

Federal Railroad Administration, DOT

§ 245.5

APPENDIX A TO PART 244—SCHEDULE OF
CIVIL PENALTIES [RESERVED]

PART 245—RAILROAD USER FEES

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AUTHORITY: 45 U.S.C. 431, 437, 438, 446; 49
CFR 1.49(m).

SOURCE: 57 FR 30602, July 9, 1992, unless
otherwise noted.

Subpart A—General

§ 245.1 Purpose and scope.

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the “Safety Act”) which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration (“FRA”) in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA. For fiscal years 1992 through 1995, the user shall be calculated by FRA in accordance with § 245.101. The Secretary’s authority to collect user fees shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

§ 245.3 Application.

This part applies to all railroads except those railroads whose entire oper-

ations are confined within an industrial installation.

§ 245.5 Definitions.

As used in this part—

(a) *Employee hours* means the number of hours worked by all employees of the railroad during the previous calendar year.

(b) *FRA* means the Federal Railroad Administration.

(c) *Industrial track* means a switching track serving industries, such as mines, mills smelters, and factories.

(d) *Light density railroad* means railroads with 1200 or less train-miles per road mile.

(e) *Main track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(f) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(g) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation (*See*, 45 U.S.C. 431(e)).

(h) *Responsible entity* means the railroad subject to this part as of December 31 of the applicable fiscal year (October 1 to September 30), i.e. December 31, 1991, for fiscal year 1992, December 31, 1992, for fiscal year 1993, etc.

(i) *Road miles* means the length in miles of the single or first main track, measured by the distance between terminals or stations, or both. Road miles does not include industrial and yard tracks, sidings, and all other tracks

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not regularly used by road trains operated in such specific service, and lines operated under a trackage rights agreement.

(j) *Safety Act* means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*)

(k) *Sliding Scale* means the adjustment made to the mile of road of light density railroads. The sliding scale is as follows:

Train miles per road mile	Scaling factor
Up to 5000
501 to 75025
751 to 100050
1001 to 120075
1201 and above	1.00

The scaling factor is multiplied by the preliminary rate per road mile for each railroad for the year.

(l) *Trackage rights agreement* means an agreement through which a railroad obtains access and provides service over tracks owned by another railroad where the owning railroad retains the responsibility for operating and maintaining the tracks.

(m) *Train* means a unit of equipment, or a combination of units of equipment (including light locomotives) in condition for movement over tracks by self-contained motor equipment.

(n) *Train mile* means the movement of a train a distance of one mile measured by the distance between terminals and/or stations and includes yard switching miles, train switching miles, and work train miles. Yard switching miles may be computed on any reasonable, supportable, and verifiable basis. In the event actual mileage is not computable by other means, yard switching miles may be computed at the rate of 6 mph for the time actually engaged in yard switching service.

(o) *Yard track* means a system of tracks within defined limits used for the making up or breaking up of trains, for the storing of cars, and for other related purposes, over which movements not authorized by timetable, or by train order may be made subject to prescribed signals, rules or other special instructions. Sidings used exclusively as passing track and main line track within yard limits are not included in the term yard track.

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§ 245.7 Penalties.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than \$10,000 per violation. Civil penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying records or reports required by this part.

Subpart B—Reporting and Recordkeeping

§ 245.101 Reporting requirements.

(a) Each railroad subject to this part shall submit to FRA, not later than March 1st of each year (August 1st, for the fiscal year ending September 30, 1992) a report identifying the railroad's total train miles for the prior calendar year, the total road miles owned, operated under lease, or controlled (but not including trackage rights) by the railroad as of December 31 of the previous calendar year, and the railroad's total number of employee hours for the prior calendar year. An entity shall be considered a railroad subject to this part if it conforms to the definitions found in § 245.5(g) and (h) above. Each railroad shall report all of the data for the entire relevant calendar year whether or not its present operations generated all of the reportable data. This report shall be made on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees and shall be filed by the Responsible Entity (see § 245.5(h)). The report shall include an explanation for an entry of zero for train miles, road miles, or employee hours. Each railroad shall also identify all subsidiary railroads for which it is reporting and provide a breakdown of train miles, road miles, and employee hours for each subsidiary. Finally, each railroad shall enter its corporate billing address for the user fees, and the name, title,

telephone number, date, and a signature of the person submitting the form to FRA.

(b) FRA anticipates mailing blank copies of FRA Form 6180.91—Annual Report of Railroads Subject to User Fees to each railroad during the month of January (the month of July for the fiscal year ending September 30, 1992) for the railroad's use in preparing the report. This action by FRA is for the convenience of the railroads only and in no way affects the obligation of railroads subject to this part to obtain and submit FRA Form 6180.91 to FRA in a timely fashion in the event a blank form is not received from FRA. Blank copies of FRA Form 6180.91 may be obtained from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

(c) Train miles, as defined in §245.5(n), shall be calculated by the railroad in accordance with the following considerations:

(1) Each railroad subject to this part is to report the train miles for the freight and passenger service it operates without regard to track or facility ownership.

(2) Train miles are to be reported by both freight and passenger railroads and shall include miles run between terminals or stations, or both, miles run by trains consisting of empty freight cars or without cars, locomotive train miles run, miles run by trains consisting of deadhead passenger equipment, motor train miles run, yard-switching miles run, work train miles, and train switching miles.

(d) Road miles, as defined in §245.5(i), shall be calculated by the railroad in accordance with the following considerations:

(1) Road miles to be reported shall include all track owned, operated under lease, or controlled by the railroad but shall not include track used under trackage rights agreements. (Note: road miles consisting of leased track are to be reported by the lessee railroad). Road miles consisting of jointly-owned track or track jointly operated under lease shall be reported by the railroad controlling operations over the track. Road miles for a given section of railroad should be reported by only one railroad.

(2) Road miles to be reported shall not include industrial track, yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service. The determination that a particular track segment qualifies as industrial track or yard track must be made on a reasonable and supportable basis. Road miles do not include track which was out of service for the entire calendar year that is the subject of the user fee report.

(e) Employee hours, as defined in §245.5(a), shall be calculated by the railroad in accordance with the following considerations: Employees hours to be reported include the number of hours worked by all railroad employees, regardless of occupation, during the previous calendar year. Include all employees in the occupational categories shown in appendix D of the FRA Guide for Preparing Accident/Incident Reports. Employee hours do not include time paid but not actually worked, such as holidays, vacations, etc. Employee hours do not include hours worked by volunteers. Employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e. contractor employees).

(f) In computing both train miles and road miles, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(g) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.91—Annual Report of Railroads Subject to User Fees is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.91 along with a letter explaining in detail the discrepancy.

(h) Each railroad subject to this part has an obligation to assure that the information provided to FRA under this part is consistent with information provided to FRA under other reporting requirements, in particular reports submitted under 49 CFR part 225—Railroad Accidents/Incidents: Reports Classification, and Investigations. The railroad shall fully explain and resolve any discrepancies.

(i) The FRA has prepared a questionnaire entitled “Written Questionnaire on Whether Your Company Is A ‘Railroad’ Subject To FRA User Fee Regulations” (FRA Form 6180.90) in order to assist in determining whether certain entities meet the definition of “railroad” included in §245.5 or constitute railroads whose entire operations are confined within an industrial installation (“plant railroads”) excluded from this part under §245.3. Copies of FRA Form 6180.90 are available from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

§ 245.103 Recordkeeping.

Each railroad subject to this part shall maintain adequate records supporting its calculation of the railroad’s total train miles for the prior calendar year, total road miles as of December 31 of the previous calendar year, and the total employee hours for the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator’s designee during normal business hours.

§ 245.105 Retention of records.

Each railroad subject to this part shall retain records required by §245.103 for at least three years after the end of the calendar year to which they relate.

Subpart C—User Fee Calculation

§ 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 15th of each year (August 1st for the fiscal year ending September 30, 1992), FRA will tabulate the total train miles, total employee hours, and total road miles for railroads subject to this part for the preceding calendar year. FRA’s calculations will be based on the information supplied by railroads under §245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations (i.e. 49 CFR parts 225 and 228). At

the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) Using tabulations of total train miles, total employee hours, total road miles, and the total cost of administering the Safety Act, FRA will calculate a railroad’s user fee assessment as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total costs of administering the Safety Act by 0.55 and then dividing this amount (i.e., fifty-five percent of the total amount to be collected) by the total number of train miles reported to the FRA for the previous calendar year. The result will be the railroad user fee assessment rate per train mile for the current fiscal year.

(ii) The assessment rate per employee hour will be calculated by multiplying the total costs of administering the Safety Act by 0.1 and then dividing this amount (i.e., 10 percent of the total amount to be collected) by the total number of employee hours reported to the FRA for the previous calendar year. The result will be the railroad user fee rate per employee hour for the fiscal year.

(iii) The assessment rate per road mile will be calculated in three steps. First, FRA will determine a preliminary assessment rate per road mile by multiplying the total costs of administering the Safety Act by 0.35 and dividing this amount (i.e., thirty-five percent of the total amount to be collected) by the total road miles reported to FRA for the previous calendar year. Second, FRA will adjust this preliminary rate per road mile for each light density railroad by multiplying the preliminary rate by the appropriate scaling factor identified in §245.5(h). The result will be a reduced assessment rate per road mile for light density railroads. Third, FRA will adjust the preliminary assessment rate per road mile for all railroads except light density railroads by adding to their preliminary rate an incremental amount reflecting the reallocation of the relief provided to light density railroads

under step 2 using the sliding scale. The incremental amount is calculated by subtracting (A) the total amount to be collected from light density railroads after application of the sliding scale from (B) the total amount that would have been collected from light density railroads using the preliminary assessment rate and developed under step 1 and (C) dividing the resulting amount by the total road miles reported to FRA by all railroads except light density railroads. The incremental amount is then added to the preliminary assessment rate for all railroads except light density railroads to derive the assessment rate per road mile for all railroads except light density railroads. The results will be a modified assessment rate per road mile for light density railroads qualifying under step 2 and a general assessment rate applicable to all other railroads. In those cases where the computed fee is less than the defined minimum, the net increase attributable to the application of the minimum standard is not included in the reallocation process under step 3 and is instead added to total collections.

(b) The user fee to be paid by each covered railroad is the greater of \$500.00 or the sum of the railroad's train miles times the assessment rate per train mile, the railroad's employee hours times the assessment rate per employee hour, and the railroad's road miles times the applicable assessment rate per road mile.

Subpart D—Collection Procedures and Duty to Pay

§ 245.301 Collection procedures.

(a) After March 15th of each year (August 15th for the fiscal year ending September 30, 1992), FRA will publish in the FEDERAL REGISTER a notice containing FRA's preliminary estimates of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale). The information published by FRA will be sufficient to enable each railroad to calculate its estimated user fee bill for the fiscal year on the basis of the train mile, employee hour, and road mile in-

formation provided by the railroad to FRA.

(b) After June 1st of each year, (August 15th for the fiscal year ending September 30, 1992), FRA will provide to each covered railroad a notice (the "Assessment Notice") containing FRA's final calculations of the total user fee to be collected, the assessment rate per train mile, the assessment rate per employee hour, the assessment rate per road mile (as adjusted by the sliding scale), the train miles, employee hours, and road miles for the railroad for the prior calendar year, the user fee to be paid by the railroad, and a statement and payment record form. FRA will mail the Assessment Notice sufficiently in advance of the end of the fiscal year in order to allow all collections to be completed prior to the end of the fiscal year. FRA will mail the Assessment Notice to the billing address designated by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

§ 245.303 Duty to pay.

(a) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual railroad user fee to the FRA. Payment in full shall be received by FRA no later than thirty days after the Assessment Notice is mailed. Payment is made only when received by FRA. Payments in excess of ten thousand dollars (\$10,000.00) shall be made by wire transfer through the Federal Reserve communications, commonly known as Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the Assessment Notice. Payments of ten thousand dollars or less shall be by check or money order payable to the Federal Railroad Administration. The payment shall be identified as the railroad's user fee by noting it with the User Fee Bill Number as assigned by FRA and by returning the payment record received with the Assessment Notice. Payment shall be sent to the address stated in the assessment notice. Any railroad making an aggregate payment for one or more subsidiaries or affiliates should return the payment records for each and list all applicable Bill Numbers with the payment.

(b) The responsibility for paying the user fee rests with the responsible entity (see §245.5(h)). Parties involved in purchase and sale transactions of railroad(s) or portions of a railroad shall be responsible for allocating the user fee amongst the interested entities in an appropriate fashion. FRA will not prorate user fee bills.

(c) No user fee will be collected from railroads that properly report zero train miles and zero road miles on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees.

(d) Payments not received by the due date will be subject to allowable interest charges, penalties, and administrative charges (31 U.S.C. 3717). Follow-up demands for payment and other actions intended to assure timely collection, including referral to local collection agencies or court action, will be conducted in accordance with Federal Claims Collection Standards (4 CFR chapter II) and Departmental procedures (49 CFR 89).

PART 250—GUARANTEE OF CERTIFICATES OF TRUSTEES OF RAILROADS IN REORGANIZATION

Sec.

250.1 Form and content of application.

250.2 Required exhibits.

250.3 Fees.

250.4 Execution and filing of application.

250.5 General instructions.

AUTHORITY: Sec. 3(f) of the Emergency Rail Services Act of 1970, Pub. L. 91-663; sec. 1.49(m), regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m).

SOURCE: 36 FR 770, Jan. 16, 1971, unless otherwise noted.

§250.1 Form and content of application.

The application shall include, in the order indicated and by section numbers and letters corresponding to those used in this part, the following:

(a) *As to the Trustee:*

(1) Full and correct name and principal business address.

(2) The name and address of the reorganization court under the direction of which the Trustee is acting and the docket number of the proceeding.

(3) Name, title, and address of the person to whom correspondence regard-

ing the application should be addressed.

(4) Brief description of the loan and its purpose or purposes, including statements of

(i) The total amount of the loan and the amount of the guarantee being sought,

(ii) The purpose or purposes for which the loan proceeds will be used,

(iii) The maturity date or dates,

(iv) The date or dates on which the Trustee desires the funds to be made available, and

(v) The rate of interest.

(5) Statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by applicant or any applicant's parent as to the date of the application, including:

(i) Status of any claims under litigation; and

(ii) Any other debts or credits existing between the applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(6)(i) Statement on behalf of the Trustee that the Trustee has endeavored to obtain a loan or loans for the purpose or purposes proposed without a guarantee by the Secretary, but has not been able to obtain a loan therefor upon reasonable terms, or if only upon terms considered unreasonable, a statement setting forth such terms and describing any facts relevant thereto.

(ii) Information as to the Trustee's efforts to obtain the needed financing without a guarantee thereof by the Secretary, and as to the results of such efforts. (See §250.2(b)(1) as to exhibits on this subject.)

(7) Full and complete statement, together with independent supporting evidence, where feasible, concerning the effect that cessation of essential transportation services of carrier would have on the public welfare.

(8) Full and complete statement, together with supporting evidence, where possible, demonstrating that cessation of essential transportation services by applicant carrier is imminent.

(9) Full and complete statement, together with supporting evidence, if possible, that there is no other practicable