



October 30, 2023

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490 L'Enfant Plaza East SW
Washington, DC 20594

Subject: Docket Number (No.) NTSB–2023–0007; RIN 3147-AA28

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents an \$79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. APTA's membership includes operating railroads, consultants, car builders and suppliers. We appreciate the chance to respond to your proposed rulemaking on behalf of our commuter rail members. APTA writes to you today to submit comments for the notice of proposed rulemaking (NPRM) for Authority of NTSB in Railroad, Pipeline, and Hazardous Materials Investigations published in the *Federal Register* June 27, 2023, at 88 FR 60164. We are pleased to provide feedback to the following questions proposed in the NTSB NPRM as it relates to the definition of property damage:

1. Should the NTSB define "substantial property damage"?

Yes. Regulatory language corresponding with establishing the authority of a federal agency should not be open ended, it should contain clear quantifiable thresholds that are either met or not met and not subject to interpretation.

2. If not, why not?

N/A

3. If so, how should the NTSB define "substantial property damage"?

The least subjective means to create a quantifiable definition is monetary value – recognizing that oftentimes early estimates may contain substantial uncertainty, especially if the estimate is required to incorporate damage to non-railroad property.

4. If “substantial property damage” is defined using a specific dollar amount, what would be a reasonable monetary threshold?

In 49 CFR 219.201(a)(1), within the context of Post-Accident Drug and Alcohol testing, FRA specifically provides for a monetary threshold within an event classified as a “Major Train Accident” as:

Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold) that involves ... Damage to railroad property of \$1,500,000 or more.

From an alternative perspective, in MIL-STD-882E, a Mishap would be deemed to be of at least “Critical” Severity when monetary loss exceeding \$1M occurs. It should be noted that a fatality under MIL-STD-882E would be considered “Catastrophic”, a severity level that would also be associated with monetary loss exceeding \$10M.

It is against this background that we suggest a monetary threshold of \$1.5M be used for “Substantial Property Damage”.

5. How should the NTSB calculate the threshold value of “substantial property damage”?

In the above referenced “Major Train Accident” criteria from 49 CFR 219, the focus is specifically on railroad property. Railroads can generally provide reasonable and accurate early estimates for damage to their property. However, estimates to non-railroad property will contain a degree of uncertainty, especially in the early stages of an incident. Therefore, APTA members recommend that the definition be specific to railroad property. Please also note that the total loss of a single locomotive or passenger railcar will exceed \$1.5M.

APTA also suggests that the costs associated with clearing wrecked railcars, locomotives, or other railroad property from the railroad not be included in the calculation, as such costs are similarly excluded by FRA in their reportability threshold definition. We recommend this because those costs will also be difficult to estimate reliably, and ultimately are not specifically actual property damage.

6. Should the dollar amount established be indexed for inflation?

Yes. The most reliable way to ensure monetary thresholds remain relevant over time is to index them to inflation. This is also an impartial mechanism that would adjust the threshold without requiring agency action to do so. Similarly, other NTSB reporting thresholds should also be indexed.

7. Should the property damage value be consistent with the reporting threshold established by the FRA? Why or why not?

No. The FRA reporting threshold would not be an appropriate mechanism to establish substantial property damage due to the relatively low threshold. The FRA threshold can be exceeded from

such minor occurrences of couplers on Electric Multiple Unit equipment being damaged while performing a coupling in a yard.

8. Should the property damage value be consistent with the reporting threshold established by the NTSB? Why or why not?

The NTSB monetary thresholds in § 840.3 Notification of railroad accidents are low for the purpose of “substantial property damage”. Currently these thresholds serve a purpose in providing notification to allow NTSB to monitor a situation. As noted previously, the total loss of a single locomotive or passenger car will easily exceed the \$150k and the \$25k thresholds. As a \$1.5M threshold is used elsewhere in FRA regulations to establish a “Major Train Accident” it would be appropriate to utilize this number.

9. Should “substantial property damage” be based on total property damage, railroad property damage, or non-railroad property damage?

As noted previously, railroad property damage will be the most reliable estimate that can be provided in the immediate aftermath of the event.

10. Should “substantial property damage” consider factors other than monetary value?

Other than casualties occurring in the event, which is a separate NTSB criteria, the only reasonably reliable quantitative criteria for property damage is monetary value. Subjectivity should not be introduced in this definition.

11. Should there be a distinction in threshold reporting requirements between public railroads and private railroads?

No, what is relevant is the overall scope/impact of the event. This should be agnostic to the carrier that was involved.

12. And which definition should apply to an accident involving both a public railroad and private railroad?

N/A

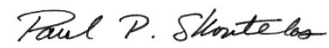
13. The NTSB has different threshold reporting requirements for freight and passenger trains. Should the definition of “substantial property damage” contain a similar distinction?

No, what is relevant is the overall scope/impact of the event. This should be agnostic to the carrier that was involved.

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APTA appreciates the opportunity to comment on this NPRM. If there are any questions regarding this letter, please contact APTA's General Counsel, Linda Ford, at lford@apta.com.

Sincerely,

A handwritten signature in cursive script that reads "Paul P. Skoutelas".

Paul P. Skoutelas
President and CEO

