

small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 4 and removing DTV channel 34 at Superior.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–31030 Filed 12–29–08; 8:45 am]

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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, 224, 225, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

[Docket No. FRA–2004–17529; Notice No. 6]

RIN 2130–AB94

Adjustments to the Minimum and Maximum Civil Monetary Penalties for Violations of Federal Railroad Safety Laws or Federal Railroad Administration Safety 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 civil monetary penalty that it will apply when it assesses a civil penalty for a violation of a railroad safety statute or regulation under its authority. FRA is also adjusting its ordinary maximum and aggravated maximum penalties to incorporate the new maximum civil penalty amounts authorized by the Rail Safety Improvement Act of 2008. In particular, FRA is increasing the minimum civil penalty per violation from \$550 to \$650, while the ordinary maximum civil penalty per violation will be increased from \$16,000 to \$25,000 and the aggravated maximum civil penalty per violation where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury (“grossly negligent violation”) will be increased from \$27,000 to \$100,000.

DATES: This final rule is effective March 2, 2009.

FOR FURTHER INFORMATION CONTACT:

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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 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.

In 2008, Congress determined that additional measures were necessary to deter violations of Federal laws and regulations that contribute to railroad fatalities, injuries, and hazardous materials releases. See H.R. Rep. No. 110–336, at 1 (2008). As a result, it passed the Rail Safety Improvement Act of 2008, which was signed into law by the President on October 16, 2008. See Public Law 110–432, Division A, 122 Stat. 4848. The Rail Safety Improvement

Act of 2008 authorizes, among other initiatives, increased maximum penalty amounts by revising the language in 49 U.S.C. 21301(a)(2), 21302(a)(2), and 21303(a)(2) to allow for civil penalty assessments up to \$25,000 per violation with penalty assessments up to \$100,000 in instances where grossly negligent violations occur. *Id.* at sec. 302.

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 29 regulations that contain provisions referencing 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 \$650, the ordinary maximum CMP to \$25,000, and the aggravated maximum CMP to \$100,000. Where applicable, FRA is amending the corresponding appendices to those regulatory provisions, which outline FRA enforcement policy. FRA also is amending part 224 by removing the footnote attached to § 224.111 and adding the removed text, as amended, as a footnote to part 224, appendix A.

Calculation of the Inflation 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 2007) 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 2004 for the minimum CMP of \$550). See 72 FR 51196 (Sept. 6, 2007); 69 FR 62818 (Oct. 28, 2004); 69 FR 30592 (May 28, 2004). 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 inflation adjusted CMP amounts.

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 initially 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 grossly negligent conduct that results in an aggravated violation. 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 then amended each of its regulations by final rule to reflect the increased CMPs. *See* 63 FR 11618 (March 10, 1998).

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 civil penalty 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 applied the adjustment calculation in the Inflation Act to the minimum CMP and determined that it would not need to be increased. In 2004, FRA determined, by applying the adjustment calculation using the June 2003 CPI, 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 (May 28, 2004). In 2007, FRA applied the inflation adjustment calculation, determined that the ordinary maximum CMP needed to be increased, and amended each of its regulations by final rule to reflect an increase in the ordinary maximum CMP to \$16,000. 72 FR 51194 (Sept. 6, 2007).

Prior to the enactment of the Rail Safety Improvement Act of 2008, FRA was evaluating the need to make inflation adjustments to its CMP amounts under the requirements of the Inflation Act. The Rail Safety Improvement Act of 2008, however, increased the authorized amounts for ordinary maximum CMPs (\$25,000) and aggravated maximum CMPs (\$100,000). The regulations now are being amended

to reflect this change in statutory authority for ordinary maximum and aggravated maximum CMPs, which temporarily alleviates the need to perform inflation adjustment calculations for FRA's ordinary maximum and aggravated maximum CMPs. While the new law increased the authority for maximum penalties, it did not address the minimum CMP amount. Therefore, FRA must calculate whether an inflation adjustment is necessary with respect to the minimum CMP. Applying the inflation adjustment calculation, FRA has determined that the minimum CMP should be increased as the following calculations show.

Calculations To Determine Minimum Civil Monetary Penalty Update for 2008

As required, this year, FRA reevaluated the minimum CMP and concluded that it should be increased to \$650, as the next calculations show. The June 2007 CPI of 624.129 divided by the CPI for June 2004 of 568.2 (since the last update was in 2004) equals an inflation factor of 1.09843; \$550 times 1.09843 equals \$604. The raw inflation adjustment amount of \$54 is rounded to the nearest multiple of 100, which is \$100. The inflation adjusted minimum penalty is \$550 plus \$100, or \$650, *see* appendix, and is applicable to all of the rail safety statutes and regulations. Because this is the second time that the minimum CMP has been adjusted under the Act, the ten-percent cap on the increase does not apply. This new FRA minimum penalty will apply to violations that occur on or after March 2, 2009.

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, in making these technical amendments to give effect to the new Rail Safety Improvement Act of 2008, 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 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. The cost of complying with existing substantive regulations is not being increased. The rules merely contain a regulatory formulation of FRA's amended statutory authority pursuant to the Rail Safety Improvement Act of 2008 and simply reserve FRA's right to assess a penalty up to \$25,000, or \$100,000 in appropriate circumstances. Additionally, the adjustment of the minimum CMP is a limited ministerial act over 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. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is

purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

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

F. Compliance With the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of \$141,000,000 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.

G. Environmental Assessment

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

H. 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, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

49 CFR Part 209

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

49 CFR Part 213

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

49 CFR Part 214

Bridges, 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

Penalties, Railroad safety.

49 CFR Part 217

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

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

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 222

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

49 CFR Part 223

Glass and glass products, 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.

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

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 234

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

49 CFR Part 235

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

49 CFR Part 236

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

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

49 CFR Part 241

Communications, Penalties, 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, 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:

- a. Removing the numerical amount “\$500” and adding in its place the numerical amount “\$650”;
- b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”;
- c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 209—[Amended]

- 3. Appendix A to part 209 is amended by:
 - a. Removing the numerical amount “\$550” in the third paragraph below the heading “PENALTY SCHEDULES; ASSESSMENT OF MAXIMUM PENALTIES,” and replacing it with the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” in the third paragraph below the heading “PENALTY SCHEDULES; ASSESSMENT OF MAXIMUM PENALTIES,” and replacing it with the numerical amount “\$25,000”;
 - c. Removing the reference to the numerical amount “\$11,000” in the sixth paragraph below the heading “PENALTY SCHEDULES; ASSESSMENT OF MAXIMUM PENALTIES,” and replacing it with the numerical amount “\$25,000”; and
 - d. Removing both references to the numerical amount “\$27,000” in the sixth paragraph below the heading “PENALTY SCHEDULES; ASSESSMENT OF MAXIMUM PENALTIES,” and replacing them with the numerical amount “\$100,000”.

Appendix B to Part 209—[Amended]

- 4. Footnote 1 to appendix B to part 209 is amended by:
 - a. Removing the numerical amount “\$500” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$11,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 213—[AMENDED]

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

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

§ 213.15 [Amended]

- 6. Paragraph (a) of § 213.15 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix B to Part 213—[Amended]

- 7. Footnote 1 to appendix B of part 213 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 214—[AMENDED]

- 8. 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]

- 9. Section 214.5 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 214—[Amended]

- 10. Footnote 1 to appendix A of part 214 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix B to Part 215—[Amended]

- 13. Footnote 1 to appendix B of part 215 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

- c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 217—[Amended]

- 18. Footnote 1 to appendix A of part 217 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 218—[Amended]

- 21. Footnote 1 of appendix A to part 218 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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. Paragraph (a) of § 219.9 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

- b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
- c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix A to Part 219—[Amended]

- 24. Footnote 1 to appendix A of part 219 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 220—[AMENDED]

- 25. 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]

- 26. Section 220.7 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix C to Part 220—[Amended]

- 27. Footnote 1 to appendix C of part 220 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 221—[AMENDED]

- 28. 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]

- 29. Section 221.7 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix C to Part 221—[Amended]

- 30. Footnote 1 to appendix C of part 221 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 222—[AMENDED]

- 31. 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]

- 32. Section 222.11 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix G to Part 222—[Amended]

- 33. Footnote 1 to appendix G of part 222 is amended by: Removing the numerical amount "27,000" and adding in its place the numerical amount "100,000".

PART 223—[AMENDED]

- 34. 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]

- 35. Section 223.7 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix B to Part 223—[Amended]

- 36. Footnote 1 to appendix B of part 223 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 224—[AMENDED]

- 37. The authority citation for part 224 is revised 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]

- 38. Paragraph (a) of § 224.11 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

- 39. Section 224.111 is amended by removing footnote 1.

Appendix A to Part 224—[Amended]

- 40. Appendix A of part 224 is amended by adding footnote 1, to read as follows:

* * * * *

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

* * * * *

PART 225—[AMENDED]

- 41. The authority citation for part 225 is revised 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]

- 42. Section 225.29 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Appendix A to Part 225—[Amended]

- 43. Footnote 1 to appendix A of part 225 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 227—[AMENDED]

- 44. The authority citation for part 227 is revised 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]

- 45. Paragraph (a) of § 227.9 is amended by:
 - a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
 - b. Removing the numerical amount "\$11,000" and adding in its place the numerical amount "\$25,000";
 - c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000"; and
 - d. Removing the phrase "appendix H" and adding in its place the phrase "appendix G".

Appendix G to Part 227—[Amended]

■ 46. Appendix G of part 227 is amended by adding the following paragraph as Footnote 1:

* * * * *

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

* * * * *

PART 228—[AMENDED]

■ 47. The authority citation for part 228 is revised 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]

■ 48. Section 228.21 is amended by:

■ a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

■ b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

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

■ 49. In appendix A to part 228, the ninth paragraph below the heading “GENERAL PROVISIONS”, entitled “Penalty”, is amended by removing its last sentence and adding the following sentences in its place:

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

* * * * *

Penalty. * * * Effective October 9, 2007, the ordinary maximum penalty of \$11,000 was raised to \$16,000 as required under law. Effective March 2, 2009, the minimum penalty, ordinary maximum penalty and aggravated maximum penalty were raised again. The minimum penalty was increased from \$550 to \$650 pursuant to the law’s requirement. 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.

* * * * *

Appendix B to Part 228—[Amended]

■ 50. Appendix B is amended by removing each of the three references to the numerical amount “\$500” and replacing them with the numerical amount “\$650”.

■ 51. Footnote 1 to appendix B of part 228 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 229—[AMENDED]

■ 52. 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]

■ 53. Paragraph (b) of § 229.7 is amended by:

■ a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

■ b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix B to Part 229—[Amended]

■ 54. Appendix B is amended by removing the numerical amount “\$500” from the entry at 229.105 and adding in its place the numerical amount “\$650”.

■ 55. Footnote 1 to appendix B of part 229 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 230—[AMENDED]

■ 56. 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]

■ 57. Paragraph (a) of § 230.4 is amended by:

■ a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

■ b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 231—[AMENDED]

■ 58. 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]

■ 59. Paragraph (f) of § 231.0 is amended by:

■ a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

■ b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 231—[Amended]

■ 60. Appendix A is amended by removing the numerical amount “\$500” from the entry at 146.A and adding in its place the numerical amount “\$650”.

■ 61. Footnote 1 to appendix A of part 231 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 232—[AMENDED]

■ 62. 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]

■ 63. Paragraph (a) of § 232.11 is amended by:

■ a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

■ b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 232—[Amended]

■ 64. Footnote 1 to appendix A of part 232 is amended by:

■ a. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and

■ b. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 233—[AMENDED]

■ 65. 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]

■ 66. Section 233.11 is amended by:

- a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
- b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
- c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 233—[Amended]

- 67. Footnote 1 to appendix A of part 233 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 234—[AMENDED]

- 68. 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]

- 69. Paragraph (a) of § 234.6 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 234—[Amended]

- 70. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 235—[AMENDED]

- 71. 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]

- 72. Section 235.9 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 235—[Amended]

- 73. Footnote 1 to appendix A of part 235 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 236—[AMENDED]

- 74. 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]

- 75. Paragraph (f) of § 236.0 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 236—[Amended]

- 76. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 238—[AMENDED]

- 77. 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]

- 78. Paragraph (a) of § 238.11 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 238—[Amended]

- 79. Footnote 1 to appendix A to part 238 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 239—[AMENDED]

- 80. 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]

- 81. Section 239.11 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;

- b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
- c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 239—[Amended]

- 82. Footnote 1 to appendix A to part 239 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 240—[AMENDED]

- 83. 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]

- 84. Paragraph (a) of § 240.11 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix A to Part 240—[Amended]

- 85. Appendix A is amended by removing each of the three references to the numerical amount “\$500” and adding in each of their places the numerical amount “\$650”.
- 86. Footnote 1 to appendix A of part 240 is amended by removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

PART 241—[AMENDED]

- 87. 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]

- 88. Paragraph (a) of § 241.15 is amended by:
 - a. Removing the numerical amount “\$550” and adding in its place the numerical amount “\$650”;
 - b. Removing the numerical amount “\$16,000” and adding in its place the numerical amount “\$25,000”; and
 - c. Removing the numerical amount “\$27,000” and adding in its place the numerical amount “\$100,000”.

Appendix B to Part 241—[Amended]

■ 89. Footnote 1 to appendix B of part 241 is amended by removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

PART 244—[AMENDED]

■ 90. 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]

■ 91. Paragraph (a) of § 244.5 is amended by:

- a. Removing the numerical amount "\$550" and adding in its place the numerical amount "\$650";
- b. Removing the numerical amount "\$16,000" and adding in its place the numerical amount "\$25,000"; and
- c. Removing the numerical amount "\$27,000" and adding in its place the numerical amount "\$100,000".

Issued in Washington, DC on December 18, 2008.

Clifford C. Eby,

Acting Administrator, Federal Railroad Administration.

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

Appendix: "Step-by-Step Calculations To Determine Civil Monetary Penalty Update: 2008"**Step-by-Step Calculations To Determine Civil Monetary Penalty Update: 2008**

These calculations follow U.S. Department of Transportation and Government Accountability Office (GAO), formerly the General Accounting Office, guidance to determine if the minimum civil monetary penalty (CMP) 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, the minimum rises from \$550 to \$650 for 2008, under the Inflation Act.

Minimum CMP

The current minimum CMP is \$550, last updated on May 28, 2004. See 69 FR 30592.

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 2007 = 624.129.

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.

$COLA = CPI \text{ for June } 2007 = 624.129 = 1.09843, \text{ CPI for June } 2004 = 568.2.$

Step 3: Find the Raw Inflation Adjustment or Inflation Adjustment Before Rounding. Raw Inflation Adjustment = $CMP \times COLA = \$550 \times 1.09843 = \$604.14 \approx \$604.$

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 = $\$604 - \$550 = \$54.$

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).

Multiples of \$100 are \$0, \$100, \$200. * * * The nearest multiple of \$100 is therefore \$100. Rounded, the \$54 increase = \$100.

Step 5: Find the Inflation Adjusted Penalty After Rounding.

CMP after rounding = Original CMP + Rounded Increase = $\$550 + \$100 = \$650.$

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 = \$650.

For 2008, the minimum CMP rises by \$100.

[FR Doc. E8-30753 Filed 12-29-08; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 071001548-81392-02]

RIN 0648-AW10

Marine Recreational Fisheries of the United States; National Saltwater Angler Registry Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to adopt regulations to implement the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The regulations establish a national registry of recreational anglers fishing in the Exclusive Economic Zone (EEZ), for anadromous species in tidal waters or for Continental Shelf fishery resources beyond the EEZ. Persons will not be required to register with NMFS if they are licensed by a state that provides data determined to be sufficient for the agency's needs. The requirement is intended to improve

existing angling effort surveys in order to improve their efficiency, to reduce possible sources of bias and to improve confidence in survey results by anglers and fishery managers.

DATES: This final rule is effective January 29, 2009, except for the amendments to § 600.1405 which are effective January 1, 2010.

ADDRESSES: Copies of the Regulatory Impact Review/Regulatory Flexibility Act Analysis are available from: Gordon Colvin, Office of Science and Technology, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. Background information and documents are available at the NMFS Office of Science and Technology website at <http://www.st.nmfs.noaa.gov/mrip/>

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Office of Science and Technology and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Gordon Colvin, phone: 301-713-2367; fax: 301-713-1875; or e-mail: gordon.colvin@noaa.gov.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at http://www.access.gpo.gov/su_docs/.

Background

In 2004, NMFS contracted with the National Research Council (NRC) of the National Academy of Sciences to review the current marine recreational fishery survey methods used by NMFS and its partners to monitor fishing effort and catch. NMFS asked the NRC to: (1) assess current survey methods for their suitability in monitoring fishing effort and catch in the shoreline, private boat, and for-hire boat recreational fisheries; (2) assess the adequacy of the methods for providing the quality of information needed to support accurate stock assessments and responsible fisheries management decisions; and (3) make recommendations for possible methodological improvements that would ensure more accurate and precise estimates of recreational effort and catch.

The NRC's Ocean Studies Board formed a 10-member committee to conduct the requested review, held a series of five public meetings in 2005 to gather information about the current survey programs in each region, and