

Dated: December 1, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

[FRA-2008-0136, Notice No. 3]

RIN 2130-ZA04

#### Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2011

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the rail equipment accident/incident reporting threshold from \$9,200 to \$9,400 for certain railroad accidents/incidents involving property damage that occur during calendar year 2011. 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 December of 2009.

**DATES:** This regulation is effective January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Arnel B. Rivera, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-306, 1200 New Jersey Ave., SE., Washington, DC 20590 (telephone 202-493-1331); 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 W31-204, 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). 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.

**New Reporting Threshold**

Approximately one year has passed since the rail equipment accident/incident reporting threshold was revised. 74 FR 65458 (December 10, 2009). 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 \$9,200, which applies to rail equipment accidents/incidents that occur during calendar year 2010, should increase by \$200 to \$9,400 for equipment accidents/incidents occurring during calendar year 2011, effective January 1, 2011. 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:

Tprior	Wnew	Wprior	Enew	Eprior
\$9,200	\$24.73606	\$24.04379	184.56666	182.03333

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 \$9,445.80, which is rounded to the nearest \$100 for a final new reporting threshold of \$9,400.

**Notice and Comment Procedures and Effective Date**

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.

FRA regularly recalculates the monetary reporting threshold using a pre-existing formula near the end of each calendar year. Therefore, any person affected by this rule anticipates the on-going adjustment of the threshold and has reasonable time to make any minor changes necessary to come into compliance with the regulations. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule in December of each calendar year and making the rule effective on January 1, of the next year,

allows FRA to use the most up-to-date data when calculating the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA has found that it has good cause to make the effective date January 1, 2011.

**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 721 of the approximately 756 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 2,995 rail equipment accidents/incidents were reported in 2006, with small railroads reporting 381 of them. Data for 2007 show that 2,690 rail equipment accidents/incidents were reported, with small railroads reporting 376 of them. Data for 2008 show that 2,469 rail equipment accidents/incidents were reported, with small railroads reporting 302 of them. In 2009, 1,890 rail equipment accidents/incidents were reported, and small railroads reported 278 of them. On average for those four calendar years, small railroads reported about 13% (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.*, any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2010 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 [\$140,800,000 or more (as adjusted 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. The final rule will not result in the expenditure, in the aggregate, of \$140,800,000 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://www.regulations.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, \$8,200 for calendar year 2007, \$8,500 for calendar year 2008, \$8,900 for calendar year 2009, \$9,200 for calendar year 2010 and \$9,400 for calendar year 2011) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. \* \* \*

\* \* \* \* \*

(e) The reporting threshold is \$6,700 for calendar years 2002 through 2005, \$7,700 for calendar year 2006, \$8,200 for calendar year 2007, \$8,500 for

calendar year 2008, \$8,900 for calendar year 2009, \$9,200 for calendar year 2010 and \$9,400 for calendar year 2011. 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 2, 2010.

**Karen J. Hedlund,**

*Chief Counsel.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0079; MO 92210–1117–0000–B4]

RIN 1018–AW52

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Vermilion Darter

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended (Act). We designate as critical habitat approximately 21.0 kilometers (km) (13.0 miles (mi)) of stream in 5 units within the Turkey Creek watershed in Jefferson County, AL.

**DATES:** This rule becomes effective on January 6, 2011.

**ADDRESSES:** This final rule, the final economic analysis, comments and materials received, as well as supporting documentation we used in preparing this final rule, are available for viewing on the Internet at <http://regulations.gov> at Docket No. FWS–R4–ES–2009–0079 and, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone 601–321–1122; facsimile 601–965–4340.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office (*see ADDRESSES* above). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the vermilion darter under the Act (16 U.S.C. 1531 *et seq.*), in this final rule. For more information on the biology and ecology of the vermilion darter, refer to the final listing rule published in the **Federal Register** on November 28, 2001 (66 FR 59367) and the Vermilion Darter Recovery Plan, available on the Internet at [http://ecos.fws.gov/docs/recovery\\_plan/070802.pdf](http://ecos.fws.gov/docs/recovery_plan/070802.pdf). For information on vermilion darter critical habitat, refer to the proposed rule to designate critical habitat for the vermilion darter published in the **Federal Register** on December 3, 2009 (74 FR 63366). Information on the associated draft economic analysis for the proposed rule to designate revised critical habitat was published in the **Federal Register** on June 29, 2010 (75 FR 37350). *See also* the discussion of habitat in the *Physical and Biological Features* section below.

#### Description and Taxonomy

The vermilion darter (*Etheostoma chermocki* (Teleostei: Percidae)) was officially described in 1992 from Turkey Creek, a tributary of the Locust Fork, which is within the Black Warrior River drainage of Jefferson County, Alabama. The vermilion darter belongs to the subgenus *Ulocentra* (snubnose darters), which includes fish that are slightly laterally compressed, have complete lateral lines, broadly connected gill membranes, a short head, and a small pronounced mouth. The vermilion darter is a medium-sized darter, reaching about 7.1 centimeters (2.8 inches) total length (length from tip of snout to longest portion of tail fin).

#### Distribution and Habitat

The vermilion darter is a narrowly endemic fish species, occurring in sparse, fragmented, and isolated populations. The species is only known in parts of the upper mainstem reach of Turkey Creek and four tributaries in Pinson, Jefferson County, Alabama (Boschung and Mayden 2004, p. 520). Suitable streams have pools of moderate current alternating with riffles of moderately swift current, and low water turbidity.

The vermilion darter was listed as endangered (66 FR 59367, November 28, 2001) because of ongoing threats to the species and its habitat from urbanization within the Turkey Creek watershed. The primary threats to the species and its habitat are degradation of water quality and substrate