

interexchange call from an inmate telephone;

(2) *Inmate telephone* means a telephone instrument set aside by authorities of a prison or other correctional institution for use by inmates.

(3) *Inmate operator services* means any interstate telecommunications service initiated from an inmate telephone that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(i) Automatic completion with billing to the telephone from which the call originated; or

(ii) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(4) *Provider of inmate operator services* means any common carrier that provides outbound interstate, domestic, interexchange operator services from inmate telephones.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

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

[Docket No. RSEP-8, Notice 1]

RIN 2105-AC63

### Civil Monetary Penalty Inflation Adjustment

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

**ACTION:** Final rule.

**SUMMARY:** FRA is implementing the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 in this final rule. FRA is adjusting the maximum civil monetary penalties it issues for violations of railroad safety statutes and regulations under its authority.

**EFFECTIVE DATE:** April 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone 202-632-3188).

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461, note (Act), 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, requires that agencies adjust by regulation each maximum civil monetary penalty (CMP) within that agency's jurisdiction by October 23, 1996 (180 days after enactment of the Debt Collection Improvement Act) and adjust those penalty amounts once every four years thereafter. 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 Debt Collection Improvement 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 CMP.

### Calculation of the Adjustment

The inflation adjustment is to be calculated by increasing the maximum civil monetary penalty or the range of minimum and maximum CMPs by the percentage that the Consumer Price Index (CPI) for the month of June 1995 (the calendar year preceding the adjustment) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted. These adjusted amounts are subject to a rounding formula found in Section 5 of the Act and the first adjustment may not exceed an increase of ten percent. FRA utilized Bureau of Labor Statistics Data to calculate adjusted CMP amounts.

FRA currently has 21 regulations that contain provisions which reference its ability 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 to reflect the increased maximum CMP and the corresponding footnotes in each Schedule of Civil Penalties. In some instances, FRA is amending the corresponding appendices to these regulatory provisions, which outline FRA enforcement policy, as well. With the exception of the provisions relating to the Hours of Service Laws contained in Part 228, FRA's maximum penalty was established by the Rail Safety Improvement Act of 1988, which set a \$10,000 limit for a penalty imposed for any single violation and a \$20,000 limit for willful violation where a grossly

negligent violation or pattern of repeat violations has created an imminent hazard of death or injury or has actually caused death or injury. By applying the adjustment calculation described above using the 1988 CPI, these maximum penalties will rise to \$11,000 and \$22,000, respectively, in each of the regulations being amended. The Rail Safety Enforcement and Review Act of 1992 increased the maximum civil penalty from \$1,000 to \$10,000 and \$20,000, respectively, for violations of the Hours of Service Laws, making these 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 are equivalent to those of the other regulations, \$11,000 and \$22,000.

FRA is also responsible for enforcement in instances where violations of the hazardous materials regulations involve railroads and those who ship by rail. The hazardous materials regulations are not issued by FRA but are issued by the Research and Special Projects Administration (RSPA), a component of DOT. The relevant portions of the RSPA regulations have been revised (see 62 FR 2970) to reflect the calculation that the new statutory maximum is \$27,500. Since FRA has previously issued a policy statement concerning its enforcement of these regulations, FRA is modifying the language in the policy statement which references the statutory maximum to reflect this new maximum of \$27,500 in this final rule, as well as the provisions in 49 CFR Part 209 addressing hazardous materials.

Except for the hazardous materials regulations, these new FRA maximum penalties will apply to violations that occur on or after April 1, 1998. RSPA has already determined that the new maximums for hazardous materials violations apply to violations that occurred after January 21, 1997.

### 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 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). The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

### 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 who are considered small entities there is no economic impact on any person who complies with the Federal railroad safety laws.

### 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 12612, preparation of a Federalism assessment is not warranted.

### Paperwork Reduction Act

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

### Compliance with the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$ 100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice

of proposed rulemaking was published, the agency shall prepare a written statement \* \* \* detailing the effect on State, local and tribal governments and the private sector. The final rule issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement is not required.

### List of Subjects in 49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 240

Railroad safety, Penalties.

Therefore, in consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 240 Title 49, Code of Federal Regulations are amended as follows:

#### PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49

#### § 209.103 [Amended]

2. Section 209.103 is amended by removing the numerical amount "\$25,000" and adding in its place the numerical amount "\$27,500".

#### § 209.335 [Amended]

3. Section 209.335(b) is amended by removing the numerical amount "\$10,000" and adding in its place the numerical amount "\$11,000".

#### § 209.409 [Amended]

4. Section 209.409 is amended by removing the numerical amount "\$10,000" and adding in its place the numerical amount "\$11,000" and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### Appendix A to Part 209—[Amended]

5. In appendix A to part 209, the section entitled *Penalty Schedules; Assessment of Maximum Penalties* is revised to read as follows:

\* \* \* \* \*

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations. Under the Hours of Service Act, the penalty was changed from a flat \$500 to a penalty of "up to \$1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to

persons, or has caused death or injury," a penalty of up to \$20,000 per violation may be assessed.

The Rail Safety Enforcement and Review Act of 1992 (RSERA) increased the maximum penalty from \$1,000 to \$10,000 and in some cases, \$20,000 for a violation of the Hours of Service Laws, making these penalty amounts uniform with those of FRA's other regulatory provisions. RSERA also increased the minimum civil monetary penalty from \$250 to \$500 for all of FRA's regulatory provisions. The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890, 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 required that agencies adjust by regulation each maximum civil monetary penalty within the agency's jurisdiction for inflation and make subsequent adjustments once every four years after the initial adjustment. Accordingly, FRA's maximum civil monetary penalties have been adjusted.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation, the schedule shows two amounts within the \$500 to \$11,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

The schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. The Senate report on the bill that became the RSIA stated:

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances. S. Rep. No. 100-153, 10th Cong., 2d Sess. 8 (1987).

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$22,000 per violation where a grossly negligent violation has created an imminent hazard of death or injury. This authority

to assess a penalty for a single violation above \$11,000 and up to \$22,000 is used only in very exceptional cases to penalize egregious behavior. Where FRA avails itself of this right to use the higher penalties in place of the schedule amount it so indicates in its penalty demand letter.

\* \* \* \* \*

#### **PART 213—[AMENDED]**

6. The authority citation for Part 213 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49

#### **§ 213.15 [Amended]**

7. Section 213.15 is amended by:

a. Removing parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix B to Part 213—[Amended]**

8. Footnote 1 to appendix B of part 213 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 214—[AMENDED]**

9. The authority citation for part 214 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49

#### **§ 214.5 [Amended]**

10. Section 214.5 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing

goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix A to Part 214—[Amended]**

11. Footnote 1 to appendix A of part 214 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 215—[AMENDED]**

12. The authority citation for Part 215 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### **§ 215.7 [Amended]**

13. Section 215.7 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix B to Part 215—[Amended]**

14. Footnote 1 to appendix B of part 215 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 216—[AMENDED]**

15. The authority citation for part 216 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### **§ 216.7 [Amended]**

16. Section 216.7 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 217—[AMENDED]**

17. The authority citation for part 217 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### **§ 217.5 [Amended]**

18. Section 217.5 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix A to Part 217—[Amended]**

19. Footnote 1 to appendix A of part 217 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 218—[AMENDED]**

20. The authority citation for part 218 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

**§ 218.9 [Amended]**

21. Section 218.9 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix A to Part 218—[Amended]**

22. Footnote 1 to appendix A of part 218 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 219—[AMENDED]**

23. The authority citation for part 219 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20140, and 49 CFR 1.49.

**§ 219.9(a) [Amended]**

24. Section 219.9(a) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the

numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix A to Part 219—[Amended]**

25. Footnote 1 to appendix A of part 219 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 220—[AMENDED]**

26. The authority citation for part 220 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

**§ 220.7 [Amended]**

27. Section 220.7 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix C to Part 220—[Amended]**

28. Footnote 1 to appendix C of part 220 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 221—[AMENDED]**

29. The authority citation for part 221 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

**§ 221.17 [Amended]**

30. Section 221.7 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities;

any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix A to Part 220—[Amended]**

31. Footnote 1 to appendix A of part 220 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 223—[AMENDED]**

32. The authority citation for part 223 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

**§ 223.7 [Amended]**

33. Section 223.7 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix B to Part 223—[Amended]**

34. Footnote 1 to appendix B of part 223 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 225—[AMENDED]**

35. The authority citation for part 225 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20901, 21301–21302, and 49 CFR 1.49.

**§ 225.29 [Amended]**

36. Section 225.29 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix A to Part 225—[Amended]**

37. Footnote 1 to appendix A of part 225 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 228—[AMENDED]**

38. The authority citation for part 228 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 21101–21108, and 49 CFR 1.49.

**§ 228.21 [Amended]**

39. Section 228.21 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and

adding in its place the numerical amount "\$22,000".

**Appendix A to Part 228—[Amended]**

40. In appendix A to part 228, the section entitled Penalty is revised to read as follows:

\* \* \* \* \*

As amended by the Rail Safety Improvement Act of 1988 and the Rail Safety Enforcement and Review Act of 1992, the penalty provisions of the law apply to any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor), except that a penalty may be assessed against an individual only for a willful violation. See appendix A to 49 CFR part 209. For violations that occurred on September 3, 1992, a person who violates the Act is liable for a civil penalty, as the Secretary of Transportation deems reasonable, in an amount not less than \$500 nor more than \$11,000, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 may be assessed. The Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996 required agencies to increase the maximum civil monetary penalty for inflation. The amounts increased from \$10,000 to \$11,000 and from \$20,000 to \$22,000 respectively.

Each employee who is required or permitted to be on duty for a longer period than prescribed by law or who does not receive a required period of rest represents a separate and distinct violation and subjects the railroad to a separate civil penalty. In the case of a violation of section 2(a)(3) or (a)(4) of the Act, each day a facility is in noncompliance constitutes a separate offense and subjects the railroad to a separate civil penalty.

In compromising a civil penalty assessed under the Act, FRA takes into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business and such other matters as justice may require.

\* \* \* \* \*

**PART 229—[AMENDED]**

41. The authority citation for part 229 is revised to read as follows:

**Authority:** 49 U.S.C., 20103, 20107, 20701–20703, and 49 CFR 1.49.

**§ 229.7 [Amended]**

42. Section 229.7(b) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**Appendix B to Part 229—[Amended]**

43. Footnote 1 to appendix B of part 229 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

**PART 230—[AMENDED]**

44. The authority citation for part 230 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

45. Section 230.0 is amended by:

**§ 230.0 [Amended]**

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 231—[AMENDED]**

46. The authority citation for part 231 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20301–20306, and 49 CFR 1.49.

##### **§ 231.0 [Amended]**

47. Section 231.0(e) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix A to Part 231—[Amended]**

48. Footnote 1 to appendix A of part 231 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 232—[AMENDED]**

49. The authority citation for part 232 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

##### **§ 232.0 [Amended]**

50. Section 232.0 (e) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities;

any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix A to Part 232—[Amended]**

51. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 233—[AMENDED]**

52. The authority citation for Part 233 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

53. Section 233.11 is revised to read as follows:

##### **§ 233.11 Civil penalties.**

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

#### **Appendix A to Part 233—[Amended]**

54. Footnote 1 to appendix A of part 233 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 234—[AMENDED]**

55. The authority citation for part 234 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, and 49 CFR 1.49.

##### **§ 234.6 [Amended]**

56. Section 234.6(a) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **Appendix A to Part 234—[Amended]**

57. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### **PART 235—[AMENDED]**

58. The authority citation for part 235 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, and 49 CFR 1.49.

59. Section 235.9 is revised to read as follows:

##### **§ 235.9 Civil penalty.**

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to

persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

#### Appendix A to Part 234—[Amended]

60. Footnote 1 to appendix A of part 234 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### PART 236—[AMENDED]

61. The authority citation for part 236 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### § 236.0 [Amended]

62. Section 236.0(f) is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### Appendix A to Part 236—[Amended]

63. Footnote 1 to appendix A of part 236 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### PART 240—[AMENDED]

64. The authority citation for part 240 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

#### § 240.11 [Amended]

65. Section 240.11 is amended by:

a. Removing the parenthetical text following the word "person" and adding in its place: "(an entity of any type covered under 1 U.S.C. 1, including but not limited to the

following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor)".

b. Removing the numerical amount "\$250" and adding in its place the numerical amount "\$500"; removing the numerical amount "\$10,000"; and adding in its place the numerical amount "\$11,000"; and removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

#### Appendix A to Part 240—[Amended]

66. Footnote 1 to appendix A of part 240 is amended by removing the numerical amount "\$20,000" and adding in its place the numerical amount "\$22,000".

Issued in Washington, D.C. on February 27, 1998.

**Jolene M. Molitoris,**

*Administrator, Federal Railroad Administration.*

[FR Doc. 98-5876 Filed 3-9-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 377

RIN 2125-AD96

#### Payment of Transportation Charges; Authority Correction

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document makes a technical amendment to the authority statement for the regulation on payment of transportation charges in order to remove the obsolete authority citations provided in the subparts. This correction is necessitated by changes in the statute and the transfer of regulatory functions to the FHWA from the former Interstate Commerce Commission (ICC) as a result of the ICC Termination Act of 1995 (ICCTA). This amendment would remove the outdated ICC authority citations in 49 CFR part 377 of the Code of Federal Regulations.

**DATES:** This final rule is effective March 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Falk, Office of the Chief Counsel, Motor Carrier Law Division,

(202) 366-1384, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The ICCTA, Pub. L. 104-88, 109 Stat. 803, abolished the ICC and transferred certain functions to the Department of Transportation. On October 21, 1996, the FHWA published a final rule that transferred and redesignated certain motor carrier transportation regulations from 49 CFR chapter X, to the FHWA in 49 CFR chapter III. In part 377, of title 49 CFR, "Payment of Transportation Charges," subparts A and B (formerly parts 1052 and 1320, respectively) included the new statutory authority at the part level, but inadvertently failed to remove the outdated ICC authority citations at the subpart levels.

In consideration of the foregoing, the FHWA removes the former ICC authority at the subpart levels and retains the part level authority statement as set forth below:

#### PART 377—[AMENDED]

The authority citation for 49 CFR part 377 continues to read as follows and the authority citations for subparts A and B are removed:

**Authority:** 49 U.S.C. 13101, 13301, 13701-13702, 13706, 13707, and 14101; 49 CFR 1.48.

Issued: March 3, 1998.

**Frank L. Calhoun,**

*Assistant Chief Counsel, Federal Highway Administration.*

[FR Doc. 98-6111 Filed 3-9-98; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 38

RIN 1018-AE19

#### Supplemental Regulations for Administration of Midway Atoll National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides for the administration of the Midway Islands and Midway Atoll National Wildlife Refuge. Under the provisions of Executive Order 13022 of October 31, 1996, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy