

## Pt. 225, App. B

## 49 CFR Ch. II (10–1–14 Edition)

Section <sup>2</sup>	Violation	Willful Violation
(d)		
(1) Failure to revise report .....	2,500	5,000
(2) Failure to notify after late identification .....	2,500	5,000
(f) Submission of notice if employee dies as result of the reported accident .....	2,500	5,000
(g) Willfully false accident statement by employee .....		5,000
225.13:		
(1) Failure to Late reports .....	2,500	5,000
(2) Failure to Review Employee Statement .....	2,500	5,000
(3) Failure to Amend Report .....	1,000	2,000
225.18: Alcohol or drug involvement .....	2,500	5,000
225.23: Joint operations .....	( <sup>1</sup> )	( <sup>1</sup> )
225.25:		
(1) Recordkeeping .....	2,500	5,000
(2) Failure to post list .....	1,000	2,000
(3) Posting Prohibited Information .....	1,000	2,000
(4) Missing fields .....	1,000	2,000
225.27:		
(1) Failure to retain records .....	1,000	2,000
(2) Failure to retain electronic receipt .....	1,000	2,000
(3) Failure to comply with electronic recordkeeping requirements .....	1,000	2,000
(4) Failure to provide access to records .....	1,000	2,000
225.33:		
(1) Failure to adopt Internal Control Plan or more than two missing/outdated/incorrect components .....	2,500	5,000
(2) Internal Control Plan with less than three missing/outdated/incorrect components .....	1,000	2,000
(3) Failure to comply with Internal Control Plan .....	2,500	5,000
(4) Failure to comply with the intimidation/harassment policy in Internal Control Plan .....	2,500	5,000
(5) Failure to comply with requirements associated with Form FRA F 6180.150 .....	2,500	5,000
225.35: Access to records and reports .....	2,500	5,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

<sup>2</sup> The penalty schedule uses section numbers from 49 CFR part 225. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

[75 FR 68909, Nov. 9, 2010, as amended at 77 FR 24421, Apr. 24, 2012]

#### APPENDIX B TO PART 225—PROCEDURE FOR DETERMINING REPORTING THRESHOLD

1. Wage data used in the calculation are collected from railroads by the Surface Transportation Board (STB) on Form A—STB Wage Statistics. Rail equipment data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series reports are used in the calculation. The equation used to adjust the reporting threshold has two components: (a) The average hourly earnings of certain railroad maintenance employees as reported to the STB by the Class I railroads and Amtrak; and (b) an overall rail equipment cost index determined by the BLS. The wage component is weighted by 40% and the equipment component by 60%.

2. For the wage component, the average of the data from Form A—STB Wage Statistics for Group No. 300 (Maintenance of Way and Structures) and Group No. 400 (Maintenance of Equipment and Stores) employees is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, second-quarter wage data are obtained from the STB. For equipment costs, the corresponding BLS railroad equipment indices for the second quarter are obtained. As the equipment index is reported monthly rather than quarterly, the average for the months of April, May and June is used for the threshold calculation.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest \$100.

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7. The weightings result from using STB wage data and BLS equipment cost data to produce a reasonable estimation of the reporting threshold that was calculated using the threshold formula in effect immediately before calendar year 2006, a formula that assumed damage repair costs, at levels at or near the threshold, were split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times [1 + 0.4(\text{Wnew} - \text{Wprior})/\text{Wprior} + 0.6(\text{Enew} - \text{Eprior})/100]$$

Where:

Wnew = New average hourly wage rate (\$).

Wprior = Prior average hourly wage rate (\$).

Enew = New equipment average PPI value.

Eprior = Prior equipment average PPI value.

[70 FR 75417, Dec. 20, 2005]

## PART 227—OCCUPATIONAL NOISE EXPOSURE

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AUTHORITY: 49 U.S.C. 20103, 20103, note, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 71 FR 63123, Oct. 27, 2006, unless otherwise noted.

### Subpart A—General

#### § 227.1 Purpose and scope.

(a) The purpose of this part is to protect the occupational health and safety of employees whose predominant noise exposure occurs in the locomotive cab.

(b) This part prescribes minimum Federal health and safety noise standards for locomotive cab occupants. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements.

#### § 227.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads and contractors to railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation;

(2) A rapid transit operation in an urban area that is not connected to the general railroad system of transportation;

(3) A rapid transit operation in an urban area that is connected to the general system and operates under a shared use waiver;

(4) A railroad that operates tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation; or

(5) Foreign railroad operations that meet the following conditions: Employees of the foreign railroad have a primary reporting point outside of the U.S. but are operating trains or conducting switching operations in the U.S.; and the government of that foreign railroad has implemented requirements for hearing conservation for railroad employees; the foreign railroad undertakes to comply with those requirements while operating within the U.S.; and FRA's Associate Administrator for Safety determines that the foreign requirements are consistent with the purpose and scope of this part.