Sincerely,

[signed]

Kelley S. Coyner,

Deputy Administrator.

Attachment

cc: Mr. David E. Edington, Manager, Hazardous Materials, Burlington Northern Santa Fe Railroad
Mr. J.R. McNally, General Manager, Hazardous Materials Systems, Consolidated Rail Corporation
Mr. Steve H. Huff, Director Operating Practices, Hazardous Materials/Special Services, CSX Transportation
Mr. Michael A. De Smedt, Manager Hazardous Materials Transportation, Illinois Central Railroad
Mr. J.W. Talley, Superintendent of Hazardous Materials Control, The Kansas City Southern Railway Company
Mr. D.L. Schoendorfer, Manager Hazardous Materials, Norfolk Southern Corporation, Environmental Protection
Mr. Phillip Marbut, Field Manager Hazardous Materials & Emergency Response, Soo Line Railroad Company
Pat Student, Manager, Technical Research, Chemical Transportation Safety, Union Pacific Railroad Company
Mr. Achille P. Ferrusi, Assistant Vice President, Safety & Regulatory Affairs, Canadian National
Mr. David M. Finlayson, Canadian Chemical Producers' Association
Mr. Jim Farrell, Manager, Technical Affairs, Canadian Fertilizer Institute
Mr. Frank J. Principi, Associate Director, Distribution Safety & Economic Programs, Chemical Manufacturers Association.

Explanation of FRA Enforcement Policy

Elimination of the ''Residue'' Placard, Placard Notation, and Placard Endorsement

On June 5, 1996, the Research and Special Programs Administration (RSPA) published a final rule in docket HM–216 (61 FR 28665). The final rule amended the Hazardous Materials Regulations (HMR) to incorporate a number of changes based on petitions from the railroad and shipping industries and on RSPA's own initiative. In order to facilitate an early transition form the pre-HM–216 regulations to the new standards, FRA is making this statement of enforcement policy with respect to the elimination of the placard notation, endorsement, and RESIDUE placard. This policy statement does not alter or add to the final rule, but offers guidance to railroads and shippers concerning the voluntary compliance period.

First, FRA will continue to expect accurate shipping descriptions during and after the transition period.

Second, FRA will continue to expect that the placard on a rail shipment of a hazardous material will accurately reflect the class of the commodity in the car and, if the identification numbers appear on the placard, that they will be accurate.

Third, FRA will expect shippers to offer tank cars consistently placarded, for example, if a RESIDUE placard is displayed at one location, the other three locations will also display RESIDUE placards.

Fourth, FRA will expect shippers to discontinue use of the RESIDUE placard after September 30, 1996, although cars offered before that date may continue their transportation cycle back to the loading point with RESIDUE placards.

Fifth, FRA expects railroads and shippers to train their employees about the new requirements to ensure an orderly transition before October 1, 1996. FRA believes that this phase-in period will help railroads and shippers ''de-bug'' automated systems such as electronic data interchange programs before the mandatory deadline.

FRA is aware that some entities are concerned that, during the voluntary compliance period, a shipping document may carry the RESIDUE placard notation (e.g., Placarded: Flammable—RESIDUE) while the car displays the traditional ''loaded'' placard. As noted above, if the shipping description is accurate and the placards are for the correct class (and carry the correct UN/NA number as appropriate), FRA will take no exception. Further, the final rule in this docket eliminates the requirement for the placard endorsement and notation, but does not prohibit their use. Shippers and carriers may continue to use this information, and to display it on shipping and movement documents, as they wish.

FRA and RSPA are aware of the problems created when regulatory changes require many companies in different industries to change their procedures and processes. We intend to be flexible in achieving full compliance and we urge the shipping and transporting companies involved to work with each other towards the enhancements in Docket HM–216. For example, shipping and transportation companies may mutually agree on a date prior to October 1, 1996 by which they will implement the changes recently published.

During the transition period for implementing requirements based on the UN Recommendations (Docket HM–181), RSPA adopted regulations in § 171.14 (popularly called ''mix & match''), that recognized the impossibility of bringing everything into phase at one instant. FRA will enforce the rules promulgated in Docket HM–216 in the same spirit.

For further information contact James H. Rader (Telephone 202–366–0510), Hazardous Materials Division; Thomas A. Phemister (Telephone 202–366–0635), Trial Attorney, Office of Chief Counsel, FRA, Washington D.C. 20590–0001.

Office of Safety Assurance and Compliance

June 27, 1996

Issued in Washington, DC, on July 18, 1996, under authority delegated in 49 CFR part 1.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–18822 Filed 7–24–96; 8:45 am]

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Federal Railroad Administration

49 CFR Part 209

RIN 2130–AB00

Federal Railroad Administration Enforcement of the Hazardous Materials Regulations: Penalty Guidelines

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

ACTION: Policy statement; final rule.

SUMMARY: FRA is publishing the penalty guideline amounts it uses in initial determinations of proposed civil penalty assessments for documented violations of DOT's Hazardous Materials Regulations. This action will make those against whom FRA enforces the Hazardous Materials Regulations more aware of the potential consequences for documented violations. FRA intends the publication of these penalty guidelines to increase compliance with the Hazardous Materials Regulations and, thereby, to enhance safety. FRA is also revising its enforcement procedures to reflect the current statutory minimum and maximum penalties for violations of the Federal hazardous materials transportation safety laws.

EFFECTIVE DATE: These guidelines, and the final rule amendments, are effective July 25, 1996.

FOR FURTHER INFORMATION CONTACT: Raymond V. Kasey, Hazardous Materials Specialist, Office of Safety Assurance and Compliance, (202) 366–6769; or Thomas A. Phemister, Trial Attorney, Office of the Chief Counsel, (202) 366–0628, Federal Railroad Administration, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: FRA promulgates and enforces regulations implementing the Federal railroad safety laws, 49 U.S.C. 20101 *et seq.*; 49 CFR 1.49, Parts 209, 213–240. For railroads and those who ship hazardous materials by railroad, FRA enforces regulations implementing the Federal hazardous materials transportation safety laws, 49 U.S.C. 5101 *et seq.*; 49 CFR 1.49(s), 107, 171–180. FRA works with its partner DOT agency, the Research and Special Programs Administration (RSPA), in the promulgation of railroad-oriented regulations implementing the Federal hazardous materials transportation law.

In all areas of its railroad safety enforcement authority except hazardous materials, FRA's traditional practice has been to issue a penalty schedule

assigning to each particular regulation specific dollar amounts for initial penalty assessments. The schedules generally constitute a statement of agency policy and are ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. The same has not been true for FRA's enforcement of the Hazardous Materials Regulations against railroads and those who ship by rail. Two main reasons supported this policy. First, the Research and Special Programs Administration (RSPA), in partnership with FRA, issues the Hazardous Materials Regulations promulgated by the Department. On March 6, 1995, RSPA published its own penalty guidelines (60 FR 12139), taking an appropriate lead in this area. The guidelines issued by FRA today complement RSPA's penalty guidelines, which together provide clear direction to carriers and shippers in this unique intermodal area. Second, the nature of hazardous materials transportation is such that a simple penalty schedule (a violation of § X equates to a penalty of $Y), as used by FRA in most other areas of its enforcement activities, can only cover the broad categories of violation and does not account for the vast differences in the hazards between, for instance, liquefied carbon dioxide and hydrocyanic acid. With the publication of the guidelines in this document, FRA believes it has given its customers counsel and direction that a mere schedule of monetary penalties cannot convey.

Following discussions among the administrations and in response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act, 1994, FRA has decided to publish an additional appendix to its enforcement procedures at 49 CFR Part 209. Appendix A—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws—will continue as the fundamental repository of agency enforcement policy; Appendix B, published with this notice, will augment it with penalty guideline information specific to violations of the Hazardous Materials Regulations. FRA's customers in the regulated community will now be more aware of the specific potential civil penalty consequences of not following the regulations, and teams from FRA's Office of Safety Assurance and Compliance will have a flexible tool to foster consistency in their recommendations for civil penalties.

FRA does not necessarily take a formal enforcement action every time it discovers a deviation from the Federal railroad safety laws. Under the Safety Assurance and Compliance Program announced by FRA in 1995, FRA's efforts are focused on producing safety results, not imposing punishment. Many deficiencies can be corrected through a simple conversation between the inspector and the shipper or carrier personnel on scene. Correction of others may become the focus of FRA outreach meetings or may be worked into corporate safety action plans. However, when these efforts do not produce regulatory compliance and safe practices or when FRA decides that enforcement action is called for, it has a range of enforcement tools and has the authority to choose those best suited to the circumstances. One of these tools (the emergency order, under 49 U.S.C. 20104(a)) can be used to address an immediate hazard even if no existing law has been violated.

Wide discretion in choosing the means of enforcement calls for general guidelines to ensure effectiveness, fairness, and an acceptable level of consistency. The purpose of guidelines is not to dictate absolutely identical treatment of identical situations; that would be an unrealistic ideal based on the false assumption that each of the many variables going into an enforcement decision could objectively and accurately be quantified. Instead, the purpose of the agency's hazardous materials civil penalty guidelines is to control the necessarily subjective elements of this process as much as is feasible by requiring that those making enforcement decisions weigh the same factors and make full use of objective information bearing on those factors. In this way, the appropriate enforcement tool is applied, responsible discretionary judgments are made, and an acceptable level of consistency in similar situations is achieved.

FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws (49 CFR Part 209, Appendix A) stresses that discretion begins at the field and regional levels: Inspectors make initial determinations on the need for enforcement action, and regional specialists play an active role in reviewing those determinations with an eye toward effectiveness and consistency. Office of Safety Assurance and Compliance headquarters personnel are responsible for spotting national trends in the data that require enforcement action and for providing guidance to the regional and field staffs on difficult enforcement policy issues.

FRA's policy statement sets forth seven factors to be considered in making enforcement decisions:

- The inherent seriousness of the condition or action.
- The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation.
- Any actual harm to persons or property already caused by the condition or action.
- The offending person's general level of current compliance as revealed by the inspection as a whole.
- The person's recent history of compliance with the relevant set of regulations, especially at the specific location (or division of the railroad involved).
- Which enforcement remedy is most appropriate under the circumstances.
- Such other factors as the immediate circumstances make relevant.

Just as there are a series of considerations that inform the decision to take enforcement action, so there are considerations to be applied to determining the amount of a civil penalty. By statute, the following are considered: (a) The nature, circumstances, extent, and gravity of the violation; (b) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and (c) other matters as justice requires. (49 U.S.C. §§ 5123(c) and 21301(a)(3).) FRA has developed penalty guidelines for hazardous materials cases to aid in applying these assessment criteria at the initial penalty assessment stage, based on the information known about a particular case. Because the guidelines in this notice are merely a general statement of agency policy and practice, are non-binding, and are periodically updated, they are being published as an informational appendix to FRA's enforcement regulations, as Appendix B to 49 CFR Part 209. They are published without public notice or comment because they are merely informational, are not finally determinative of any issues or rights, and do not have the force of law. For a discussion of relevant case law, see the preamble to RSPA's publication of its penalty guidelines, 60 FR 12139.

The guidelines published in this notice are a preliminary assessment tool used by FRA personnel, and they create no rights in any party. They contain baseline amounts for violations that frequently have been cited by FRA hazardous materials inspectors. When a violation not described in the guidelines is encountered, a new guideline is developed, typically by analogy to a similar violation in the guidelines. Their application is a starting point to

promote consistency. No two cases are identical. The baseline amount or range is an initial reflection of the nature, extent, circumstances, and gravity of the violation as compared with other types of violations. The FRA attorney can vary from the guidelines as necessary to reflect a case's particular facts. This notice publishes the guidelines as they existed on March 31, 1996; FRA plans to publish updated and revised guidelines from time to time.

A respondent receives the first notice that FRA may be seeking civil penalties when the FRA inspector informs him/her that a violation will be recommended. If the inspector's report is approved by the regional office and passes legal review in the Office of Chief Counsel, the respondent will receive a *Notice of Probable Violation* (NOPV) in which a charge of violation is made, accompanied by a summary of the alleged violations and the penalty amounts FRA proposes. A separate document sent with the NOPV lists the respondent's three options: Pay the penalty proposed, seek an informal conference, or request a formal hearing before a hearing officer. The election to pursue informal resolution does not preclude respondent from later seeking a formal hearing.

During the informal resolution process, the respondent and the FRA attorney assigned to the case review any defenses or mitigating information presented. The new information presented and arguments made since the initial penalty assessment often leads to a re-evaluation of the penalty in light of statutory considerations. One very important factor is any remedial action taken by the respondent to prevent a recurrence of similar violations. Following discussions between the FRA attorney and the respondent, they typically reach an agreement on the amount of penalty, if any, to be paid. FRA's findings of fact and the agreement on the penalty amount are then memorialized in an Order Assessing Civil Penalty. The respondent pays the penalty, and the case is closed. Under FRA's procedures, the respondent who will not agree to a compromise settlement can request a formal hearing.

If the respondent makes such a request, the matter is assigned to a hearing officer who hears both sides and renders a decision. FRA retains the right to amend its NOPV prior to hearing and to seek the maximum statutory amount for each violation. If the decision is against the respondent, the hearing officer is bound only by the statutory maximum and minimum civil penalty amounts and the statutory penalty considerations.

To summarize, the FRA guidelines consist of a listing of violations and the baseline penalty, or range of penalties, proposed for each as of March 31, 1996. The guidelines presuppose flexibility in their application, and FRA proposes to re-publish the then-current guidelines as appropriate.

The Hazardous Materials Transportation Uniform Safety Act of 1990 (P.L. 101–615), March 16, 1990) amended the penalty provisions for violations of the Federal hazardous materials transportation safety laws. The maximum penalty had been $10,000; the 1990 Act increased it to $25,000 and established a minimum of $250. Accordingly, FRA is amending the statutory references and minimum and maximum penalty amounts in its enforcement procedures to reflect current law. FRA also clarifies that its authority to amend an NOPV at any time prior to issuance of an order includes authority to amend the proposed penalty to the statutory maximum. Finally, FRA makes technical amendments to reflect recodification of the Federal railroad safety laws by Pub. L. 103–272. These amendments affect 49 CFR 209.101, 209.103, 209.105, 209.131, 209.133, and 209.201.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule merely updates recodified statutory references in a portion of the CFR; no requirements are changed as a result. The policy statement is an informational appendix and imposes no requirements. Thus, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers of hazardous materials by railroad, to manufacturers of packagings used for the transportation of hazardous materials by railroad, and to railroads. Some of these are small entities; however, there will be no significant economic impact.

Paperwork Reduction Act

There are no new information requirements in this final rule.

List of Subjects in 49 CFR Part 209

Administrative practices and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 209 is amended as follows:

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

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

Authority: 49 U.S.C. Chs. 51, 57, 201, and 213; 49 CFR 1.49.

2. Section 209.101(a) is revised to read as follows:

§ 209.101 Civil penalties generally.

(a) Sections 209.101 through 209.121 prescribe rules of procedure for the assessment of civil penalties pursuant to the Federal hazardous materials transportation safety law, 49 U.S.C. Chapter 51.

* * * * *

3. Section 209.103 is revised to read as follows:

§ 209.103 Minimum and maximum penalties.

A person who knowingly violates a requirement of subchapter A or C of chapter I, Subtitle B of this title is liable for a civil penalty of at least $250 but not more than $25,000 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense. 49 U.S.C. 5123.

4. Section 209.105 is amended by revising paragraphs (a) and (c) to read as follows:

§ 209.105 Notice of probable violation.

(a) FRA, through the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of subchapter A or C of chapter I, subtitle B of this title. Appendix B to this part contains guidelines used by the chief counsel in making initial penalty assessments.

* * * * *

(c) The FRA may amend the notice of probable violation at any time prior to the entry of an order assessing a civil penalty. If the amendment contains any

new material allegation of fact, the respondent is given an opportunity to respond. In an amended notice, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of $25,000 for each violation.

5. Section 209.131 is revised to read as follows:

§ 209.131 Criminal penalties generally.

The Federal hazardous materials transportation safety laws (49 U.S.C. 5124) provide a criminal penalty of a fine under title 18, United States Code, and imprisonment for not more than 5 years, or both, for any person who knowingly violates 49 U.S.C. 5104(b) or who willfully violates chapter 51 of title 49, United States Code, or a regulation prescribed or order issued under that chapter.

6. Section 209.133 is revised to read as follows:

§ 209.133 Referral for prosecution.

If an inspector, including a certified state inspector under Part 212 of this chapter, or other employee of FRA becomes aware of a possible willful violation of the Federal hazardous materials transportation safety laws (49 U.S.C. Chapter 51) or a regulation issued under those laws for which FRA exercises enforcement responsibility, he or she reports it to the Chief Counsel. If evidence exists tending to establish a prima facie case, and if it appears that assessment of a civil penalty would not be an adequate deterrent to future violations, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

7. Section 209.201 is revised to read as follows:

§ 209.201 Compliance orders generally.

(a) This subpart prescribes rules of procedure leading to the issuance of compliance orders pursuant to the Federal railroad safety laws at 49 U.S.C. 5121(a) and/or 20111(b).

(b) The FRA may commence a proceeding under this subpart when FRA has reason to believe that a person is engaging in conduct or a pattern of conduct that involves one or more violations of the Federal railroad safety laws or any regulation or order issued under those laws for which FRA exercises enforcement authority.

8. Appendix B is added to Part 209 to read as follows:

Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Materials Assessments

These guidelines establish benchmarks to be used in determining initial civil penalty assessments for violations of the Hazardous Materials Regulations (HMR). The guideline penalty amounts reflect the best judgment of the FRA Office of Safety Assurance and Compliance (RRS) and of the Safety Law Division of the Office of Chief Counsel (RCC) on the relative severity, on a scale of $250 to $25,000, of the various violations routinely encountered by FRA inspectors. (49 U.S.C. 5123) Unless otherwise specified, the guideline amounts refer to average violations, that is, violations involving a hazardous material with a medium level of hazard, and a violator with an average compliance history. In an ''average violation,'' the respondent has committed the acts due to a failure to exercise reasonable care under the circumstances (''knowingly''). For some sections, the guidelines contain a breakdown according to relative severity of the violation, for example, the guidelines for shipping paper violations at 49 CFR §§ 172.200–.203. *All* penalties in these guidelines are subject to change depending upon the circumstances of the particular case. The general duty sections, for example §§ 173.1 and 174.7, are not ordinarily cited as separate violations; they are primarily used as explanatory citations to demonstrate applicability of a more specific section where applicability is otherwise unclear.

FRA believes that infractions of the regulations that lead to personal injury are especially serious; this is directly in line with Department of Transportation policy that hazardous materials are only safe for transportation when they are securely sealed in a proper package. (Some few containers, such as tank cars of carbon dioxide, are designed to vent off excess internal pressure. They are exceptions to the ''securely sealed'' rule.) ''Personal injury'' has become somewhat of a term of art, especially in the fields of occupational safety and of accident reporting. To avoid confusion, these penalty guidelines use the notion of ''human contact'' to trigger penalty aggravation. In essence, *any* contact by a hazardous material on a person during transportation is a per se injury and proof will not be required regarding the extent of the physical contact or its consequences. When a violation of the Hazardous Materials Regulations *causes* a death or serious injury, the maximum penalty of $25,000 shall always be assessed initially.

These guidelines are a preliminary assessment tool for FRA's use. They create no rights in any party. FRA is free to vary from them when it deems appropriate and may amend them from time to time without prior notice. Moreover, FRA is not bound by any amount it initially proposes should litigation become necessary. In fact, FRA reserves the express authority to amend the NOPV to seek a penalty of up to $25,000 for each violation at any time prior to issuance of an order.

Penalty Assessment Guidelines

Emergency orders		Guideline
EO16	Penalties for violations of EO16 vary depending on the circumstances	5,000
EO17	Penalties for violations of EO17 vary depending on the circumstances	([1])
	Failure to file annual report	5,000

[1] Varies.

49 CFR section	Description	Guideline
	PART 107	
107.608	Failure to register or to renew registration. (Note: registration—or renewal—is mitigation.)	1,000
	PART 171	
171.2(c)	Representing (marking, certifying, selling, or offering) a packaging as meeting regulatory specification when it does not.	8,000
171.2(f)(2)	Billing, marking, etc. for the presence of HM when no HM is present. (Mitigation required for shipments smaller than a carload, i.e., single drum penalty is 1,000).	2,000
171.12	Import shipments—Importer not providing shipper and forwarding agent with US requirements. Cannot be based on inference.	4,000
	Import shipments—Failure to certify by shipper or forwarding agent	2,000
171.15	Failure to provide immediate notice of certain hazardous materials incidents	6,000

49 CFR section	Description	Guideline
171.16	Failure to file incident report (form DOT 5800.1). (Note: Multiple failures will aggravate the penalty; see the expert attorney.).	4,000
	PART 172	
Shipping Papers:		
172.200—.203	Offering hazardous materials for transportation when the material is not properly described on the shipping paper as required by §§ 172.200—.203. (The ''shipping paper'' is the document tendered by the shipper/offeror to the carrier. The original shipping paper contains the shipper's certification at § 172.204.).	
	—Information on the shipping paper is wrong to the extent that it caused or materially contributed to a reaction by emergency responders that aggravated the situation or caused or materially contributed to improper handling by the carrier that led to or materially contributed to a product release.	15,000
	—Total lack of hazardous materials information on shipping paper. (Some shipping names alone contain sufficient information to reduce the guideline to the next lower level, but they may be such dangerous products that aggravation needs to be considered.).	7,500
	—Some information is present but the missing or improper description could cause mishandling by the carrier or a delay or error in emergency response.	5,000
	—When the improper description is not likely to cause serious problem (technical defect)	2,000
	—Shipping paper includes a hazardous materials description and no hazardous materials are present.	7,500
	Note: Failure to include emergency response information is covered at §§ 172.600–604; while the normal unit of violation for shipping papers is the whole document, failure to provide emergency response information *is* a separate violation.	
172.204	Shipper's failure to certify	2,000
172.205	Hazardous waste manifest. (Applies only to defects in the Hazardous Waste Manifest form [EPA Form 8700–22 and 8700–22A]; shipping paper defects are cited and penalized under § 172.200–.203.).	4,000
Marking	The guidelines for ''marking'' violations contemplate a total lack of the prescribed mark. Obviously, where the package (including a whole car) is partially marked, mitigation should be applied.	
172.301	Failure to mark a non-bulk package as required (e.g., no commodity name on a 55-gallon drum). (Shipment is the unit of violation.).	1,000
172.302	Failure to follow standards for marking bulk packaging. (Note: If a more specific section applies, cite it and its penalty guideline.).	2,000
172.302(a)	ID number missing or in improper location. (The guideline is for a portable tank; for smaller bulk packages, the guideline should be mitigated downward.).	2,500
172.302(b)	Failure to use the correct *size* of markings. (Note: If § 172.326(a) is also cited, it takes precedence and .302(b) is not cited. Note also: the guideline is for a gross violation of marking size—½'' where 2'' is required—and mitigation should be considered for markings approaching the required size.).	2,000
172.302(c)	Failure to place exemption number markings on bulk package	2,000
172.303	Prohibited marking. (Package is marked for a hazardous material and contains either another hazardous material or no hazardous material.)	
	—The marking is wrong and caused or contributed to a wrong emergency response	10,000
	—Inconsistent marking; e.g., Shipping name and ID number do not agree	5,000
	—Marked as a hazardous material when package does not contain a hazardous material	2,000
172.313	''Inhalation Hazard'' not marked	2,500
172.322	Failure to mark for MARINE POLLUTANT where required	1,500
172.325(a)	Improper, or missing, HOT mark for elevated temperature material	1,500
172.326(a)	Failure to mark a portable tank with the commodity name	2,500
172.326(b)	Owner's/lessee's name not displayed	500
172.326(c)	Failure to mark portable tank with ID number	2,500
172.330(a)(1)(i)	Offering/transporting hazardous materials in a tank car that does not have the required shipping name or common name stenciled on the car; include reference to section requiring stenciling, such as § 173.314(b) (5) or (6).	2,500
172.330(a)(1)(ii)	Offering/transporting hazardous materials in a tank car that does not have the required ID number displayed on the car.	2,500
172.331(b)	Offering bulk packaging other than a portable tank, cargo tank, or tank car (e.g., a hopper car) not marked with UN/NA number. (I.e., a hopper car carrying a hazardous substance, where a placard is not required).	2,500
172.332	Improper display of identification number markings. Note: Citation of this section and §§ 172.326 (portable tanks), 172.328 (cargo tanks), or 172.330 (tank cars) does not create two separate violations.	2,000
172.334(a)	Displaying ID numbers on a RADIOACTIVE, EXPLOSIVES 1.1,1.2,1.3,1.4,1.5, or 1.6, or DANGEROUS, or subsidiary hazard placard.	4,000
172.334(b)	—Improper display of ID number that caused or contributed to a wrong emergency response	15,000
	—Improper display of ID number that could cause carrier mishandling or minor error in emergency response.	5,000
	—Technical error	2,000
172.334(f)	Displaying ID number on orange panel not in proximity to the placard	1,500
Labeling:		
172.400–.450	Failure to label properly. (See also § 172.301 regarding the marking of packages.)	2,500

49 CFR section	Description	Guideline
Placarding	The guidelines for ''placarding'' violations contemplate a total lack of the prescribed placard. Obviously, where the package (including a whole car) is partially placarded, mitigation should be applied.	
172.502	—Placarded as hazardous material when car does not contain a hazardous material	2,000
	—Placard does not represent hazard of the contents	2,000
	—Display of sign or device that could be confused with regulatory placard. Photograph or good, clear description necessary.	2,000
172.503	Improper display of ID number on placards. (Note: Do not cite this section; cite § 172.334.)	(1)
172.504(a)	Failure to placard; affixing or displaying wrong placard. (See also §§ 172.502(a), 172.504(a), 172.505, 172.510(c), 172.516, 174.33, 174.59, 174.69; all applicable sections should be cited, but the penalty should be set at the amount for the violation most directly in point.) (Generally, the car is the unit of violation, and penalties vary with the number of errors, typically at the rate of $1,000 per placard.)	
	—Complete failure to placard	7,500
	—One placard missing (add $1,000 per missing placard up to a total of three; then use the guideline above).	1,000
	— Complete failure to placard, but only 2 placards are required (e.g., intermediate bulk containers [IBCs]).	2,500
172.504(b)	Improper use of DANGEROUS placard for mixed loads	5,000
172.504(c)	Placarded for wrong hazard class when no placard was required due to 1,001 pound exemption	2,000
172.504(e)	Use of placard other than as specified in the table:	
	—Improper placard caused or contributed to improper reaction by emergency response forces or caused or contributed to improper handling by carrier that led to a product release.	15,000
	—Improper placard that could cause improper emergency response or handling by carrier	5,000
	—Technical violation	2,500
172.505	Improper application of placards for subsidiary hazards. (Note: This is in addition to any violation on the primary hazard placards.).	5,000
172.508(a)	Offering hazardous material for rail transportation without affixing placards. (Note: The preferred section for a total failure to placard is 172.504(a); only one section should be cited to avoid a dual penalty.) (Note also: Persons offering hazardous materials for rail movement must *affix* placards; if offering for highway movement, the placards must be *tendered* to the carrier. § 172.506.).	7,500
	Placards OK, except they were IMDG labels instead of 10″ placards. (Unit of violation is the packaging, usually a portable tank.).	500
	Placards on TOFC/COFC units not readily visible. (Note: Do not cite this section, cite § 172.516 instead.).	(2)
172.508(b)	Accepting hazardous material for rail transportation without placards affixed	5,000
172.510(a)	EXPLOSIVES 1.1, EXPLOSIVES 1.2, POISON GAS, POISON GAS-RESIDUE, (Division 2.3, Hazard Zone A), POISON, or POISON-RESIDUE (Division 6.1, Packing Group I, Hazard Zone A) placards displayed without square background.	5,000
172.510(c)	Improper use of RESIDUE placard.	
	—Placarded RESIDUE when loaded	4,000
	—Placarded loaded when car contains only a residue	1,000
	—Placarded EMPTY when RESIDUE is required	500
172.514	Improper placarding of bulk packaging other than a tank car: For the ''exception'' packages in 174.514(c). Note: Use the regular placarding sections for the guideline amounts for larger bulk packages.	2,000
172.516	Placard not readily visible, improperly located or displayed, or deteriorated. Good color photos ''essential'' to prove deterioration, and considerable weathering is permissible. Placard is the unit of violation.	1,000
	—When placards on an intermodal container are not visible, for instance, because the container is in a well car. Container is the unit of violation, and, as a matter of enforcement policy, FRA accepts the lack of visibility of the end placards.	2,000
Emergency Response Information.	Violations of §§ 172.600–.604 are in addition to shipping paper violations. In citing a carrier, if the railroad's practice is to carry an emergency response book or to put the E/R information as an attachment to the consist, the unit of violation is generally the train (or the consist). ''Telephone number'' violations are generally best cited against the shipper; if against a railroad, there should be proof that the number was given to the railroad, that is, it was on the original shipping document.	
172.600–.602	Where improper emergency response information has caused an improper reaction from emergency forces and the improper response has aggravated the situation. Note: Proof of this will be rigorous. For instance, if the emergency response forces had chemical information with the correct response and they relied, instead, on shipper/carrier information to their detriment; the $15,000 penalty guideline applies.	15,000
	Bad, missing, or improper emergency response information. (Be careful in transmitting violations of this section against a railroad; there are many sources of E/R information and it does not necessarily ''travel'' with the shipping documents.).	4,000
172.602(c)	Failure to have emergency response information ''immediately accessible''	15,000
172.604	Improper or missing emergency response telephone number	2,500
Training:		
172.702(a)	General failure to train hazmat employees	5,000
172.702(b)	Hazmat employee performing covered function without training. (Unit of violation is the employee; see the expert attorney if more than 10 employees are involved.).	1,000
172.704(a)	Failure to train in the required areas:	2,500
	—General awareness/familiarization	

49 CFR section	Description	Guideline
	—Function-specific	
	—Safety	
	(Unit of violation is the ''area,'' and, for a total failure to train, cite 172.702(a) and use that penalty instead of 172.704.)	
172.704(c)	Initial and recurrent training. (Note: Cite this and the relevant substantive section, e.g., 172.702(a), and use penalty provided there.).	([3])
172.704(d)	Failure to maintain record of training. (Unit of violation is the record.)	2,500
	PART 173	
173.1	General duty section applicable to shippers; also includes subparagraph (b), the requirement to train employees about applicable regulations. (Cite the appropriate section in the 172.700–.704 series for training violations.).	2,000
173.9(a)	Early delivery of transport vehicle that has been fumigated. (48 hours must have elapsed since fumigation.).	5,000
173.9(b)	Failure to display fumigation placard. (Ordinarily cited against shipper only, not against railroad.)	1,000
173.10	Delivery requirements for gases and for flammable liquids. See also 174.204 and 174.304	3,000
173.22	Shipper responsibility: This general duty section should ordinarily be cited only to support a more specific charge.	([4])
173.22a	Improper use of packagings authorized under exemption	2,500
	Failure to maintain copy of exemption as required.	1,000
173.24(b)(1) & 173.24(b)(2) and 173.24(f)(1) & 173.24(f)(1)(ii).	Securing closures: These subsections are the general ''no leak'' standard for all packagings. § 173.24(b) deals primarily with *packaging* as a whole, while § 173.24(f) focuses on *closures.* Cite the sections accordingly, using both the leak/non-leak criteria and the package size considerations to reach the appropriate penalty. Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of $25,000 if the HMR violation *causes* the injury. With tank cars, § 173.31(b) applies, and IM portable tanks [§ 173.32c], and other tanks of that size range, should use the tank car penalty amounts, stated in reference to that section.	
	—Small bottle or box	1,000
	—55-gallon drum	2,500
	—Larger container, e.g., IBC; not portable tank or tank car	5,000
173.24(c)	Use of package not meeting specifications, including required stencils and markings. The most specific section for the package involved should be cited (see below). The penalty guideline should be adjusted for the size of the container. Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of $25,000 if the HMR violation *causes* the injury.	
	—Small bottle or box	1,000
	—55-gallon drum	2,500
	—Larger container, e.g., IBC; not portable tank or tank car	5,000
	For more specific sections: Tank cars—§ 173.31(a), portable tanks—§ 173.32, and IM portable tanks—§§ 173.32a, .32b, and .32c, q.v	
173.24a(a)(3)	Non-bulk packagings: Failure to secure and cushion inner packagings	1,000
	—Causes leak	3,000
	—Leak with any contact between product and any human being	10,000
173.24a(b)&(d)	Non-bulk packagings: Exceeding filling limits	1,000
	—Causes leak	3,000
	—Leak with any contact between product and any human being	10,000
173.24b(a)	Insufficient outage:	3,000
	—<1%	
	—Causes leak	5,000
	—Leak with any contact between product and any human being	10,000
173.24b(a)(3)	Outage <5% on PIH material	5,000
	—Causes leak	7,500
	—Leak with any contact between product and any human being	10,000
173.26	Loaded beyond gross weight or capacity as stated in specification. (Applies only if quantity limitations do not appear in packaging requirements of Part 173.).	5,000
173.28	Improper reuse, reconditioning, or remanufacture of packagings.	1,000
173.29(a)	Offering residue tank car for transportation when openings are not tightly closed (§ 174.67(k) is also usually applicable). The regulation requires offering ''in the same manner as when'' loaded and may be cited when a car not meeting specifications (see § 173.31(a)(1)) is released back into transportation after unloading; same guideline amount. Guidelines vary with the type of commodity involved:	
	—Hazardous material with insignificant vapor pressure and without classification as ''poison'' or ''inhalation hazard''.	2,000
	—With actual leak	5,000
	—With leak allowing the product to contact any human being	15,000
	—Hazardous material with vapor pressure (essentially any gas or compressed gas) and/or with classification as ''poison'' or ''inhalation hazard.''.	5,000
	—With actual leak	7,500
	—With leak allowing the product (or fumes or vapors) to contact any human being. (In the case of fumes, the ''contact'' must be substantial.).	15,000
	—Where only violation is failure to secure a protective housing, e.g., the covering for the gaging device.	1,000

49 CFR section	Description	Guideline
173.30	A general duty section that should be cited with the explicit statement of the duty.	
173.31(a)(1)	Use of a tank car not meeting specifications and the ''Bulk packaging'' authorization in Column 8 of the § 172.101 Hazardous Materials Table reference is:	
	§ 173.240	1,000
	§ 173.241	2,500
	§ 173.242	5,000
	§ 173.243	5,000
	§ 173.244	7,500
	§ 173.245	7,500
	§ 173.247	1,000
	§ 173.314, .315	5,000
	—Minor defect not affecting the ability of the package to contain a hazardous material, e.g., no chain on a bottom outlet closure plug.	500
	Tank meets specification, but specification is not stenciled on car. Note: § 179.1(e) implies that only the builder has the duty here, but it is the presence of the stencil that gives the shipper the right to rely on the builder. (See § 173.22(a)(3).).	1,000
	Tank car not stenciled ''Not for flammable liquids,'' and it should be. (AAR Tank Car Manual, Appendix C, C3.03(a)5.)	
	—Most cars	2,500
	—Molten sulfur car	500
	—If flammable liquid is actually in the car	5,000
173.31(a)(4)	Use of a tank car stenciled for one commodity to transport another	5,000
173.31(a)(5)	Use of DOT-specification tank car without shelf couplers. (Note: prior to November 15, 1992, this did not apply to a car not carrying hazardous materials.).	10,000
	—Against a carrier, cite § 174.3 and this section	6,000
173.31(a)(6)	Use of non-DOT specification car without shelf couplers to carry hazardous materials. (Applies only since November 15, 1990.).	10,000
	—Against a carrier, cite § 174.3 and this section	6,000
173.31(a)(7)	Use of tank car without air brake support attachments welded to pads. (Effective July 1, 1991)	5,000
173.31(a)(15)	Tank car with nonreclosing pressure relief device used to transport Class 2 gases, Class 3 or 4 liquids, or Division 6.1 liquids, PG I or II.	7,500
173.31(a)(17)	Tank car with interior heating coils used to transport Division 2.3 or Division 6.1, PG I, based on inhalation toxicity.	7,500
173.31(b)(1), 173.31(b)(3)	Shipper failure to determine (to the extent practicable) that tank, safety appurtenances, and fittings are in proper condition for transportation; failure to properly secure closures. (Sections 173.31(b)(1) & .31(b)(3), often cited as together for loose closure violations, are taken as one violation.) The unit of violation is the car, aggravated if necessary for truly egregious condition. Sections 173.24(b) & (f) establish a ''no-leak'' design standard, and 173.31 imposes that standard on operations.	5,000
	—With actual leak of product	10,000
	—With actual leak allowing the product (or fumes or vapors) to contact any human being. (With safety *vent,* be careful because carrier might be at fault.).	15,000
	—Minor violation, e.g., bottom outlet cap loose on tank car of molten sulfur (because product is a solid when shipped).	1,000
	—Failure (.31(b)(1)) to have bottom outlet cap off during loading	1,000
173.31(b)(4)	Filling and offering for transportation a tank car overdue for retest of tank, interior heater system, and/or safety relief valve. Note that the car may be filled while in-date, held, and then shipped out-of-date. (Adjust penalty if less than one month or more than one year overdue.).	6,000
173.31(c)(1)	Tank, interior heater system, and/or safety valve overdue for retest. If these conditions exist, the violation is of § 173.31(b)(4). If the violation is for improperly conducting the test(s), see the expert attorney.	
173.31(c)(10)	Failure to properly stencil a retest that was performed	1,000
173.32c	Loose closures on an IM portable tank (§ 173.24 establishes the ''tight closure'' standard; § 172.32c applies it to IM portable tanks.) (The scale of penalties is the same as for tank cars.).	5,000
	—With actual leak of product	10,000
	—With actual leak and human being contact	15,000
	—Minor violation	1,000
173.314(b)(5)	No commodity stencil, compressed gas tank car. (See also § 172.330)	2,500
173.314(c)	Compressed gas loaded in excess of filling density (same basic concept as insufficient outage)	6,000
	—''T'' car with excessive voids in the thermal coating, such that the car no longer complies with the DOT specification. Section 173.31(a)(1) requires tank cars used to transport hazardous materials to meet the requirements of the applicable specification and this section (§ 173..314(c)) lists 112T/114T cars as allowed for compressed gases.	5,000
PART 174		
General Requirements:		
174.3	Acceptance of improperly prepared shipment. This general duty section must be accompanied by a citation to the specific section violated.	
174.7	Carrier's failure to instruct employees; cannot be based on inference; §§ 172.700-.704 are preferred citations.	(5)
174.8(b)	—Failure to inspect hazardous materials (and adjacent) cars at point where train is required to be inspected. (Unit of violation is the train.) (Note: For all ''failure to inspect'' citations, the mere presence of a nonconforming condition does not *prove* a failure to inspect.).	4,000

49 CFR section	Description	Guideline
	—Allowing unsafe loaded placarded car to continue in transportation beyond point where inspection was required). (Unit of violation is the car.).	8,000
	—Failure to determine whether placards are in place and conform to shipping papers (at a required inspection point). (Unit of violation is the car.).	5,000
174.9(a)	Failure to properly inspect loaded, placarded tank car at origin or interchange	4,000
174.9(b)	Loose or insecure closures on tank car containing a residue of a hazardous material. (FRA policy is that, against a railroad, this violation must be observable from the ground because, for reasons of safety, railroad inspectors do not climb on cars absent an indication of a leak.).	1,000
174.9(c)	Failure to ''card'' a tank car overdue for tank retest	3,000
174.10(c)	Offering a noncomplying shipment in interchange	3,000
174.10(d)	Offering leaking car of hazardous materials in interchange	10,000
174.12	Improper performance of intermediate shipper/carrier duties; applies to forwarders and highway carriers delivering TOFC/COFC shipments to railroads.	3,000
174.14	Failure to expedite: violation of ''48-hour rule.'' Note: does not apply to cars ''held short'' of destination or constructively placed.	1,000
General Operating Requirements.	Note: This subpart (Subpart B) of Part 174 has three sections referring to shipment documentation: § 174.24 relating to *accepting* documents, § 174.25 relating to the *preparation* of movement documents, and § 174.26 relating to movement documents in the *possession* of the train crew. Only the most relevant section should be cited. In most cases, the unit of violation is the shipment, although where a unified consist is used to give notice to the crew, there is some justification for making it the train, especially where the discrepancy was generated using automated data processing and the error is repetitious.	
174.24	Accepting hazardous materials shipment without properly prepared shipping paper. (Note: The carrier's duty extends only to the document received, that is, a shipment of hazardous materials in an unplacarded transport vehicle with a shipping paper showing other than a hazardous material is not a violation against the carrier unless knowledge of the contents of the vehicle is proved. Likewise, receipt of a tank car placarded for Class 3 with a shipping paper indicating a flammable liquid does not create a carrier violation if the car, in fact, contains a corrosive. On the other hand, receipt of a placarded trailer with a shipping paper listing only FAK (''freight-all-kinds''), imposes a duty on the carrier to inquire further and to reject the shipment if it is improperly billed.)	
	—Improper hazardous materials information that could cause delay or error in emergency response	7,500
	—Total absence of hazardous materials information	5,000
	—Technical errors, not likely to cause problems, especially with emergency response	1,000
	—Minor errors not relating to hazardous materials emergency response, e.g., not listing an exemption number and the exemption is not one affecting emergency response.	500
174.25	Preparing improper movement documents. (Similar to the requirements in § 174.24, here the carrier is held responsible for preparing a movement document that accurately reflects the shipping paper tendered to it. With no hazardous materials information on the shipper's bill of lading, the carrier is not in violation—absent knowledge of hazardous contents—for preparing a nonhazardous movement document. While ''movement documents'' in the rail industry used to be waybills or switch tickets (almost exclusively), carriers are now incorporating the essential information into a consist, expanded from its former role as merely a listing of the cars in the train.)	
	—Information on the movement document is wrong to the extent that it actually caused or materially contributed to a reaction by emergency responders that aggravated the situation or caused or materially contributed to improper handling by the carrier that led to or materially contributed to a product release.	15,000
	—Total lack of hazardous materials information on movement document. (Some shipping names alone contain sufficient information to reduce the guideline to the next lower level, but they may be such dangerous products that aggravation needs to be considered.).	7,500
	—Some information is present, but the missing or improper description could cause mishandling by the carrier or a delay or error in emergency response, including missing RESIDUE description required by § 174.25(c).	5,000
	—Missing/improper *endorsement,* unless on a switch ticket as allowed under § 174.25(b)	3,500
	—Movement document does not indicate, for a flatcar carrying trailers or containers, which trailers or containers contain hazardous materials. (If all trailers or containers on the flatcar contain hazardous materials, there is no violation.).	2,500
	—When the improper description is not likely to cause serious problem (technical defect)	1,000
	—Minor errors not related to hazardous materials emergency response, e.g., not listing an exemption number and the exemption is not one affecting emergency response.	500
	Note: Failure to include emergency response information is covered at § 172.600–604; while the normal unit of violation for movement documents is the whole document, failure to provide emergency response information *is* a separate violation.	
174.26(a)	Failure to execute the required POISON GAS and EXPLOSIVES 1.1/1.2 notices. (The notice is the unit of violation, because one notice can cover several shipments.).	5,000
	Failure to deliver the required POISON GAS and EXPLOSIVES 1.1/1.2 notices to train and engine crew. (Cite this, or the above, as appropriate.).	5,000
	Failure to transfer notice from crew to crew. (Note that this is very likely an individual liability situation; the penalty guideline listed here, however, presumes action against a railroad.).	3,000
	Failure to keep copy of notice on file	1,000
174.26(b)	Train crew does not have a document indicating position in train of each loaded, placarded car. Aggravate by 50% for Poison Gas, 2.3, and Explosives, 1.1 and 1.2. (Train is the unit of violation.).	6,000
	—Technical violation, e.g., car is listed in correct *relative* order, but not in exact numerical order, usually because of addition of car or cars to head *or* tail of train. (Note: Applies only if the *actual* location is off by 10 or fewer cars.).	1,000

49 CFR section	Description	Guideline
174.26(c)	Improper paperwork in possession of train crew. (If the investigation of an accident reveals a violation of this section and § 174.25, cite this section.) (Shipment is unit of violation, although there is justification for making it the train if a unified consist is used to carry this information and the violation is a pattern one throughout all, or almost all, of the hazardous materials shipments. For intermodal traffic, ''shipment'' can mean the container or trailer—e.g., a UPS trailer with several non-disclosed hazardous materials packages would be one unit.)	
	—Information on the document possessed by the train crew is wrong to the extent that it caused or materially contributed to a reaction by emergency responders that aggravated the situation or caused or materially contributed to improper handling by the carrier that led to or materially contributed to a product release.	15,000
	—Total lack of hazardous materials information on movement document. (Some shipping names alone contain sufficient information to reduce the guideline to the next lower level, but they may be such dangerous products that aggravation needs to be considered.).	7,500
	—Some information is present but the error(s) could cause mishandling by the carrier or a delay or error in emergency response. Includes missing RESIDUE description required by § 174.25(c).	5,000
	—Improper information, but the hazardous materials are small shipments (e.g., UPS moves) and PG III (e.g., the ''low hazard'' materials allowed in TOFC/COFC service without an exemption since HM–197).	3,500
	—Technical defect not likely to cause delay or error in emergency response or carrier handling	1,000
	—Minor error not relating to emergency response or carrier handling, e.g., not listing the exemption number on document and the exemption is not one affecting emergency response.	500
174.33	—Failure to maintain ''an adequate supply of placards.'' [The violation is for ''failure to replace''; if missing placards are replaced, the supply is obviously adequate, if not, failure to have a placard is not a separate violation from failure to replace it.]	
	—Failure to replace lost or destroyed placards based on shipping paper information. (This is in addition to the basic placarding mistakes in, for instance, § 172.504.).	1,000
	Note: A railroad's placarding duties are to *not* accept a car without placards [§ 172.508(b)]; to maintain an ''adequate supply'' of placards and to replace them based on shipping paper information [§ 174.33]; and to *not* transport a car without placards [§ 174.59]. At each inspection point, a railroad must determine that all placards are in place. [§ 172.8(b)] The ''next inspection point'' replacement requirement in § 174.59, q.v., refers to placards that disappear *between* inspection points; a car *at* an inspection point must be placarded because it is in transportation, even if held up at that point. [49 U.S.C. 5102(12)]	
174.45	Failure to report hazardous materials accidents or incidents. Cite §§ 171.15 or 171.16 as appropriate.	
174.50	Moving leaking tank car unnecessarily	7,500
	Failure to stencil leaking tank car	3,500
	Loss of product resulted in human being contact *because* of improper carrier handling	15,000
174.55	Failure to block and brace as prescribed. (See also §§ 174.61, .63, .101, .112, .115; where these more specific sections apply, cite them.) Note: The regulatory requirement is that hazardous materials packages be loaded and securely blocked and braced to prevent the packages from changing position, falling to the floor, or sliding into each other. If the load is tight and secure, pieces of lumber or other materials may not be necessary to achieve the ''tight load'' requirement. Be careful on these and consult freely with the expert attorney and specialists in the Hazardous Materials Division.	
	—General failure to block and brace	5,000
	—Inadequate blocking and bracing (an attempt was made but blocking/bracing was insufficient.)	2,500
	—Inadequate blocking and bracing leading to a leak	7,500
	—Inadequate blocking and bracing leading to a leak and human being contact	15,000
174.59	Marking and placarding. Note: As stated elsewhere, a railroad's placarding duties are to *not* accept a car without placards [§ 172.508(b)], to maintain an ''adequate supply'' of placards and to replace them based on shipping paper information [§ 174.33], and to *not* transport a car without placards [§ 174.59]. At each inspection point, a railroad must determine that all placards are in place. [§ 172.8(b)] The ''next inspection point'' replacement requirement in this section refers to placards that disappear *between* inspection points. A car *at* an inspection point must be placarded because it is in transportation [49 U.S.C. 5102(12)], even if held up at that point. Because the statute creates civil penalty liability only if a violation is ''knowing,'' that is, ''a reasonable person knew or should have known that an act performed by him was in violation of the HMR,'' and because railroads are not under a duty to inspect hazardous materials cars merely standing in a yard, violations written for unplacarded cars in yards must include proof that the railroad knew about the unplacarded cars and took no corrective action within a reasonable time. (Note also that the real problem with unplacarded cars in a railyard may be a lack of emergency response information, §§ 172.600–.604, and investigation may reveal that those sections should be cited instead of this one.)	
	—Complete failure to placard	7,500
	—One placard missing (add $1,000 per missing placard up to a total of three; then use the guideline above).	1,000
	For other placarding violations, see §§ 172.500–.560 and determine if one of them more correctly states the violation.	
174.61	Improper transportation of transport vehicle or freight container on flat car. (Note: If improper lading restraint is the violation, see § 174.55; if improper restraint of a bulk packaging inside a closed transport vehicle is the violation, see § 174.63(b).).	3,000
174.63(a) & (c)	—Improper transportation of portable tank or other bulk packaging in TOFC/COFC service	3,000
	—Improper transportation leading to a release of product	7,500

49 CFR section	Description	Guideline
	—Improper transportation leading to a release and human being contact	15,000
174.63(b)	Improper securement of bulk packaging inside enclosed transport vehicle or freight container.	
	—General failure to secure	5,000
	—Inadequate securement (an attempt to secure was made but the means of securement were inadequate).	2,500
	—Inadequate securement leading to a leak	7,500
	—Inadequate securement leading to a leak and human being contact	15,000
174.63(e)	Transportation of cargo tank or multi-unit tank car tank without authorization and in the absence of an emergency.	7,500
174.67(a)(1)	Tank car unloading operations performed by persons not properly instructed (case cannot be based on inference).	2,500
174.67(a)(2)	Unloading without brakes set and/or wheels blocked. (The enforcement standard, as per 1995 Hazardous Materials Technical Resolution Committee, is that sufficient handbrakes must be applied on one or more cars to prevent movement and each car with a handbrake set must be blocked in both directions. The unloading facility must make a determination on how many brakes to set.)	
	—No brakes set, no wheels blocked, or fewer brakes set/wheels blocked than facility's operating plan.	5,000
	—No brakes set, but wheels blocked	3,000
	—Brakes set, but wheels not blocked	4,000
174.67(a)(3)	Unloading without cautions signs properly displayed. (See Part 218, Subpart B)	2,000
174.67(c)(2)	Failure to use non-metallic block to prop manway cover open while unloading through bottom outlet.	
	—Flammable or combustible liquid, or other product with a vapor flash point hazard	3,000
	—Material with no vapor flammability hazard	500
174.67(h)	Insecure unloading connections, such that product is actually leaking	10,000
174.67(i)	Unattended unloading	5,000
174.67(j)	Discontinued unloading without disconnecting all unloading connections, tightening valves, and applying closures to all other openings. (Note: If the car is attended, this subsection does not apply.).	2,000
174.67(k)	Preparation of car after unloading: Removal of unloading connections is required, as is the closing of *all* openings with a ''suitable tool.'' Note: This subsection requires unloading connections to be ''removed'' when unloading is complete, § 174.67(j) requires them to be ''disconnected'' for a temporary cessation of unloading. The penalties recommended here mirror those in § 173.29, dealing with insecure closures generally.	
	—Hazardous material with insignificant vapor pressure and without classification as ''poison'' or ''inhalation hazard''.	2,000
	—With actual leak	5,000
	—With leak allowing the product to contact any human being	15,000
	—Hazardous material with vapor pressure (essentially any gas or compressed gas) and/or with classification as ''poison'' or ''inhalation hazard''.	5,000
	—With actual leak	7,500
	—With leak allowing the product (or fumes or vapors) to contact any human being). Note: Contact with fumes must be substantial.	15,000
174.69	—Complete failure to remove loaded placards and replace with RESIDUE placard on tank cars	6,000
	—Partial failure. (Unit of violation is the placard; the guideline is used for each placard up to 3, then the penalty above is applicable.).	1,000
174.81	—Failure to obey segregation requirements for materials forbidden to be stored or transported together. (''X'' in the table).	6,000
	—Failure to obey segregation requirements for materials that must be separated to prevent commingling in the event of a leak. (''O'' in the table).	4,000
174.83(a)	Improper switching of placarded rail cars	5,000
174.83(b)	Improper switching of loaded rail car containing Division 1.1/1.2, 2.3 PG I Zone A, or Division 6.1 PG I Zone A, or DOT 113 tank car placarded for 2.1.	8,000
174.83(c)–(e)	Improper switching of placarded flatcar	5,000
174.83(f)	Switching Division 1.1/1.2 without a buffer car or placement of Division 1.1/1.2 car under a bridge or alongside a passenger train or platform.	8,000
174.84	Improper handling of Division 1.1/1.2, 2.3 PG I Zone A, 6.1 PG I Zone A in relation to guard or escort cars.	4,000
174.85	Improper Train Placement (The unit of violation under this section is the car. Where more than one placarded car is involved, e.g., if 2 placarded cars are too close to the engine, both are violations. Where both have a similar violation, e.g., a Division 1.1 car next to a loaded tank car of a Class 3 material, each car gets the appropriate penalty as listed below.)	
	RESIDUE car without at least 1 buffer from engine or occupied caboose	3,000
	Placard Group 1—Division 1.1/1.2 (Class A explosive) materials	
	—Fewer than 6 cars (where train length permits) from engine or occupied caboose	8,000
	—As above but with at least 1 buffer	7,000
	—No buffer at all (where train length doesn't permit 5)	8,000
	—Next to open top car with lading beyond car ends or, if shifted, would be beyond car ends	7,000
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices, or car with permanent bulkhead.	6,000
	—Next to operating temperature-control equipment or internal combustion engine in operation	7,000
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	7,000
	Placard Group 2—Division 1.3/1.4/1.5 (Class B and C explosives); Class 2 (compressed gas, other than Division 2.3, PG 1 Zone A; Class 3 (flammable liquids); Class 4 (flammable solid); Class 5 (oxidizing materials); Class 6, (poisonous liquids), except 6.1 PG 1 Zone A; Class 8 (corrosive materials).	

49 CFR section	Description	Guideline
	For tank cars:	
	—Fewer than 6 cars (where train length permits) from engine or occupied caboose	6,000
	—As above but with at least 1 buffer	5,000
	No buffer at all (where train length doesn't permit 5)	6,000
	—Next to open top car with lading beyond car ends or, if shifted, would be beyond car ends	5,000
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices, or car with permanent bulkhead.	4,000
	—Next to operating temperature-control equipment or internal combustion engine in operation	5,000
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	5,000
	For other rail cars:	
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	5,000
	Placard Group 3—Divisions 2.3 (PG 1 Zone A; poisonous gases) and 6.1 (PG 1 Zone A; poisonous materials)	
	For tank cars:	
	—Fewer than 6 cars (where train length permits) from engine or occupied caboose	8,000
	—As above but with at least 1 buffer	7,000
	No buffer at all (where train length doesn't permit 5)	8,000
	—Next to open top car with lading beyond car ends or, if shifted, would be beyond car ends	7,000
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices, or car with permanent bulkhead.	6,000
	—Next to operating temperature-control equipment or internal combustion engine in operation	7,000
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	7,000
	For other rail cars:	
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	5,000
	Placard Group 4—Class 7 (radioactive) materials.	
	For rail cars:	
	—Next to locomotive or occupied caboose	8,000
	—Next to placarded car, except one from same placard group or COMBUSTIBLE	5,000
	—Next to carload of undeveloped film	3,000
174.86	Exceeding maximum allowable operating speed (15 mph) while transporting molten metals or molten glass.	3,000
174.101(o)(4)	Failure to have proper explosives placards on flatcar carrying trailers/containers placarded for Class 1. (Except for a complete failure to placard, the unit of violation is the placard.).	
	—Complete failure to placard	7,500
	—One placard missing (add $1,000 per missing placard up to a total of three, then use the guideline above).	1,000
174.104(f)	Failure to retain car certificates at ''forwarding station''	1,000
	Failure to attach car certificates to car. (Unit of violation is the certificate, 2 are required.)	1,000
174.204	Improper tank car delivery of gases (Class 2 materials)	3,000
174.304	Improper tank car delivery of flammable liquids (Class 3 materials)	3,000
174.600	Improper tank car delivery of materials extremely poisonous by inhalation (Division 2.3 Zone A or 6.1 Zone A materials).	5,000
	PART 178	
178.2(b)	Package not constructed according to specifications—also cite section not complied with.	
	—Bulk packages, including portable tanks	8,000
	—55-gallon drum	2,500
	—Smaller package	1,000
	PART 179	
179.1(e)	Tank car not constructed according to specifications— also cite section not complied with. (Note: Part 179 violations are against the builder or repairer. Sections in this Part are often cited in conjunction with violations of §§ 172.330 and 173.31 (a)&(b) by shippers. In such cases, the Part 179 sections are cited as references, not as separate alleged violations.).	8,000
179.6	Repair procedures not in compliance with Appendix R of the Tank Car Manual	5,000

[1] See § 172.334.
[2] See § 172.516.
[3] Varies.
[4] See specific section.
[5] See penalties: 172.700–.704.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 96–18823 Filed 7–24–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 960416112–6164–02; ID# 071996B]

RIN 0648–AI29

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna Angling Category

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

ACTION: Closure.

SUMMARY: NMFS closes the fishery for school Atlantic bluefin tuna (ABT) conducted by Angling category fishermen in the waters off Delaware and states south. Closure of this fishery is necessary because the annual quota of 65 metric tons (mt) of school ABT allocated for this subcategory in waters off Delaware and states south is projected to be attained by July 25, 1996. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective from 2330 hours local time July 25 through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Hogarth, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(d)(1) of the regulations provides for an annual quota of 65 mt of school ABT to be harvested from waters off Delaware and states south by individuals in the Angling category. The Assistant Administrator for Fisheries, NOAA (AA), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of those statistics, to project a date when the catch of ABT will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The AA has determined, based on the reported catch and estimated fishing effort, that the annual quota of school ABT for those fishing in waters off Delaware and states south will be attained by July 25, 1996. Fishing for, catching, possessing, or landing any school ABT in the closed area must cease at 2330 hours local time on July 25, 1996. In addition, landing any school ABT in or from the closed area is prohibited.

However, anglers may continue to tag and release fish less than 47 inches (119 cm) curved fork length under the NMFS tag-and-release program (50 CFR 285.27). The Angling category fishery for bluefin tuna in the large school and small medium classes (47 inches to less than 59 inches (119 cm to less than 150 cm), and 59 inches to less than 73 inches (150 cm to less than 185 cm) curved fork length, respectively) is regulated under a separate quota and is not affected by this closure. Anglers, therefore, may continue to fish for these larger size classes. The 73 metric ton quota of school ABT for the waters off New Jersey and states north is not affected by this closure, and remains open.

Classification

This action is required by 50 CFR 285.20(b)(1) and complies with E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: July 19, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18851 Filed 7–19–96; 4:21 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 071996A]

Groundfish of the Gulf of Alaska; Northern Rockfish in the Central Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), July 20, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and part 679.

The northern rockfish TAC for the Central Regulatory Area was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 4,610 metric tons (mt). (See § 679.20(c)(3)(ii).)

The Director, Alaska Region, NMFS (Regional Director), established a directed fishing allowance for northern rockfish of 4,360 mt, with consideration that 250 mt will be taken as incidental catch in directed fishing for other species in this area. (See § 679.20(d)(1).) The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area.

The maximum retainable bycatch amounts at § 679.20(e) apply to a fishery that is closed to directed fishing.

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–18850 Filed 7–19–96; 4:17 pm]

BILLING CODE 3510–22–F