

to invoice payments made to small disadvantaged business concerns. However, contractors shall not be entitled to interest penalties if the Government fails to make early payment.

232.1007 and 232.1108 [Removed]

26. Sections 232.1007 and 232.1108 are removed.

[FR Doc. 05-24218 Filed 12-19-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA-2005-20680, Notice No. 2]

RIN 2130-AB65

Revision of Method for Calculating Monetary Threshold for Reporting Rail Equipment Accidents/Incidents; Announcement of Reporting Threshold for Calendar Year 2006

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending a portion of the accident reporting regulations. Specifically, FRA is amending the method for calculating the monetary threshold for reporting rail equipment accidents/incidents. The amendment is necessary because, in 2001, the Bureau of Labor Statistics (BLS) ceased collecting and publishing railroad wage data used by FRA in the calculation. Consequently, FRA has had to seek a new source of publicly-available data. In the new formula, FRA uses wage data collected and maintained by the Surface Transportation Board (STB) in place of the unavailable BLS wage data. As equipment data remain available from the BLS, there is no change to the source of the equipment component of the reporting threshold. The purpose of the rule is to ensure and maintain comparability between different years of accident data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

In addition, FRA is using the newly established formula to calculate a new accident/incident monetary reporting threshold for calendar year 2006. This final rule increases the monetary threshold for reporting rail equipment

accidents/incidents from \$6,700 to \$7,700, and applies to accidents and incidents involving railroad property damage that occur on or after January 1, 2006.

DATES: *Effective Date:* This final rule is effective January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Arnel Rivera, Staff Director, Systems Support Division, RRS-22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-1331) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

SUPPLEMENTARY INFORMATION:

Background

FRA published a Notice of Proposed Rulemaking (NPRM) on April 19, 2005 (70 FR 20333), proposing to amend the formula for calculating the rail equipment accident/incident monetary reporting threshold, and requested comments. The NPRM proposed to substitute railroad employee wage data collected by the STB for obsolete BLS data that is no longer collected. This final rule adopts the proposed formula, and establishes a new monetary threshold for calendar year 2006.

A "rail equipment accident/incident" is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that causes reportable damages greater than the reporting threshold for the year in which the event occurs to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and materials. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b) and (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

FRA has periodically adjusted the reporting threshold based on the prices of a market basket of railroad labor and materials. The purpose of these adjustments has been to maintain the comparability between different years of

data by having the threshold keep pace with equipment and labor costs so that each year the equivalent group of accidents is included in the reportable accident counts.

Approximately three years have passed since the rail equipment accident/incident reporting threshold was last reviewed and revised. 67 FR 79533 (Dec. 30, 2002). At that time, FRA published an interim final rule carrying over the \$6,700 threshold from calendar year 2002 to 2003 and subsequent years until adoption of a new threshold. 49 CFR 225.19(c). FRA last revised the monetary threshold formula in 1996. 61 FR 30940 (June 18, 1996); 61 FR 60632 (November 29, 1996). The calendar year 2002 threshold has been retained because the BLS ceased publishing certain data required to compute the wage component of the calculation, *i.e.*, the average hourly earnings of production workers for Class I railroads and the National Railroad Passenger Corporation (Amtrak), due to inadequate sampling data. Specifically, the Class I railroads and Amtrak did not provide the monthly hours and earnings data for production workers that BLS needed to publish these numbers for calendar year 2002. BLS did not foresee a better response rate in future years and, as a result, changed its methodology and the information that it publishes. Therefore, it was not possible for FRA to calculate a new threshold for calendar years 2003 and beyond based on the existing formula.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b): "[i]n establishing or changing a monetary threshold for the reporting of a railroad accident or incident, * * * damage cost calculations" shall be based "only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency or instrumentality." Congress allows an exception to this general rule only if the necessary data are not available from the sources described, and only after public notice and comment.

Pursuant to this 1992 direction from Congress, FRA issued an NPRM earlier this year proposing a new method for calculation of the monetary reporting threshold. 70 FR 20333 (April 19, 2005).

Proposal

Currently, the accident/incident reporting threshold adjustment is calculated utilizing two components. The first component is the average hourly earnings for Class I railroads and Amtrak workers. BLS was collecting these data and reporting them under LABSTAT Series Report, Standard Industrial Code (SIC) 4011 for Class I Railroad Average Hourly Earnings, Series ID EEU41401106, Not Seasonally Adjusted. These data are no longer available from BLS.

In order to update the reporting threshold, FRA has searched for a new source of the wage component used in the reporting threshold formula. FRA found that railroads report wage data to the STB, and proposed to use these data as an alternative to the obsolete BLS data. The Class I railroads and Amtrak report hours of service and compensation data quarterly to the STB, on Form A—STB Wage Statistics. Form A organizes hours of service and compensation by five reporting groups: Executives, Officials, and Staff Assistants (Group No. 100); Professional and Administrative (Group No. 200); Maintenance of Way and Structures (Group No. 300); Maintenance of Equipment and Stores (Group No. 400); and Transportation, other than train and engine (Group No. 500). By dividing the compensation by the corresponding hours of service, the wage rate for any reporting group can be found. In the NPRM, FRA proposed to use the average wage rate of reporting Groups No. 300 and 400 as a substitute for BLS wage data.

FRA believes that the STB wage data are a suitable substitute for several reasons. Most significantly, the data directly measure the wages for the two groups of employees whose skills are most used in repairing or replacing damaged railroad equipment. In contrast, BLS wage data were a broader measure of all Class I railroad and Amtrak employee wages. Alternative BLS wage data currently available also provide only broad measures. STB data are, additionally, consistent with Congressional requirements set forth in 49 U.S.C. 20901(b). The STB data are publicly available, although currently only in paper hardcopy, and the information is statistically sound. STB data are derived from a process that is virtually a census of Class I railroads and Amtrak (though the occasional railroad may be late in reporting) and should therefore represent a more accurate and statistically valid account of railroad wages than the BLS wage data.

To further ascertain the suitability of STB wage data as a substitute for unavailable BLS wage data, FRA recalculated the 1997 to 2002 reporting thresholds using STB data. This a posteriori comparison of STB- and BLS-based thresholds showed STB data are a reasonable substitute. The analysis also showed that weighting the wage component by 40% and the equipment component by 60%, rather than the 50/50 current weights, produced a threshold that better approximated the existing threshold. The STB-based threshold, however, does increase at a faster rate than the BLS-based threshold. With 40/60 weights on wages and equipment, the new reporting threshold formula changes to:

$$T_{\text{new}} = T_{\text{prior}} * [1 + 0.4(W_{\text{new}} - W_{\text{prior}})/W_{\text{prior}} + 0.6(E_{\text{new}} - E_{\text{prior}})/100]$$

where the broad definitions of the variables remain the same as before but the underlying definitions of “Wnew” and “Wprior” are revised to reflect the use of STB wage data.

In applying this new formula to periodically update the reporting threshold, FRA proposed using the latest data that would be available when the threshold is updated, instead of an average based on yearly data. As the threshold is typically calculated in the second half of the calendar year, and STB wage data are due 30 days after the close of a quarter, the latest STB data available will be second-quarter data. The calculation for the 2006 threshold will use the second-quarter 2005 wage data from the STB. For equipment costs, FRA is continuing to use the corresponding BLS railroad equipment index in the equation. As the equipment index is reported monthly rather than quarterly, the average for the months of April, May, and June will be inputted into the threshold calculation. The newly calculated threshold reflects the changes in wages and equipment from the last time the threshold was updated to the present.

As proposed in the NPRM, the procedure for adjusting the threshold is shown in the formula below.

Additionally, the NPRM proposed that the weights in the threshold formula be adjusted from 50% on wages and 50% on equipment, to 40% on wages and 60% on equipment. It was found that the 40/60 weights produced a better approximation of the original accident threshold when the threshold was calculated using STB wage data.

New Formula

$$T_{\text{new}} = T_{\text{prior}} * [1 + 0.4(W_{\text{new}} - W_{\text{prior}})/W_{\text{prior}} + 0.6(E_{\text{new}} - E_{\text{prior}})/100]$$

Where:

Tnew = New threshold.

Tprior = Prior threshold. With reference to the threshold, “prior” refers to the previous threshold rounded to the nearest \$100, as reported in the **Federal Register**.

Wnew = New average hourly wage rate, in dollars.

Wprior = Prior average hourly wage rate, in dollars.

Enew = New equipment average PPI value.

Eprior = Prior equipment average PPI value.

With reference to wages and equipment, “prior” refers to the previous wage and equipment averages used to calculate the prior threshold, Tprior. “Prior” does not necessarily refer to the wage and equipment averages for the immediately preceding year (although it may if the threshold is calculated annually). In calculating the threshold, the goal is to capture the change between the old wage and equipment prices and the new prices for these inputs.

New Reporting Threshold for Calendar Year 2006

The equation used to calculate the reporting threshold measures the changes in railroad wages and equipment costs over a period of time, and updates the previous reporting threshold by these amounts. The values for Wprior and Eprior are those that were used to calculate the 2002–2005 monetary reporting threshold.

The value for Wnew is derived from STB wage data collected on Form A—STB Wage Statistics. Railroads report earnings to the STB quarterly on this form. FRA uses second-quarter data reported for the Maintenance of Way and Structures Group (Group No. 300), and the Maintenance of Equipment and Stores Group (Group No. 400). A wage rate is calculated by dividing the compensation paid to employees in these groups by their corresponding service hours, using the “Time Worked and Paid for at Straight Times Rates” category. The wage rates for these two groups are averaged to produce a composite wage, which is then weighted by 40% in the threshold calculation.

The value for Enew is derived from BLS equipment index numbers that are used to measure changes in equipment costs. The equipment index is reported under LABSTAT Series Report, Producer Price Index (PPI) for Commodities, Series ID WPU144 for Railroad Equipment. As the index numbers are reported monthly, the index numbers for the months of April, May, and June are averaged to produce

a second-quarter equipment index number. The index numbers are divided

by 100 to place them in the same decimal form as the wage rates.

Thus, the specific inputs to the equation are:

Tprior	Wnew	Wprior	Enew	Eprior
\$6700	\$21.05563	\$20.61668	160.16667	135.6000

Using the above figures, the calculated Tnew, new threshold, is \$7,744.64, which is rounded to the nearest \$100 for a final new reporting threshold of \$7,700. The new threshold is \$1,000 more than the previous threshold, which had been last calculated for CY 2002. The equipment cost component of the reporting threshold increased the most, rising from about 136 to 160.

Appendix B is revised to show the new procedure and formula used by FRA for determining the reporting threshold. Additionally, § 225.19(e) is amended to reflect that the accident reporting threshold for calendar year 2006 is \$7,700. Consistent with § 225.19(c), this reporting threshold will be adjusted annually.

Comments

No comments were received in response to the NPRM.

Notice and Comment Issues

In this final rule, FRA is taking two steps. First, FRA is revising the method for calculating the reporting threshold and adopting a new formula, after notice and comment. Second, FRA is using that new formula to calculate the monetary reporting threshold for calendar year 2006. The new threshold, based on the revised formula, is not subject to notice and comment. FRA finds that the current cost data inserted into this adopted formula and the cost data that they replace were obtained from reliable Federal government sources. FRA also finds that this rule imposes no additional burden, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures with respect to the recalculation of the monetary reporting threshold are impracticable, unnecessary, and contrary to the public interest. By simply inserting values derived from reliable data into a formula adopted after notice and comment, FRA is not exercising discretion in a way that could be informed by further public comment. As a consequence, FRA is proceeding directly to this final rule with respect to the recalculation of the monetary reporting threshold.

For similar reasons, there is good cause for not publishing the rule at least

30 days before its effective date as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the provisions of this final rule since the publication of the NPRM on April 19, 2005 (70 FR 20333), more than 30 days prior to the effective date of this rule.

Final Rule

The formula to calculate the monetary accident reporting threshold is adopted as proposed. Further, FRA has gathered the necessary data, has calculated a new threshold using the adopted formula, and is establishing the revised threshold dollar amount at \$7,700. This revised threshold is effective beginning January 1, 2006.

Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979).

Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes “small entities” as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

About 630 of the approximately 680 railroads in the United States are considered small entities by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents,

and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 2,738 rail equipment accidents/incidents were reported in 2002, with small railroads reporting 255 of them. In 2003, 2,992 rail equipment accidents/incidents were reported, and small railroads reported 271 of them. Data for 2004 show that 3,296 rail equipment accidents/incidents were reported, with small railroads reporting 309 of them. In each of those three calendar years, small railroads reported ten percent or less of the total number of rail equipment accidents/incidents. FRA notes that these data are accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting.

Absent this rulemaking (i.e., any increase in the monetary reporting threshold), the number of reportable accidents/incidents would increase, as keeping the 2002–2005 threshold in place would not allow it to keep pace with the increasing dollar amounts of wages and rail equipment repair costs. Therefore, this rule will be neutral in effect. Increasing the reporting threshold will slightly decrease the recordkeeping burden for railroads over time. Any recordkeeping burden would not be significant, and would affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act of 1995

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, “Federalism,” issued on August 4, 1999, requires that each agency “in a separately identified portion of the preamble to the regulation as it is to be

issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *." This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent

that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of [\$120,700,000 or more (as adjusted for inflation)] in any 1 year and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of \$120,700,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

Privacy Act

Anyone is able to search the electronic form of all our comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume

65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA is amending part 225, chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-02, 21301, 21302, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

■ 2. Amending § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.*, \$6,700 for calendar years 2002 through 2005, and \$7,700 for calendar year 2006) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.

* * * * *

(e) The reporting threshold is \$6,700 for calendar years 2002 through 2005 and \$7,700 for calendar year 2006. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1-8 of appendix B to part 225.

■ 3. Revise appendix B to part 225 in its entirety to read as follows:

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.

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.

Issued in Washington, DC, on December 14, 2005.

Clifford C. Eby,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 05-24267 Filed 12-19-05; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041221358-5065-02; I.D. 121205E]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter IV Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001hrs local time, December 18, 2005. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the year (through December 31, 2005). This action is necessary to prevent the fishery from exceeding its annual quota and allow for effective management of this stock.

DATES: Effective 0001 hours, December 18, 2005, through 2400 hours, December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978-281-9221, fax 978-281-9135, e-mail don.frei@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2005 specification of DAH for *Loligo* squid was set at 16,872.4 mt (70 FR 21971, April 28, 2005). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons ¹	Research Set-aside
I (Jan-Mar)	33.23	5,564.3	N/A
II (Apr-Jun)	17.61	2,948.8	N/A
III (Jul-Sep)	17.30	2,896.9	N/A
IV (Oct-Dec)	31.86	5,334.9	N/A
Total	100	16,744.9	255.1

¹Quarterly allocations after 255.1 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 95 percent of the total DAH for *Loligo* squid has been harvested. Therefore, effective 0001 hours, December 18, 2005, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2006, when the 2006 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 14, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05-24266 Filed 12-15-05; 2:38 pm]

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