

schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

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2. Amend § 54.709 by revising paragraphs (a) introductory text, and (a)(1), and by removing the first sentence of paragraph (a)(2) and adding two sentences in its place to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions. (2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service

support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.

* * * * *

3. Amend § 54.711 by revising paragraph (a) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the **Federal Register**. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

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4. Add § 54.712 to subpart H to read as follows:

§ 54.712 Carrier recovery of universal service costs from end-users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) Eligible telecommunications carriers may not recover federal universal service contribution costs from Lifeline customers.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-1998-4898, Notice No. 5]

RIN 2130-AB57

Retention of Current Monetary Threshold for Reporting Rail Equipment Accident/Incidents During Calendar Year 2003 and Until Further Amended

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

ACTION: Interim final rule with request for comments.

SUMMARY: This Interim Final Rule establishes at \$6,700 the monetary threshold for reporting certain railroad accidents/incidents involving railroad property damage that occur during calendar year 2003 and, until further notice, during subsequent calendar years. The 2003 threshold remains the same as the threshold for calendar year 2002 due to the unavailability of Bureau of Labor Statistics wage data that were previously used to calculate the threshold. FRA is not calculating a new threshold; rather, the old one is being retained as it is not possible to calculate a new threshold with the current formula due to the lack of BLS data. FRA will be providing notice and seeking comment at a future date to establish a new formula for calculating the monetary threshold for reporting rail equipment accidents/incidents. This action is needed to ensure and maintain comparability between different years of accident data by having the threshold

keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

DATES: (1) This regulation is effective January 1, 2003.

(2) *Written Comments:* Written comments must be received by February 28, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (Docket No. FRA-1998-4898, Notice No. 5). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, United States Department of Transportation, room PL-401, 400 7th Street, SW., Washington, DC 20590-0001; or electronically through the Web site for the Docket Management System at <http://dams.dot.gov>. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the "Help" menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS-22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6280) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

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 causes reportable damages greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR

225.19(b), (c). 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, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996). As stated in the procedures in appendix B, information from the Bureau of Labor Statistics (BLS) is used to calculate the threshold. "The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS." 49 CFR part 225, App. B, paragraph 1. The formula set forth in appendix B is consistent with 49 U.S.C. 20901(b), which reads as follows:

(b) Monetary threshold for reporting.

(1) In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, the Secretary shall base damage cost calculations only on publicly available information obtained from—

(A) the Bureau of Labor Statistics; or
(B) another department, agency, or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

(2) If information is not available as provided in paragraph (1)(A) or (B) of this subsection, the Secretary may use any other source to obtain the information. However, use of the information shall be subject to public notice and an opportunity for written comment.

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was last reviewed and revised. 66 FR 66346 (Dec. 26, 2001). However, FRA will not be recalculating the threshold this year based on the current formula in appendix B. The threshold from calendar year 2002, \$6,700, will remain in place. The reason for this is that the BLS is no longer publishing the figures necessary for FRA to compute the wage component of the equation, i.e., the average hourly earnings of production workers for Class I railroads and Amtrak, due to inadequate sampling data. Specifically, the Class I railroads

and Amtrak have not provided the monthly hours and earnings data for production workers that BLS needs to publish these numbers for calendar year 2002. BLS does not foresee a better response rate in future years and, as a result, is completely changing its methodology and the information that it publishes. Therefore, it is not possible for FRA to calculate a new threshold based on the current formula. The calendar year 2002 threshold of \$6,700 will be held over for calendar year 2003 and until further notice so that a threshold remains in place. Beginning in calendar year 2003, FRA will develop a new method for calculating the accident reporting threshold in a separate notice-and-comment rulemaking consistent with 49 U.S.C. 20901(b).

The threshold amount of \$6,700 will remain in effect on January 1, 2003. Sections 225.5 and 225.19 and appendix B have been amended to state that the reporting threshold is \$6,700 for calendar year 2003 and, until further notice, for subsequent calendar years.

Notice-and-Comment Procedures

Although FRA is soliciting comments, FRA believes that it is necessary to issue this Interim Final Rule immediately in order to ensure that a monetary accident/incident reporting threshold remains in place while FRA proposes and establishes a new method for calculating the threshold, based on different data. Because a threshold must be in place at the beginning of calendar year 2003, extended notice-and-comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). It is currently impossible for FRA to calculate a new threshold based on the current formula, and there is not enough time to create, propose and issue a new methodology for establishing a threshold consistent with 49 U.S.C. 20901(b) before January 1, 2003. As a consequence, FRA is proceeding directly to an Interim Final Rule.

However, in accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is appropriate to allow the public to comment on this Interim Final Rule. FRA solicits written comments on all aspects of this Interim Final Rule.

FRA does plan to issue a notice of proposed rulemaking (NPRM) establishing a new formula for determining the amount of the reporting threshold.

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). This Interim Final Rule has also been reviewed under Executive Order 12866 and is also considered “nonsignificant” under that order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) 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 published an interim policy that formally establishes “small entities” as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024 (Aug. 11, 1997). For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. FRA certifies that this Interim Final Rule will have no significant impact on a substantial number of small entities. To the extent that this rule has an 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, a total number of 426 rail equipment accidents/incidents were reported as occurring in calendar year 2001. Of that number, only 24 were reported by small railroads. Hypothetically, if the cost of repairing rail equipment did slightly increase over the last year, and the monetary reporting threshold for the new year remained the same, it is possible that a small number of accidents would become reportable that would not be reportable if the

threshold were increased to account for the increased costs. Therefore, this rule will be neutral in effect for railroads who do not experience any rail equipment accidents/incidents. For railroads that do experience a rail equipment accident/incident, it is possible that there would be a slight increase in the number of reportable accidents, and thus a slight increase of the reporting burden. This burden would not be significant, and would affect the large railroads more than the small entities.

The American Shortline and Regional Railroad Association (ASLRRA) represents the interests of most small freight railroads and some excursion railroads operating in the United States. FRA field offices and the ASLRRA engage in various outreach activities with small railroads. For instance, when new regulations are issued that affect small railroads, FRA briefs the ASLRRA, which in turn disseminates the information to its members and provides training as appropriate. When a new railroad is formed, FRA safety representatives visit the operation and provide information regarding applicable safety regulations. FRA regularly addresses questions and concerns regarding regulations raised by railroads. Because this Interim Final Rule is not anticipated to significantly affect small railroads, FRA is not providing alternative treatment for small railroads under this rule.

Paperwork Reduction Act

There are no new information collection requirements associated with this Interim 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**, provided 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. 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 of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

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 the 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 \$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. The Interim Final Rule would not result in the expenditure, in the aggregate, of \$100,000,000 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 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)(i) That is a significant regulator 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 Interim Final Rule in accordance with Executive Order 13211. FRA has determined that this Interim 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 regulator action is not a “significant energy action” within the meaning of Executive Order 13211.

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, title 49 Code of Federal Regulations as follows:

PART 225—RAILROAD ACCIDENT/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

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

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by adding a heading for paragraph (c), revising the first and last sentences 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.*, \$6,300 for calendar years 1991 through 1966, \$6,500 for calendar year 1997, and \$6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * * The reporting threshold will be reviewed periodically, and, if necessary, will be adjusted every year.

* * * * *

(e) The reporting threshold is \$6,300 for calendar years 1991 through 1996. The reporting threshold is \$6,500 for calendar year 1997, \$6,600 for calendar years 1998 through 2001, and \$6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter. The procedure for determining the reporting threshold for calendar years 1997 through 2002 appears as paragraphs 1–9 of appendix B to part 225. The primary rationale for the reporting threshold established for calendar year 2003 and, until further notice, for subsequent calendar years, appears as paragraph 10 of appendix B to part 225.

3. Part 225 is amended by revising paragraph 9 of appendix B and adding new paragraph 10 to appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

9. The result of these calculations is \$6,682.254777. Since the result is rounded to the nearest \$100, the reporting threshold for rail equipment

accidents/incidents that occur during calendar year 2002 is \$6,700.

10. In the absence of data necessary to compute the reporting threshold for calendar year 2003 according to the procedure described in paragraphs 1–9 of this appendix B, the calendar year 2002 threshold of \$6,700 remains in effect for calendar year 2003 and, until further notice, for all subsequent years.

Issued in Washington, DC., on December 19, 2002.

Allan Rutter,

Federal Railroad Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819201–2327–03; I.D. 122302A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces voluntary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan’s (ALWTRP) implementing regulations. These voluntary restrictions apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,460 square nautical miles (nm²) (2,706 km²), east of Cape Ann, MA, called Cashes Ledge, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 24, 2002, through 2400 hours January 13, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.