that

imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

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 Executive Order 13132. In addition, FRA determined this rule does not impose substantial direct compliance costs on State and local governments. Accordingly, FRA concluded the consultation and funding requirements of Executive Order 13132 do not apply and preparation of a federalism assessment is not required.

Environmental Impact

FRA evaluated this final rule under its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined this final rule 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 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. . . . The following classes of FRA actions are categorically excluded: . . . (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

Consistent with section 4(c)(20) of FRA's Procedures, FRA 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 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. This final rule will not result in the expenditure of more than \$156,000,000 by the public sector in any one year. 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 any 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 a notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking) that (1)(i) 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) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this rule under Executive Order 13211. FRA has determined this rule will not have a significant adverse effect on the supply, distribution, or use of energy, and, thus, is not a “significant energy action” under Executive Order 13211.

Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and

adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA evaluated this final rule under Executive Order 12898 and the DOT Order and determined it would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

Executive Order 13175 (Tribal Consultation)

FRA evaluated this final rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

Trade Impact

The Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the

basis for U.S. standards. FRA assessed the potential effect of this final rule on foreign commerce and concluded its requirements are consistent with the Trade Agreements Act.

Privacy Act

Interested parties should be aware that anyone can search the electronic form of all written comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register (65 FR 19477-19478, Apr. 11, 2000) or you may visit <http://www.transportation.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. In § 225.19, revise the first sentence of paragraph (c), and 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, \$10,500 for calendar year 2016, and \$10,700 for calendar year 2017) 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, \$10,500 for calendar year 2015, \$10,500 for calendar year 2016, and \$10,700 for calendar year 2017. 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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Sarah E. Feinberg,
Administrator.

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