

those found in paragraph (f) to Appendix B.

Paragraph (f) was amended on October 2, 2002, by removing "\$27,500" and adding in its place "\$10,000" (67 FR 61818) as mandated by TEA-21. The October 2002 notice failed to remove the listed minimum penalty of \$250. paragraph (f) to Appendix B is re-written today to reflect that there are no minimum penalties for these violations and to correctly reflect the prohibitions mandated by 49 U.S.C. 31144 (as amended by TEA-21), which prohibits all unfit motor carriers from operating in interstate commerce. Any unsatisfactory safety rating, given to motor carriers by FMCSA, is treated by the agency as a determination of unfitness (65 FR 50919, August 22, 2000).

This notice addresses penalties considered to be initial adjustments, which are therefore subject to the statutory 10 percent maximum. The notice also addresses the previously adjusted penalties, amended on March 13, 1998 (63 FR 12413), which are therefore not subject to the statutory 10 percent maximum.

Under 5 U.S.C. 553(b), the FMCSA finds good cause that prior notice and opportunity for comment are unnecessary because these inflation adjustments required by the Act are ministerial acts over which the agency has no discretion. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

Under 49 U.S.C. 5123, the FMCSA may assess a fine for violations of the Federal Hazardous Materials Regulations (HMR) (49 CFR parts 171-180). The driver, motor carrier, or shipper who violates the HMR is subject to a civil penalty of not less than \$250 and not more than \$25,000 for each

violation. The maximum penalty was adjusted for inflation on March 13, 1998 (63 FR 12413), resulting in an adjusted penalty of \$27,500 (see 49 CFR part 386, Appendix B, paragraph (e)). But the minimum penalty was not previously adjusted for inflation. This minimum statutory penalty was last set in 1990. The Consumer Price Index was 180 in June 2002, and was approximately 130 in June of 1990 (see U.S. Department of Labor CPI index at <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>). Thus the inflation factor is 180/130 or 1.38. The new minimum penalty amount after the increase and statutory rounding would thus be the result of multiplying $\$250 \times 1.38 = \345 . However, after applying the 10 percent limit on an initial increase, the new minimum penalty amount per violation is \$275.

The current maximum penalty of \$27,500 was adjusted for inflation in 1998. The Consumer Price Index was 180 in June 2002, and 163 in June 1998. Thus the inflation factor is 108/163 or 1.10. The new maximum penalty amount after the increase and statutory rounding would thus be the result of multiplying $\$27,500 \times 1.10 = \$30,250$. The Act is instructive as to the rounding method to be employed. The increase is to be rounded to the nearest multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000. The amount of the increase was \$2,750, rounded to the nearest multiple of \$5,000 equals a \$5,000 adjustment to the current maximum penalty, or a new penalty of \$32,500. The rounding adjustment is also consistent with a General Accounting Office (GAO) clarifying letter issued on July 15, 2002 (see GAO #B-290021).

The following inflation factors were used to adjust penalties in this final rule: 180/163 or 1.10 for penalties previously adjusted in 1998, and new TEA-21 penalties enacted by Congress that same year; 180/130 or 1.38 for the hazardous materials minimum penalty not previously adjusted since 1990; 180/152 or 1.18 for commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 809) (all commercial penalties are being adjusted for the first time and are subject to the 10 percent maximum increase); and 180/166 or 1.08 for penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748 (December 9, 1999). Appendix A, to 49 CFR part 386, paragraph (h) includes MCSIA penalties for operating during a period of suspension for failure to pay penalties as outlined in 49 CFR 386.83 and 386.84. The FMCSA adjusts these penalties for inflation, even

though they are only three years old, to place all penalties on the same adjustment schedule. The Act allows for more frequent adjustments, so long as agencies adjust at least every four years. These penalties are subject to the 10 percent maximum adjustment because this is the first adjustment for inflation.

Appendices A and B are now adjusted for inflation.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. These inflation adjustments are ministerial acts in compliance with the statute over which FMCSA has no discretion. The FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment. The agency believes that this rule will not result in a major increase in costs or prices for State or local governments. The law is simply designed to preserve the remedial impact of civil penalties. Consequently, the economic impact of this final rule will be minimal because it will not substantially change the applicable civil penalty amount, but merely adjust the penalty to reflect inflation.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive order 13132, dated August 4, 1999, and it has been determined this action does not have sufficient federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is a new Administration within the Department of