

Current OMB Control No.	Title	Title 49 CFR part or section where identified and described
2137-0620	Inspection and Testing of Meter Provers	Part 173, Subpart A, § 173.5a.

Issued in Washington, DC, on June 2, 2005.

**Susan Gorsky,**

*Acting Director, Office of Hazardous Materials Standards.*

[FR Doc. 05-11399 Filed 6-7-05; 8:45 am]

**BILLING CODE 4910-60-P**

## 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. 3]

**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 \$15,000.

**DATES:** Effective July 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Carolina Mirabal, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6043), [carolina.mirabal@fra.dot.gov](mailto:carolina.mirabal@fra.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 2004) 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 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 ordinary maximum CMP to \$15,000.

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 ("grossly negligent violation") or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury. 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 grossly negligent 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 penalty from \$1,000 to \$10,000 and \$20,000, respectively, 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. By applying the same adjustment calculation using the 1992 CPI, the 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.

RSERA also increased the minimum CMP for all of the rail safety statutes and regulations from \$250 to \$500. 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. As required, FRA recently reevaluated the minimum CMP and concluded that it should remain at \$550, as the next calculations show. The June 2004 CPI of 568.2 divided by 568.2 (since the last update was in 2004) equals an inflation factor of 1; \$550 times 1 equals \$550, or an increase of zero. 69 FR 30591.

FRA also reevaluated the CMP for a grossly negligent violation and determined that it should remain at \$27,000, as the following calculations show. The June 2004 CPI of 568.2 divided by 568.2 (since the last update

was in 2004) equals an inflation factor of 1; \$27,000 times 1 equals \$27,000, or an increase of zero. 69 FR 30591.

In 2004, FRA had applied the adjustment calculation in the Inflation Act to the ordinary maximum CMP and concluded that it would not need to be increased. 69 FR 30591. Now, applying the adjustment calculation using the June 2004 CPI, FRA has determined that the ordinary maximum CMP should be increased from \$11,000 to \$15,000, as the next calculations show.

The June 2004 CPI of 568.2 divided by the June 1998 CPI of 488.2 equals an inflation factor of 1.164; \$11,000 times 1.164 equals \$12,804, or an increase of \$1,804, which is rounded up to the nearest multiple of \$5,000, raising the ordinary maximum CMP to \$15,000.

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 July 8, 2005.

#### 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 \$120,700,000 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, 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, 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 “\$15,000.”

#### **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 “\$15,000.”

#### **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 “\$15,000.”

#### **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 “\$15,000.”

#### **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 “\$15,000.”

#### **PART 216—[AMENDED]**

■ 10. 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]**

■ 11. Section 216.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 217—[AMENDED]**

■ 12. 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]**

■ 13. Section 217.5 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 218—[AMENDED]**

■ 14. 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]**

■ 15. Section 218.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 219—[AMENDED]**

■ 16. 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]**

■ 17. Paragraph (a) of § 219.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 220—[AMENDED]**

■ 18. 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]**

■ 19. Section 220.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 221—[AMENDED]**

■ 20. 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]**

■ 21. Section 221.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 222—[AMENDED]**

■ 22. 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]**

23. Section 222.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 223—[AMENDED]**

■ 24. 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]**

■ 25. Section 223.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 225—[AMENDED]**

■ 26. 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]**

■ 27. Section 225.29 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 228—[AMENDED]**

■ 28. 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]**

■ 29. Section 228.21 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

■ 30. 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:

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

\* \* \* \* \*

*Penalty.* \* \* \* In 2005, the ordinary maximum penalty of \$11,000 was raised to \$15,000 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]**

■ 31. 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]**

■ 32. Paragraph (b) of § 229.7 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 230—[AMENDED]**

■ 33. 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]**

■ 34. Paragraph (a) of § 230.4 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 231—[AMENDED]**

■ 35. 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]**

■ 36. Paragraph (f) of § 231.0 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**PART 232—[AMENDED]**

■ 37. 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]**

■ 38. Paragraph (a) of § 232.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

**APPENDIX A TO PART 232—[AMENDED]**

■ 39. 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 “\$15,000.”

**PART 233—[AMENDED]**

■ 40. 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]

■ 41. Section 233.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 234—[AMENDED]

■ 42. 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]

■ 43. Paragraph (a) of § 234.6 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 235—[AMENDED]

■ 44. 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]

■ 45. Section 235.9 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 236—[AMENDED]

■ 46. 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]

■ 47. Paragraph (f) of § 236.0 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 238—[AMENDED]

■ 48. 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]

■ 49. Paragraph (a) of § 238.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 239—[AMENDED]

■ 50. 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]

■ 51. Section 239.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 240—[AMENDED]

■ 52. 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]

■ 53. Paragraph (a) of § 240.11 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 241—[AMENDED]

■ 54. 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]

■ 55. Paragraph (a) of § 241.15 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

#### PART 244—[AMENDED]

■ 56. 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]

■ 57. Paragraph (a) of § 244.5 is amended by removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$15,000.”

Issued in Washington, DC on June 3, 2005.

**Joseph H. Boardman,**

*Administrator, Federal Railroad Administration.*

[FR Doc. 05–11396 Filed 6–7–05; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Part 1507

[Docket No. TSA–2004–18984, Amendment 1507–1]

RIN 1652–AA36

### Privacy Act of 1974: Implementation of Exemptions; Registered Traveler Operations Files

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Final rule.

**SUMMARY:** TSA is issuing a final rule that will exempt the Registered Traveler Operations Files (DHS/TSA 015) from several provisions of the Privacy Act of 1974 to prevent the unauthorized disclosure of classified and law enforcement information.

**DATES:** Effective July 8, 2005.

**FOR FURTHER INFORMATION CONTACT:** Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3947.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the Department of Transportation’s electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting the TSA’s Law and Policy Web page at <http://www.tsa.gov/public>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

##### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA’s jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration’s Web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).