

Docket No. 03–13, adopted December 20, 2006, and released December 22, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2006–26565, Notice No. 1]

Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2007

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

ACTION: Final rule.

SUMMARY: This rule increases the rail equipment accident/incident reporting threshold from \$7,700 to \$8,200 for

certain railroad accidents/incidents involving property damage that occur during calendar year 2007. This action is needed to ensure that FRA's reporting requirements reflect cost increases that have occurred since the reporting threshold was last computed in 2005.

DATES: *Effective Date:* This regulation is effective January 1, 2007.

Applicability Date: The revised reporting threshold value of \$8,200 is not applicable to 49 CFR part 219—Control of Alcohol and Drug Use, and 49 CFR part 240—Qualification and Certification of Locomotive Engineers, until January 10, 2007, due to delayed final rule publication. Consequently, for purposes of 49 CFR parts 219 and 240 only, a rail equipment accident/incident should be considered reportable under 49 CFR part 225, through January 9, 2007, if the resultant damages are greater than \$7,700.

FOR FURTHER INFORMATION CONTACT:

Arnel B. Rivera, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–1331); or Sandra S. Ries, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6047).

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) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225 to reflect any cost increases or decreases. 61 FR 30940 (June 18, 1996); 61 FR 60632 (Nov. 29, 1996); 61 FR 67477 (Dec. 23, 1996); 62 FR 63675 (Dec. 2, 1997); 63 FR 71790 (Dec. 30, 1998); 64 FR 69193 (Dec. 10, 1999); 65 FR 69884 (Nov. 21, 2000); 66 FR 66346 (Dec. 26, 2001); 67 FR 79533 (Dec. 30, 2002); 70 FR 75414 (Dec. 20, 2005).

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was revised. 70 FR 75414 (December 20, 2005). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of \$7,700, which applies to rail equipment accidents/incidents that occur during calendar year 2006, should increase by \$500 to \$8,200 for equipment accidents/incidents occurring during calendar year 2007, effective January 1, 2007. The specific inputs to the equation set forth in appendix B (i.e., $T_{new} = T_{prior} * [1 + 0.4(W_{new} - W_{prior})/W_{prior} + 0.6(E_{new} - E_{prior})/100]$) to part 225 are:

| T _{prior} | W _{new} | W _{prior} | E _{new} | E _{prior} |
|--------------------|------------------|--------------------|------------------|--------------------|
| \$7,700 | \$21.458 | \$21.0556305 | 169.7 | 160.1666667 |

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 PPI value; E_{prior} = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (T_{new}) is \$8199.30, which is rounded to the nearest \$100 for a final new reporting threshold of \$8,200.

Notice and Comment Procedures

In this rule, FRA has recalculated the monetary reporting threshold based on the formula discussed in detail and adopted, after notice and comment, in the final rule published December 20, 2005, 70 FR 75414. FRA has found that 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 has found that this rule imposes no additional burden on any person, but rather provides 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 the final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and 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 (Pub. L. 104–121), FRA has issued a final policy that formally establishes “small entities” as including 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.*

About 662 of the approximately 699 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 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 3,011 rail equipment accidents/incidents were reported in 2003, with small railroads reporting 263 of them. In 2004, 3,373 rail equipment accidents/incidents were reported, and small railroads reported 307 of them. Data for 2005 show that 3,223 rail equipment accidents/incidents were reported, with small railroads reporting 327 of them. In each of those three calendar years, small railroads reported ten percent or less 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., any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2006 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 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, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, “Federalism,” issued 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 * * *.” This rulemaking action has been analyzed in accordance with 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 that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with 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 that 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 pursuant to section 4(c)(20) of FRA’s Procedures. 64 FR 28545, 28547, May 26, 1999. 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 that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 [\$128,100,000 or more (as adjusted 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. The final rule will not result in the expenditure, in the aggregate, of \$128,100,000 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 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; 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) 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 in accordance with 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

Anyone is able to search the electronic form of all our comments received into any of our dockets 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** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

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 1.49.

■ 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, and \$8,200 for calendar year 2007) 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, and \$8,200 for calendar year 2007. 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 29, 2006.

Joseph H. Boardman,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AV17

Endangered and Threatened Wildlife and Plants; Clarification of Significant Portion of the Range for the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Clarification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) provide a clarification of the finding we made in support of the final rule that listed the contiguous U.S. Distinct Population Segment of the Canada lynx (*Lynx canadensis*) (lynx) as threatened. In that rule, we found that, "collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS (Distinct Population Segment)." In response to a court order, we now clarify that finding.

ADDRESSES: The complete file for this clarification is available for inspection, by appointment, during normal business hours at the Montana Ecological Services Office, 585 Shepard Way, Helena, MT 59601 (telephone 406/449-5225).

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Fish and Wildlife Office, at the above address (telephone 406/449-5225).

SUPPLEMENTARY INFORMATION: The Service listed the Canada lynx, hereafter referred to as lynx, as threatened on March 24, 2000 (65 FR 16052). After listing the lynx as threatened, plaintiffs in the case of *Defenders of Wildlife v. Kempthorne* (Civil Action No. 00-2996 (GK)) initiated action in Federal District Court challenging the listing of the lynx

as threatened. On December 26, 2002, the Court issued a Memorandum of Opinion and Order to have the Service explain our 2000 finding that "[c]ollectively the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the [lynx] DPS." Pursuant to that order, the Service published a notice of remanded determination and clarification of our 2000 finding on July 3, 2003 (68 FR 40075). In that notice, the Service attempted to address the court's order and issued a new finding that the lynx is not endangered throughout a significant portion of its range. Plaintiffs subsequently brought further action claiming that the Service violated the court's 2002 order.

On September 29, 2006, the Court issued another Memorandum of Opinion and Order remanding the same portion of the Service's March 24, 2000, determination of status for the lynx. The court remanded the finding so that "the Service may clearly and specifically address the finding it was ordered to explain three years ago: That '[c]ollectively the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the [lynx] DPS' (Order at 3)." This finding appeared in the final rule that listed the contiguous U.S. DPS of the lynx as threatened (65 FR 16052; March 24, 2000). Because the court remanded the 2000 listing determination for further explanation of how the Service at that time reached its conclusion the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the lynx DPS, the following discussion addresses the basis for the Service's decision in 2000. The conclusions reached in 2000, and the basis for those conclusions, do not necessarily represent the Service's current views, given new information regarding the lynx as well as the evolving views of the courts and the Service regarding the meaning of the definitions of "endangered species" and "threatened species." In fact, when the Service completed the first remand decision, it did not reiterate its conclusion from 2000 on this issue; instead, it based its new conclusion on a different line of reasoning. The Service recently requested that the Office of the Solicitor examine the definition of "endangered species." As a result, the explanation of the Service's rational for its decision in 2000 provided here may not reflect how the Service will apply the definition of "endangered species" in the future.