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**Patrick R. Mullen,**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2000-7257, Notice No. 93]

#### Railroad Safety Advisory Committee; Notice of Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** FRA announces the sixty-fourth meeting of the Railroad Safety Advisory Committee (RSAC), a Federal Advisory Committee that provides advice and recommendations to FRA on railroad safety matters through a consensus process. This special meeting of the RSAC will focus on the events related to the February 3, 2023 freight train derailment in East Palestine, Ohio, and include a discussion of potential related safety improvements and possible RSAC tasks and actions.

**DATES:** The RSAC meeting is scheduled for Monday, March 27, 2023. The meeting will commence at 9:30 a.m. and will adjourn by 4:30 p.m. (all times Eastern Daylight Time). Requests to submit written materials to be reviewed during the meeting must be received by March 17, 2023. Requests for accommodations because of a disability must be received by March 17, 2023.

**ADDRESSES:** The RSAC meeting will be held at the National Association of Home Builders, located at 1201 15th Street NW, Washington, DC 20005. A final agenda will be posted on the RSAC internet website at <https://rsac.fra.dot.gov/> at least one week in advance of the meeting. Please see the RSAC website for additional information on the committee at <https://rsac.fra.dot.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Kenton Kilgore, RSAC Designated Federal Officer/RSAC Coordinator, FRA Office of Railroad Safety, (202) 365-3724 or [kenton.kilgore@dot.gov](mailto:kenton.kilgore@dot.gov). Any committee-related request should be sent to Mr. Kilgore.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92-463), FRA is giving notice of a meeting of the RSAC. The RSAC is composed of 51 voting representatives from 26 member organizations, representing various rail industry perspectives. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities.

**Public Participation:** The meeting is open to the public. Attendance is on a first-come, first served basis, and is accessible to individuals with disabilities. DOT and FRA are committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact Mr. Kenton Kilgore as listed in the **FOR FURTHER INFORMATION CONTACT** section and submit your request by March 17, 2023. Any member of the public may submit a written statement to the committee at any time. If a member of the public wants the submit written materials to be reviewed by the committee during the meeting, it must be received by March 17, 2023.

**Agenda Summary:** This special meeting of the RSAC will focus on the events leading up to, during, and following the February 3, 2023 Norfolk Southern Railway Co. freight train derailment in East Palestine, Ohio, as well as suggested safety improvements, and possible RSAC tasks and actions. A detailed agenda for the meeting will be posted on the RSAC internet website at least one week in advance of the meeting. Copies of the minutes of past meetings, along with general information about the committee, are also available on the RSAC internet website at <https://rsac.fra.dot.gov/>.

Issued in Washington, DC.

**Amitabha Bose,**  
*Administrator.*

[FR Doc. 2023-04914 Filed 3-9-23; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Updated Civil Penalty Schedules and Guidelines

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

**ACTION:** Notice of availability.

**SUMMARY:** FRA is issuing this notice to advise all interested stakeholders that it has issued, and made available on its website, updated civil penalty schedules and guidelines (Schedules) to

account for inflation. This notice explains FRA's increase to its guideline rail safety civil penalty amounts. This notice also announces FRA's intent to adjust the civil penalty amounts line-by-line on an annual basis for inflation, after this adjustment.

**FOR FURTHER INFORMATION CONTACT:** Veronica Chittim, Senior Attorney, Office of the Chief Counsel, telephone: 202-480-3410, email: [veronica.chittim@dot.gov](mailto:veronica.chittim@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety and hazardous materials transportation statutes, regulations, and orders, including the civil penalty provisions codified primarily at 49 U.S.C. chs. 51 and 213.<sup>1</sup> FRA currently has safety regulations in 36 parts of the Code of Federal Regulations (CFR) that contain provisions establishing the agency's authority to impose civil penalties if a person<sup>2</sup> violates any requirement in the pertinent portion of a statute, regulation, or order. Out of those 36 CFR parts, 32 contain civil penalty Schedules constituting a statement of agency policy. These Schedules were historically issued as an appendix to the relevant part of the CFR. In 2019, FRA relocated the existing Schedules from the CFR to FRA's website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).<sup>3</sup> Since 2019, FRA has incorporated updates to the Schedules to account for regulatory changes, to reflect updated minimum and maximum statutory civil monetary penalty (CMP) amounts, and to add Schedules for FRA regulations (*i.e.*, 49 CFR parts 271 and 299).

FRA last published comprehensive, line-by-line revisions to the Schedules of its safety regulations in 1988.<sup>4</sup> The revisions reflected the higher maximum penalty amounts the Rail Safety Improvement Act of 1988 (RSIA of 1988) established.<sup>5</sup> With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211),<sup>6</sup> RSIA

<sup>1</sup> 49 U.S.C. 103 and 49 CFR 1.89; 49 U.S.C. chs. 51, 201-213.

<sup>2</sup> 49 CFR 209.3.

<sup>3</sup> 84 FR 23730 (May 23, 2019).

<sup>4</sup> 53 FR 52918 (Dec. 29, 1988).

<sup>5</sup> Pub. L. 100-342.

<sup>6</sup> The Rail Safety Enforcement and Review Act (RSERA) (Pub. L. 102-365, Sept. 3, 1992), increased the maximum penalty for a violation of the hours of service laws, from \$1,000 to \$10,000, and in some cases to \$20,000, making these penalty amounts consistent with those of FRA's other regulatory provisions. RSERA also increased the

of 1988 raised the maximum penalty for an ordinary violation from \$2,500 to \$10,000 (ordinary maximum) and to \$20,000 for a grossly negligent violation or pattern of repeated violations that has caused an imminent hazard or death or injury to individuals, or has caused death or injury (aggravated maximum). Therefore, FRA published amendments to the Schedules to “give effect to the full range of civil penalties . . . permitted to be assessed for violation of specific regulations.”<sup>7</sup> In these amendments, FRA revised not only the ordinary and aggravated maximum CMP amounts per violation, but also the individual, line-item penalties for specific sections or subsections of the regulations.

Since the publication of the Schedules in 1988, FRA has periodically adjusted its minimum CMP and its ordinary and aggravated maximum CMPs to conform to the mandates of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act).<sup>8</sup> The Inflation Act required each agency to: (1) adjust by regulation each maximum CMP, or range of minimum and maximum CMPs, within that agency’s jurisdiction; and (2) adjust those penalty amounts once every four years thereafter, to reflect inflation.<sup>9</sup> FRA periodically reviewed its minimum CMP and ordinary and aggravated maximum CMPs as the Inflation Act required and adjusted them as appropriate.<sup>10</sup>

The Rail Safety Improvement Act of 2008 (RSIA) increased the ordinary and aggravated maximum CMPs to \$25,000 and \$100,000, respectively.<sup>11</sup> In 2008, FRA adjusted its minimum CMP from \$550 to \$650 under the Inflation Act, and also adopted \$25,000 as the ordinary maximum and \$100,000 as the aggravated maximum CMPs required by the RSIA.<sup>12</sup> Subsequently, in 2012, FRA adjusted the aggravated maximum CMP for inflation to \$105,000, but kept the minimum and ordinary maximum CMPs unchanged.<sup>13</sup>

Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Act), agencies were required to make a catch-

minimum penalty from \$250 to \$500 for all of FRA’s regulatory provisions.

<sup>7</sup> 53 FR 52918.

<sup>8</sup> Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by Sec. 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, Apr. 26, 1996.

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., 63 FR 11618 (Mar. 10, 1998); 69 FR 30591 (May 28, 2004); 72 FR 51194 (Sept. 6, 2007).

<sup>11</sup> Public Law 110–432, Div. A, Sec. 302.

<sup>12</sup> *Id.*; 74 FR 15387 (Apr. 6, 2009).

<sup>13</sup> 77 FR 24415 (Apr. 24, 2012).

up adjustment for the minimum, ordinary maximum, and aggravated maximum CMPs, followed by annual inflation adjustments.<sup>14</sup> FRA has adjusted the statutory minimum, ordinary maximum, and aggravated maximum CMPs pursuant to the 2015 Inflation Act, with the most recent adjustment occurring on January 6, 2023.<sup>15</sup>

FRA’s practice has been to issue Schedules assigning to each section or subsection of the regulations specific dollar amounts for initial penalty assessments. These Schedules (and all line-item penalty amounts found within them) are statements of agency policy that specify the penalty that FRA will ordinarily assess for the violation of a particular section or subsection of a safety regulation, and are published to inform members of the regulated community of the penalty FRA will likely assess for a given violation within the range of the statutory minimum to the aggravated maximum CMP. The Schedules are not regulations nor are they subject to notice-and-comment requirements. The Schedules provide guidance on FRA’s policy in predictable situations, but they do not prevent FRA from using the full range of penalty authority when circumstances warrant. Thus, regardless of the amounts shown in the Schedules, FRA continues to reserve the right to assess, within the range established by the rail safety statutes (49 U.S.C. ch. 213) or by regulation under the 2015 Inflation Act, an amount other than that listed in the Schedules based on the circumstances of the alleged violation.

The Schedules included in these statements of agency policy continue to provide guideline penalty amounts for two categories of violations: ordinary (non-willful) and willful. Each Schedule lists the CFR section or subsection in the left-hand column, sometimes with additional designations to distinguish different types of violations (penalty codes) of the section or subsection, to facilitate the assessment of civil penalties.<sup>16</sup> The corresponding

<sup>14</sup> Public Law 114–74, Sec. 701 (Nov. 2, 2015).

<sup>15</sup> See 49 CFR part 209, appendix A. Effective January 6, 2023, the minimum CMP was raised from \$976 to \$1,052, the ordinary maximum CMP was raised from \$31,928 to \$34,401, and the aggravated maximum CMP was raised from \$127,712 to \$137,603. See 88 FR 1114.

<sup>16</sup> The only exception is 49 CFR part 231; the left-hand column of the Schedule lists the FRA defect codes for that part, and not the corresponding CFR sections. This is because the defect codes are organized by the type of safety appliance, which makes them easier to use than the section numbers of part 231, which are organized primarily by car or locomotive type. Nevertheless, if necessary, every defect code can be traced to a specific

guideline penalty amount for an ordinary violation and then the guideline penalty amount for a willful violation are listed. The ordinary penalties apply to railroads or other respondents, except individuals, while the “willful” column applies to willful violations committed by railroads or other respondents, including individuals.

### Updated Civil Penalty Schedules

FRA is updating, line-by-line, FRA’s civil penalty Schedules to account for inflation. Although the 2015 Inflation Act did not require FRA to adjust individual, line-item penalty amounts, Congress’ recognition in that Act of the negative impact that inflation has on the deterrent effect of FRA’s civil penalties, and the fact FRA has never adjusted each of its civil penalties to specifically account for inflation, prompted FRA to update these statements of agency policy. FRA believes the new inflation-adjusted penalty amounts in these statements of agency policy will preserve the deterrent effects of the CMPs, supporting FRA’s mission to make the United States’ rail system safer.

Many of FRA’s existing CMP guideline amounts are below the 2023 statutory minimum CMP amount of \$1,052.<sup>17</sup> To address this issue both specifically for the existing \$1,000 guideline CMPs and to combat the erosion of the deterrent effect of FRA’s civil penalties in a consistent manner, FRA is updating all rail safety CMP guideline amounts.

Effective for violations occurring on or after March 8, 2023, FRA has increased all rail safety penalties by multiplying the base, pre-adjusted penalty, by two. For example, a base penalty of \$2,500 will increase to \$5,000. Beginning in 2024, FRA intends to annually adjust all of its Schedules by a fixed inflation rate factor (using the Consumer Price Index), similar to the calculation used to adjust the statutory minimum and maximum CMPs. FRA will continue to post such inflation updates to its Schedules on FRA’s website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).

### Conclusion

To promote railroad safety by enhancing and maintaining the deterrent effect of the civil penalty program, FRA is doubling its guideline

regulatory provision in part 231 or statutory provision in 49 U.S.C. ch. 203, or both.

<sup>17</sup> See, e.g., a guideline base CMP for a non-willful violation of 49 CFR 213.241, *Inspection records*, \$1,000.

penalties to account for inflation. Beginning in 2024, FRA expects to annually adjust its civil penalty Schedules indexed to the rate of inflation. All updates to these statements of agency policy can be found on FRA's website (<https://railroads.dot.gov/legislation-regulations/civil-penalties-schedules-guidelines>).

Issued in Washington, DC.

Allison Ishihara Fultz,  
Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; Toyota Motor North America, Inc.

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the Toyota Motor North America, Inc.'s (Toyota) petition for exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Crown vehicle line beginning in model year (MY) 2024. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

**DATES:** The exemption granted by this notice is effective beginning with the 2024 model year.

**FOR FURTHER INFORMATION CONTACT:**

Carlita Ballard, Office of International Policy, Fuel Economy, and Consumer Programs, NHTSA, West Building, W43-439, NRM-310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366-5222. Her fax number is (202) 493-2990.

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. Chapter 331, the Secretary of Transportation (and the National Highway Traffic Safety Administration (NHTSA) by delegation) is required to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. NHTSA promulgated

regulations at 49 CFR part 541 (theft prevention standard) to require parts-marking for specified passenger motor vehicles and light trucks. Pursuant to 49 U.S.C. 33106, manufacturers that are subject to the parts-marking requirements may petition the Secretary of Transportation for an exemption for a line of passenger motor vehicles equipped with an antitheft device as standard equipment that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. In accordance with this statute, NHTSA promulgated 49 CFR part 543, which establishes the process through which manufacturers may seek an exemption from the theft prevention standard.

49 CFR 543.5 provides general submission requirements for petitions and states that each manufacturer may petition NHTSA for an exemption of one vehicle line per model year. Among other requirements, manufacturers must identify whether the exemption is sought under section 543.6 or section 543.7. Under section 543.6, a manufacturer may request an exemption by providing specific information about the antitheft device, its capabilities, and the reasons the petitioner believes the device to be as effective at reducing and deterring theft as compliance with the parts-marking requirements. Section 543.7 permits a manufacturer to request an exemption under a more streamlined process if the vehicle line is equipped with an antitheft device (an "immobilizer") as standard equipment that complies with one of the standards specified in that section.<sup>1</sup>

Section 543.8 establishes requirements for processing petitions for exemption from the theft prevention standard. As stated in section 543.8(a), NHTSA processes any complete exemption petition. If NHTSA receives an incomplete petition, NHTSA will

<sup>1</sup> 49 CFR 543.7 specifies that the manufacturer must include a statement that their entire vehicle line is equipped with an immobilizer that meets one of the following standards:

(1) The performance criteria (subsections 8 through 21) of C.R.C. c. 1038.114, *Theft Protection and Rollaway Prevention* (in effect March 30, 2011), as excerpted in appendix A of [part 543];

(2) National Standard of Canada CAN/ULC-S338-98, *Automobile Theft Deterrent Equipment and Systems: Electronic Immobilization* (May 1998);

(3) United Nations Economic Commission for Europe (UN/ECE) Regulation No. 97 (ECE R97), *Uniform Provisions Concerning Approval of Vehicle Alarm System (VAS) and Motor Vehicles with Regard to Their Alarm System (AS)* in effect August 8, 2007; or

(4) UN/ECE Regulation No. 116 (ECE R116), *Uniform Technical Prescriptions Concerning the Protection of Motor Vehicles Against Unauthorized Use* in effect on February 10, 2009.

notify the petitioner of the deficiencies. Once NHTSA receives a complete petition the agency will process it and, in accordance with section 543.8(b), will grant the petition if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541.

Section 543.8(c) requires NHTSA to issue its decision either to grant or to deny an exemption petition not later than 120 days after the date on which a complete petition is filed. If NHTSA does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.<sup>2</sup> Exemptions granted under part 543 apply only to the vehicle line or lines that are subject to the grant and that are equipped with the antitheft device on which the line's exemption was based, and are effective for the model year beginning after the model year in which NHTSA issues the notice of exemption, unless the notice of exemption specifies a later year.

Sections 543.8(f) and (g) apply to the manner in which NHTSA's decisions on petitions are to be made known. Under section 543.8(f), if the petition is sought under section 543.6, NHTSA publishes a notice of its decision to grant or deny the exemption petition in the **Federal Register** and notifies the petitioner in writing. Under section 543.8(g), if the petition is sought under section 543.7, NHTSA notifies the petitioner in writing of the agency's decision to grant or deny the exemption petition.

This grant of petition for exemption considers Toyota Motor North America, Inc.'s (Toyota) petition for its Crown vehicle line beginning in MY 2024.

#### I. Specific Petition Content Requirements Under 49 CFR 543.6

Pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention*, Toyota petitioned for an exemption for its specified vehicle line from the parts-marking requirements of the theft prevention standard, beginning in MY 2024. Toyota petitioned under 49 CFR 543.6, *Petition: Specific content requirements*, which, as described above, requires manufacturers to provide specific information about the antitheft device installed as standard equipment on all vehicles in the line for which an exemption is sought, the antitheft device's capabilities, and the

<sup>2</sup> 49 U.S.C. 33106(d).