

Federal Railroad Administration Updates Civil Penalty Schedules and Guidelines

Alert

03.14.2023

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The Federal Railroad Administration (FRA) announced that it has doubled all of its rail safety civil monetary penalty (CMP) base amounts for violations of rail safety and hazardous materials regulations. The changes are effective for violations occurring on or after March 8, 2023. The FRA also announced its intent, beginning in 2024, to adjust its CMP schedules annually using the Consumer Price Index. The adjustments come on the heels of the FRA's January 23, 2023 inflationary adjustment of its statutory minimum, ordinary maximum and aggravated maximum CMPs, as well as calls for increased penalties in the wake of recent high-profile derailments.

According to the FRA, this is the first time since 1988 that it has made such adjustments on a line-by-line basis and such adjustments "will preserve the deterrent effects of the CMPs." Previously, the FRA had only periodically updated the statutory minimum CMP and the ordinary and aggravated maximum amounts pursuant to the Rail Safety Improvement Act (RSIA) and the Federal Civil Penalties Inflation Adjustment Act (Inflation Act). The Inflation Act requires the agencies to make annual inflationary adjustments, but does not require line-by-line adjustments for each violation.

The increase in base penalties was made without opportunity for public comment. The FRA's notice explains that the penalty schedules and guidelines are considered statements of agency policy and therefore are not subject to notice and comment. The FRA's notice also states that, based on the circumstances, the FRA reserves the right to assess an amount other than that listed in the schedules. The updated schedules are available on the FRA's website at [Civil Penalties Schedules & Guidelines](#).

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