

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 209**

[Docket No. FRA-2004-17530; Notice No. 1]

RIN 2130-AB62

Inflation Adjustment of the Maximum and Minimum Civil Penalties for a Violation of the Hazardous Materials Transportation Laws and Regulations

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 minimum and maximum civil monetary penalties (CMP) that it will apply when assessing a penalty for a violation of the Federal hazardous material transportation laws and regulations. Consistent with past FRA practice, FRA's penalty increase will mirror that made by DOT's lead agency for administration of the hazardous materials transportation laws and regulations, the Research and Special Program Administration (RSPA). In particular, FRA is increasing the minimum civil penalty from \$250 to \$275 and the maximum civil penalty from \$27,500 to \$32,500.

DATES: *Effective Date:* June 28, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa L. Porter, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6034).

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Act) requires that agencies adjust by regulation each maximum CMP, or the 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.) 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 the calendar year preceding the adjustment 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. These adjusted amounts are subject to a rounding formula found in section 5 of the Act, and the first adjustment may not exceed an increase of ten percent.

FRA is responsible for enforcement of the hazardous material transportation law and regulations primarily in instances where violations involve railroads and those who ship by rail. 49 CFR 1.49(s). The hazardous material transportation regulations are issued not by FRA, but by RSPA. 49 CFR 1.53(b). RSPA's regulations contain CMP provisions that are subject to the Act, and RSPA has twice amended its regulations by final rules to reflect changes in its maximum and minimum CMPs. FRA's minimum and maximum CMPs that it applies when assessing penalties for violations of the hazardous material transportation laws and regulations have historically mirrored RSPA's minimum and maximum CMPs that it applies when assessing penalties for violations of the hazardous material transportation laws and regulations.

The hazardous materials transportation law at 40 U.S.C. 5123 (a)(1) established a CMP for a knowing violation of the Federal hazardous material transportation law (49 U.S.C. ch. 51) or RSPA's regulations (49 CFR Parts 171-180), in an amount of "at least \$250 but not more than \$25,000 for each violation." Pursuant to the Act, in a final rule published in the **Federal Register** on January 21, 1997, RSPA increased the maximum CMP for a violation from \$25,000 to \$27,500. 62 FR 2970. (This increase in the maximum CMP was subject to the initial rounding limitations discussed above.) Accordingly, on March 10, 1998, FRA issued a final rule that revised its own regulations and added a reference to FRA's previously issued policy statement concerning its enforcement of RSPA's regulations to reflect RSPA's increase in the maximum CMP. On September 8, 2003, RSPA again increased the maximum CMP, this time to \$32,500, based on the increase in the CPI from June 1997 to June 2002. 68 FR 52844. (Because this was the second time RSPA had increased the maximum CMP under the Act, the increase in the maximum CMP was not subject to the 10 percent limit in the Act.) In this final rule, FRA is amending its regulations and policy statement once again to reflect the most recent change in RSPA's maximum CMP.

Prior to September 8, 2003, RSPA has not adjusted the \$250 minimum CMP amount specified in its regulations. By the final rule issued in 2003, RSPA increased its minimum CMP to \$275. 68 FR 52844. (Because it was a first time

adjustment to the minimum CMP, the increase was subject to the 10 percent limitation required by the Act.) FRA is now amending its regulations and policy statement to reflect this change in RSPA's minimum CMP.

RSPA determined that the new minimum and maximum CMPs for hazardous material transportation violations apply to violations that occur after September 30, 2003, for which a civil penalty is assessed by RSPA. FRA's changes will be applicable to all violations occurring after June 28, 2004, for which a civil penalty is assessed by FRA.

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.

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 shippers who are considered small entities there is no economic impact on any person who complies with the Federal hazardous material transportation 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 \$100,000,000 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 Part 209

Hazardous materials, Penalties.

The Final Rule

■ Therefore, in consideration of the foregoing, chapter II subtitle NB of title 49 of the Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 is revised 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.

§ 209.103 [Amended]

■ 2. Section 209.103 is amended by removing the numerical amount “\$250” and adding in its place the numerical amount “\$275”, and by removing the numerical amount “\$27,500” and adding in its place the numerical amount “\$32,500”.

§ 209.105 [Amended]

■ 3. Section 209.105(c) is amended by removing the numerical amount “\$25,000” and adding in its place the numerical amount “\$32,500”.

Appendix B to Part 209—[Amended]

■ 4. In appendix B to part 209, the text before the table is amended by removing all references to the numerical amount “\$25,000” and adding in their place the numerical amount “\$32,500,” and by removing the reference to the numerical amount “\$250” and adding in its place the numerical amount “\$275”.

Issued in Washington, DC, on May 18, 2004

Allan Rutter,

Administrator, Federal Railroad Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

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

[Docket No. FRA-2004-17529; Notice No. 1]

RIN 2130-AB61

Inflation Adjustment of the Maximum and Minimum Civil Monetary Penalties 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 minimum and maximum civil monetary penalties 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 minimum civil penalty from \$500 to \$550 and the maximum civil penalty where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury or has actually caused death or injury (“grossly negligent violation”) from \$22,000 to \$27,000.

DATES: *Effective Date:* This final rule is effective June 28, 2004, except for the amendments to part 222, which are effective December 18, 2004.

FOR FURTHER INFORMATION CONTACT: Melissa L. Porter, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6034).

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. (Pub. L. 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 Pub. L. 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 2003) 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 1992 for the minimum CMP of \$500 and June 1998 for maximum CMP of \$22,000 for a grossly negligent violation.) The Inflation Act also specifies that 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 between \$10,000 and \$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 27 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 minimum CMP to \$550 and maximum CMP for a grossly negligent violation to \$27,000. In some instances, FRA is amending the corresponding appendices to these regulatory provisions, which outline FRA enforcement policy, as well.

With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211), the maximum CMP for