

**§ 42.24 Type-volume or page limits for petitions, motions, oppositions, replies, and sur-replies.**

\* \* \* \* \*

(c) *Replies and sur-replies.* The following word counts or page limits for replies and sur-replies apply and include any statement of facts in support of the reply. The word counts or page limits do not include a table of contents; a table of authorities; a listing of facts that are admitted, denied, or cannot be admitted or denied; a certificate of service or word count; or an appendix of exhibits.

\* \* \* \* \*

(4) *Sur-replies to replies to patent owner responses to petitions:* 5,600 words.

\* \* \* \* \*

■ 4. Amend § 42.71 by revising the third sentence of paragraph (d) introductory text to read as follows:

**§ 42.71 Decision on petitions or motions.**

\* \* \* \* \*

(d) \* \* \* The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply. \* \* \*

\* \* \* \* \*

■ 5. Revise § 42.108 to read as follows:

**§ 42.108 Institution of *inter partes* review.**

(a) When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.

(b) At any time prior to a decision on institution of *inter partes* review, the Board may deny all grounds for unpatentability for all of the challenged claims. Denial of all grounds is a Board decision not to institute *inter partes* review.

(c) *Inter partes* review shall not be instituted unless the Board decides that the information presented in the petition demonstrates that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

■ 6. Amend § 42.120 by revising paragraph (a) to read as follows:

**§ 42.120 Patent owner response.**

(a) *Scope.* A patent owner may file a single response to the petition and/or decision on institution. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

\* \* \* \* \*

■ 7. Amend § 42.208 by revising paragraphs (a), (b), and (c) to read as follows:

**§ 42.208 Institution of post-grant review.**

(a) When instituting post-grant review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.

(b) At any time prior to institution of post-grant review, the Board may deny all grounds for unpatentability for all of the challenged claims. Denial of all grounds is a Board decision not to institute post-grant review.

(c) Post-grant review shall not be instituted unless the Board decides that the information presented in the petition demonstrates that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

\* \* \* \* \*

■ 8. Amend § 42.220 by revising paragraph (a) to read as follows:

**§ 42.220 Patent owner response.**

(a) *Scope.* A patent owner may file a single response to the petition and/or decision on institution. A patent owner response is filed as an opposition and is subject to the page limits provided in § 42.24.

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**Andrei Iancu,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2020–27048 Filed 12–8–20; 8:45 am]

**BILLING CODE 3510–16–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–HQ–OAR–2019–0611; FRL–10017–82–OAR]

RIN 2060–AU54

**Implementation of the Revoked 1997 8-Hour Ozone National Ambient Air Quality Standards; Updates to 40 CFR Part 52 for Areas That Attained by the Attainment Date; Withdrawal of Direct Final Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of adverse comment, the Environmental Protection Agency (EPA) is withdrawing the October 9, 2020, direct final rule to update the Code of Federal Regulations (CFR) to codify its findings that nine areas in four states attained the revoked 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment dates. The EPA will address all comments received in a subsequent final rule for which the EPA will not institute a second comment period.

**DATES:** The direct final rule published on October 9, 2020 (85 FR 64046) is withdrawn effective December 9, 2020.

**FOR FURTHER INFORMATION CONTACT:** Ms. Virginia Raps, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C539–01, Research Triangle Park, NC 27711, telephone (919) 541–4383; fax number: (919) 541–5315; email address: [raps.virginia@epa.gov](mailto:raps.virginia@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 9, 2020, the EPA published a direct final rule (85 FR 64046) to codify its findings that nine areas in four states attained the revoked 1997 8-hour ozone NAAQS by the applicable attainment dates. In the proposal for the direct final rule published on the same day (85 FR 64089), the EPA stated that written comments must be received on or before November 9, 2020. The EPA stated that if any relevant adverse comments are received on the proposal, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**. On November 2, 2020, an anonymous comment was posted in the docket that the EPA interprets as relevant and adverse. Therefore, the EPA is withdrawing the direct final rule and will publish a subsequent final rule wherein the EPA will address all comments received. The EPA will not

institute a second comment period on the subsequent final rule.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Andrew Wheeler,  
Administrator.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ Accordingly, the rule amending 40 CFR 52.282, 52.350, 52.1683, and 52.2585 published in the *Federal Register* on October 9, 2020 (85 FR 64046) is withdrawn effective December 9, 2020.

[FR Doc. 2020–26960 Filed 12–8–20; 8:45 am]

BILLING CODE 6560–50–P

### 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 January 8, 2021.

**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 SE, Washington, DC 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. SE, Washington, DC 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. SE, Washington, DC 20590 (telephone 202–493–0665).

#### SUPPLEMENTARY INFORMATION:

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#### 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.<sup>1</sup> 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

<sup>1</sup> This estimate was based on projections using data from 2006–2018, as described in the NPRM.