



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
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**Federal Railroad
Administration**

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VIA ELECTRONIC FILING

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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**Re: Docket No. EP 770 – *Urgent Issues in Freight Rail Service*; Docket No. EP 770 (Sub-No. 1)
– *Urgent Issues in Freight Rail Service***

Dear Ms. Brown:

The U.S. Department of Transportation (DOT) and the Federal Railroad Administration (FRA) respectfully request the Surface Transportation Board (STB or Board) reopen the data collection period in the above-captioned proceeding for the limited purpose of accepting this response to the Association of American Railroads (AAR) December 20, 2023, filing (“AAR Letter”).¹ The information contained herein will allow the Board to compile a more accurate and complete record in this proceeding.

The AAR letter relied on changes to FRA’s reporting threshold for rail equipment accidents/incidents to rebut arguments made by labor organizations regarding the safety record of the Class I railroads.² FRA agrees with AAR that rail equipment accident/incident data is critical in understanding trends in safety performance. However, AAR’s suggestion that revisions to the methodology render the data misleading is incorrect.

In 2019, the FRA proposed a modification to the calculation of periodic adjustments to the reporting threshold for rail equipment accidents/incidents to “better reflect the actual changes in equipment prices over time, resulting in a more accurate reporting threshold from year-to-year.”³ FRA stated that without the revision, “the threshold will continue to overestimate the actual changes in equipment costs, and the degree of inaccuracy will progressively increase in the future.”⁴ In 2020, the FRA issued the Final Rule modifying how it calculated periodic adjustments to the rail

¹ Letter from Association of American Railroads to Ms. Cynthia Brown, [Urgent Issues in Freight Rail Service](#), EP 770, et al. (Dec. 20, 2023).

² Second Supplemental Comments of the Brotherhood of Maintenance of Way Employees Division/IBT, et al., [Urgent Issues in Freight Rail Service](#), EP 770, et al. (Nov. 30, 2023).

³ Federal Railroad Administration, [Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents](#), Notice of Proposed Rulemaking, 84 Fed. Reg. 22,410, 22,412 (May 17, 2019).

⁴ [Id.](#)

accident/incident reporting threshold by revising the percentage change term for equipment costs.⁵ Rather than comparing the current year's equipment costs to a fixed baseline value, FRA's new rule compares it to the previous year's index for equipment costs. Regarding the impact of this change, the Final Rule stated:

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 expected to help inform future regulatory and other actions that better address safety risks and reduce the occurrence of rail equipment accidents/incidents.⁶

The AAR letter argued that "correction of FRA's error did not cause more accidents, it just made more accidents reportable." Yet the increase to reportable accidents resulting from the changed methodology is de minimis. FRA estimated the modification "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."⁷ The Final Rule explained:

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.⁸

To be sure, even with a de minimis increase in accidents and incidents reported, the changed methodology was important to improve the overall quality of the data reported, which the AAR letter does not dispute. But given the de minimis impact of the change, it should not distort railroad safety data trends or confound the ability to draw conclusions from that data. The AAR letter also raised inflation as a factor that "has nothing to do with safety performance" but may influence the number of reportable accidents. AAR stated that "FRA's methodology accounts for higher inflation rates, but with an up to 18-month lag." This is a mischaracterization of the lag in capturing inflation. FRA's methodology for calculating inflation relies on a yearly average; all inflation data for a given year is accounted for in the threshold that takes effect one quarter, or three months, after the conclusion of the annual period. As of January 1, 2024, the inflation threshold is based on the average inflation for the twelve-month period ending September 30, 2023.⁹

FRA appreciates the Board's ongoing efforts to address rail service issues and the opportunity to provide information on matters relevant to this proceeding. As stated in DOT and FRA's

⁵ Federal Railroad Administration, Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents, Final Rule, 85 Fed. Reg. 79,130 (Dec. 9, 2020).

⁶ Id. at 79,131.

⁷ Id. at 79,130.

⁸ Id.

⁹ AAR also noted that higher wages resulting from new collective bargaining agreements were not reflected in the accident/incident data threshold for 2022 and 2023. However, FRA's annual threshold calculation ultimately captures all wage change data over time.

November 7, 2023, filing in the reciprocal switching proceeding,¹⁰ the metrics reported in EP 770 (Sub-No. 1), provided FRA and DOT with invaluable insight into factors that affect the safety, reliability, and efficiency of railroad operations. FRA will continue to monitor and, when appropriate, participate in the Board's proceedings relating to railroad reporting.

Respectfully,



Amit Bose
Administrator

¹⁰ Comments of the United States Department of Transportation and the Federal Railroad Administration, Reciprocal Switching for Inadequate Service, EP 711 (Sub-No. 2) (November 7, 2023).