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[4910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, and 244

[Docket No. FRA-2004-17529; Notice No. 8]

RIN 2130-AB94

Inflation Adjustment of the Aggravated Maximum Civil Monetary Penalty for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation or Order

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

ACTION: Final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, FRA is adjusting the aggravated maximum penalty that it will apply when assessing a civil penalty for a violation of a railroad safety statute, regulation, or order under its authority. In particular, FRA is increasing the aggravated maximum civil penalty (i.e., the maximum civil penalty per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury) from \$100,000 to \$105,000. The current minimum civil penalty per violation of \$650 and the current ordinary maximum civil penalty per violation of \$25,000 remain the same.

DATES: This final rule is effective [Insert date 60 days after publication in the FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996, and adjust those penalty amounts once every four years thereafter, to reflect inflation. Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-373, April 26, 1996. Congress recognized the important role that CMPs play in deterring violations of Federal laws, regulations, and orders and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. ch. 213. See 49 U.S.C. 103 and 49 CFR 1.49; 49 U.S.C. ch. 201-213. FRA currently has safety regulations in 31 parts of the Code of Federal Regulations that contain provisions referencing the agency's authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the Code of Federal Regulations. In this final rule, FRA is amending each of those separate regulatory provisions and the corresponding footnotes in each Schedule of Civil

Penalties appended to those regulations, in order to raise the aggravated maximum CMP to \$105,000. Where applicable, FRA is amending the corresponding appendices to those regulatory provisions which outline FRA enforcement policy. See 49 CFR part 209, app. A; 49 CFR part 228, app. A. FRA is also amending several sections in the civil penalty schedules to reflect FRA's existing practice, which is to increase the guideline penalty amount from the statutory, inflation-adjusted minimum of \$650 (or for some line items, \$500) to \$1,000 for an ordinary violation, and \$2,000 for a willful violation, to allow room for downward negotiation during the settlement process. These select changes to the penalty guidelines do not modify the statutory minimum penalty (which remains at \$650), but simply memorialize FRA's policy. See 49 CFR 228.9; 49 CFR 228.11; 49 CFR 228.17; 49 CFR 231.146.A; 49 CFR 240.215(b); 49 CFR 240.223(a), (b).

Further, FRA is revising language in 49 CFR part 209, appendix A, "Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws," to better reflect the proper statutory history and authorities, particularly as the original version of the statement was written in 1988 and has not been fully updated to reflect the recodification of the Federal railroad safety statutes, effective July 5, 1994, Public Law 103-272, 108 Stat. 745, or the enactment on October 16, 2008, of the Rail Safety Improvement Act of 2008 (RSIA of 2008), Public Law 110-432, Div. A, 122 Stat. 4848. These changes include the updated statutory citations that resulted from the 1994 recodification. Finally, FRA is adding the language "or orders" in two places within part 209, appendix A, "Penalty Schedules: Assessment of Maximum Penalties," to reflect FRA's already existing policy of establishing civil penalty schedules and recommended civil penalty amounts applicable to violations of various orders issued by FRA (such as

emergency orders under 49 U.S.C. 20104) when necessary to advance the agency's safety mission.

Description of the Calculation of the Adjustment and of FRA's Recent Actions to Comply with the Inflation Act and the Rail Safety Improvement Act of 2008

Under the Inflation Act, the inflation adjustment is to be calculated by increasing the maximum CMP, or the range of minimum and maximum CMPs, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment (here, June 2011) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted (here, June 2009 for the minimum CMP of \$650, the ordinary maximum of \$25,000, and the aggravated maximum CMP of \$100,000). See 73 FR 79698 (Dec. 30, 2008), the final rule that made those CMP changes, effective March 2, 2009. The Inflation Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of \$100 for a penalty between \$100 and \$1,000, or to the nearest multiple of \$5,000 for a penalty of more than \$10,000 and less than or equal to \$100,000. The first CMP adjustment may not exceed an increase of ten percent. FRA utilizes Bureau of Labor Statistics data to calculate adjusted CMP amounts. As will be described, FRA has adjusted its CMPs for inflation over the years since the 1996 amendment to the Inflation Act requiring such inflation adjustments.

In addition, FRA has revised its CMPs pursuant to the Rail Safety Improvement Act of 2008 (RSIA of 2008), Public Law 110-342, Div. A, 122 Stat. 4848, enacted October 16, 2008, which raised the ordinary maximum civil penalty to \$25,000 and raised the aggravated maximum civil penalty (for a grossly negligent violation or a

pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury) to \$100,000. See sec. 302, which amended 49 U.S.C. 21301(a)(2), 21302(a)(2), and 21303(a)(2). The RSIA of 2008 did not amend the minimum civil penalty, which at the time of its enactment remained, pursuant to the Inflation Act, at an inflation-adjusted \$550. 69 FR 30591 (May 28, 2004) and 69 FR 62817 (Oct. 28, 2004). (In 2004, FRA had determined, by applying the adjustment calculation using the June 2003 CPI, that the minimum CMP should be increased from \$500 to \$550, effective June 28, 2004, except for the amendments to part 222, which became effective December 18, 2004.)

Prior to the enactment of the RSIA of 2008, FRA had been evaluating the need to make inflation adjustments to its CMP amounts under the requirements of the Inflation Act; however, because the RSIA of 2008 increased the authorized amounts for ordinary maximum CMPs (from \$16,000¹ to \$25,000) and aggravated maximum CMPs (from \$27,000² to \$100,000), FRA amended the regulations, civil penalty schedules, and some related guidance in the Code of Federal Regulations to reflect this change in statutory authority for ordinary maximum and aggravated maximum CMPs, which temporarily alleviated the need to perform inflation adjustment calculations for FRA's ordinary maximum and aggravated maximum CMPs. As discussed, although the RSIA of 2008 increased the authority for maximum penalties, it did not address the minimum CMP amount; therefore, FRA calculated whether an inflation adjustment was necessary with respect to the minimum CMP. Applying the inflation adjustment calculation, FRA determined that the \$550 minimum CMP should be increased to \$650. 73 FR 79698

¹ 72 FR 51194 (Sept. 6, 2007).

² 69 FR 30591 (May 28, 2004); 69 FR 62817 (Oct. 28, 2004).

(Dec. 30, 2008). In 2009, FRA also published a correcting amendment to correct an error relating to the total ordinary maximum civil monetary penalty amount in 49 CFR part 232, app. A. 74 FR 15387 (Apr. 6, 2009).

In 2012, four years after the 2008 adjustment, FRA has again evaluated whether inflation adjustments to its CMP amounts are necessary under the requirements of the Inflation Act. Applying the inflation adjustment calculation, FRA has determined that the minimum CMP of \$650 and the ordinary maximum CMP of \$25,000 should remain the same but that the aggravated maximum CMP should be increased to \$105,000, as the following calculations show.

Calculations to Determine Civil Monetary Penalty Updates for 2012

1. Minimum CMP of \$650 Unchanged

As required, this year, FRA reevaluated the minimum CMP and concluded that it should remain the same (\$650), as the next calculations show. The June 2011 CPI of 676.162 divided by the CPI for June 2009 of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; \$650 times 1.046494387 equals \$680. The raw inflation adjustment amount of \$30 is rounded to the nearest multiple of \$100, which is \$0. The inflation adjusted minimum penalty is \$650 plus \$0, or \$650, and is applicable to all of the rail safety statutes, regulations, and orders. See appendix to this final rule. Thus, the FRA minimum CMP stays the same, at \$650.

2. Ordinary Maximum CMP of \$25,000 Unchanged

Applying the adjustment calculation using the June 2011 CPI, FRA has determined that the ordinary maximum CMP should remain the same (\$25,000), as the following calculations show. The June 2011 CPI of 676.162 divided by the June 2009

CPI of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; \$25,000 times 1.046494387 equals \$26,162, or a raw inflation adjustment amount of \$1,162, which is rounded to the nearest multiple of \$5,000, which is \$0. See appendix to this final rule. Therefore, the ordinary maximum CMP should remain at \$25,000.

3. Aggravated Maximum CMP of \$100,000 Raised to \$105,000

FRA also reevaluated the CMP for an aggravated violation and determined that it should be increased to \$105,000, as the following calculations show. The June 2011 CPI of 676.162 divided by the CPI for June 2009 of 646.12 (since the last update was in 2009) equals an inflation factor of 1.046494387; \$100,000 times 1.046494387 equals \$104,649. The raw inflation adjustment amount of \$4,649 is rounded to the nearest multiple of \$5,000, which is \$5,000. The inflation-adjusted aggravated maximum penalty is \$100,000 plus \$5,000 (the rounded raw inflation adjustment amount), or \$105,000, and is applicable to all of the rail safety statutes, regulations, and orders. See appendix to this final rule. The aggravated maximum CMP has been adjusted previously according to the Inflation Act. However, the RSIA of 2008 significantly raised the aggravated maximum penalty from \$27,000 to \$100,000. Public Law 110-342, Div. A, 122 Stat. 4848. In this way, the RSIA of 2008 “reset” the aggravated maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new, statutory aggravated maximum CMP. Thus, the ten-percent cap for first time adjustments does apply, and the new maximum penalty amount must not exceed \$110,000. However, the increase due to inflation rounds to \$5,000, and therefore the ten-percent cap does not constrain the increase. This new FRA aggravated maximum penalty

will apply to violations that occur on or after [Insert date 60 days after publication in the FEDERAL REGISTER].

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. Public comment is unnecessary because FRA is not exercising discretion in a way that could be informed by public comment. As such, notice and comment procedures are “impracticable, unnecessary, or contrary to the public interest” within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Likewise, the adjustments required by the Inflation Act are ministerial acts over which FRA has no discretion, making public comment unnecessary. FRA is issuing these amendments as a final rule applicable to all future rail safety civil penalty cases under its authority to cite for violations that occur on or after the effective date of this final rule.

Regulatory Impact

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because it is limited to a ministerial act on which the

agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule will apply to railroads and others that are considered small entities, there is no economic impact on any person who complies with the Federal railroad safety laws and the regulations and orders issued under those laws.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance with the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 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 \$140,800,000 or more in any one 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 issued today will not result in the expenditure, in the aggregate, of \$140,800,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 213

Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Incorporation by reference, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

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

49 CFR Part 216

Administrative practice and procedures, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 217

Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Communications, Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements, Telephone.

49 CFR Part 221

Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

Administrative practice and procedure, Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glass and glass products, Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, and Reporting and recordkeeping requirements.

49 CFR Part 225

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

49 CFR Part 227

Incorporation by reference, Locomotive noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Administrative practice and procedure, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements, Sanitation.

49 CFR Part 229

Accident investigation, Data preservation, Event recorders, Incorporation by reference, Locomotive noise control, Locomotives, Occupational safety and health, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements, Sanitation.

49 CFR Part 230

Locomotives, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Incorporation by reference, Locomotives, Penalties, Railroad locomotive safety, Railroad power brakes, Railroad safety, Reporting and recordkeeping requirements, Two-way end-of-train devices.

49 CFR Part 233

Accident reporting, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 236

Incorporation by reference, Penalties, Positive Train Control, Railroad safety, Railroad signals, Reporting and recordkeeping requirements.

49 CFR Part 237

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

49 CFR Part 238

Fire prevention, Incorporation by reference, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Conductor, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, and 244, of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.409 [Amended]

2. Section 209.409 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

3. Appendix A to part 209 is amended:

a. By revising the introductory text; and

b. In the “Penalty Schedules: Assessment of Maximum Penalties” section by:

i. Revising the first, second, and third paragraphs;

ii. Adding new fourth, fifth, and sixth paragraphs; and

iii. Revising the last paragraph.

The revisions and additions read as follows:

**APPENDIX A TO PART 209—STATEMENT OF AGENCY POLICY CONCERNING ENFORCEMENT
OF THE FEDERAL RAILROAD SAFETY LAWS**

The Federal Railroad Administration (“FRA”) enforces the Federal railroad safety statutes under delegation from the Secretary of Transportation. See 49 CFR 1.49(c), (d), (f), (g), (m), and (oo). Those statutes include 49 U.S.C. ch. 201-213 and uncodified provisions of the Rail Safety Improvement Act of 2008 (Public Law 110-432,

Div. A, 122 Stat. 4848). On July 4, 1994, the day before the enactment of Public Law 103-272, 108 Stat. 745, the Federal railroad safety statutes included the Federal Railroad Safety Act of 1970 (“Safety Act”) (then codified at 45 U.S.C. 421 et seq.), and a group of statutes enacted prior to 1970 referred to collectively herein as the “older safety statutes”: the Safety Appliance Acts (then codified at 45 U.S.C. 1–16); the Locomotive Inspection Act (then codified at 45 U.S.C. 22–34); the Accident Reports Act (then codified at 45 U.S.C. 38–43); the Hours of Service Act (then codified at 45 U.S.C. 61–64b); and the Signal Inspection Act (then codified at 49 App. U.S.C. 26). Effective July 5, 1994, Public Law 103-272 repealed certain general and permanent laws related to transportation, including these rail safety laws (the Safety Act and the older safety statutes), and reenacted them as revised by that law but without substantive change in title 49 of the U.S. Code, ch. 201-213. Regulations implementing the Federal rail safety laws are found at 49 CFR parts 209-244. The Rail Safety Improvement Act of 1988 (Public Law 100–342, enacted June 22, 1988) (“RSIA”) raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. FRA also enforces the hazardous materials transportation laws (49 U.S.C. ch. 51 and uncodified provisions) (formerly the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 et seq., which was also repealed by Public Law 103-272, July 5, 1994, and reenacted as revised but without substantive change) as it pertains to the shipment or transportation of hazardous materials by rail.

* * * * *

PENALTY SCHEDULES: ASSESSMENT OF MAXIMUM PENALTIES

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the Federal rail safety laws, regulations, or orders. *Id.*, secs. 3, 13-15, 17. Pursuant to sec. 16 of RSIA, the penalty for a violation of the Hours of Service Act was changed from a flat \$500 to a penalty of “up to \$1,000, as the Secretary of Transportation deems reasonable.” Under all the other statutes, and regulations and orders under those statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that “where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury,” the penalty was raised to a maximum of \$20,000 per violation (“the aggravated maximum penalty”).

The Rail Safety Enforcement and Review Act (RSERA), Public Law 102-365, 106 Stat. 972, enacted in 1992, increased the maximum penalty from \$1,000 to \$10,000, and provided for an aggravated maximum penalty of \$20,000 for a violation of the Hours of Service Act, making these penalty amounts uniform with those of FRA’s other safety laws, regulations, and orders. RSERA also increased the minimum civil monetary penalty from \$250 to \$500 for all of FRA’s safety regulatory provisions and orders. *Id.*, sec. 4(a).

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996 (Public Law 104-134, 110 Stat. 1321-373, April 26, 1996) (Inflation Act) required that agencies adjust by regulation each minimum and maximum civil monetary penalty within the agency’s jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA’s

minimum and maximum civil monetary penalties have been periodically adjusted, pursuant to the Inflation Act, through rulemaking.

The Rail Safety Improvement Act of 2008 (“RSIA of 2008”), enacted October 16, 2008, raised FRA’s civil monetary ordinary and aggravated maximum penalties to \$25,000 and \$100,000 respectively. FRA amended the civil penalty provisions in its regulations so as to make \$25,000 the ordinary maximum penalty per violation and \$100,000 the aggravated maximum penalty per violation, as authorized by the RSIA of 2008, in a final rule published on December 30, 2008 in the Federal Register. 73 FR 79700. The December 30, 2008 final rule also adjusted the minimum civil penalty from \$550 to \$650 pursuant to Inflation Act requirements. Id. A correcting amendment to the civil penalty provisions in 49 CFR part 232 was published on April 6, 2009. 74 FR 15388.

Effective [Insert date 60 days after publication in the FEDERAL REGISTER], the aggravated maximum penalty was raised from \$100,000 to \$105,000 pursuant to the Inflation Act.

FRA’s traditional practice has been to issue penalty schedules assigning to each particular regulation or order specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation or order, the schedule shows two amounts within the \$650 to \$25,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—part 231—the schedule refers to sections of the relevant

FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$105,000 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. This authority to assess a penalty for a single violation above \$25,000 and up to \$105,000 is used only in very exceptional cases to penalize egregious behavior. FRA indicates in the penalty demand letter when it uses the higher penalty amount instead of the penalty amount listed in the schedule.

* * * * *

Appendix B to Part 209—[Amended]

4. Footnote 1 to appendix B to part 209 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 213—[AMENDED]

5. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102-20114 and 20142; Sec. 403, Div. A, Pub. L. 110-432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 213.15 [Amended]

6. In § 213.15, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 213—[Amended]

7. Footnote 1 to appendix B of part 213 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 214—[AMENDED]

8. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 214.5 [Amended]

9. Section 214.5 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 214—[Amended]

10. Footnote 1 to appendix A of part 214 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 215—[AMENDED]

11. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 215.7 [Amended]

12. Section 215.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 215—[Amended]

13. Footnote 1 to appendix B of part 215 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 216—[AMENDED]

14. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102-20104, 20107, 20111, 20133, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 216.7 [Amended]

15. Section 216.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 217—[AMENDED]

16. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 217.5 [Amended]

17. Section 217.5 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 217—[Amended]

18. Footnote 1 to appendix A of part 217 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 218—[AMENDED]

19. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 218.9 [Amended]

20. Section 218.9 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 218—[Amended]

21. Footnote 1 of appendix A to part 218 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 219—[AMENDED]

22. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 219.9 [Amended]

23. In § 219.9, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 219—[Amended]

24-26. Appendix A of part 219 is amended by:

a. Removing the numerical amount “-5,000” from the entry at 219.701(a) and adding in its place the numerical amount “5,000”;

b. Removing the numerical amount “-7,500” from the entry at 219.701(a) and adding in its place the numerical amount “7,500”; and

c. Removing from footnote 1 the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 220—[AMENDED]

27. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20103, note, 20107, 21301-21302, 20701-20703, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 220.7 [Amended]

28. Section 220.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix C to Part 220—[Amended]

29. Footnote 1 to appendix C of part 220 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 221—[AMENDED]

30. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 221.7 [Amended]

31. Section 221.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix C to Part 221—[Amended]

32. Footnote 1 to appendix C of part 221 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 222—[AMENDED]

33. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 222.11 [Amended]

34. Section 222.11 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix H to Part 222—[Amended]

35. Footnote 1 to appendix H of part 222 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 223—[AMENDED]

36. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20133, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 223.7 [Amended]

37. Section 223.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 223—[Amended]

38-39. Appendix B is amended by:

a. Removing the numerical amount “1,500” from the entry at 223.17 and adding in its place the numerical amount “2,000”; and

b. Removing from footnote 1 the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 224—[AMENDED]

40. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 224.11 [Amended]

41. Paragraph (a) of § 224.11 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 224—[Amended]

42. Appendix A of part 224 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901-20902, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 225.29 [Amended]

44. Section 225.29 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 225—[Amended]

45. Footnote 1 to appendix A of part 225 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 227—[AMENDED]

46. The authority citation for part 227 continues to read as follows:

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

§ 227.9 [Amended]

47. Paragraph (a) of § 227.9 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix G to Part 227—[Amended]

48. Footnote 1 to appendix G of part 227 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 228—[AMENDED]

49. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101-21109; Sec. 108, Div. A, Pub. L. 110-432, 122 Stat. 4860-4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.49.

§ 228.21 [Amended]

50. Section 228.21 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

51. In appendix A to part 228, below the heading “GENERAL PROVISIONS,” the “Penalty” paragraph is amended by adding three sentences to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

GENERAL PROVISIONS

* * * * *

Penalty. * * * Meanwhile, the ordinary maximum penalty was increased from \$16,000 to \$25,000 and the aggravated maximum was increased from \$27,000 to \$100,000 in accordance with the authority provided under the Rail Safety Improvement Act of 2008. See sec. 302, Div. A, Public Law 110-432, 122 Stat. 4848, 4878, Oct. 16, 2008; 49 U.S.C. 21301-21303. Effective [Insert date 60 days after publication in the FEDERAL REGISTER], the aggravated maximum penalty was raised from \$100,000 to

\$105,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Sec. 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321-373, Apr. 16, 1996.

* * * * *

Appendix B to Part 228—[Amended]

52-58. Appendix B is amended by:

- a. Removing the numerical amount “\$650” from the entry at 228.9 and adding in its place the numerical amount “\$1,000”;
- b. Removing the numerical amount “\$1,000” from the entry at 228.9 and adding in its place the numerical amount “\$2,000”;
- c. Removing the numerical amount “650” from the entry at 228.11 and adding in its place the numerical amount “1,000”;
- d. Removing the numerical amount “1,000” from the entry at 228.11 and adding in its place the numerical amount “2,000”;
- e. Removing the numerical amount “650” from the entry at 228.17 and adding in its place the numerical amount “1,000”;
- f. Removing the numerical amount “1,000” from the entry at 228.17 and adding in its place the numerical amount “2,000”; and
- g. Removing from footnote 1 the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 229—[AMENDED]

59. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137-20138, 20143, 20701-20703, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49 (c), (m).

§ 229.7 [Amended]

60. Paragraph (b) of § 229.7 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 229—[Amended]

61. Footnote 1 to appendix B of part 229 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 230—[AMENDED]

62. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 230.4 [Amended]

63. Paragraph (a) of § 230.4 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 231—[AMENDED]

64. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20131, 20301-20303, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 231.0 [Amended]

65. Paragraph (f) of § 231.0 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 231—[Amended]

66-68. Appendix A is amended by:

- a. Removing the numerical amount “650” from the entry at 213.146.A and adding in its place the numerical amount “1,000”;
- b. Removing the numerical amount “1,000” from the entry at 213.146.A and adding in its place the numerical amount “2,000”; and
- c. Removing from footnote 1 the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 232—[AMENDED]

69. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20133, 20141, 20301-20303, 20306, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 232.11 [Amended]

70. In § 232.11, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 232—[Amended]

71. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 233—[AMENDED]

72. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 233.11 [Amended]

73. Section 233.11 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 233—[Amended]

74. Footnote 1 to appendix A of part 233 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 234—[AMENDED]

75. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; Pub. L. 110-432, Div. A, § 202; and 49 CFR 1.49.

§ 234.6 [Amended]

76. In § 234.6, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 234—[Amended]

77. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 235—[AMENDED]

78. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 235.9 [Amended]

79. Section 235.9 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 235—[Amended]

80. Footnote 1 to appendix A of part 235 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 236—[AMENDED]

81. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 20133, 20141, 20157, 20301-20303, 20306, 20501-20505, 20701-20703, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 236.0 [Amended]

82. In § 236.0, paragraph (f) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 236—[Amended]

83. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 237—[AMENDED]

84. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102-20114; P.L. 110-432, division A, section 417; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 237.7 [Amended]

85. In § 237.7, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 237—[Amended]

86. Footnote 1 to appendix B of part 237 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 238—[AMENDED]

87. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302-20303, 20306, 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 238.11 [Amended]

88. In § 238.11, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 238—[Amended]

89. Footnote 1 to appendix A to part 238 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 239—[AMENDED]

90. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20105-20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

§ 239.11 [Amended]

91. Section 239.11 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 239—[Amended]

92. Footnote 1 to appendix A to part 239 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 240—[AMENDED]

93. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 240.11 [Amended]

94. In § 240.11, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 240—[Amended]

95-101. Appendix A is amended by:

- a. Removing the numerical amount “500” from the entry at 240.215(b) and adding in its place the numerical amount “1,000”;
- b. Removing the numerical amount “1,000” from the entry at 240.215(b) and adding in its place the numerical amount “2,000”;
- c. Removing the numerical amount “500” from the entry at 240.223(a) and adding in its place the numerical amount “1,000”;
- d. Removing the numerical amount “1,000” from the entry at 240.223(a) and adding in its place the numerical amount “2,000”;
- e. Removing the numerical amount “500” from the entry at 240.223(b) and adding in its place the numerical amount “1,000”;
- f. Removing the numerical amount “1,000” from the entry at 240.223(b) and adding in its place the numerical amount “2,000”; and
- g. Removing from footnote 1 the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 241—[AMENDED]

102. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.15 [Amended]

103. In § 241.15, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix B to Part 241—[Amended]

104. Footnote 1 to appendix B of part 241 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 242—[AMENDED]

105. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 242.11 [Amended]

106. In § 242.11, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Appendix A to Part 242—[Amended]

107. Footnote 1 to appendix A of part 242 is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

PART 244—[AMENDED]

108. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 244.5 [Amended]

109. In of § 244.5, paragraph (a) is amended by removing the numerical amount “\$100,000” and adding in its place the numerical amount “\$105,000”.

Issued in Washington, DC on __April 18, 2012__.

Joseph C. Szabo,
Administrator, Federal Railroad Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix: Step-by-Step Calculations to Determine Civil Monetary Penalty Updates:

2012

These calculations follow guidance by the U.S. Department of Transportation and the Government Accountability Office (GAO, which was formerly the General Accounting Office) to determine if the civil monetary penalties (CMPs) should be updated according to the Inflation Act. (Sources for guidance: (1) GAO attachment to memorandum with subject “Annual Review of Department of Transportation’s (DOT) Civil Penalties Inflation Adjustment,” dated July 10, 2003; (2) policy paper entitled “Federal Civil Penalties Inflation Adjustment Act of 1990”). In brief, the minimum stays the same at \$650, the ordinary maximum stays the same at \$25,000, but the aggravated maximum rises from \$100,000 to \$105,000 under the Inflation Act.

Minimum CMP

The current minimum CMP is \$650, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (Bureau of Labor Statistics (BLS), 1967

Base, U.S. City Average)

The CPI for June of the preceding year, i.e., CPI for June 2011 = 676.162.

The CPI for June of the year the CMP was last set or adjusted under the

Inflation Act, i.e., CPI for June 2009 = 646.12.

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = 1.046494387.$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

Raw Inflation Adjustment = CMP x COLA = \$650 x 1.046494387 = \$680.122 ≈
\$680.

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the increase in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment - Original CMP = \$680 - \$650 = \$30.

Use the following rounding rule: “If the current unadjusted penalty is greater than \$100 and less than or equal to \$1,000, round the increase to the nearest multiple of \$100.” (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of \$100 are (\$0, \$100, \$200, . . .). The nearest multiple of \$100 is therefore \$0. Rounded, the \$30 increase = \$0.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = \$650 + \$0 = \$650.

Step 6: Apply a 10% Ceiling if Necessary.

As the minimum CMP has been adjusted previously according to the Inflation Act (effective March 2009), the 10% cap for first time adjustments does not apply.

Also, the RSIA of 2008 did not affect the minimum statutory penalty.

Step 7: Determine New Penalty.

The new minimum CMP = **\$650**

For 2012, the minimum CMP stays the same.

Ordinary Maximum CMP

The current ordinary maximum CMP is \$25,000, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average.)

The CPI for June of the preceding year, i.e., CPI for June 2011 = 676.162.

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2009 = 646.121.

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = \underline{1.046494387}.$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

$$\begin{aligned} \text{Raw Inflation Adjustment} &= \text{CMP} \times \text{COLA} = \$25,000 \times 1.046494387 = \\ & \$26,162.36 \approx \underline{\$26,162}. \end{aligned}$$

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the *increase* in the CMP is rounded, according to the rounding rules.

$$\begin{aligned} \text{Increase} &= \text{Raw Inflation Adjustment} - \text{Original CMP} = \$26,162 - \$25,000 = \\ & \$1,162. \end{aligned}$$

Use the following rounding rule: “If the current unadjusted penalty is greater than \$10,000 and less than or equal to \$100,000, round the *increase* to the nearest multiple of \$5,000;” (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of \$5,000 are (\$0, \$5,000, \$10,000, . . .). The nearest multiple of \$5,000 is therefore \$0. Rounded, the \$1,162 increase = \$0.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

$$\begin{aligned} \text{CMP after rounding} &= \text{Original CMP} + \text{Rounded Increase} = \$25,000 + \$0 = \\ & \underline{\$25,000}. \end{aligned}$$

Step 6: Apply a 10% Ceiling if Necessary.

The maximum CMP has been adjusted previously according to the Inflation Act (effective March 2009). However, the RSIA of 2008 significantly raised the maximum penalty from \$16,000 to \$25,000. In this way, the RSIA of 2008 “reset” the maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new statutory maximum CMP.

The 10% cap for first time adjustments does apply.

The new maximum penalty amount cannot exceed: $\$25,000 + (10\% \times \$25,000) = \underline{\$27,500}$.

Step 7: Determine New Penalty

The new maximum CMP = **\$25,000**.

For 2012, the maximum CMP stays the same. The increase due to inflation rounds to \$0, and therefore the 10% cap is not a constraining factor either.

Aggravated Maximum CMP

The current aggravated maximum CMP is \$100,000, last updated on December 30, 2008, effective March 2, 2009. See 73 FR 79698.

Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Average.)

The CPI for June of the preceding year, i.e., CPI for June 2011 = 676.162

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2009 = 646.121

Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$\text{COLA} = \frac{\text{CPI for June 2011}}{\text{CPI for June 2009}} = \frac{676.162}{646.121} = \underline{1.046494387}$$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding.

$$\text{Raw Inflation Adjustment} = \text{CMP} \times \text{COLA} = \$100,000 \times 1.046494387 =$$

$\$104,649.44 \approx \underline{\$104,649}$.

Step 4: Round the Raw Inflation Adjustment Amount.

Recall that the *increase* in the CMP is rounded, according to the rounding rules.

Increase = Raw Inflation Adjustment - Original CMP = $\$104,649 - \$100,000 =$
 $\$4,649$.

Use the following rounding rule: “If the current unadjusted penalty is greater than \$10,000 and less than or equal to \$100,000, round the *increase* to the nearest multiple of \$5,000;” (Federal Civil Penalties Inflation Adjustment Act of 1990, (DOT guidance, p.4)) Multiples of \$5,000 are (\$0, \$5,000, \$10,000, . . .). The nearest multiple of \$5,000 is therefore \$5,000. Rounded, the \$4,649 increase = $\underline{\$5,000}$.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $\$100,000 + \$5,000 =$
 $\underline{\$105,000}$.

Step 6: Apply a 10% Ceiling if Necessary.

The aggravated maximum CMP has been adjusted previously according to the Inflation Act (effective March 2009). However, the RSIA of 2008 significantly raised the aggravated maximum penalty from \$27,000 to \$100,000. In this way, the RSIA statute “reset” the aggravated maximum penalty, and this review may be considered the first one conducted under the Inflation Act of the new, statutory aggravated maximum CMP.

The 10% cap for first time adjustments does apply.

The new maximum penalty amount cannot exceed: $\$100,000 + (10\% \times$

\$100,000) = \$110,000.

Step 7: Determine New Penalty

The new maximum CMP = **\$105,000**.

For 2012, the aggravated maximum CMP should increase. The increase due to inflation rounds to \$5,000, and therefore the 10% cap does not constrain the increase.

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