

December 20, 2023

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

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Office of Proceedings
December 20, 2023
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Public Record

*Re: Urgent Issues in Freight Rail Service, EP 770; Urgent Issues in Freight
Rail Service—Railroad Reporting, EP 770-1*

Dear Ms. Brown:

I write in response to a recent filing from organized labor regarding the industry's safety record.¹ There can be no reasonable dispute that our industry is consistently getting safer, aided by innovations in technology, training, and operational practices. The last several decades have been the safest on record. And the railroads' firm commitment to achieve zero accidents will remain a focus of attention, research, and investment until it is consistently achieved. Achieving that goal will require—and benefit from—the efforts and commitment of our workforce. But in that shared enterprise, it is critical that all keep a clear eye on what matters and what can make a difference, and not be distracted or misled by issues that have nothing to do with safety. In that regard, comments in the November filing regarding recent changes in the number of reported accidents require this response.

As the Board knows, FRA requires railroads to report all rail equipment accidents/incidents above a certain monetary threshold ("reporting threshold"). In 2006, FRA inadvertently introduced a technical error in the computation of the formula used to adjust the reporting threshold. This error resulted in the monetary threshold for when an accident or incident must be reported to FRA being set higher than it otherwise would have been from 2006 and 2020. FRA acknowledged this error in 2019, explaining that the 2006 "methodology has resulted in the gradual overstatement of the change in the equipment costs and consequently higher reporting thresholds. FRA analysis found the current formula for computing the reporting threshold does not accurately capture the changes in equipment prices due to a technical error."²

¹ See Second Supplemental Comments, Brotherhood of Maintenance of Way Employees Division, et al., *Urgent Issues in Freight Rail Service*, EP 770, et al. (Nov. 30, 2023).

² FRA, *Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents*, Notice of Proposed Rulemaking, 84 Fed. Reg. 33412 (May 17, 2019) ("Proposed Rule") (emphasis added).

FRA finalized the rule to correct this error in December 2020, recognizing 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.*”³ In other words, reducing the threshold increased the number of reportable accidents for 2021 and going forward, relative to the years prior. To state the obvious, correction of FRA’s error did not cause more accidents, it just made more accidents reportable. This is not a change in the actual safety performance of the railroads.

Another example of a factor that has nothing to do with actual safety performance but that can influence reportable accident rates is inflation. Inflation in 2021, 2022, and 2023 has been higher than normal.⁴ Higher inflation does not cause more accidents, but it means the costs of an accident increase—making more accidents reportable. FRA’s methodology accounts for higher inflation rates, but with an up to 18-month lag. Higher inflation in 2022 will first be reflected in the reporting thresholds set for 2024.

Finally, a third example of a confounding factor is the retroactive application of higher wages that resulted from the most recent round of collective bargaining. Those higher costs were not reflected in the calculations of the reporting threshold for 2022 or 2023, but those higher costs are included in a railroad’s calculation of the costs of an incident or accident. Thus, more accidents will exceed the reporting thresholds in 2022 and 2023 than would have if the thresholds had been calculated using actual costs.

Reportable accident data is important in understanding trends in safety performance, but year-over-year changes must be carefully reviewed and understood before broad conclusions can be drawn about changes in the actual safety of the railroads. Regardless, the railroads’ commitment to get to zero—regardless of reporting thresholds—remains steadfast.

Respectfully submitted,

J. Frederick Miller Jr.



Association of American Railroads - Counsel
425 Third Street, SW
Washington, D.C. 20024
(202) 639-2100

³ FRA, *Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents*, Final Rule, 85 Fed. Reg. 79130 (Dec. 9, 2020) (“Final Rule”)(emphasis added).

⁴ See Federal Reserve Economic Data, *Producer Price Index by Commodity: Transportation Equipment: Railroad Equipment*, available at <https://fred.stlouisfed.org/series/WPU144>; see also Federal Reserve Bank of Minneapolis, *Consumer Price Index, 1913*, available at: <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913->.