third was completed on July 1, 2009. The 2009 five-year review included a recommendation to implement institutional controls. This was completed on August 9, 2013 with the execution of the Declaration of Covenants, Restrictions and Environmental Easement. The fourth five-year review is scheduled to be completed on or before July 1, 2014.

*Community Involvement*

Public participation activities for this Site have been satisfied as required in CERCLA Sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. As part of the remedy selection process, the public was invited to comment on the proposed remedy. Prior to each five-year review, the public was notified through an ad in a local newspaper, *The Observer-Dispatch* (Utica), that a review of the remedy would be conducted and that the results would be available in the local site repository upon completion. Contact information for questions related to the five-year review was also provided. All other documents and information that EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories identified above.

*Determination That the Site Meets the Criteria for Deletion From the NCP*

The implemented remedy achieves the degree of cleanup specified in the ROD for all pathways of exposure. All selected remedial action objectives and clean-up levels are consistent with agency policy and guidance. No further Superfund responses are needed to protect human health and the environment at the Site.

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

## V. Deletion Action

EPA, with the concurrence of the State of New York, has determined that all appropriate responses under CERCLA have been completed and that no further response actions under CERCLA, other than M&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL. Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior publication. This action will be effective December 2, 2013 unless EPA receives adverse comments by November 1, 2013. If adverse comments are received within the 30-day public comment period of this action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments received. In such a case, there will be no additional opportunity to comment.

## List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 20, 2013.

**Judith A. Enck,**

*Regional Administrator, EPA, Region 2.*

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

## Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''NY,'' ''Ludlow Sand & Gravel,'' ''Clayville''.

[FR Doc. 2013–24116 Filed 10–1–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

## Pipeline and Hazardous Materials Safety Administration

## 49 CFR Part 107

**[Docket No. PHMSA–2013–0045 (HM–258C)]**

**RIN 2137–AF02**

## Hazardous Materials Regulations: Penalty Guidelines

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule; revised statement of policy.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) is publishing this revised statement of policy to update baseline assessments for frequently-cited violations of the Hazardous Materials Regulations (HMR) and to clarify additional factors that affect penalty amounts. This revised statement of policy is intended to provide the regulated community and the general public with information on the hazardous materials penalty assessment process.

**DATES:** This rule is effective October 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Meridith L. Kelsch or Shawn Wolsey, Office of the Chief Counsel, at (202) 366–4400, or Deborah L. Boothe, Standards and Rulemaking Branch, at (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### Contents

I. Background
II. Discussion of Revisions
  A. Revisions to Part II, List of Frequently Cited Violations
  B. Revisions to Parts III and IV
III. Regulatory Analyses and Notices
  A. Statutory/Legal Authority for the Rulemaking
  B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures
  C. Executive Order 13132
  D. Executive Order 13175
  E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
  F. Paperwork Reduction Act
  G. Regulatory Identifier Number (RIN)
  H. Unfunded Mandates Reform Act of 1995
  I. Environmental Assessment
  J. Privacy Act
  K. Executive Order 13609 and International Trade Analysis
  L. National Technology Transfer and Advancement Act

## I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) publishes hazardous materials transportation enforcement civil penalty guidelines in Appendix A to 49 CFR part 107, subpart D. The Research and Special Programs Administration (RSPA; PHMSA's predecessor agency) first published these guidelines in the **Federal Register** on March 6, 1995, in response to a request contained in Senate Report 103–150 that

accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994 (*See* 60 FR 12139). RSPA and PHMSA published additional revisions of these guidelines on January 21, 1997 (62 FR 2970), September 8, 2003 (68 FR 52844), February 17, 2006 (71 FR 8485), December 29, 2009 (74 FR 68701), and September 1, 2010 (75 FR 53593). These guidelines provide the regulated community and the general public with information about PHMSA's hazmat penalty assessment process and the types of information or documentation that respondents in enforcement cases can provide to justify possible reductions of proposed penalties.

PHMSA's field operations personnel and attorneys use these guidelines, which are updated periodically, as a standard for determining civil penalties for violations of the Federal hazardous materials transportation law (49 U.S.C. 5101–5128) and the regulations issued under that law. The baseline penalties and aggravating or mitigating factors outlined in these guidelines are a tool to aid PHMSA in applying similar civil penalties and adjustments in comparable situations. These baselines and adjustment criteria are based on factors PHMSA is required, under 49 U.S.C. 5123(c) and 49 CFR 107.331, to consider in each case. PHMSA selected the baseline penalties set out in Part II by considering the relative nature, circumstances, extent, and gravity of the particular violation. The aggravating and mitigating factors discussed in Parts III and IV represent all information PHMSA is required to consider under these provisions.

Since the guidelines are intended to reflect the statutory considerations, they are subject to adjustments, as appropriate, for the specific facts of individual cases. The guidelines are neither binding nor mandatory, but serve as a standard to promote consistency. Using the baselines as a starting point allows PHMSA to handle analogous violations similarly; and combining baselines with the mitigating and aggravating adjustments, helps us treat respondents in enforcement actions fairly. These baselines, however, only provide a starting point and may be adjusted as appropriate to reflect additional relevant factors. As such, they do not impose any requirement and are not binding.

As a general statement of agency policy and practice, these guidelines are not finally determinative of any issues or rights and do not have the force of law. They are informational, impose no requirements, and serve only as instruction or a guide. As such, they constitute a statement of agency policy and serve to provide greater transparency for effected entities. For these reasons, they do not establish a rule or requirement and no notice of proposed rulemaking or comment period is necessary. For further discussion of the nature and PHMSA's use of these penalty guidelines, see the preambles to the final rules published on March 6, 1995 (60 FR 12139) and January 21, 1997 (62 FR 2970).

## II. Discussion of Revisions

In this final rule, PHMSA is publishing an updated statement of policy, revising Appendix A to Part 107, Subpart D, including the List of Frequently Cited Violations in Part II of the guidelines, and Parts III and IV, which provide additional factors that affect penalty amounts. The revisions to Part II include modifications to individual baseline assessments, the addition of frequently-cited violations that were not previously included in the guidelines, and assigned penalties instead of penalty ranges, where appropriate, to reflect safety risks, such as packing group. The revisions to Parts III and IV of the guidelines clarify the criteria PHMSA considers when determining a civil penalty amount that appropriately reflects the risk posed by a violation, the culpability of the respondent, and aggravating or mitigating factors.

### *A. Revisions to Part II, List of Frequently Cited Violations*

The revisions to Part II of the guidelines are the result of inflation and statutory adjustments, as well as an overall review of the current penalty guidelines and regulatory requirements. PHMSA evaluated the baseline penalties to ensure they are comprehensive, clear, consistent, and appropriately reflect the safety implications of the violations.

As part of these adjustments, in this revised statement of policy, PHMSA is modifying the baselines in the List of Frequently Cited Violations in Part II of the guidelines to reflect inflation and the statutory increase in the maximum civil penalty, which took effect October 1, 2012. Both of these factors necessitate an overall increase in the baseline penalties.

Section 33010 of the Hazardous Materials Transportation Safety Improvement Act of 2012 (Title III of the Moving Ahead for Progress in the 21st Century Act (''MAP–21,''), Pub. L. 112–141, 126 Stat. 405, 837 (codified as amended at 49 U.S.C. 5123(a)) increased the maximum civil penalty for a knowing violation of the Federal hazardous materials transportation law, or a regulation, order, special permit, or approval issued under that law, from $55,000 to $75,000 and increased the maximum civil penalty from $110,000 to $175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. This statutory change took effect October 1, 2012, and PHMSA incorporated these changes into the regulations effective April 17, 2013 (78 FR 22798). Since the maximum civil penalties have increased, it is appropriate to also increase the individual baselines for consistency.

Additionally, PHMSA is increasing individual baselines for inflation because many of the current baselines have not been adjusted since they were first published. Specifically, RSPA initially published the guidelines in 1995 (60 FR 12139). In 1997, RSPA adjusted the maximum civil penalty for inflation, added, deleted and combined several baselines, and altered several baselines to reflect the comparative risks of the violation for different hazardous materials. Again in 2003, RSPA adjusted the maximum and minimum civil penalties for inflation and added, modified, and increased several specific baselines (68 FR 52844). In 2006, PHMSA adjusted the maximum and minimum civil penalties, adopting the limits established by Congress in 2005 in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; Pub. L. 109–59, 119 Stat. 1144 (codified as amended at 49 U.S.C. 5123(a))). At the same time, PHMSA adjusted a small number of individual baselines (71 FR 8485). Again in 2009, PHMSA adjusted the maximum and minimum civil penalties for inflation (74 FR 68701). The 2010 adjustments merely corrected errors in the 2009 calculations (75 FR 53593). Notably, since the guidelines were first published in 1995, certain individual baselines were adjusted but never comprehensively adjusted for inflation.

In order to remain consistent with the MAP–21 increase to the maximum civil penalties, as well as make appropriate adjustments for inflation, PHMSA reviewed the entire list of baseline penalties and generally increased them. We are not increasing all of the baselines, however, as we considered each individually to ensure the baselines appropriately reflect the safety implications associated with the particular violation.

For those baselines that PHMSA is increasing for inflation and consistency with MAP–21, we used a uniform calculation to determine the amount of increase. PHMSA determined the

inflation adjustment by using the calculation found in the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (the Act is set forth in the note to 28 U.S.C. 2461). The Act requires each Federal agency to adjust maximum and minimum civil penalties it administers at least every four years, to correspond with the effects of inflation, but applies a maximum increase of 10 percent for first-time adjustments. Congress, effective October 1, 2012 (see MAP–21 discussion above) adjusted the maximum and minimum penalties for inflation; so PHMSA is increasing only individual baselines.

Because this revised statement of policy does not address inflation adjustments for maximum and minimum penalties, the adjustments are not mandated, and the formula provided in the Act is not binding on these revisions. Nevertheless, PHMSA applied the formula in the Act to calculate the baseline increases, for consistency and continuity, as the Act is a standard recognized method of calculating inflation adjustments for regulatory penalties.

The formula for inflation adjustments set out in the Act provides that the increase is based on a ''cost-of-living adjustment'' determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. In applying this calculation, PHMSA used 2003 as the year in which the last adjustment was made. This is because 2003 is the last time there were numerous adjustments and those revisions were the most similar to the current changes, in that there were extensive adjustments to individual baselines and not just maximum and minimum civil penalties. Since this revised statement of policy is adjusting individual baselines, 2003 represents the most-recent instance of comparable adjustments.

Applying the adjustment formula in the Act, PHMSA calculated the percentage by which the CPI–U in June 2012 (229.478) (the year preceding the adjustment) exceeds the CPI–U in June 2003 (183.7) (the year in which the baseline penalties were last adjusted). This comparison shows that the CPI–U increased by 25 percent during that period. Accordingly, PHMSA is increasing the baseline civil penalties by 25 percent. To avoid increasing any penalties by more than 25 percent, PHMSA rounded down the calculated adjustments to the nearest one-hundred dollars.

Although the Act provides a 10 percent limit on first-time adjustments, PHMSA is not conforming to this limitation for several reasons. First, many individual baselines have been adjusted before, so this is not a first-time adjustment. We are applying the same calculated inflation adjustment to all of the individual baselines that we are increasing for uniformity. To apply the 25 percent increase to those baselines that have been changed before, and 10 percent to those that have not, would create inconsistencies by creating larger differences between baselines that have been deemed comparatively appropriate in all prior revisions. Second, PHMSA is not required to comply with the 10 percent limit in these adjustments because the adjustments in this updated statement of policy are not mandated under the Act, as the Act does not apply to adjustments to individual baselines. Rather, we are merely using the Act as a uniform and recognized standard for consistency. Finally, the changes in MAP–21 increased the maximum civil penalty by approximately 36 percent (from $55,000 to $75,000) for a knowing violation and 59 percent (from $110,000 to $175,000) for violations resulting in serious harms. By comparison, a 25 percent increase to individual baseline penalties is significantly lower than the changes to the maximum civil penalties imposed by MAP–21.

Another change in this revised statement of policy is to add baseline penalties with violation descriptions to provide consistency and clarity for imposing similar penalties in similar cases. To identify violations that have been cited frequently but were not listed in the table of baseline penalties, PHMSA reviewed past Notices of Probable Violations and the regulations. We are now listing baseline penalties with violation descriptions in the List of Frequently Cited Violations for these violations. We are establishing these baseline penalties based on civil penalties that have been applied in past enforcement cases and by analogy to baselines for comparable violations that are already listed and relative safety implications.

In general, we are expanding the following categories in the List of Frequently Cited Violations: Security plans; Special permits and approvals; Undeclared shipments; Shipping papers; Emergency response requirements; Package marking requirements; Package labeling requirements; Placarding requirements; Packaging requirements; Offeror Requirements for specific hazardous materials: Cigarette lighters, Explosives, Radioactive Materials, Compressed Gases in cylinders; Packaging Manufacturers, Drum Manufacturers and Reconditioners, IBC and Portable Tank Requalification; Cylinder Manufacturers and Rebuilders; Cylinder Requalification; Incident Notification and Stowage/Attendance/Transportation Requirements. We are adding these new categories: Offeror Requirements for specific hazardous materials: Oxygen Generators and Batteries; Manufacturing, Reconditioning, Retesting Requirements: Activities subject to Approvals and Cargo Tank Motor Vehicles.

Another modification PHMSA is making in this revised statement of policy is to eliminate many baseline ranges (e.g., $3,000 to $6,000) in the List of Frequently Cited Violations, and replace them with specific baselines (e.g., $6,000 for PG I; $4,500 for PG II; $3,000 for PG III). Baseline ranges provided flexibility to adjust penalties depending on the safety risks or severity of a particular case. We will now divide many ranges into distinct baseline amounts that reflect the relative risks of specific packing groups, explosive classifications, or hazardous materials. Applying specific baselines instead of ranges will continue to reflect the relative safety risks of various hazardous materials within a particular violation, while assuring consistency and clarity.

Finally, PHMSA comprehensively reviewed the baseline penalties and descriptions, and we are adopting several modifications to ensure they are current, consistent, and appropriate. In this revised statement of policy, we are removing outdated or duplicative descriptions and updating language to reflect the regulatory text, where necessary. We are also decreasing and increasing baselines, as appropriate, to ensure comparable, similar, or related violations have commensurate baseline penalties and that each baseline reflects the risks associated with the violation.

*B. Revisions to Part III—Consideration of Statutory Criteria and Part IV—Miscellaneous Factors Affecting Penalty Amounts*

This statement of policy also modifies Parts III and IV of the guidelines, which provide factors that affect penalty amounts. As specified in 49 U.S.C. 5123(c) and 49 CFR 107.331, PHMSA must consider several factors when assessing a civil penalty, including the nature, circumstances, extent and gravity of a violation, the degree of culpability and compliance history of the respondent, the financial impact of

the penalty on the respondent, and other matters as justice requires. As described below, PHMSA will also consider a respondent's corrective actions and that point in time at which those actions are taken. Parts III and IV elaborate on several of these factors and explain how PHMSA considers this information to adjust penalties, where appropriate.

In this revision, PHMSA is clarifying Parts III and IV to provide transparency and ensure consistency in how mitigating and aggravating factors affect penalty assessments. In general, we are modifying some of the language in these Parts to articulate clearly how PHMSA considers relevant information and performs adjustments. We are also adding new points that will enhance transparency and consistency.

1. Revisions to Part III—Consideration of Statutory Criteria

Previously, Part III—Consideration of Statutory Criteria has outlined the process PHMSA uses for setting initial penalties and listed the statutory criteria PHMSA must consider under 49 U.S.C. 5123(c) and 49 CFR 107.331. In this revision, we are providing this same information as well as additional details.

In the revised guidelines, we are still identifying the statutory considerations, but have revised the language to add greater clarity. Specifically, we have added details to elaborate on the information that may be relevant in considering the statutory criteria. For example, in evaluating the gravity of a violation, we explain that actual and potential consequences of a violation are factors we consider in setting a civil penalty in a case. We are including this and similar factors to help demonstrate the types of information that are pertinent to the statutory criteria.

We are also explaining where we obtain the information that is relevant to the statutory criteria and at what stages we collect it. Specifically, we may obtain information concerning the statutory criteria at any stage of the enforcement proceedings, and we may receive this information from any appropriate source, including the regulated entity. This additional information serves to clarify that determining a civil penalty is an ongoing process that develops throughout an enforcement proceeding. As such, this clarification notifies respondents in enforcement cases that they may provide relevant information to PHMSA at any stage and we will consider it.

Finally, we are providing a specific order in which PHMSA will apply increases and decreases to baseline penalty amounts. While the previous guidelines alluded to this, we are establishing a clear sequence of adjustments in this revision. Specifically, after selecting an appropriate baseline penalty, we will generally apply decreases for reshippers, increases for multiple counts, increases for prior violations, decreases for corrective actions, and then decreases for financial considerations, in order to consider all of the statutory criteria. Clearly establishing this sequence will provide for consistency in how respondents are treated in enforcement actions.

2. Revisions to Part IV—Miscellaneous Factors Affecting Penalty Amounts

In the revised guidelines, we are also modifying the language in Part IV—Miscellaneous Factors Affecting Penalty Amounts. These modifications provide greater clarity and transparency by revising language, including more detail, and setting out more-clearly defined procedures for applying aggravating and mitigating factors. We are also restructuring this section so that the factors are listed in the order in which PHMSA applies the penalty increases or decreases, as set out in Part III.

With respect to respondents that act as reshippers, we have revised the language in this section so that our procedures and relevant criteria are understandable. Additionally, we have extended the reshipper mitigating factor to carriers who reasonably rely on a shipment as they receive it and do not open or alter the package before continuing in transportation. We expanded this to carriers to reflect their similarity to reshippers in so far as both may receive fully-prepared shipments and rely on another party's preparation and compliance. Apart from extending this provision to carriers, we have not made any substantive changes to this section.

We are also modifying the provisions regarding multiple counts of a violation. The revised language provides more detail in describing how PHMSA handles multiple counts, which promotes greater consistency and transparency. Although this is a highly fact-specific determination, the additional language will provide more comprehensive guidance. For example, we are including fuller explanations of the factors that are relevant, such as whether multiple counts demonstrate a company's regular business practice. Additionally, we are including specific examples of when multiple counts may be treated as one violation, when a penalty may be increased by 25 percent for each additional count, and when separate counts may be warranted.

The provisions pertaining to prior violations are also being updated to establish a clear timeframe and consistent application. We are specifying that the six-year period used to evaluate increases for prior violations will be determined using the dates of the last exit briefings issued. Previously, this period was calculated using the date a case or ticket was ''initiated,'' without specifying what constituted initiation of a case. We are now specifying that the initiation date of a case is the date of the exit briefing. The date of the exit briefing best represents the date a case is initiated because it is the date a respondent first receives notice of a non-compliance issue and commences the enforcement process. Additionally, the date of the exit briefing is the most consistent measure that can be replicated for all cases.

Generally, an exit briefing is issued on or near the date a violation is found, whereas a ticket or Notice of Probable Violation may be issued substantially later and are not issued within the same time frame for all cases. Using a calendar year instead of a specific date can lead to some respondents being penalized for prior cases that happened more than six years previously (e.g., a prior violation in January 2007 would be within six years of a case issued in September 2013), while others are penalized for only less than a six-year period (e.g., a prior violation in December 2006 would be outside the six years for a case issued in January 2013). To avoid these disparities, PHMSA is applying the date of the exit briefing as the date a case is ''initiated.'' Although PHMSA is using the exit briefing to represent the initiation of a case, only cases that have been finally-adjudicated will be considered as prior violations. As such, the issuance of an exit briefing alone, with no further action does not constitute a prior violation.

In addition, we are including a specific provision for the use of expired special permits that was previously included in a separate section. Under this provision, if a respondent is cited for operating under an expired special permit and has previously committed the same violation, the penalty will be doubled (i.e., increased by 100 percent). This is the same as the previous language, we are simply relocating it so that all of the factors relating to prior violations are discussed together.

We are also adding one factor that PHMSA will consider in determining penalty increases for prior violations. If PHMSA finds that a respondent has

been cited for an identical violation within the six-year period specified above, we will generally increase the penalty for that violation by 100 percent. The rationale for this is that the respondent was previously notified of the violation and had the opportunity to correct it; failing to correct an issue and committing the exact same violation demonstrates a disregard for compliance and justifies an additional increase to the penalty.

With respect to corrective action, the revised guidelines provide additional details regarding how PHMSA determines reductions for corrective action. These revisions supplement, but do not change, the existing standard. Notably, we are including further explanations of the primary factors—extent and timing. We are also adding guidance for how respondents may document their corrective actions. Additionally, we are setting out standards that describe the factors we consider in determining whether to reduce a civil penalty for corrective action, up to 25 percent. Finally, we are incorporating a new provision that respondents who have committed the same violation previously (as determined in a finally-adjudicated case) may not receive a reduction for corrective action because corrective action is warranted when a respondent in an enforcement case makes sincere, comprehensive, and effective efforts to remedy a violation. Therefore, if the company was previously notified of the non-compliance issue and failed to fix it, a corrective action reduction is not appropriate.

We are also revising the provisions for penalty reductions for financial considerations in the guidelines; however, we are not making any substantive changes to this section. We have merely modified and restructured the language, without changing the meaning.

Finally, we are removing the section regarding penalty increases for using an expired special permit. Previously, this section included two provisions: (1) That a prior violation warrants an increase of 25 percent, and (2) that when a respondent uses an expired special permit and has previously committed the same violation, an increase of 100 percent is appropriate. The first provision is adequately expressed in the section on prior violations (i.e., 25 percent increase for a prior violation). And the second provision is now moved to the section on prior violations as well, in order to keep all increases for prior violations in the same section for organizational purposes.

Although these revisions to the guidelines are intended to provide consistency and clarity, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331, including consideration of small businesses. Therefore, PHMSA will continue to review all relevant information in the record concerning any alleged violation or the respondent, and we will adjust the baseline assessments as warranted by the statutory criteria.

These penalty guidelines remain subject to revision and PHMSA will use the version of the guidelines in effect at the time the violation in any particular case is committed. Questions concerning PHMSA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

## III. Rulemaking Analyses and Notices

### *A. Statutory/Legal Authority for This Rulemaking*

This final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101–5128). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises PHMSA's guidelines for determining civil penalties, which are published in Appendix A to subpart D of part 107, including the List of Frequently Cited Violations in Part II, as well as Part III Consideration of Statutory Criteria and Part IV Miscellaneous Factors Affecting Penalty Amounts, which provide additional factors and criteria that affect penalty amounts.

Revisions to Part II include modifications to individual baseline assessments, the addition of frequently-cited violations not previously included in the guidelines, and the replacement of penalty ranges with assigned penalties based on safety risks, such as packing group, where appropriate. The revisions to Parts III and IV of the guidelines clarify the criteria PHMSA considers when determining a civil penalty amount that appropriately reflects the risk posed by a violation, the culpability of the respondent, and any aggravating or mitigating factors. More specifically, we are establishing a sequence in which aggravating and mitigating factors are applied, identifying the period within which prior violations are considered, specifying that the repeating of identical violations in multiple cases serves as an aggravating factor, and clarifying the process by which PHMSA considers mitigation for corrective actions, reshippers, and financial considerations as well as penalty increases for multiple counts and prior violations.

Under 49 U.S.C. 5123(c), when determining a civil penalty amount, PHMSA must consider the nature, circumstances, extent, and gravity of the violation, the degree of culpability, history of compliance, ability to pay, and effect on ability to continue to do business for the specific respondent, as well as other matters that justice requires. As such, the baseline penalties in the List of Frequently Cited Violations and the additional factors in Parts III and IV are merely guidelines that are subject to adjustments for the unique facts and circumstances of each case. They do not establish or impose any requirements, are not finally-determinative of any issues or rights, are not binding, and do not have the force of law. Rather, they are guidelines PHMSA uses as a starting point in determining a civil penalty and a guide outlining relevant factors we consider. Since they are merely informational guidelines stating general agency policy and practice, no notice of proposed rulemaking is necessary.

### *B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures*

This rulemaking is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Accordingly, this final rule was not reviewed by the Office of Management and Budget (OMB). Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT because it has minimal impact on a significant number of small businesses.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to identify and consider regulatory approaches that reduce burdens and maintain flexibility and consider how to best promote

retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome. The revisions to Appendix A to Subpart D of Part 107 are consistent with the intent of Executive Order 13563 as this final rule clarifies the civil penalties process, fosters a greater understanding of the regulations and associated penalties for non-compliance and updates the regulations to more-accurately reflect current economic conditions.

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993 directs agencies to prioritize ''those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.'' Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

This final rule does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures. This rule imposes no new costs upon persons conducting hazardous materials operations in compliance with the requirements of the HMR. Those entities not in compliance with the requirements of the HMR may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. The amendments in this rule could provide safety benefits (i.e., larger penalties deterring knowing violators). Overall, it is anticipated this rulemaking would be cost neutral.

A summary of the regulatory evaluation used to support the proposals presented in this final rule are discussed below. A copy of the full regulatory evaluation explaining the rationale behind PHMSA's conclusions is available in the docket for this rulemaking.

Regulatory Evaluation

For the regulatory evaluation of this final rule, PHMSA assumes:

- The cost associated with this rulemaking will be imposed on those individuals who are in violation of the requirements of the HMR.
- Updating the guidelines and expanding the list of frequently cited violations will raise awareness of the regulatory requirements and provide a safety benefit.
- PHMSA is raising the baseline penalties for consistency with MAP–21 and to reflect inflation based on the calculation found in the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (the Act is set forth in the note to 28 U.S.C. 2461).

PHMSA's current civil penalties program has proven effective in achieving a high level of transportation safety. However, the lack of fee increases to keep pace with inflation may have limited the capability to deter potential violators from knowingly violating the HMR. While this final rule maintains the current level of safety, we expect the implementation of the changes published in this final rule will result in a benefit by providing a more substantial deterrent for potential violators of the HMR.

PHMSA anticipates the primary costs will be to those who violate the HMR while the primary benefits will be attributed to an increased awareness of regulatory requirements, an improved understanding of the civil penalties process, and a more substantial deterrent for those who violate the HMR.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This rule does not impose any regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; it is merely an updated informational statement of policy and guidance and does not impose any requirements. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*D. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess the impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. If an agency finds that there is a significant impact, the agency must consider whether alternative approaches could mitigate the impact on small entities. The size criteria for small entities are defined by the Small Business Administration (SBA) in 13 CFR 121.201.

The hazardous materials regulated community consists of approximately 200,000 offerors. Approximately 90 percent meet the SBA small business criteria. However, we have determined that, based on the following analysis, the changes adopted in the final rule will not result in a significant impact. Based on our review of PHMSA hazardous materials penalties levied in the last calendar year (January 1, 2012–December 31, 2012), PHMSA issued 616 cases and tickets. If we used the assumption that 90 percent of the hazardous materials regulated community meet the SBA small business criteria than this final rule would only affect approximately 550 small entities. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

*F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of Title 5 of the Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. There are no new information requirements in this final rule.

*G. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of

this document can be used to cross-reference this action with the Unified Agenda.

*H. Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or to the private sector.

*I. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. §§ 4321–4375), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, the Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action

In this final rule we are revising 49 CFR Appendix A to Subpart D of Part 107 (Enforcement) Part II by:

- Modifying individual baseline assessments contained in the penalty guidelines table;
- Adding violations not previously included in the list of frequently-cited violations; and
- Replacing penalty ranges with assigned penalties based on safety risks, such as packing group, where appropriate.

In addition in this final rule we are revising 49 CFR Appendix A to Subpart D of Part 107, Part III—Consideration of Statutory Criteria and Part IV—Miscellaneous Factors Affecting Penalty Amounts by:

- Establishing a penalty amount that appropriately addresses the risk posed by a violation; and
- Establishing the criteria and PHMSA's process for considering the statutorily-mandated aggravating or mitigating factors involved in determining a civil penalty.

Alternatives Considered

*Alternative (1)—No action alternative:* Leave the HMR as is; do not adopt above-described guidelines.

PHMSA periodically reviews and updates various regulations and guidelines to improve the clarity of the HMR and provide relief for safe alternatives when necessary. If PHMSA chose the no-action alternative, the public would not receive the benefits of increased awareness of the civil penalties and the processes that accompany them. Furthermore, PHMSA civil penalties would continue to be out of date and not reflective of current economic conditions. Therefore, PHMSA rejected the do-nothing alternative.

*Alternative (2)—Preferred Alternative:* Go forward with the modified guidelines as described in this notice.

Environmental Consequences

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause human death or injury, the loss of ecological resources (e.g. wildlife habitats), and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. Compliance with the HMR substantially reduces the possibility of accidental release of hazardous materials.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates: The risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. As the civil penalty program is specifically designed to ensure compliance with the HMR it concurrently reduces the possibility of accidental release of hazardous materials and thus environmental damage.

Conclusion

Based on the above discussion, the amendments in this final rule would have no significant negative environmental impacts. Civil penalties may act as a deterrent to those violating the HMR, which may have a negligible positive environmental impact as a result of increased compliance with the HMR. PHMSA concludes there are no significant environmental impacts associated with this final rule.

*J. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at *http://www.dot.gov/privacy*.

*K. Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed

the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations.

*L. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. There are no voluntary consensus standards relevant to the penalty guidelines, and as such, the revised guidelines do not include any.

## IV. Revised Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

### List of Subjects in 49 CFR Part 107

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

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006 33010; 49 C.F.R. 1.81, 1.97.

■ 2. Revise Appendix A to Subpart D of Part 107 to read as follows:

### Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

I. This appendix sets forth the guidelines PHMSA uses (as of October 2, 2013) in making initial baseline determinations for civil penalties. The first part of these guidelines is a list of baseline amounts or ranges for frequently-cited probable violations. Following the list of violations are general guidelines PHMSA uses in making penalty determinations in enforcement cases.

**II. List of Frequently Cited Violations**

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| **General Requirements** | | |
| A. Registration Requirements: Failure to register as an offeror or carrier of hazardous material and pay registration fee: | 107.608, 107.612. | |
| 1. Small business or not-for-profit | | $1,200 + $600 each additional year. |
| 2. All others | | $3,500 + $1,000 each additional year. |
| B. Training Requirements: | | |
| 1. Failure to provide initial training to hazmat employees (general awareness, function-specific, safety, and security awareness training): | 172.702. | |
| a. More than 10 hazmat employees | | $1,500 for each area. |
| b. 10 hazmat employees or fewer | | $1,000 for each area. |
| 2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training). | 172.702 | $1,000 for each area. |
| 3. Failure to provide in-depth security training when a security plan is required but has not been developed. | 172.702 | Included in penalty for no security plan. |
| 4. Failure to provide in-depth security training when a security plan is required and has been developed. | 172.702 | $3,100. |
| 5. Failure to create and maintain training records: | 172.704. | |
| a. More than 10 hazmat employees | | $1,000. |
| b. 10 hazmat employees or fewer | | $600. |
| C. Security Plans: | | |
| 1. Failure to develop a security plan; failure to adhere to security plan: | 172.800. | |
| a. Section 172.504 Table 1 materials | | $9,300. |
| b. Packing Group I | | $7,500. |
| c. Packing Group II | | $5,600. |
| d. Packing Group III | | $3,700. |
| 2. Incomplete security plan or incomplete adherence (one or more of four required elements missing). | | One-quarter (25 percent) of above for each element. |
| 3. Failure to update a security plan to reflect changing circumstances. | 172.802(b) | One-third (33 percent) of baseline for no plan. |
| 4. Failure to put security plan in writing; failure to make all copies identical. | 172.800(b) | One-third (33 percent) of baseline for no plan. |
| D. Notification to a Foreign Shipper: Failure to provide a foreign offeror or forwarding agent written information of HMR requirements applicable to a shipment of hazardous materials within the United States, at the place of entry into the United States: | 171.22(f). | |
| 1. Packing Group I and § 172.504 Table 1 materials | | $9,300.* |
| 2. Packing Group II | | $5,500.* |
| 3. Packing Group III | | $1,800.* |

* The baseline applied to the importer shall be equal to or less than the baseline applied to the foreign offeror or forwarding agent.

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| E. Special Permits and Approvals: | | |
| 1. Offering or transporting a hazardous material, or otherwise performing a function covered by a special permit or approval, without authorization: | 171.2. | |
| a. After the special permit or approval has expired | | $1,200 + $600 for each additional year. |
| b. After the special permit or approval has been terminated | | $5,000 to $25,000. |
| 2. Failure to comply with a provision of a special permit or approval (when no other baseline is applicable): | 171.2. | |
| a. That relates to safety | | $4,000 and up. |
| b. That does not relate to safety | | $500 and up. |
| 3. Failure to maintain a copy of the special permit in the transport vehicle or facility, when required by the terms of the special permit. | Special Permit | $1,000. |
| 4. Use an approval or approval symbol issued to another person | Approval, Various | $9,000. |
| **Offeror Requirements—All hazardous materials** | | |
| A. Undeclared Shipment: | 172.200, 172.300, 172.400, 172.500. | |
| 1. Offering for transportation a hazardous material without shipping papers, package markings, labels, and placards (where required): | | |
| a. Packing Group I and § 172.504 Table 1 materials | | $30,000 and up. |
| b. Packing Group II | | $20,000. |
| c. Packing Group III | | $17,500. |
| d. Consumer Commodity, ORM–D | | $5,000. |
| 2. Offering for transportation a hazardous material that is misclassified on the shipping paper, markings, labels, and placards (including improper treatment as consumer commodity, ORM–D): | | |
| a. Packing Group I and § 172.504 Table I materials | | $20,000. |
| b. Packing Group II | | $12,000. |
| c. Packing Group III | | $8,000. |
| 3. Offering for transportation a forbidden hazardous material: | | |
| a. Packing Group I and § 172.504 Table I materials | | $35,000. |
| b. Packing Group II | | $25,000. |
| c. Packing Group III | | $20,000. |
| 4. Offering for transportation a lithium battery, without shipping papers, package markings, labels, or placards (when required): | | |
| a. For air transport | | $40,000. |
| b. For ground transport | | $20,000. |
| B. Shipping Papers: | | |
| 1. Failure to provide a shipping paper for a shipment of hazardous materials or accepting hazardous materials for transportation without a shipping paper: | 172.201, 177.817(a). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $7,500. |
| b. Packing Group II | | $5,600. |
| c. Packing Group III | | $3,700. |
| 2. Failure to follow one or more of the three approved formats for listing hazardous materials and non-hazardous materials on a shipping paper. | 172.201(a)(1) | $1,500. |
| 3. Failure to retain shipping papers as required | 172.201(e) | $1,200. |
| 4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name: | 172.202. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,000. |
| b. Packing Group II | | $1,500. |
| c. Packing Group III | | $1,000. |
| 5. Failure to include a hazard class/division number in the shipping description: | 172.202. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,000. |
| b. Packing Group II | | $1,500. |
| c. Packing Group III | | $1,000. |
| 6. Failure to include an identification number in the shipping description: | 172.202. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,500. |
| b. Packing Group II | | $1,800. |
| c. Packing Group III | | $1,200. |
| 7. Using an incorrect hazard class: | 172.202. | |
| a. That does not affect compatibility requirements | | $1,000. |
| b. That affects compatibility requirements: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $7,500. |
| ii. Packing Group II | | $5,600. |
| iii. Packing Group III | | $3,700. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 8. Using an incorrect identification number: | 172.202. | |
| a. That does not change the response information | | $1,000. |
| b. That changes response information: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $7,500. |
| ii. Packing Group II | | $5,600. |
| iii. Packing Group III | | $3,700. |
| 9. Failure to include the Packing Group or using an incorrect Packing Group: | 172.202. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $1,700. |
| b. Packing Group II and III | | $1,300. |
| 10. Using a shipping description that includes additional unauthorized information (extra or incorrect words). | 172.202 | $1,000. |
| 11. Using a shipping description not in required sequence | 172.202 | $600. |
| 12. Failure to include the total quantity of hazardous material covered by a shipping description (including net explosive mass). | 172.202 | $600. |
| 13. Failure to include any of the following on a shipping paper, as required: Special permit number; ''Limited Quantity or ''Ltd Qty;'' ''RQ'' for a hazardous substance; technical name in parentheses for a listed generic or ''n.o.s.'' material; or marine pollutant. | 172.203(a), (b), (c)(2), (k), (l) | $600. |
| 14. Failure to indicate poison inhalation hazard on a shipping paper. | 172.203(m) | $2,500. |
| 15. Failure to include or sign the required shipper's certification on a shipping paper. | 172.204 | $1,000. |
| C. Emergency Response Information Requirements: | | |
| 1. Providing incorrect emergency response information with or on a shipping paper: | 172.602. | |
| a. No significant difference in response | | $1,000. |
| b. Significant difference in response: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $7,500. |
| ii. Packing Group II | | $5,600. |
| iii. Packing Group III | | $3,700. |
| 2. Failure to include an emergency response telephone number on a shipping paper. | 172.604 | $3,200. |
| 3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation; or listing the number in a manner that it is not readily identifiable or cannot be found easily and quickly (e.g., multiple telephone numbers); or failing to include the name, contract number, or other unique identifier of the person registered with the emergency response provider. | 172.604 | $1,600. |
| 4. Listing an emergency response telephone number on a shipping paper that causes emergency responders delay in obtaining emergency response information (e.g., listing a telephone number that not working, incorrect, or otherwise not capable of providing required information). | 172.604 | $3,200 to $5,200 |
| D. Package Marking Requirements: | | |
| 1. Failure to mark the proper shipping name and identification number on a package: | 172.301(a). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $6,000. |
| b. Packing Group II | | $4,500. |
| c. Packing Group III | | $3,000. |
| 2. Marking a package with an incorrect shipping name and identification number: | 172.301(a). | |
| a. That does not change the response information: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $3,700. |
| ii. Packing Group II | | $2,700. |
| iii. Packing Group III | | $2,200. |
| b. That changes the response information: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $9,500. |
| ii. Packing Group II | | $7,100. |
| iii. Packing Group III | | $4,700. |
| 3. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package: | 172.301(a). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,000. |
| b. Packing Group II | | $1,500. |
| c. Packing Group III | | $1,000. |
| 4. Failure to mark the identification number on a package: | 172.301(a). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,500. |
| b. Packing Group II | | $1,800. |
| c. Packing Group III | | $1,200. |
| 5. Marking a package with an incorrect identification number: | 172.301(a). | |
| a. That does not change the response information | | $1,000. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| b. That changes the response information: | | |
| i. Packing Group I and § 172.504 Table 1 materials | | $7,500. |
| ii. Packing Group II | | $5,600. |
| iii. Packing Group III | | $3,700. |
| 6. Failure to include the required technical name(s) in parentheses for a listed generic or "n.o.s." entry. | 172.301(c) | $600. |
| 7. Failure to mark "non-odorized" on a cylinder containing liquefied petroleum gas. | 172.301(f) | $2,000. |
| 8. Marking a package as containing hazardous material when it contains no hazardous material. | 172.303(a) | $1,000. |
| 9. Failure to locate required markings away from other markings that could reduce their effectiveness. | 172.304(a)(4) | $1,000. |
| 10. Failure to mark a package containing liquid hazardous materials with required orientation markings: | 172.312. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $4,000. |
| b. Packing Group II | | $3,500. |
| c. Packing Group III | | $3,000. |
| 11. Failure to mark "Biohazard on an infectious substance or "Inhalation Hazard" on a package containing a poison by inhalation hazard. | 172.313(a), 172.323 | $4,000. |
| 12. Failure to apply limited quantity marking or "RQ" marking on a non-bulk package containing a hazardous substance. | 172.315, 172.324(b) | $600. |
| 13. Listing the technical name of a select agent hazardous material when it should not be listed. | 172.301(b) | $1,600. |
| 14. Failure to apply a "Keep away from heat," marine pollutant, or elevated temperature ("HOT") marking. | 172.317, 172.322, 172.325 | $1,200. |
| 15. Failure to properly mark a bulk container | 172.331, 172.334, 172.336, 172.338. | $1,000. |
| E. Package Labeling Requirements: | | |
| 1. Failure to label a package or applying a label that represents a hazard other than the hazard presented by the hazardous material in the package. | 172.400 | $7,000. |
| 2. Placing a label on a package that does not contain a hazardous material. | 172.401(a) | $1,000. |
| 3. Failure to place a required subsidiary label on a package: | 172.402. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $3,100. |
| b. Packing Group II | | $1,800. |
| c. Packing Group III | | $600. |
| 4. Placing a label on a different surface of the package than, or away from, the proper shipping name. | 172.406(a) | $1,000. |
| 5. Placing an improper size label on a package | 172.407(c) | $1,000. |
| 6. Placing a label on a package that does not meet color specification requirements (depending on the variance). | 172.407(d) | $1,000. |
| 7. Failure to place a Cargo Aircraft Only label on a package intended for air transportation, when required. | 172.402(c) | $5,000. |
| 8. Failure to place a Cargo Aircraft Only label on a package containing a primary lithium battery or failure to mark a package containing a primary lithium battery as forbidden for transport on passenger aircraft: | 172.402(c), 172.102(c)(1) Special Provision 188, 189, 190. | |
| a. For air transport | | $10,000. |
| b. For ground transport | | $1,000. |
| 9. Failure to provide an appropriate class or division number on an explosive label. | 172.411 | $3,100. |
| F. Placarding Requirements: | | |
| 1. Improperly placarding a freight container or vehicle containing hazardous materials: | 172.504. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $1,200 to $11,200. |
| b. Packing Group II and III | | $1,000 to $9,000. |
| 2. Failure to placard a freight container or vehicle containing hazardous materials (no placard at all): | 172.504. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $12,000. |
| b. Packing Group II and III | | $8,500. |
| G. Packaging Requirements: | | |
| 1. Failure to comply with package testing requirements for small quantities, excepted quantities, de minimis, materials of trade, limited quantities, and ORM–D. | 173.4, 173.4a, 173.4b, 173.6, 173.156, 173.306. | $1,000 to $5,000. |
| 2. Offering a hazardous material for transportation in an unauthorized non-UN standard or non-specification packaging (includes failure to comply with the terms of a special permit authorizing use of a non-standard or non-specification packaging): | Various. | |
| a. Packing Group I, § 172.504 Table 1 materials, and Division 2.3 gases. | | $11,200. |
| b. Packing Group II and Divisions 2.1 and 2.2 gases | | $8,700. |
| c. Packing Group III | | $6,200. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 3. Offering a hazardous material for transportation in a package that was not retested as required: | Various. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $8,000. |
| b. Packing Group II | | $5,000. |
| c. Packing Group III | | $3,000. |
| 4. Offering a hazardous material for transportation in an improper package: | Various. | |
| a. When Packing Group I material is packaged in a Packing Group III package. | | $8,000. |
| b. When Packing Group I material is packaged in a Packing Group II package. | | $5,000. |
| c. When Packing Group II material is packaged in a Packing Group III package. | | $3,000. |
| 5. Offering a hazardous material for transportation in a packaging (including a packaging manufactured outside the United States) that is torn, damaged, has hazardous material present on the outside of the package, or is otherwise not suitable for shipment. | Various | $7,500. |
| 6. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing: | 178.601, Various. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $13,500. |
| b. Packing Group II | | $10,500. |
| c. Packing Group III | | $7,500. |
| 7. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking (including missing specification plates). | 173.32(d), 173.24(c) | $4,500. |
| 8. Failure to close a UN standard packaging in accordance with the closure instructions: | 173.22(a)(4). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $2,000 to $5,000. |
| b. Packing Group II | | $1,000 to $4,000. |
| c. Packing Group III | | $500 to $3,000. |
| 9. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation: | 173.24(b). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $16,500. |
| b. Packing Group II | | $11,200. |
| c. Packing Group III | | $7,500. |
| 10. Overfilling or underfilling a package so that the effectiveness is substantially reduced: | 173.24(b). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $11,200. |
| b. Packing Group II | | $7,500. |
| c. Packing Group III | | $3,700. |
| 11. Failure to ensure packaging is compatible with hazardous material lading. | 173.24(e) | $9,000 to $12,000. |
| 12. Failure to mark an overpack as required | 173.25(a)(4) | $3,700. |
| 13. Packaging incompatible materials in an overpack | 173.25(a)(5) | $9,300. |
| 14. Marking a package "overpack" when the inner packages do not meet the requirements of the HMR: | 173.25(a). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $15,000. |
| b. Packing Group II | | $10,000. |
| c. Packing Group III | | $7,000. |
| 15. Failure to comply with additional requirements for transportation by aircraft. | 173.27 | $1,000 to $10,000. |
| 16. Filling an IBC, portable tank, or cargo tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank. (Penalty amount depends on number of units and time out of test.). | 173.32(a), 173.33(a)(3), 180.352, 180.407, 180.605. | |
| a. Packing Group I and § 172.504 Table 1 materials: | | |
| i. All testing overdue | | $8,700. |
| ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue. | | $4,600. |
| b. Packing Group II: | | |
| i. All testing overdue | | $6,600. |
| ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue. | | $3,300. |
| c. Packing Group III: | | |
| i. All testing overdue | | $4,600. |
| ii. Only periodic (5 year) tests overdue or only intermediate periodic (2.5 year) tests overdue. | | $2,300. |
| 17. Manifolding cylinders without conforming to manifolding requirements. | 173.301(g) | $3,700 and up. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 18. Failure to ensure a cargo tank motor vehicle in metered delivery service has an operational off-truck remote shut-off activation device. | 173.315(n)(3) | $2,500. |
| 19. Offering a hazardous material in a cargo tank motor vehicle when the material does not meet compatibility requirements with the tank or other lading or residue. | 173.33 | $15,000. |
| 20. Failure to provide the required outage in a portable tank that results in a release of hazardous materials:. | 173.32(f)(6). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $15,000. |
| b. Packing Group II | | $11,200. |
| c. Packing Group III | | $7,500. |
| **Offeror Requirements—Specific hazardous materials** | | |
| A. Cigarette Lighters: | | |
| 1. Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel. | 173.21(i) | $7,500. |
| 2. Failure to include the cigarette lighter test report identifier on the shipping paper. | 173.308(d)(1) | $1,000. |
| 3. Failure to mark the approval number on the package. | 173.308(d)(2) | $1,000. |
| B. Class 1—Explosives: | | |
| 1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description. | 172.320 | $1,000. |
| 2. Offering an unapproved explosive for transportation: | 173.54, 173.56(b). | |
| a. Division 1.4 fireworks meeting the chemistry requirements of APA Standard 87–1. | | $5,000. |
| b. Division 1.3 fireworks meeting the chemistry requirements of APA Standard 87–1. | | $7,500. |
| c. All other explosives (including forbidden) | | $12,500 and up. |
| 3. Offering an unapproved explosive for transportation that minimally deviates from an approved design in a manner that does not impact safety: | 173.54, 173.56(b). | |
| a. Division 1.4 | | $3,000. |
| b. Division 1.3 | | $4,000. |
| c. All other explosives | | $6,000. |
| 4. Offering a leaking or damaged package of explosives for transportation: | 173.54(c). | |
| a. Division 1.3 and 1.4 | | $12,500. |
| b. All other explosives | | $16,500. |
| 5. Offering a Class 1 material that is fitted with its own means of ignition or initiation, without providing protection from accidental actuation. | 173.60(b)(5) | $15,000. |
| 6. Packaging explosives in the same outer packaging with other materials. | 173.61 | $9,300. |
| 7. Transporting a detonator on the same vehicle as incompatible materials using the approved method listed in 177.835(g)(3) without meeting the requirements of IME Standard 22. | 177.835(g)(3) | $10,000. |
| C. Class 7—Radioactive Materials: | | |
| 1. Failure to include required additional entries for radioactive material on a shipping paper, or providing incorrect information for these additional entries. | 172.203(d) | $2,000 to $5,000. |
| 2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds. | 172.310(a) | $1,000. |
| 3. Failure to mark each package with the words ''Type A'' or ''Type B,'' as appropriate. | 172.310(b) | $3,700. |
| 4. Placing a label on Class 7 material that understates the proper label category. | 172.403 | $6,200. |
| 5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index. | 172.403(g) | $2,000 to $5,000. |
| 6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material. | 173.410 | $6,200. |
| 7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation. | 173.411 | $6,200. |
| 8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material. | 173.412(a) | $5,000. |
| 9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material. | 173.412(b)–(i) | $6,200. |
| 10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material. | 173.412(j)–(l) | $11,200. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data: | 173.415(a), 173.461. | |
| a. Tests and evaluation not performed | | $13,500. |
| b. Test performed but complete records not maintained | | $2,500 to $6,200. |
| 12. Offering any Type B, Type B(U), or Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable. | 173.416 | $16,500. |
| 13. Offering a Type B packaging without registering as a party to the NRC approval certificate: | 173.471(a). | |
| a. Never obtained approval | | $3,700. |
| b. Holding an expired certificate | | $1,200. |
| 14. Failure to meet one or more of the special requirements for a package used to ship more than 0.1 kg of uranium hexafluoride. | 173.420 | $13,500. |
| 15. Offering Class 7 materials for transportation as a limited quantity without meeting the requirements for a limited quantity. | 173.421(a) | $8,000. |
| 16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard. | 173.423(a) | $600 to $3,100. |
| 17. Offering Class 7 materials for transportation under exceptions for radioactive instruments and articles while failing to meet the applicable requirements. | 173.424 | $6,200 to $12,500. |
| 18. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) while failing to comply with applicable transport requirements (including, an external dose rate that exceeds an external radiation level of 10 mSv/h at 3 meters from the unshielded material). | 173.427 | $7,500 to $12,500. |
| 19. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls. | 173.427(a)(6) | $1,200. |
| 20. Offering in excess of a Type A quantity of a Class 7 material in a Type A packaging. | 173.431 | $15,000. |
| 21. Offering a package that exceeds the permitted radiation level or transport index. | 173.441 | $12,500. |
| 22. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination. | 173.443 | $6,200 and up. |
| 23. Storing packages of radioactive material in a group with a total criticality safety index of more than 50. | 173.447(a) | $6,200 and up. |
| 24. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0. | 173.448(e) | $6,200 and up. |
| 25. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported. | 173.471(d) | $3,700. |
| 26. Offering or exporting special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority, as required. | 173.476(a), (b) | $3,700. |
| 27. Shipping a fissile material as fissile-exempt without meeting one of the exemption requirements or otherwise not complying with fissile material requirements. | 173.417, 173.453, 173.457 | $12,500. |
| 28. Offering Class 7 fissile materials while failing to have a DOT Competent Authority Certificate or NRC Certificate of Compliance, as required, or failing to meet the requirements of the applicable Certificate. | 173.417 | $1,000 to $12,500. |
| D. Class 2—Compressed Gases in Cylinders: | | |
| 1. Filling and offering a cylinder with compressed gas when the cylinder is out of test or after its authorized service life: | 173.301(a)(6), (a)(7). | |
| a. Table 1 and compressed gas in solution | | $10,000 to $15,000. |
| b. Division 2.1 gases | | $7,500 to $10,000. |
| c. Division 2.2 gases | | $5,000 to $7,500. |
| 2. Overfilling cylinders: | Various. | |
| a. Division 2.3 gases | | $15,000. |
| b. Division 2.1 gases | | $10,000. |
| c. Division 2.2 gases | | $7,500. |
| d. Aerosols, limited quantities, consumer commodities | | $5,000. |
| 3. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days. | 173.303(d) | $6,200. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 4. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 131 °F, without evidence of leakage, distortion, or other defect. | 173.306(a)(3) | $1,800 to $5,000. |
| 5. Offering a limited quantity of a compressed gas in a metal container intended to expel a non-poisonous material, while failing to subject the filled container to a hot water bath, as required. | 173.306(a)(3)(v) | $5,000. |
| 6. Offering liquefied petroleum gas for permanent installation on consumer premises when the requirements are not met. | 173.315(j) | $7,500 to $10,000. |
| E. Oxygen Generators Offered by Air: | | |
| 1. Offering an unapproved oxygen generator for transportation | 173.168 | $25,000. |
| 2. Offering an oxygen generator for transportation without installing a means of preventing actuation, as required. | 173.168 | $12,500 to $25,000. |
| 3. Offering an oxygen generator as spent when the ignition and chemical contents were still present. | 172.102(c)(1) Special Provision 61 | $35,000. |
| F. Batteries: | 173.159, 173.185, 173.21(c). | |
| 1. Offering lithium batteries in transportation that have not been tested: | | |
| a. Ground transport | | $15,000. |
| b. Air transport | | $30,000. |
| 2. Offering lithium batteries in transportation that have been assembled from tested cells, but have not been tested. | | $5,000 + 25 percent increase for each additional design. |
| 3. Failure to create records of design testing | | $2,500 to $9,300. |
| 4. Offering lithium batteries in transportation that have not been protected against short circuit. | | $15,000. |
| 5. Offering lithium batteries in transportation in unauthorized packages. | | $12,500. |
| 6. Offering lead acid batteries in transportation in unauthorized packages. | | $10,000. |
| 7. Offering lithium batteries in transportation on passenger aircraft or misclassifying them for air transport. | | $30,000. |
| 8. Failure to prepare batteries so as to prevent damage in transit | | $6,000. |
| **Manufacturing, Reconditioning, Retesting Requirements** | | |
| A. Activities Subject to Approval: | | |
| 1. Failure to report in writing a change in name, address, ownership, test equipment, management, or test personnel. | 171.2(c), Approval Letter | $700 to $1,500. |
| 2. Failure by an independent inspection agency of specification cylinders to satisfy all inspector duties, including inspecting materials, and verifying materials of construction and cylinders comply with applicable specifications. | 178.35(c)(1), (2), (3) | $5,000 to $16,500. |
| 3. Failure to properly complete or retain inspector's report for specification packages. | 178.25(c)(4), Various | $4,000. |
| 4. Failure to have a cylinder manufacturing registration number/symbol, when required. | Various | $2,500. |
| B. Packaging Manufacturers (General): | | |
| 1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions. | 178.2(c) | $3,100. |
| 2. Failure to comply with specified construction requirements for non-bulk packagings: | 178.504 to 178.523. | |
| a. Packing Group I and § 172.504 Table 1 materials | | $12,000. |
| b. Packing Group II | | $8,000. |
| c. Packing Group III | | $4,000. |
| 3. Fail testing: Failure to ensure a packaging certified as meeting the UN standard is capable of passing the required performance testing (depending on size of package): | 178.601(b), 178.609, Part 178 subparts O, Q. | |
| a. Infectious substances | | $16,500. |
| b. Packing Group I and § 172.504 Table 1 materials | | $13,500 to $16,500. |
| c. Packing Group II | | $10,500 to $13,500. |
| d. Packing Group III | | $7,500 to $10,500. |
| 4. No testing: Certifying a packaging as meeting a UN standard when design qualification testing was not performed (depending on size of package): | 178.601(d), 178.609, Part 178 subparts O, Q. | |
| a. Infectious substances | | $16,500. |
| a. Packing Group I and § 172.504 table 1 materials | | $13,500 to $16,500. |
| b. Packing Group II | | $10,500 to $13,500. |
| c. Packing Group III | | $7,500 to $10,500. |
| 5. Failure to conduct periodic testing on UN standard packaging (depending on length of time, Packing Group, and size of package). | 178.601(e), Part 178 subparts O, Q. | $2,500 to $16,500. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 6. Improper testing: Failure to properly conduct testing for UN standard packaging (e.g., testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test) (depending on size of package): | | |
| a. Design qualification testing: | 178.601(d), 178.609, Part 178 subparts O, Q. | |
| i. Infectious substances | | $13,500. |
| ii. Packing Group I | | $10,500 to $13,500. |
| iii. Packing Group II | | $7,500 to $10,500. |
| iv. Packing Group III | | $2,500 to $7,500. |
| b. Periodic testing: | 178.601(e), 178.609. | |
| i. Infectious substances | | $10,500. |
| ii. Packing Group I | | $7,000 to $10,500. |
| iii. Packing Group II | | $4,000 to $7,000. |
| iv. Packing Group III | | $600 to $4,000. |
| 7. Failure to keep complete and accurate testing records: | 178.601(l). | |
| a. No records kept | | $5,000. |
| b. Incomplete or inaccurate records | | $1,200 to $3,700. |
| 8. Improper marking of UN certification | 178.503 | $600 per item. |
| C. Drum Manufacturers & Reconditioners: | | |
| 1. Failure to properly conduct a production leakproofness test on a new or reconditioned drum: | 178.604(b), (d), 173.28(b)(2)(i). | |
| a. Improper testing: | | |
| i. Packing Group I | | $3,000. |
| ii. Packing Group II | | $2,500. |
| iii. Packing Group III | | $2,000. |
| b. No testing performed: | | |
| i. Packing Group I | | $6,200. |
| ii. Packing Group II | | $5,000. |
| iii. Packing Group III | | $3,700. |
| 2. Marking incorrect tester information on a reused drum: | 173.28(b)(2)(ii). | |
| a. Incorrect information | | $1,000. |
| b. Unauthorized use of another's information | | $9,000. |
| 3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard.. | 173.28(c) | $7,500 to $13,500. |
| 4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not been altered. | 173.28(d) | $600 |
| D. IBC and Portable Tank Requalification: | | |
| 1. Failure to properly test and inspect IBCs or portable tanks | 180.352, 180.603. | |
| a. Packing Group I | | $10,000. |
| b. Packing Group II | | $7,500. |
| c. Packing Group III | | $5,000. |
| 2. Failure to properly mark an IBC or portable tank with the most current retest and/or inspection information. | 180.352(e), 178.703(b), 180.605(k) | $600 per item. |
| 3. Failure to keep complete and accurate records of IBC or portable tank retest and reinspection: | 180.352(f), 180.605(l). | |
| a. No records kept | | $5,000. |
| b. Incomplete or inaccurate records | | $1,200 to $3,700. |
| 4. Failure to make inspection and test records available to a DOT representative upon request. | 180.352(g), 49 U.S.C. 5121(b)(2) | $1,200. |
| 5. Failure to perform tests (internal visual, leakproofness) on an IBC as part of a repair. | 180.352(d) | $3,700 to $6,200. |
| 6. Failure to perform routine maintenance on an IBC | 180.350(c) | $2,500. |
| E. Cylinder Manufacturers & Rebuilders: | | |
| 1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency. | 178.35 | $10,000 to $25,000. |
| 2. Failure to mark a registration number/symbol on a cylinder, when required. | 178.35, Various | $1,000. |
| 3. Failure to mark the date of manufacture or lot number on a DOT–39 cylinder. | 178.65(i) | $3,700. |
| 4. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S., without an approval. | 107.807, 178.35 | $6,200. |
| 5. Failure to comply with defect and attachment requirements, safety device requirements, or marking requirements. | 178.35(d), (e), (f) | $5,000. |
| 6. Failure to meet wall thickness requirements | Various | $9,300 to $18,700. |
| 7. Failure to heat treat cylinders prior to testing | Various | $6,200 to $18,700. |
| 8. Failure to conduct a complete visual internal examination | Various | $3,100 to $7,700. |
| 9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment. | Various | $3,100 to $7,700. |
| 10. Failure to conduct a flattening test | Various | $9,300 to $18,700. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 11. Failure to conduct a burst test on a DOT–2P, 2Q, 2S, or 39 cylinder. | 178.33–8, 178.33a–8, 178.33b–8, 178.65(f)(2). | $6,200 to $18,700. |
| 12. Failure to maintain required inspector's reports: | 178.35, Various. | |
| a. No reports at all | | $5,000. |
| b. Incomplete or inaccurate reports | | $1,200 to $3,700. |
| 13. Failure to complete or retain manufacturer's reports | 178.35(g) | $6,200. |
| 14. Representing a DOT–4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator. | 180.211(a) | $10,000 to $25,000. |
| F. Cargo Tank Motor Vehicles: | | |
| 1. Failure to maintain complete cargo tank test reports, as required: | 180.417(b), (c). | |
| a. No records | | $5,000. |
| b. Incomplete records | | $1,200 to $3,700. |
| 2. Failure to have a cargo tank tested or inspected (e.g., visual, thickness, pressure, leakproofness). | 180.407(c) | $8,000 and up; increase by 25 percent for each additional. |
| 3. Failure to mark a cargo tank with test and inspection markings | 180.415 | $600 each item. |
| 4. Failure to retain a cargo tank's data report and Certificates or design certification. | 178.320(b), 178.337–18, 178.338–19, 178.345–15. | $6,200. |
| 5. Failure to mark a special permit number on a cargo tank. | 172.301(c) | $1,800. |
| 6. Constructing a cargo tank or cargo tank motor vehicle not in accordance with a special permit or design certification. | 178.320(b), Special Permit | $13,500. |
| 7. Failure to mark manhole assemblies on a cargo tank motor vehicle manufactured after October 1, 2004. | 178.345–5(e) | $4,500. |
| 8. Failure to apply specification plate and name plate: | 178.337–17, 178.338–18, 178.345–14. | |
| a. No marking | | $4,500. |
| b. Incomplete marking | | $600 per item. |
| 9. Failure to conduct monthly inspections and tests of discharge system in cargo tanks. | 180.416(d) | $2,500. |
| G. Cylinder Requalification: | | |
| 1. Certifying or marking as retested a non-specification cylinder | 180.205(a) | $1,000. |
| 2. Failure to have retester's identification number (RIN) | 180.205(b) | $5,000. |
| 3. Failure to have current authority due to failure to renew a RIN | 180.205(b) | $2,500 + $600 each additional year. |
| 4. Marking a RIN before successfully completing a hydrostatic retest. | 180.205(b) | $1,000. |
| 5. Representing, marking, or certifying a cylinder as meeting the requirements of a special permit when the cylinder was not maintained or retested in accordance with the special permit. | 171.2(c), (e), 180.205(c), Special Permit. | $2,500 to $7,500. |
| 6. Failure to conduct a complete visual external and internal examination. | 180.205(f) | $2,600 to $6,500. |
| 7. Performing hydrostatic retesting without confirming the accuracy of the test equipment or failing to conduct hydrostatic testing. | 180.205(g)(1), 180.205(g)(3) | $2,600 to $6,500. |
| 8. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion. | 180.205(g)(5) | $3,800. |
| 9. Failure to perform a second retest, after equipment failure, at a pressure increased by the lesser of 10 percent or 100 psi (includes exceeding 90percent of test pressure prior to conducting a retest). | 180.205(g)(5) | $3,800. |
| 10. Failure to condemn a cylinder when required (e.g., permanent expansion exceeds 10 percent of total expansion [5percent for certain special permit cylinders], internal or external corrosion, denting, bulging, evidence of rough usage). | 180.205(i) | $7,500 to $13,500. |
| 11. Failure to properly mark a condemned cylinder or render it incapable of holding pressure. | 180.205(i)(2) | $1,000 to $5,000. |
| 12. Failure to notify the cylinder owner in writing when a cylinder has been condemned. | 180.205(i)(2) | $1,200. |
| 13. Failure to perform hydrostatic retesting at the minimum specified test pressure. | 180.209(a) | $2,600 to $6,500. |
| 14. Marking a star on a cylinder that does not qualify for that mark. | 180.209(b) | $2,500 to $5,000. |
| 15. Marking a "+" sign on a cylinder without determining the average or minimum wall stress by calculation or reference to CGA Pamphlet C–5. | 173.302a(b) | $2,500 to $5,000. |
| 16. Marking a cylinder in or on the sidewall when not permitted by the applicable specification. | 180.213(b) | $7,500 to $13,500. |
| 17. Failure to maintain legible markings on a cylinder | 180.213(b)(1) | $1,000. |
| 18. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp. | 180.213(c)(2) | $7,500 to $13,500. |
| 19. Improper marking of the RIN or retest date on a cylinder | 180.213(d) | $1,000. |

| Violation description | Section or cite | Baseline assessment |
|---|---|---|
| 20. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised. | Special Permit | $7,500 to $13,500. |
| 21. Failure to comply with eddy current examination requirements for DOT 3AL cylinders manufactured of aluminum alloy 6351–T6, when applicable. | Appendix C to Part 180 | $2,600 to $6,500. |
| 22. Failure to maintain current copies of the HMR, DOT special permits, and CGA Pamphlets applicable to inspection, retesting, and marking activities. | 180.215(a) | $700 to $1,500. |
| 23. Failure to keep complete and accurate records of cylinder re-inspection and retest: | 180.215(b). | |
| a. No records kept | | $5,000. |
| b. Incomplete or inaccurate records | | $1,200 to $3,700. |
| **Carrier Requirements** | | |
| A. Incident Notification: | | |
| 1. Failure to provide immediate telephone/online notification of a reportable hazardous materials incident reportable under 171.15(b). | 171.15 | $6,000. |
| 2. Failure to file a written hazardous material incident report within 30 days of discovering a hazardous materials incident reportable under 171.15(b) or 171.16(a). | 171.16 | $4,000. |
| 3. Failure to include all required information in hazardous materials incident notice or report or failure to update report. | 171.15, 171.16 | $1,000. |
| B. Shipping Papers: | | |
| 1. Failure to retain shipping papers for 1 year after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier. | 174.24(b), 175.33(c), 176.24(b), 177.817(f). | $1,200. |
| C. Stowage/Attendance/Transportation Requirements: | | |
| 1. Transporting packages of hazardous material that have not been secured against movement. | Various | $3,700 and up. |
| 2. Failure to properly segregate hazardous materials | Various | $9,300 and up. |
| 3. Failure to remove a package containing hazardous materials from a motor vehicle before discharge of its contents: | 177.834(h). | |
| a. Packing Group I and § 172.504 Table 1 materials | | $5,000. |
| b. Packing Group II | | $3,000. |
| c. Packing Group III | | $1,000. |
| 4. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage. | 177.835(i) | $6,500 and up. |
| 5. Failure to attend Class 1 explosive materials during transportation. | 177.835(k) | $3,000. |
| 6. Transporting railway track torpedoes outside of flagging kits, in violation of DOT–E 7991. | 171.2(b), (e) | $8,700. |
| 7. Failure to carry a hazmat registration letter or number in the transport vehicle. | 107.620(b) | $1,000. |
| 8. Transporting Class 7 (radioactive) material having a total transport index greater than 50. | 177.842(a) | $6,200 and up. |
| 9. Transporting Class 7 (radioactive) material without maintaining the required separation distance. | 177.842(b) | $6,200 and up. |
| 10. Failure to comply with radiation survey requirements of a special permit that authorizes the transportation of Class 7 (radioactive) material having a total transportation index exceeding 50. | 171.2(b), (e), Special Permit | $6,200 and up. |

The baseline penalty amounts in Part II are used as a starting amount or range appropriate for the normal or typical nature, extent, circumstances, and gravity of the probable violations frequently cited in enforcement reports. PHMSA must also consider any additional factors, as provided in 49 U.S.C. 5123(c) and 49 CFR 107.331, including the nature, circumstances, extent and gravity of a violation, the degree of culpability and compliance history of the respondent, the financial impact of the penalty on the respondent, and other matters as justice requires. Consequently, at each stage of the administrative enforcement process, up to and including issuance of a final order or decision on appeal, PHMSA can adjust the baseline amount in light of the specific facts and circumstances of each case.

As part of this analysis, PHMSA reviews the factors outlined in the next section, *Miscellaneous Factors Affecting Penalty Amounts,* the safety implications of the violation, the pervasiveness of the violation, and all other relevant information. PHMSA considers not only what happened as a result of the violation, but also what could have happened as a result of continued violation of the regulations. As a general matter, one or more specific instances of a violation are presumed to reflect a respondent's general manner of operations, rather than isolated occurrences.

PHMSA may draw factors relevant to the statutory considerations from the initial information gathered by PHMSA's Office of Hazardous Materials Safety Field Operations, the respondent in response to an exit briefing, ticket, or Notice of Probable Violation (NOPV), or information otherwise available to us. We will generally apply the specific statutory factors that are outlined in

the next section, *Miscellaneous Factors Affecting Penalty Amounts,* in the following order:

1. Select the appropriate penalty amount within a specific baseline or range, with appropriate increases or decreases depending on the packing group or material involved and other information regarding the frequency or duration of the violation, the culpability of the respondent, and the actual or potential consequences of the violation.

2. Apply decreases for a reshipper or carrier that reasonably relied on an offeror's non-compliant preparation of a hazardous materials shipment.

3. Apply increases for multiple counts of the same violation.

4. Apply increases for prior violations of the HMR within the past six years.

5. Apply decreases for corrective actions.

6. Apply decreases for respondent's inability to pay or adverse effect on its ability to continue in business.

After each adjustment listed above, PHMSA will use the new modified baseline to calculate each subsequent adjustment. PHMSA will apply adjustments separately to each individual violation. All penalty assessments will be subject to additional adjustments as appropriate to reflect other matters as justice requires.

*A. Respondents That Reship*

A person who either receives hazardous materials from another company and reships them (reshipper), or accepts a hazardous material for transportation, and transports that material (carrier), is responsible for ensuring that the shipment complies in all respects with Federal hazardous materials transportation law. In both cases, the reshipper or carrier independently may be subject to enforcement action if the shipment does not comply.

Depending on all the circumstances, however, the person who originally prepared the shipment and placed it into transportation may have greater culpability for the noncompliance than the reshipper or carrier who reasonably relies on the shipment as received and does not open or alter the package before the shipment continues in transportation. PHMSA will consider the specific knowledge and expertise of all parties, as well as which party is responsible for compliance under the regulations, when evaluating the culpability of a reshipper or carrier. PHMSA recognizes that a reshipper or carrier may have reasonably relied upon information from the original shipper and may reduce the applicable baseline penalty amount up to 25 percent.

*B. Penalty Increases for Multiple Counts*

A main objective of PHMSA's enforcement program is to obtain compliance with the HMR and the correction of violations which, in many cases, have been part of a company's regular course of business. As such, there may be multiple instances of the same violation. Examples include a company shipping various hazardous materials in the same unauthorized packaging, shipping the same hazardous material in more than one type of unauthorized packaging, shipping hazardous materials in one or more packagings with the same marking errors, or using shipping papers with multiple errors.

Under 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations pertaining to packaging manufacture or qualification) is subject to a civil penalty up to $75,000 or $175,000 for a violation occurring on or after October 1, 2012. As such, PHMSA generally will treat multiple occurrences that violate a single regulatory provision as separate violations and assess the applicable baseline penalty for each distinct occurrence of the violation. PHMSA will generally consider multiple shipments or, in the case of package testers, multiple package designs, to be multiple occurrences; and each shipment or package design may constitute a separate violation.

PHMSA, however, will exercise its discretion in each case to determine the appropriateness of combining into a single violation what could otherwise be alleged as separate violations and applying a single penalty for multiple counts or days of a violation, increased by 25 percent for each additional instance, as directed by 49 U.S.C. 5123(c). For example, PHMSA may treat a single shipment containing three items or packages that violate the same regulatory provision as a single violation and apply a single baseline penalty with a 50 percent increase for the two additional items or packages; and PHMSA may treat minor variations in a package design for a package tester as a single violation and apply a single baseline penalty with a 25 percent increase for each additional variation in design.

When aggravating circumstances exist for a particular violation, PHMSA may handle multiple instances of a single regulatory violation separately, each meriting a separate baseline or increase the civil penalty by 25 percent for each additional instance. Aggravating factors may include increased safety risks, continued violation after receiving notice, or separate and distinct acts. For example, if the multiple occurrences each require their own distinct action, then PHMSA may count each violation separately (e.g., failure to obtain approvals for separate fireworks devices).

*C. Penalty Increases for Prior Violations*

The baseline penalty in the List of Frequently Cited Violations assumes an absence of prior violations. If a respondent has prior violations of the HMR, generally, PHMSA will increase a proposed penalty.

When setting a civil penalty, PHMSA will review the respondent's compliance history and determine if there are any finally-adjudicated violations of the HMR initiated within the previous six years. Only cases or tickets that have been finally-adjudicated will be considered (i.e., the ticket has been paid, a final order has been issued, or all appeal remedies have been exhausted or expired). PHMSA will include prior violations that were initiated within six years of the present case; a case or ticket will be considered to have been initiated on the date of the exit briefing for both the prior case and the present case. If multiple cases are combined into a single Notice of Probable Violation or ticket, the oldest exit briefing will be used to determine the six-year period. If a situation arises where no exit briefing is issued, the date of the Notice of Probable Violation or Ticket will be used to determine the six-year period. PHMSA may consider prior violations of the Hazardous Materials Regulations from other DOT Operating Administrations.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25 percent increase over the pre-mitigation recommended baseline penalty.

2. For each prior ticket—10 percent increase over the pre-mitigation recommended baseline penalty.

3. If a respondent is cited for operating under an expired special permit and previously operated under an expired special permit (as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the civil penalty 100 percent.

4. If a respondent is cited for the exact same violation that it has been previously cited for within the six-year period (in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket), PHMSA will increase the baseline for that violation by 100 percent. This increase will apply only when the present violation is identical to the previous violation and applies only to the specific violation that has recurred.

5. A baseline proposed penalty (both for each individual violation and the combined total) will not be increased more than 100 percent on the basis of prior violations.

*D. Corrective Action*

PHMSA may lower a proposed penalty when a respondent's documented corrective action has fixed an alleged violation. Corrective action should demonstrate not only that the specific deficiency is corrected but also that any systemic corrections have been addressed to prevent recurrence of the violation.

The two primary factors that determine the reduction amount are the extent and timing of the corrective action. In other words, PHMSA will determine the amount of mitigation based on how much corrective action a respondent completes and how soon after the exit briefing it performs corrective action. Comprehensive systemic action to prevent future violations may warrant greater mitigation than actions that simply target violations identified during the inspection. Actions taken immediately (within the 30 calendar day period that respondents have to respond to an exit briefing, or upon approval of Field Operations) may warrant greater mitigation than actions that are not taken promptly.

PHMSA may consider a respondent's corrective action to assess mitigation at various stages in the enforcement process, including: (1) AFTEr an inspection and before an NOPV is issued; (2) on receipt of an NOPV; or (3) after receipt of an NOPV. In order to reduce a civil penalty for corrective action, PHMSA must receive satisfactory

documentation that demonstrates the corrective action was completed. If a corrective action is of a type that cannot be documented (e.g., no longer using a particular packaging), then a respondent may provide a signed affidavit describing the action it took. The affidavit must begin with the affirmative oath ''I hereby affirm under the penalties of perjury that the below statements are true and correct to the best of my knowledge, information and belief,'' in accordance with 28 U.S.C. 1746.

Generally, corrective action credit may not exceed 25 percent. Mitigation is applied to individual violations and fact patterns but should not be considered to be automatic reduction. Thus, in a case with two violations, if corrective action for the first violation is more extensive than for the second, the penalty for the first will be mitigated more than that for the second. If a respondent has previously committed the same violation, however, as determined in a finally-adjudicated civil, criminal, or administrative enforcement case or a ticket, PHMSA will not apply any reduction for corrective action.

In determining the appropriate civil penalty reduction, PHMSA will consider the extent to which the respondent corrected the violation and any risks or harms it created, the respondent's actions to prevent the violation from recurring, improvements to overall company practices to address a widespread compliance issue, and how quickly the corrective action was performed. In general, PHMSA will apply the following reductions for corrective action, subject to the facts and circumstances of individual cases and respondents. If a respondent has given full documentation of timely corrective action and PHMSA does not believe that anything else can be done to correct the violation or improve overall company practices, we will generally reduce the civil penalty by no more than 25 percent. As noted above, a 25 percent reduction is not automatic. We will reduce the penalty up to 20 percent when a respondent promptly and completely corrected the cited violation and has taken substantial steps toward comprehensive improvements. PHMSA will generally apply a reduction up to 15 percent when a respondent has made substantial and timely progress toward correcting the specific violation as well as overall company practices, but additional actions are needed. A reduction up to 10 percent is appropriate when a respondent has taken significant steps toward addressing the violation, but minimal or no steps toward correcting broader company policies to prevent future violations. PHMSA may reduce a penalty up to 5 percent when a respondent made untimely or minimal efforts toward correcting the violation.

*E. Financial Considerations*

PHMSA may mitigate a proposed penalty when a respondent documents that the penalty would either (1) exceed an amount that the respondent is able to pay, or (2) have an adverse effect on the respondent's ability to continue in business. These criteria relate to a respondent's entire business, and not just the product line or part of its operations involved in a violation. PHMSA may apply this mitigation by reducing the civil penalty or instituting a payment plan.

PHMSA will only mitigate a civil penalty based on financial considerations when a respondent supplies financial documentation demonstrating one of the factors above. A respondent may submit documentation of financial hardship at any stage to receive mitigation or an installment payment plan. Documentation includes tax records, a current balance sheet, profit and loss statements, and any other relevant records. Evidence of a respondent's financial condition is used only to decrease a penalty, and not to increase it.

In evaluating the financial impact of a penalty on a respondent, PHMSA will consider all relevant information on a case-by-case basis. Although PHMSA will determine financial hardship and appropriate penalty adjustments on an individual basis, in general, we will consider the following factors.

1. The overall financial size of the respondent's business and information on the respondent's balance sheet, including the current ratio (current assets to current liabilities), the nature of current assets, and net worth (total assets minus total liabilities).

2. A current ratio close to or below 1.0 may suggest that the company would have difficulty in paying a large penalty or in paying it in a single lump sum.

3. A small amount of cash on hand (representing limited liquidity), even with substantial other current assets (such as accounts receivable or inventory), may suggest a company would have difficulty in paying a penalty in a single lump sum.

4. A small or negative net worth may suggest a company would have difficulty in paying a penalty in a single lump sum. Notwithstanding, many respondents have paid substantial civil penalties in installments even though net worth was negative. For this reason, negative net worth alone does not always warrant reduction of a proposed penalty or even, in the absence of factors discussed above, a payment plan.

When PHMSA determines that a proposed penalty poses a significant financial hardship, we may reduce the proposed penalty and/or implement an installment payment plan. The appropriateness of these options will depend on the circumstances of the case.

When an installment payment plan is appropriate, the length of the payment plan should be as short as possible, but may be adjusted as necessary. PHMSA will not usually exceed six months for a payment plan. In unusual circumstances, PHMSA may extend the period of a payment plan. For example, the duration of a payment plan may reflect fluctuations in a company's income if its business is seasonal or if the company has documented specific reasons for current non-liquidity.

Issued in Washington, DC, on September 25, 2013 under authority delegated in 49 CFR § 1.97.

**Cynthia L. Quarterman,**

*Administrator, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2013–23887 Filed 10–1–13; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

## Pipeline and Hazardous Materials Safety Administration

## 49 CFR Parts 107, 130, 171, 172, 173, 174, 177, 178, 179, and 180

**RIN 2137–AF03**

**[Docket No. PHMSA–2013–0158 (HM–244F)]**

## Hazardous Materials: Minor Editorial Corrections and Clarifications (RRR)

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations (HMR). The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

**DATES:** *Effective date:* October 1, 2013. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of January 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Neal Suchak, Standards and Rulemaking Division, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Section-by-Section Review
III. Regulatory Analyses and Notices
A. Statutory/Legal Authority for the Rulemaking
B. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
C. Executive Order 13132
D. Executive Order 13175
E. Regulatory Flexibility Act, Executive Order 13272 and DOT Policies and Procedures
F. Executive Order 13563 Improving Regulation and Regulatory Review
G. Unfunded Mandates Reform Act of 1995
H. Paperwork Reduction Act
I. Environmental Impact Analysis
J. Regulation Identifier Number (RIN)
K. Privacy Act