

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 252**

RIN 0750-AF58

Defense Federal Acquisition Regulation Supplement; Taxpayer Identification Numbers (DFARS Case 2006-D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for validation of Taxpayer Identification Numbers as part of the Central Contractor Registration process. The DFARS changes are consistent with changes made to the Federal Acquisition Regulation.

EFFECTIVE DATE: September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Felisha Hitt, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0310; facsimile (703) 602-7887. Please cite DFARS Case 2006-D037.

SUPPLEMENTARY INFORMATION:**A. Background**

DFARS 252.204-7004 contains a substitute paragraph for use with the clause at FAR 52.204-7, Central Contractor Registration, to address DoD-unique requirements relating to contractor registration in the Central Contractor Registration (CCR) database. This final rule amends DFARS 252.204-7004 for consistency with changes made to FAR 52.204-7 in Item I of Federal Acquisition Circular 2005-10, published at 71 FR 36923 on June 28, 2006. The changes address requirements for the Government to validate a contractor's Taxpayer Identification Number, and for the contractor to consent to this validation, as part of the CCR registration process.

DoD published a proposed rule at 71 FR 2645 on January 22, 2007. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule relates to an administrative requirement for TIN validation, which is performed by the Government. Contractors need only provide consent for TIN validation as part of the CCR registration process.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 252.204-7004 is amended as follows:

■ a. By revising the section heading, clause title, and clause date; and

■ b. In paragraph (a), by revising the definition of "Registered in the CCR database" to read as follows:

252.204-7004 Alternate A, Central Contractor Registration.

ALTERNATE A, CENTRAL CONTRACTOR REGISTRATION (SEP 2007)

* * * * *

(a) * * *
"Registered in the CCR database" means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database;

(2) The Contractor's CAGE code is in the CCR database; and

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service, and has marked the records "Active." The Contractor will be required to provide consent for TIN

validation to the Government as part of the CCR registration process.

[FR Doc. E7-17433 Filed 9-5-07; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

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

[Docket No. FRA-2004-17529; Notice No. 5]

RIN 2130-AB66

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

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 ordinary maximum penalty that it will apply when assessing a civil penalty for a violation of railroad safety statutes and regulations under its authority. In particular, FRA is increasing the ordinary maximum civil penalty from \$11,000 to \$16,000.

EFFECTIVE DATE: October 9, 2007.

FOR FURTHER INFORMATION CONTACT: Sarah Grimmer, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6390), sarah.grimmer@dot.gov.

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 law and regulations 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.

Calculation of the Adjustment

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 2006) 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 1998 for the ordinary maximum). 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 adjustment may not exceed an increase of ten percent. FRA utilized Bureau of Labor Statistics data to calculate adjusted CMP amounts.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes and regulations, including the civil penalty provisions at 49 U.S.C. ch. 213. 49 CFR 1.49; 49 U.S.C. ch. 201–213. FRA currently has 28 regulations that contain provisions that reference its 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 to raise the ordinary maximum CMP to \$16,000.

With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211), the ordinary maximum CMP for a violation of the rail safety laws and regulations was established by the Rail Safety Improvement Act of 1988, which set a \$10,000 limit for a CMP imposed for any ordinary violation, and a \$20,000 limit 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 (aggravated violations). In 1998, after applying the adjustment calculation in the Inflation Act, FRA determined that the ordinary maximum CMP for any single violation needed to be increased to \$11,000 and that the maximum CMP for aggravated violations needed to be increased to \$22,000. FRA amended each of its

regulations by final rule to reflect the increased CMPs. 63 FR 11618.

The Rail Safety Enforcement and Review Act (RSERA) in 1992 increased the range of the minimum and maximum civil penalties for a violation of the hours of service laws, making these minimum and maximum penalty amounts uniform with those of FRA's other regulatory provisions. Before enactment of RSERA, the penalty was "up to \$1,000 per violation." RSERA increased the minimum civil penalty for an hours of service violation to \$500, the ordinary maximum civil penalty to \$10,000, and the aggravated maximum to \$20,000. By applying the same adjustment calculation using the 1992 CPI, the ordinary and aggravated maximum penalties for violations of the hours of service laws were raised to equal those of the other rail safety laws and regulations: \$11,000 and \$22,000. In 1998, FRA had applied the adjustment calculation in the Inflation Act to the minimum CMP and had determined that it would not need to be increased. In 2004, FRA by applying the adjustment calculation using the June 2003 CPI determined that the minimum CMP should be increased from \$500 to \$550. FRA also determined in 2004 under the same rationale that the aggravated maximum CMP should be increased from \$22,000 to \$27,000. 69 FR 30592.

Calculations To Determine Civil Monetary Penalty Updates for 2007

1. Minimum CMP

As required, this year, FRA reevaluated the minimum CMP and concluded that it should remain at \$550, as the next calculations show. The June 2006 CPI of 607.8 divided by the CPI for June 2004 of 568.2 (since the last update was in 2004) equals an inflation factor of 1.06969; \$550 times 1.06969 equals \$588. The raw inflation adjustment amount of \$38 is rounded to the nearest multiple of 100, or zero. The inflation-adjusted minimum penalty is \$550 plus zero, or \$550. See appendix.

2. Aggravated Maximum CMP

FRA also reevaluated the CMP for an aggravated violation and determined that it should remain at \$27,000, as the following calculations show. The June 2006 CPI of 607.8 divided by the CPI for June 2004 of 568.2 (since the last update was in 2004) equals an inflation factor of 1.06969; \$27,000 times 1.06969 equals \$28,882. The raw inflation adjustment amount of \$1,882 is rounded to the nearest multiple of \$5,000, which is zero. The rounded raw inflation adjustment amount is zero. The

inflation-adjusted aggravated maximum penalty remains \$27,000.

3. Ordinary Maximum CMP

Applying the adjustment calculation using the June 2006 CPI, FRA has determined that the ordinary maximum CMP should be increased from \$11,000 to \$16,000, as the next calculations show.

The June 2006 CPI of 607.8 divided by the June 1998 CPI of 488.2 (since the last update was in 1998) equals an inflation factor of 1.24498; \$11,000 times 1.24498 equals \$13,695, or a raw inflation adjustment amount of \$2,695, which is rounded up to the nearest multiple of \$5,000, which is \$5,000. Therefore, the ordinary maximum CMP should be increased by \$5,000, or to \$16,000. Because this is the second time that the ordinary maximum CMP has been adjusted under the Act, the ten-percent cap on the increase does not apply. This new FRA ordinary maximum penalty will apply to violations that occur on or after October 9, 2007.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments required by the 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.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. 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

The final rule issued today will not result in the expenditure, in the aggregate, of \$128,100,000 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 in 49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

Railroad safety, Penalties.

The Final Rule

■ In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, 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. 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

“\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix A to Part 209—[Amended]

■ 3. Appendix A to part 209 is amended by removing the numerical amount “\$11,000” in the third paragraph below the heading “Penalty Schedules; Assessment of Maximum Penalties,” and replacing it with the numerical amount “\$16,000”.

PART 213—[AMENDED]

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

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 213.15 [Amended]

■ 5. Paragraph (a) of § 213.15 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 214—[AMENDED]

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

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

§ 214.5 [Amended]

■ 7. Section 214.5 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 215—[AMENDED]

■ 8. 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]

■ 9. Section 215.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix B to Part 215—[Amended]

■ 10. Footnote 1 of Appendix B to Part 215—Schedule of Civil Penalties, is amended by removing the numerical amount “\$10,000” and adding in its place the numerical amount “16,000”.

PART 216—[AMENDED]

■ 11. 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]

■ 12. Section 216.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 217—[AMENDED]

■ 13. 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]

■ 14. Section 217.5 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 218—[AMENDED]

■ 15. 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]

■ 16. Section 218.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix A to Part 218 [Amended]

■ 17. Footnote 1 of Appendix A to Part 218 is amended by removing the numerical amount “\$22,000” and adding in its place the numerical amount “\$27,000”.

PART 219—[AMENDED]

■ 18. 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]

■ 19. Paragraph (a) of § 219.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 220—[AMENDED]

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

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

§ 220.7 [Amended]

■ 21. Section 220.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 221—[AMENDED]

■ 22. 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]

■ 23. Section 221.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 222—[AMENDED]

■ 24. 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]

■ 25. Section 222.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 223—[AMENDED]

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

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 223.7 [Amended]

■ 27. Section 223.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 224—[AMENDED]

■ 28. 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; and 49 CFR 1.49.

§ 224.11 [Amended]

■ 29. Section 224.11 is amended by removing the amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 225—[AMENDED]

■ 30. 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; and 49 CFR 1.49.

§ 225.29 [Amended]

■ 31. Section 225.29 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 228—[AMENDED]

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

Authority: 49 U.S.C. 20103, 20107, 21101–21108; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 228.21 [Amended]

■ 33. Section 228.21 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

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

■ 34. In appendix A to part 228, the ninth paragraph below the heading “General Provisions,” which is entitled “Penalty” is amended by adding the following at the end of the paragraph:

* * * * *

Penalty. * * * Effective October 9, 2007, the ordinary maximum penalty of \$11,000 was raised to \$16,000 as required under the law; however, the minimum penalty and the maximum penalty for a grossly negligent violation did not need to be adjusted.

* * * * *

PART 229—[AMENDED]

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

Authority: 49 U.S.C. 20102–20103, 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]

■ 36. Paragraph (b) of § 229.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix B to Part 229—[Amended]

■ 37. Footnote 1 to Appendix B of Part 229 is amended by removing the numerical amount of “\$10,000” and adding in its place the numerical amount “\$16,000”.

PART 230—[AMENDED]

■ 38. 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]

■ 39. Paragraph (a) of § 230.4 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 231—[AMENDED]

■ 40. 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]

■ 41. Paragraph (f) of § 231.0 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 232—[AMENDED]

■ 42. 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]

■ 43. Paragraph (a) of § 232.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix A To Part 232—[AMENDED]

■ 44. Footnote 1 to Appendix A of Part 232 is amended by removing the numerical amount of “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 233—[AMENDED]

■ 45. 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]

■ 46. Section 233.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 234—[AMENDED]

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

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

§ 234.6 [Amended]

■ 48. Paragraph (a) of § 234.6 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 235—[AMENDED]

■ 49. 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]

■ 50. Section 235.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 236—[AMENDED]

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

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

§ 236.0 [Amended]

■ 52. Paragraph (f) of § 236.0 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 238—[AMENDED]

■ 53. 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]

■ 54. Paragraph (a) of § 238.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Appendix A to Part 238—[AMENDED]

■ 55. Footnote 1 to Appendix A of part 238 is amended by removing the numerical amount of “\$10,000” and adding in its place the numerical amount “\$16,000”.

PART 239—[AMENDED]

■ 56. 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]

■ 57. Section 239.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 240—[AMENDED]

■ 58. 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]

■ 59. Paragraph (a) of § 240.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 241—[Amended]

■ 60. 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]

■ 61. Paragraph (a) of § 241.15 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

PART 244—[Amended]

■ 62. 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]

■ 63. Paragraph (a) of § 244.5 is amended by removing the numerical

amount “\$11,000” and adding in its place the numerical amount “\$16,000”.

Joseph H. Boardman,
Administrator, Federal Railroad Administration.

Appendix: Step by Step Calculations To Determine Civil Monetary Penalty Updates: 2007

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

Step by Step Calculations To Determine Civil Monetary Penalty Updates: 2007

These calculations follow DOT and Government Accounting Office guidance to determine if the 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.”) Overall, there is no change in the minimum (\$550) and aggravated maximum penalties (\$27,000) for 2007, but the ordinary maximum rises from \$11,000 to \$16,000 under the Inflation Act.

Minimum

The current minimum CMP is \$550, last updated on May 28, 2004. See 69 FR 30592.
Step 1: Find the Consumer Price Index (CPI). (BLS, 1967 Base, U.S. City Avg.)
The CPI for June of the preceding year, i.e., CPI for June 2006 = 607.8
The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2004 = 568.2
Step 2: Calculate the Cost of Living Adjustment (COLA), or the Inflation Factor.

$$COLA = \frac{CPI \text{ for June 2006}}{CPI \text{ for June 2004}} = \frac{607.8}{568.2} = 1.06969$$

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

$$Raw \text{ Inflation Adjustment} = CMP \times COLA = \$550 \times 1.06969 = \$588.33 \approx \$588$$

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 = \$588 – \$550 = \$38

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, p. 4)

The nearest multiple of \$100 is \$0.
Rounded, the \$38 increase = \$0

Step 5: Find the Inflation Adjusted Penalty After Rounding.

$$CMP \text{ after rounding} = Original \text{ CMP} + \text{Rounded Increase} = \$550 + \$0 = \$550$$

Step 6: Apply a 10% Ceiling if Necessary. As the minimum CMP has been adjusted previously according to the Inflation Act, the 10% cap for first time adjustments does not apply.

Step 7: Determine New Penalty
The new minimum CMP = \$550

For 2007, the minimum CMP stays the same.

Ordinary Maximum

The current ordinary maximum CMP is \$11,000, last updated on March 10, 1998. See 63 FR 11619.

Step 1: Find the Consumer Price Index (CPI). The CPI for June of the preceding year, i.e., CPI for June 2006 = 607.8

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 1998 = 488.2

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

$$\text{COLA} = \frac{\text{CPI for June 2006}}{\text{CPI for June 1998}} = \frac{607.8}{488.2} = 1.24498$$

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

$$\begin{aligned} \text{Raw Inflation Adjustment} &= \text{CMP} \times \text{COLA} \\ \text{Raw Inflation Adjustment} &= \$11,000 \times \\ &1.24498 = \$13,694.78 \approx \$13,695 \end{aligned}$$

Step 4: Round the Raw Inflation Adjustment Amount.

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

$$\text{Increase} = \text{Raw Inflation Adjustment} - \text{Original CMP}$$

$$\text{Increase} = \$13,695 - \$11,000 = \$2,695$$

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, p. 4)

The nearest multiple of \$5,000 is \$5,000. Rounded, the \$2,695 increase = \$5,000

Step 5: Find the Inflation Adjusted Penalty After Rounding.

$$\text{CMP after rounding} = \text{Original CMP} + \text{Rounded Increase}$$

$$\text{CMP after rounding} = \$11,000 + \$5,000 = \$16,000$$

Step 6: Apply a 10% Ceiling if Necessary.

As the ordinary maximum CMP has been adjusted previously according to the Inflation Act, the 10% cap for first time adjustments does not apply.

Step 7: Determine New Penalty

The new ordinary maximum CMP = \$16,000

For 2007, the ordinary maximum CMP rises from \$11,000 to \$16,000.

Aggravated Maximum

The current aggravated maximum CMP is \$27,000, last updated on May 28, 2004. See 69 FR 30592.

Step 1: Find the Consumer Price Index (CPI). The CPI for June of the preceding year, i.e., CPI for June 2006 = 607.8

The CPI for June of the year the CMP was last set or adjusted under the Inflation Act, i.e., CPI for June 2004 = 568.2

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

$$\text{COLA} = \frac{\text{CPI for June 2006}}{\text{CPI for June 2004}} = \frac{607.8}{568.2} = 1.06969$$

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

$$\begin{aligned} \text{Raw Inflation Adjustment} &= \text{CMP} \times \text{COLA} \\ \text{Raw Inflation Adjustment} &= \$27,000 \times \\ &1.06969 = \$28,881.63 \approx \$28,882 \end{aligned}$$

Step 4: Round the Raw Inflation Adjustment Amount.

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

$$\text{Increase} = \text{Raw Inflation Adjustment} - \text{Original CMP}$$

$$\text{Increase} = \$28,882 - \$27,000 = \$1,882$$

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, p. 4)

The nearest multiple of \$5,000 is \$0.

Rounded, the \$1,882 increase = \$0

Step 5: Find the Inflation Adjusted Penalty After Rounding.

$$\text{CMP after rounding} = \text{Original CMP} + \text{Rounded Increase}$$

$$\text{CMP after rounding} = \$27,000 + \$0 = \$27,000$$

Step 6: Apply a 10% Ceiling if Necessary.

As the aggravated maximum CMP has been adjusted previously according to the Inflation Act, the 10% cap for first time adjustments does not apply.

Step 7: Determine New Penalty

The new aggravated maximum CMP = \$27,000

For 2007, the aggravated maximum CMP stays the same.

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