



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA-2014-0099, Notice No. 2]

RIN 2130-AC49

Revision of Method for Calculating Monetary Threshold for Reporting Rail

Equipment Accidents/Incidents

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

ACTION: Final rule.

SUMMARY: FRA's accident/incident reporting regulation requires railroads to report to FRA all rail equipment accidents/incidents above the monetary reporting threshold (reporting threshold) applicable to that calendar year. In this final rule, FRA amends this regulation to modify the way it calculates periodic adjustments to the reporting threshold and the way it communicates each calendar year's threshold to railroads. This final rule will improve the accuracy of accident/incident data gathered from the railroads.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or visit U.S.

Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Prabhdeep S. Chawla, Industry Economist, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-21, W33-321, 1200 New Jersey Ave., S.E., Washington, D.C. 20590 (telephone 202-493-6298); or Senya Waas, Attorney Adviser, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, W31-223, 1200 New Jersey Ave., S.E., Washington, D.C. 20590 (telephone 202-493-0665).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

- I. Executive Summary**
- II. Background**
- III. Discussion of Specific Comments and Conclusions**
- IV. Regulatory Review and Notices**
 - A. Executive Orders 12866, 13771, and DOT Regulatory Policies and Procedures**
 - B. Regulatory Flexibility Act and Executive Order 13272: Certification of No Significant Economic Impact on a Substantial Number of Small Entities**
 - C. Other Specialized Analyses (Paperwork Reduction Act, Federalism, Environmental Impact, Unfunded Mandates Reform Act of 1995, Energy Impact)**
 - D. Privacy Act**
 - E. Regulation Identifier Number (RIN)**
- I. Executive Summary**

On May 17, 2019, FRA published a notice of proposed rulemaking (NPRM) proposing two technical revisions to the formula for calculating its accident/incident reporting threshold and an administrative change to the way FRA communicates the reporting threshold applicable to the upcoming year. *See* 84 FR 22410. This final rule substantially adopts all of the proposals in the NPRM. First, FRA revises the percentage term used to determine a change in equipment costs, so it is consistent with the percentage term used to determine a change in labor costs. Second, to reflect overall economic data trends better, this final rule revises the formula to use full-year data instead of only second-quarter data to calculate the reporting threshold. Third, FRA is revising 49 CFR 225.19(e) to indicate that it will publish an annual notice on its website stating the reporting threshold for the upcoming calendar year (CY). FRA will publish this annual notice on its website no later than November 30th of each year, providing at least one month advance notice to stakeholders of the new threshold before it becomes effective. Issuing a notice each year, as opposed to a final rule, will simplify and expedite the communication of the reporting threshold, and will be more practical and efficient than FRA annually publishing a final rule incorporating the reporting threshold amount in the rule text in 49 CFR 225.19(c) and (e).

In the NPRM, FRA proposed no revisions to 49 CFR 225.19(c) regarding rail equipment accidents. However, because that section currently lists the reporting threshold for each calendar year since 2002, FRA is revising that section to remove those specific references consistent with the revisions to § 225.19(e) discussed above. Specifically, FRA will no longer publish each year's reporting threshold in the rule text of part 225. Instead, each year, FRA will issue a notice announcing the reporting threshold for the upcoming year.

FRA analyzed the economic impacts of this final rule against a “no action” baseline reflecting what would happen in the absence of this final rule. That is, what

would happen if the reporting threshold continued to be calculated according to the current, technically-flawed formula. FRA estimated that, going forward, the technical revisions to the reporting threshold formula adopted in this final rule will yield slightly lower reporting thresholds than the existing formula would produce. This lower threshold will likely result in railroads being required to report more rail equipment accidents/incidents under this final rule. As noted in the NPRM, FRA estimated this rule would cause the railroads to report an average of 140 more rail equipment accidents/incidents annually over the 10-year period from 2019 to 2028.¹ The present value of the costs to report these accidents/incidents to FRA totals \$138,913 using a 7 percent discount rate, and \$170,744 using a 3 percent discount rate. The annualized costs are \$19,778 using a 7 percent discount rate, and \$20,016 using a 3 percent discount rate. To place the estimated marginal increase in reported rail equipment accidents/incidents in perspective, the expected increase represents about 7.5 percent of the 1,850 total reported rail equipment accidents/incidents every year (an average over the years 2014 to 2018) – and an even smaller percentage of the approximately 12,000 total accidents/incidents reported annually on average (including highway-rail incidents and other incidents).

FRA also quantified the cost-savings from not publishing the reporting threshold in the **Federal Register**. Over 10 years, the expected present value of cost savings totals \$8,927 discounted at 7 percent, and \$10,842 discounted at 3 percent. The corresponding annualized cost savings are \$1,271 using a 7 percent discount rate, and also \$1,271 using a 3 percent discount rate.

Although this final rule may require railroads to report slightly more accidents and incidents in any given year, FRA expects it will result in more accurate and consistent train accident data for analyzing railroad safety trends. The improved data is

¹ This estimate was based on projections using data from 2006-2018, as described in the NPRM.

expected to help inform future regulatory and other actions that better address safety risks and reduce the occurrence of rail equipment accidents/incidents. Additionally, users of FRA's data (including states, researchers, and other stakeholders), will benefit from access to more accurate and consistent data. Overall, the revisions will benefit a broad range of analyses.

II. Background

The NPRM contained a detailed background discussion of the existing formula FRA used to calculate the annual reporting threshold, the proposed revisions to that formula, and the agency's proposal to issue a notice on its website each year announcing the reporting threshold for the upcoming calendar year.

Given that FRA received limited comments to the NPRM, FRA is not reproducing the NPRM analysis here. Please refer to the NPRM for the full background discussion. 84 FR at 22411-22417.

III. Discussion of Specific Comments and Conclusions

In the NPRM, FRA requested comments on the assumptions and methodology used in its analysis. In response, FRA received two comments. One comment was filed jointly by the Association of American Railroads and the American Short Line and Regional Railroad Association (Railroads), and a second comment was submitted anonymously. The comments received are in the public docket for this rulemaking at www.regulations.gov.

In their comment, the Railroads expressed concern over how FRA will communicate the threshold for the upcoming year to railroads and the public at-large. The Railroads recommended three changes to the NPRM. First, they suggested FRA provide a dedicated website address where the reporting threshold could be reliably found. Second, to provide certainty regarding the effective date of any changes to the threshold, the Railroads asked FRA to provide an annual date for when to expect

publication of the reporting threshold notice on FRA’s website. Third, the Railroads suggested FRA should have and communicate a plan to keep the reporting threshold on the FRA website in case of a partial Government shutdown. The Railroads did not object to the proposed technical revisions to the reporting threshold formula.

In consideration of the Railroads’ comments, FRA has established a dedicated web page for the reporting threshold on its website. The web page address is: <https://railroads.dot.gov/forms-guides-publications/guides/monetary-threshold-notice>. In addition, a link to the reporting threshold will be featured under “Related Links” on the FRA Safety Data & Reporting web page at <https://railroads.dot.gov/safety-data>, when it is first published and for some time thereafter. These websites will help the public find the reporting threshold when needed.

In response to the Railroads’ second concern, FRA is modifying the rule text to state that it will publish a notice on its website no later than November 30th each year announcing the new reporting threshold that will take effect on January 1st of the upcoming calendar year. This change will provide the Railroads and other stakeholders advance notification about when the reporting threshold will be published.

While partial Government shutdowns noted by the Railroads occur, they are infrequent events. From 1990 to 2019, there have been 7 Government shutdowns totaling 83 days, accounting for less than 1 percent of the total number of days over those 30 years.² Moreover, FRA’s web pages continue to operate during a Government shutdown. Routine operations, including hosting the reporting threshold, continue under a Government shutdown. However, any specific service a user might need would be

² Jennifer Earl, “A Look Back at Every Government Shutdown in US History,” Fox News, published February 9, 2018, updated January 28, 2019, accessed December 17, 2019, <https://www.foxnews.com/politics/a-look-back-at-every-government-shutdown-in-us-history>. Calculation: 83 days/(30 years * 365 days per year) = 0.0076, or about 0.8%.

deferred until after the shutdown. FRA also suggests that users who need the reporting threshold simply print or save a copy the reporting threshold for their records, as it will remain the same for the entire calendar year.

FRA received an anonymous comment recommending every accident/incident be investigated without regard to the reporting threshold. The commenter stated that small incidents can indicate systemic issues leading to catastrophic events.

While FRA does not have the resources to investigate every accident/incident, it exercises its jurisdiction in the course of conducting inspections and investigations to request information on accidents/incidents below the reporting threshold from the railroads. *See* 49 CFR 225.25. To mandate railroads regularly report every accident/incident to FRA is beyond the scope of this rulemaking.

Other than the change to the rule text discussed above, FRA has adopted the requirements proposed in the NPRM in this final rule.

IV. Regulatory Review and Notices

A. Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures

This final rule is a nonsignificant rulemaking and evaluated in accordance with existing policies and procedures under Executive Order 12866 and DOT's Administrative Rulemaking, Guidance, and Enforcement Procedures in 49 CFR part 5. This rulemaking is not a regulatory action under Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," because it is not significant under Executive Order 12866. *See* 82 FR 9339, Jan. 30, 2017.

FRA is revising its formula for determining the reporting threshold. The changes are summarized in the "Executive Summary" section above, and discussed in detail in the NPRM. The changes are intended to improve the accuracy of the reporting threshold, and the resulting rail equipment accident/incident data gathered from the railroads over

time. The improved data is expected to help formulate regulations and other actions that better address safety risks. Table 1 below summarizes these costs and benefits.

TABLE 1: SUMMARY OF COSTS AND BENEFITS (Over a 10-year period of analysis)			
	Costs	Cost Savings*	Benefits
Undiscounted, Nominal	\$202,032	\$12,710	Qualitative: More Accurate Data
Present Value (PV) at 3%	\$170,744	\$10,842	Qualitative: More Accurate Data
Present Value (PV) at 7%	\$138,913	\$8,927	Qualitative: More Accurate Data
Annualized at 3%	\$20,016	\$1,271	Qualitative: More Accurate Data
Annualized at 7%	\$19,778	\$1,271	Qualitative: More Accurate Data

* FRA will realize cost savings from issuing the reporting threshold on its website due to a reduction in printing costs.

To estimate these costs, FRA’s analysis in the NPRM indicated the changes in the reporting threshold formula would produce a slightly lower threshold in future years as compared to the existing formula.³ FRA’s analysis also showed, for rail equipment accidents/incidents near the reporting threshold, railroads reported an average of 8 rail equipment accidents/incidents for every \$100 increase in the reporting threshold. FRA forecasts both the baseline and slightly lower revised (i.e., final rule) thresholds from 2019 to 2028, and calculated the monetary differences between them. Next, FRA applied the rate of 8 accidents/incidents per \$100 increase to the monetary differences between the reporting thresholds to estimate the marginal increase in reported accidents/incidents. Finally, FRA multiplied the \$144 cost to submit an accident/incident report to FRA on Form F 6180.54 to the marginal increase in reported accidents/incidents, to calculate the costs presented in the table above.

This final rule modifies the NPRM rule text by stating FRA will publish the upcoming reporting threshold on its website before it becomes effective, per comments received from the Railroads. No additional costs are expected from this change. This

³ For the years 2006 to 2018, the revised threshold formula in this final rule produces a reporting threshold about six percent lower on average than the no-action baseline reporting threshold formula.

change will provide advance notification of the new reporting threshold to the railroads and public.

B. Regulatory Flexibility Determination and Executive Order 13272: Certification of No Significant Economic Impact on a Substantial Number of Small Entities

Need for the Final Rule

This section examines the impact of the final rule on small entities. FRA is changing the way the reporting threshold is calculated because FRA found the existing formula was overestimating the change in equipment costs. As explained in detail in the NPRM, FRA is standardizing the way the percent change in equipment costs is calculated. Equipment cost changes will be calculated consistently with the way that labor costs are calculated. FRA is also incorporating 12 months of data in the reporting threshold calculation. In addition, FRA is notifying railroads of the new reporting threshold for the upcoming year by publishing an annual notice on FRA's website.

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (Aug. 16, 2002), require agency 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. FRA prepared an Initial Regulatory Flexibility Analysis (IRFA) at the time the proposed reporting threshold rule was published in the Federal Register. The analysis below supports that the final rule will not have a significant economic effect on a substantial number of small entities.

FRA requested comment on potential small business impacts of the proposed rule. No commenters objected to the technical revisions to the reporting threshold formula, or to the potential costs of the proposed changes on small entities.

Description of Regulated Entities

Under section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 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, which is \$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, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

All railroads currently governed by 49 CFR part 225 railroad accident/incident reporting requirements will be subject to this final rule. Of those, FRA considers about 735 of the approximately 784 railroads in the United States to be small entities. The final rule will result in a slightly lower future reporting threshold. Small entities affected by this rulemaking will be those that report accidents/incidents with associated monetary damages near the reporting threshold amount. Small railroads that report rail equipment accidents/incidents with monetary damages that are much above (or below) the reporting threshold will continue to report (or not report) these to FRA. FRA’s analysis in the IRFA showed a range of 8 to 18 small railroads reported accidents/incidents near the reporting threshold annually over the period from 2014 to 2018, or an average of 12 small railroads that would be affected. On average, these railroads represent about 1.7 percent of the 735 small railroads. Given the low proportion of small railroads impacted, this final rule is not expected to impact a substantial number of small entities.

Description of Compliance Requirements

In the NPRM, to determine the potential compliance costs for small entities, FRA conducted an analysis similar to the economic analysis for all railroads. The steps and calculations in the analysis are summarized here. First, FRA calculated the rate of additional rail equipment accidents/incidents that small entities may have to report for every \$100 change in the reporting threshold. FRA found an average of one more rail

equipment accident/incident reported per \$100 change. This rate is based on rail equipment accidents/incidents reported by the small entities in the past for the period 2006 to 2018. FRA lacks information on accidents/incidents below the current threshold because railroads do not have to report these. Therefore, FRA broadly assumed the pattern of accidents/incidents below a lower threshold calculated under this final rule would be similar to those above the threshold, a mirror image for accidents/incidents near the threshold.

To estimate the trend of the thresholds calculated using the baseline formula (i.e., the reporting threshold formula in effect before this final rule), and the thresholds calculated using the formula in this final rule, FRA forecast both thresholds for the years 2019 to 2028. The forecasts allowed FRA to calculate the monetary differences between the baseline and final-rule reporting thresholds in the future, by year. Next, FRA converted the monetary differences between the reporting thresholds to the number of additional rail equipment accident/incident reports that small railroads may have to submit to FRA under the final rule. FRA estimated these additional accident/incident reports by applying the rate of accidents/incidents per \$100 change in the reporting threshold noted above.

Finally, FRA multiplied the railroad's cost to submit an accident/incident report to FRA (\$144 per report) by the number of additional rail equipment accident/incident reports, to produce the compliance cost per year for the small entities. Please see the cost schedule below. For the 10-year period, the undiscounted (nominal) costs amount to \$25,488. The present value of total costs discounted at a 7 percent discount rate equals \$17,526, and when discounted at a 3 percent rate equals \$21,541.

TABLE 2. ESTIMATED COSTS BASED ON FORECASTED NUMBER OF RAIL EQUIPMENT ACCIDENTS/INCIDENTS: SMALL ENTITIES
--

Calendar year	Reporting threshold (baseline formula, pre-final rule) calculated	Reporting threshold (final-rule formula with full-year data)	Difference between final-rule and pre-final rule thresholds	Number of extra accidents/incidents reported (rounded)	Estimated annual cost @ \$144 per accident/incident
2019	\$12,021	\$ 10,566	-\$1,456	15	\$2,160
2020	\$12,329	\$ 10,807	-\$1,522	15	\$2,160
2021	\$12,637	\$ 11,048	-\$1,589	16	\$2,304
2022	\$12,944	\$ 11,289	-\$1,655	17	\$2,448
2023	\$13,252	\$ 11,530	-\$1,721	17	\$2,448
2024	\$13,559	\$ 11,771	-\$1,788	18	\$2,592
2025	\$13,867	\$ 12,012	-\$1,854	19	\$2,736
2026	\$14,174	\$ 12,254	-\$1,921	19	\$2,736
2027	\$14,482	\$ 12,495	-\$1,987	20	\$2,880
2028	\$14,789	\$ 12,736	-\$2,053	21	\$3,024
Total Undiscounted Cost 2019-2028 (10 Years), Nominal					\$25,488
Present Value (PV) of Total Cost Discounted at 7% 2019-2028					\$17,526
Present Value (PV) of Total Cost Discounted at 3% 2019-2028					\$21,541
Total Annualized Cost Using 7% Discount Rate 2019-2028					\$2,495
Total Annualized Cost Using 3% Discount Rate 2019-2028					\$2,525

In terms of the estimated economic impact of the final rule on small entities, FRA expects the impact to be minimal based on the above analysis. Given the annualized cost is approximately \$2,500, the cost per railroad for this group of railroads is about \$139 to \$313 per year—or on average about \$210 per year per railroad. (Calculated as $\$2,500/18$ railroads = \$139; and $\$2,500/8$ railroads = \$312.50; for a range of about \$139 to \$313.) When compared to annual revenues, the impact is very small. The industry trade organization representing small railroads, the American Short Line and Regional Railroad Association (ASLRRA), reports the average freight revenue per Class III railroad is \$4.8 million.⁴ Relative to the average freight revenue per railroad, FRA estimates the proposed rule will affect less than 0.1 percent of revenues. (Calculated as

⁴ See American Short Line and Regional Railroad Association. (2014). *Short Line and Regional Railroad Facts and Figures*. (Pamphlet). Washington, DC: Author.

\$210 compliance cost per year per railroad/\$4,800,000 average freight revenue per railroad = 0.00004 = 0.004 percent.) FRA therefore expects the average compliance costs for a small entity to be not significant.

Certification

Under the RFA, FRA prepared and made available for public comment an IRFA describing the impacts of the proposed rule on small entities (5 U.S.C 603(a)). FRA received no comments regarding the impact on small entities. Additionally, the ASLRRA did not object to the technical revisions or costs of the proposed rule. As explained above, FRA finds the average compliance costs for a small entity to be not significant. Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Other Specialized Analyses

Paperwork Reduction Act

The burden for Accident/Incident Reporting and Recordkeeping is approved in the information collection for 49 CFR part 225 under OMB No. 2130-0500. OMB re-approval for this collection of information was granted on June 6, 2018, and the expiration date is June 30, 2021.

Federalism

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 EO 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, the agency consults with 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.

This final rule has been analyzed in accordance with the principles and criteria contained in EO 13132. FRA has determined that, if adopted, the final rule would not 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. In addition, FRA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of EO 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Accident Reports Act of 1910, repealed and recodified at 49 U.S.C. 20901. *See* Pub. L. 103-272 (July 5, 1994). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “local safety or security hazard” exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in EO 13132. As explained above, FRA has determined that this final

rule has no federalism implications, other than the possible preemption of State laws under the former FRSA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

Environmental Impact

FRA has evaluated this final rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., other environmental statutes, related regulatory requirements, and its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999). FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA’s NEPA Procedures, “Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.” *See* 64 FR 28547 (May 26, 1999). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* In accordance with 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 this rule is not a major Federal action that significantly affects the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Mar. 22, 1995); 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 one 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 is not expected to result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, 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.” *See* 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 notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking (1) that is a significant regulatory action under Executive Order 12866 or any successor order, and 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 does not anticipate that this final rule is 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.

D. 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.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 225

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

The Final 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 - RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

2. In § 225.19, revise paragraphs (c) and (e) and remove the parenthetical authority citation at the end of the section 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 to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and costs for acquiring new equipment and material.

* * * * *

(e) *Notice.* No later than November 30 of each year, the Administrator will publish a notice on FRA's website announcing the reporting threshold that will take effect on January 1 of the following calendar year.

3. Appendix B to part 225 is revised to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

1. Wage data used in the calculation are collected from railroads by the Surface Transportation Board (STB) on Form A—STB Wage Statistics. Rail equipment data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series reports are used in the calculation. The equation used to adjust the reporting threshold has two components: (a) The average hourly earnings of certain railroad maintenance employees as reported to the STB by the Class I railroads and Amtrak; and (b) an overall rail equipment cost index determined by the BLS. The wage component is weighted by 40% and the equipment component by 60%.

2. For the wage component, the average of the data from Form A—STB Wage Statistics for Group No. 300 (Maintenance of Way and Structures) and Group No. 400 (Maintenance of Equipment and Stores) employees is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, second-quarter and first-quarter wage data for the current year, and fourth-quarter and third-quarter wage data for the previous year are obtained from the STB. For equipment costs, the corresponding BLS railroad equipment indices for the same time period as the STB wage data are obtained.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage and equipment components appear as fractional changes relative to the prior year. After performing the calculation, the result is rounded to the nearest \$100.

7. The weightings result from using STB wage data and BLS equipment cost data to produce a reasonable estimation of the reporting threshold that was calculated using the threshold formula in effect immediately before calendar year 2006, a formula that assumed damage repair costs, at levels at or near the threshold, were split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times [1 + 0.4(\text{W}_{\text{new}} - \text{W}_{\text{prior}})/\text{W}_{\text{prior}} + 0.6(\text{E}_{\text{new}} - \text{E}_{\text{prior}})/\text{E}_{\text{prior}}]$$

Where:

W_{new} = New average hourly wage rate (\$).

W_{prior} = Prior average hourly wage rate (\$).

E_{new} = New equipment average PPI value.

E_{prior} = Prior equipment average PPI value.

Issued in Washington, D.C.

Quintin C. Kendall,
Deputy Administrator.

[FR Doc. 2020-25863 Filed: 12/8/2020 8:45 am; Publication Date: 12/9/2020]