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**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 386**

**Docket Number: [FMCSA-2016-0128]**

**RIN 2126-AB93**

**Federal Civil Penalties Inflation Adjustment of 2015**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Interim final rule.

**SUMMARY:** FMCSA amends the civil penalties listed in its regulations to ensure that the civil penalties assessed or enforced by the Agency reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), FMCSA is required to promulgate a catch-up adjustment through an interim final rule. Pursuant to the Administrative Procedure Act, FMCSA finds that good cause exists for immediate implementation of this interim final rule because prior notice and comment are unnecessary, per the specific provisions of the 2015 Act.

**DATES:** This interim rule is effective on August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. LaTonya Mimms, Enforcement Division, by email at [civilpenalty@dot.gov](mailto:civilpenalty@dot.gov) or phone at 202-366-0991. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

## **I. Executive Summary**

### **A. Purpose and Summary of the Major Provisions**

This interim final rule (IFR) adjusts the amount of FMCSA’s civil penalties to account for inflation as directed by the 2015 Act. The specific inflation adjustment methodology is described later in this document.

### **B. Benefits and Costs**

The changes imposed by this IFR affect the civil penalty amounts, which are considered by the Office of Management and Budget (OMB) Circular A-4, Regulatory Analysis, as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition they are not considered in the monetization of societal costs and benefits of rulemakings. Congress stated in the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) that increasing penalties over time will “maintain the deterrent effect of civil monetary penalties and promote compliance with the law.”<sup>1</sup> Therefore, with this continued deterrence, FMCSA infers that there may be some safety benefits that occur due to this IFR. The deterrence effect of increasing penalties, which Congress has recognized, cannot be reliably quantified into safety benefits, however.

## **II. LEGAL BASIS FOR THE RULEMAKING**

### **A. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015**

This rulemaking is based primarily on the 2015 Act, Pub. L. 114-74, title VII, § 701, 129 Stat. 599, 28 U.S.C. 2461 note (Nov. 2, 2015). The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) (28 U.S.C. 2461 note). The basic

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<sup>1</sup> 28 U.S.C. 2461 note (Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890.)

findings and purpose of the amended 1990 Act remain unchanged and include supporting the role civil penalties play in federal law and regulations in deterring violations by allowing for regulatory adjustments to account for inflation. The changes based on the 2015 Act amend sections four, five, six, and also add a new section seven. The effective provisions relevant to this rulemaking will be discussed in turn.

Under section four, agencies must adjust their civil monetary penalties and publish such adjusted penalties in the Federal Register by July 1, 2016, while utilizing an initial “catch-up” adjustment through an IFR to be effective no later than August 1, 2016. This IFR satisfies the catch-up requirement. Subsequent annual adjustments are also required. Agencies can determine that a provision or provisions be exempt from these adjustments based on certain criteria through a notice and comment rulemaking, though OMB must concur in the determination (*Id.* at subsection (c)). FMCSA is not seeking an exemption under section 4(c). There is also a provision to account for a situation where other adjustments are made that go above those required by the 2015 Act. If this is the case, then no adjustments are needed that year (*Id.* at subsection (d)).

Section five outlines the procedure for applying cost of living increases to adjust penalties. As with section four, section five addresses both initial and subsequent adjustments based on the definition of cost of living adjustment (COLA). For initial adjustments, COLA is defined as the difference between the consumer price index (CPI) for October 2015 and the CPI for October of the year the penalty was “adjusted or established under a provision of law, other than the 2015 Act” (*Id.* at subsection 5(b)(2)). FMCSA interprets the phrase “under a provision of law” to include both statutorily mandated adjustments prior to the 2015 Act and those penalties initially promulgated through

rulemaking. This is a reasonable interpretation, as many penalties are initially prescribed by statute and subsequently adjusted over time through the regulatory process. In addition, such a reading is consistent with the interpretation contained in guidance provided by OMB as further discussed in the Background section, below. Subsequent adjustments are based on increasing the civil penalty or range of penalties by the COLA using the difference in the CPI between the month of October preceding the date of adjustment and the month of October one year previously (*Id.* at subsection (a) and (b)(1)).

The 2015 Act also amended provisions of the Debt Collection Improvement Act of 1996 (DCIA) Pub. L. 104–134, 110 Stat 1321, 28 U.S.C. 2461 note (April 26, 1996), which amended the 1990 Act. Most importantly, the DCIA had previously provided that the first adjustment of a civil monetary penalty may not exceed 10 percent of such penalty. This 10 percent cap provision was rescinded by the 2015 Act (*Id.* at subsection (c)). Under section six of the 1990 Act, the period of time covered by increases to civil penalties has been revised. Previously, adjustments to civil penalties were applied only to violations that occurred after the date the increases took effect. The 2015 Act revised section six to read, “Any increase under this Act in a civil monetary penalty shall apply only to the civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.” By adding the phrase “including those [penalties] whose associated violation *predated* such increase,” if a violation took place before the effective date of the adjusted penalty, and the agency then issued a notice of claim proposing a penalty after the effective date, the new adjusted penalty level would be assessed.

In previous enforcement cases on administrative review, the FMCSA Assistant Administrator has stated that, for various purposes, a penalty will not be deemed “assessed” until the date that the Agency issues its Final Agency Action. In re Mittlestadt Trucking, LLC, FMCSA-2007-0058, at page 3 (Second Interim Order, May 4, 2012); In re America Express, Inc. d/b/a Mid America Express, FMCSA-2001-9836, at footnote 24 (Final Order, May 23, 2005). Before the issuance of the Final Agency Action, the penalty is merely a proposed penalty. The question therefore arises whether section six of the 1990 Act, as amended by the 2015 Act, requires that proposed penalties in open cases, in which a notice of claim has been issued but which have not been formally reduced to an “assessment” through order of the Assistant Administrator or other Final Agency Order, must be adjusted.

Section 521(b)(2)(D) of Title 49, U.S. Code, requires FMCSA to calculate each civil penalty assessment to induce further compliance. FMCSA has concluded that, for those open enforcement matters in which a penalty was proposed before the date of the “catch-up” adjustment or an annual adjustment but in which a Final Agency Action has not been issued, recalculating the amount of the proposed penalty would not induce further compliance, and would thus be contrary to the goal of 49 U.S.C. 521(b)(2)(D). Moreover, the length of time between the date that a person is notified of the amount of the proposed penalty and the issuance of the Final Agency Action can vary, but is sometimes several years, depending on litigation schedules and other factors. Applying an inflation adjustment to proposed penalties in cases long awaiting administrative review could raise questions of equity. FMCSA therefore will not retroactively adjust the proposed penalty amounts in notices of claim issued prior to the effective date. Otherwise, the 2015 Act applies prospectively, and

does not retroactively change previously assessed or enforced penalties an agency is actively collecting or has collected.

While the statutory language speaks to only increases in penalty amounts, FMCSA will assess the new penalty both in cases where the penalty increases and where it decreases. This aligns with the intent of the statute, which is to ensure penalty amounts properly reflect inflation. Congress likely did not envision a scenario where penalty amounts would be decreased pursuant to the 2015 Act, which explains the use of the term “increases” in the statutory language.

Based on new section seven, oversight and reporting requirements apply. First, OMB must provide annual guidance by December of each year on implementing the 2015 Act (*Id.* at subsection (a)). In response to this provision, OMB has provided guidance to agencies regarding the methodology to follow to implement adjustments required under the 2015 Act, as further discussed in the Background section, below. Agencies must report civil penalty adjustments through their Agency Financial Report required under OMB Circular A-136 or its successor (*Id.* at subsection (b)). Last, the Comptroller General is required to report to Congress regarding compliance with the 2015 Act (*Id.* at subsection (c)).

#### B. Administrative Procedure Act (APA).

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides an exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest.” FMCSA finds that prior notice and comment is unnecessary because section 4 of the 2015

Act specifically requires the initial catch-up adjustment to be accomplished through an IFR. While prior notice and comment is not required, FMCSA will accept comments on any errors that may be found in this document. We note, however, that the penalty adjustments, and the methodology used to determine the adjustments, are set by the terms of the 2015 Act, and FMCSA has no discretion to make changes in those areas.

### **III. Background**

#### **A. Method of Calculation**

OMB published a memorandum on February 24th, 2016, providing guidance to the Agencies for implementation of the 2015 Act (OMB implementation guidance, <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>). The OMB implementation guidance detailed a method of calculating inflation adjustments that differs substantially from the methods used in past inflation adjustments under the 1990 Act. Previous adjustments were conducted under rules that required significant rounding of figures. For example, in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the penalty inflation increment would be rounded to the nearest multiple of \$1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if the inflation increment was not large enough. Furthermore, first-time increases to penalties were capped at 10 percent. Over time, this approach caused some penalties to lose value relative to total inflation. Alternatively, in some instances the prescribed approach resulted in the rounding up of the inflation increment, thus causing the total penalty amount to increase in value relative to total inflation.

The 2015 Act has removed these rounding rules; now, penalties are simply rounded to the nearest \$1. While this creates penalty values that are no longer round numbers, it

does ensure that penalties will be increased each year to a figure commensurate with the actual calculated inflation. Furthermore, the 2015 Act “resets” the inflation calculations by excluding prior inflationary adjustments under the 1990 Act, which contributed to a change in the real value of penalty levels. This means the inflationary adjustments made by FMCSA in 2015<sup>2</sup>, 2007<sup>3</sup>, and 2003<sup>4</sup> have been disregarded for purposes of determining the baseline year to perform the calculations for this interim final rule. As a result of the new approach required by the 2015 Act, some of the penalty amounts will increase in value relative to the current codified amount, and some penalty amounts will decrease in value. The 2015 Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (i.e., originally enacted by Congress) or last adjusted other than pursuant to the 1990 Act.

The FMCSA thoroughly reviewed its civil penalties. This IFR sets forth the initial “catch-up” adjustment required by the 2015 Act, as shown in the table below. The first column provides a description of the penalty and its location in 49 CFR part 386. The second column (“Legal Authority”) provides the United States Code (U.S.C.) statutory citation. In the third column (“Current Penalty”), FMCSA lists the existing codified penalty. The fourth column (“Baseline Penalty”) provides the penalty amount as enacted by Congress or changed through a mechanism other than the 1990 Act. The fifth column (“Baseline Penalty Year”) lists the year in which the baseline penalty was enacted by Congress or changed through a mechanism other than the 1990 Act. The sixth column

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<sup>2</sup> 80 FR 19146, April 3, 2015.

<sup>3</sup> 72 FR 55100, September 28, 2007.

<sup>4</sup> 68 FR 15381, March 31, 2003.

(“Multiplier”) lists the multiplier used to adjust the CPI for all urban consumers (CPI-U) of the baseline penalty year to the CPI-U for the current year. The OMB prescribes, in Table A of the OMB implementation guidance the multiplier for agencies to use. Adjusting the baseline penalty with the multiplier provides the “Preliminary New Penalty” listed in column seven. The preliminary new penalty is then compared with the current penalty from column three to find the Final Adjusted Penalty in column eight. The adjusted penalty is the lesser of either the preliminary new penalty or an amount equal to 250% of the current penalty. As no preliminary new penalties are greater than 250% of the current penalty, columns seven and eight are identical.

**IV. TODAY’S INTERIM FINAL RULE**

**Summary of Penalty Adjustments**

As noted in the regulatory text (Part 386, Appendices A and B) in today’s rule, the adjusted civil penalties identified in the appendices supersede, where a discrepancy exists, the corresponding civil penalty amounts identified in title 49, United States Code.

**Part 386**

The introductions to Part 386, Appendices A and B, have been revised to refer to the 2015 Act. Below is the table with the current civil penalty amounts in the appendices of Part 386 and new civil penalties following the inflation adjustments required by the 2015 Act:

Table 1: Inflation Adjustments for Part 386

| Civil Penalty Location<br>(1) | Legal Authority<br>(2) | Current Penalty<br>(3) | Baseline Penalty<br>(4) | Baseline Penalty Year<br>(5) | OMB Prescribed Multiplier<br>(6) | Preliminary New Penalty<br>(7) | Final Adjusted Penalty in 2016<br>(8) |
|-------------------------------|------------------------|------------------------|-------------------------|------------------------------|----------------------------------|--------------------------------|---------------------------------------|
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| Appendix A II<br>Subpoena   | MAP-21 Pub. L. 112-141, sec. 32110, 126 Stat. 405, 782, (2012) (49 U.S.C. 525).                                   | \$1,000  | \$1,000  | 2012 | 1.02819 | \$1,028  | \$1,028  |
| Appendix A II<br>Subpoena   | MAP-21 Pub. L. 112-141, sec. 32110, 126 Stat. 405, 782 (2012) (49 U.S.C. §525).                                   | \$10,000 | \$10,000 | 2012 | 1.02819 | \$10,282 | \$10,282 |
| Appendix A IV (a)<br>Out-of-service order<br>(operation of CMV<br>by driver)  | Pub. L. 98-554, sec. 213(b), 98 Stat. 2829, 2841-2843 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990). | \$3,100  | \$1,000  | 1990 | 1.78156 | \$1,782  | \$1,782  |
| Appendix A IV (b)<br>Out-of-service order<br>(requiring or<br>permitting operation<br>of CMV by driver)   | Pub. L. 98-554, sec. 213(a), 98 Stat. 2829 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).            | \$21,000 | \$10,000 | 1990 | 1.78156 | \$17,816 | \$17,816 |
| Appendix A IV (c)<br>Out-of-service order<br>(operation by driver<br>of CMV or<br>intermodal equipment<br>that was placed out of<br>service)                  | Pub. L. 98-554, sec. 213(a), 98 Stat. 2829 (1984) (49 U.S.C. 521(b)(7)), FR 11224 (March 27, 1990).               | \$3,100  | \$1,000  | 1990 | 1.78156 | \$1,782  | \$1,782  |
| Appendix A IV (d)<br>Out-of-service order<br>(requiring or<br>permitting operation<br>of CMV or<br>intermodal equipment<br>that was placed out of<br>service) | Pub. L. 98-554, sec. 213(a), 98 Stat. 2829 (1984) (49 U.S.C. 521(b)(7)); 55 FR 11224 (March 27, 1990).            | \$21,000 | \$10,000 | 1990 | 1.78156 | \$17,816 | \$17,816 |
| Appendix A IV (e)<br>Out-of-service order<br>(failure to return<br>written certification)   | 49 U.S.C. 521 (b)(2)(B), 49 CFR 396.9 (d)(3).   | \$850    | \$500    | 1990 | 1.78156 | \$891    | \$891    |

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| of correction)  |   |          |          |      |         |          |          |
| Appendix A IV (g)<br>Out-of-service order<br>(failure to cease<br>operations as ordered)  | MAP-21, Pub.<br>L. 112-141, sec.<br>32503, 126 Stat.<br>405, 803 (2012)<br>(49 U.S.C.<br>521(b)(2)(F)).   | \$25,000 | \$25,000 | 2012 | 1.02819 | \$25,705 | \$25,705 |
| Appendix A IV (h)<br>Out-of-service order<br>(operating in<br>violation of order)   | Pub. L. 98-554,<br>sec. 213(a), 98<br>Stat, 2829,<br>2841-2843<br>(1984) (49<br>U.S.C.<br>521(b)(7)).   | \$16,000 | \$10,000 | 1984 | 2.25867 | \$22,587 | \$22,587 |
| Appendix A IV (i)<br>Out-of-service order<br>(conducting<br>operations during<br>suspension or<br>revocation for failure<br>to pay penalties) | TEA-21, Pub. L.<br>105-178, sec.<br>4015(b), 112<br>Stat. 411-12<br>(1998) (49<br>U.S.C.<br>521(b)(2)(A)),<br>521 (b)(7)); 65<br>FR 56521,<br>56530<br>(September 19,<br>2000). | \$16,000 | \$10,000 | 1998 | 1.45023 | \$14,502 | \$14,502 |
| Appendix A IV (j)<br>(conducting<br>operations during<br>suspension or<br>revocation)   | Pub. L. 98-554,<br>sec. 213(a), 98<br>Stat, 2829,<br>2841-2843<br>(1984) (49<br>U.S.C.<br>521(b)(7)).   | \$11,000 | \$10,000 | 1984 | 2.25867 | \$22,587 | \$22,587 |
| Appendix B (a)(1)<br>Recordkeeping--<br>maximum penalty per<br>day  | SAFETEA-LU,<br>Pub. L. 109-59,<br>sec. 4102 (a),<br>119 Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>521(b)(2)(B)(i)).   | \$1,100  | \$1,000  | 2005 | 1.19397 | \$1,194  | \$1,194  |
| Appendix B (a)(1)<br>Recordkeeping--<br>maximum total<br>penalty  | SAFETEA-LU,<br>Pub. L. 109-59,<br>sec. 4102 (a),<br>119 Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>521(b)(2)(B)(i)).   | \$11,000 | \$10,000 | 2005 | 1.19397 | \$11,940 | \$11,940 |

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| Appendix B (a)(2)<br>Knowing falsification<br>of records                                  | SAFETEA-LU,<br>Pub. L. 109–59,<br>sec. 4102 (a),<br>119 Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>521(b)(2)(B)(ii))<br>.                     | \$11,000 | \$10,000 | 2005 | 1.19397 | \$11,940 | \$11,940 |
| Appendix B (a)(3)<br>Non-recordkeeping<br>violations                                      | TEA-21, Pub. L.<br>105-178, sec.<br>4015(b), 112<br>Stat. 107, 411-<br>12 (1998) (49<br>U.S.C.<br>521(b)(2)(A)).                               | \$16,000 | \$10,000 | 1998 | 1.45023 | \$14,502 | \$14,502 |
| Appendix B (a)(4)<br>Non-recordkeeping<br>violations by drivers                           | TEA-21, Pub. L.<br>105-178, sec.<br>4015(b), 112<br>Stat. 107, 411-<br>12 (1998) (49<br>U.S.C.<br>521(b)(2)(A)).                               | \$3,750  | \$2,500  | 1998 | 1.45023 | \$3,626  | \$3,626  |
| Appendix B (a)(5)<br>Violation of 49 CFR<br>392.5 (first offense)                         | SAFETEA-LU,<br>Pub. L. 109–59,<br>119 Stat. 1144,<br>1715; sec. 4102<br>(b), 119 Stat.<br>1715-16 (2005)<br>(49 U.S.C.<br>31310<br>(i)(2)(A)). | \$4,125  | \$2,500  | 2005 | 1.19397 | \$2,985  | \$2,985  |
| Appendix B (a)(5)<br>Violation of 49 CFR<br>392.5 (second or<br>subsequent<br>conviction) | SAFETEA-LU,<br>Pub. L. 109–59,<br>119 Stat. 1144,<br>1715; sec. 4102<br>(b), 119 Stat.<br>1715-16 (2005)<br>(49 U.S.C.<br>31310<br>(i)(2)(A)). | \$4,125  | \$5,000  | 2005 | 1.19397 | \$5,970  | \$5,970  |
| Appendix B (b)<br>Commercial driver’s<br>license (CDL)<br>violations                      | Pub. L. 99-570,<br>sec. 12012(b),<br>100 Stat. 3207-<br>184-85 (1986)<br>(49 U.S.C.<br>521(b)(2)(C)).  | \$4,750  | \$2,500  | 1986 | 2.15628 | \$5,391  | \$5,391  |

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| Appendix B (b)(1):<br>Special penalties<br>pertaining to violation<br>of out-of-service<br>orders (first<br>conviction)   | SAFETEA-LU,<br>Pub. L. 109–59,<br>sec. 4102(b),<br>119 Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>31310<br>(i)(2)(A)).         | \$2,750  | \$2,500  | 2005 | 1.19397 | \$2,985  | \$2,985  |
| Appendix B (b)(1)<br>Special penalties<br>pertaining to violation<br>of out-of-service<br>orders (second or<br>subsequent<br>conviction)                                | SAFETEA-LU,<br>Pub. L. 109–59,<br>119, sec. § 4102<br>(b), Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>31310<br>(i)(2)(A)).     | \$5,500  | \$5,000  | 2005 | 1.19397 | \$5,970  | \$5,970  |
| Appendix B (b)(2)<br>Employer violations<br>pertaining to<br>knowingly allowing,<br>authorizing employee<br>violations of out-of-<br>service order<br>(minimum penalty) | Pub. L. 99-570,<br>sec. 12012(b),<br>100 Stat. 3207-<br>184-85 (1986)<br>(49 U.S.C.<br>521(b)(2)(C)).                           | \$4,750  | \$2,500  | 1986 | 2.15628 | \$5,391  | \$5,391  |
| Appendix B (b)(2)<br>Employer violations<br>pertaining to<br>knowingly allowing,<br>authorizing employee<br>violations of out-of-<br>service order<br>(maximum penalty) | SAFETEA-LU,<br>Pub. L. 109–59,<br>sec. 4102 (b),<br>119 Stat. 1144,<br>1715 (2005) (49<br>U.S.C.<br>31310 (i)(2)(C)).           | \$27,500 | \$25,000 | 2005 | 1.19397 | \$29,849 | \$29,849 |
| Appendix B (b)(3)<br>Special penalties<br>pertaining to railroad-<br>highway grade<br>crossing violations   | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.<br>403(a), 109 Stat.<br>956 (1995) (49<br>U.S.C.<br>31310(j)(2)(B)). | \$11,000 | \$10,000 | 1995 | 1.54742 | \$15,474 | \$15,474 |
| Appendix B (d)<br>Financial<br>responsibility<br>violations   | Pub. L. 103-272,<br>sec. 31139(f),<br>108 Stat. 745,<br>1006-1008<br>(1994) (49<br>U.S.C.<br>31139(g)(1)).                      | \$21,000 | \$10,000 | 1994 | 1.59089 | \$15,909 | \$15,909 |

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| Appendix B (e)(1)<br>Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations<br>(transportation or<br>shipment of<br>hazardous materials)               | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126 Stat.<br>405, 837-838<br>(2012) (49<br>U.S.C.<br>5123(a)(1)). | \$75,000  | \$75,000  | 2012 | 1.02819 | \$77,114  | \$77,114  |
| Appendix B<br>(e)(2)Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations<br>(training)--minimum<br>penalty   | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126 Stat.<br>405, 837 (2012)<br>(49 U.S.C.<br>5123(a)(3)).        | \$450     | \$450     | 2012 | 1.02819 | \$463     | \$463     |
| Appendix B (e)(2) :<br>Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations<br>(training)--maximum<br>penalty  | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126 Stat.<br>405, 837 (2012)<br>(49 U.S.C.<br>5123(a)(1)).        | \$75,000  | \$75,000  | 2012 | 1.02819 | \$77,114  | \$77,114  |
| Appendix B (e)(3)<br>Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations<br>(packaging or<br>container)   | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126 Stat.<br>405, 837, (2012)<br>49 U.S.C.<br>5123(a)(1)).        | \$75,000  | \$75,000  | 2012 | 1.02819 | \$77,114  | \$77,114  |
| Appendix B (e)(4):<br>Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations<br>(compliance with<br>FMCSRs)  | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126<br>Stat. 405, 837<br>(2012) (49<br>U.S.C.<br>5123(a)(1)).     | \$75,000  | \$75,000  | 2012 | 1.02819 | \$77,114  | \$77,114  |
| Appendix B (e)(5)<br>Violations of<br>Hazardous Materials<br>Regulations (HMRs)<br>and Safety Permitting<br>Regulations (death,<br>serious illness, severe<br>injury to persons;<br>destruction of | MAP-21 Pub. L.<br>112-141, sec.<br>33010, 126<br>Stat. 405, 837<br>(2012) (49<br>U.S.C.<br>5123(a)(2)).     | \$175,000 | \$175,000 | 2012 | 1.02819 | \$179,933 | \$179,933 |

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| property)   |   |           |           |      |         |           |           |
| Appendix B (f)(1)<br>Operating after being<br>declared unfit by<br>assignment of a final<br>“unsatisfactory”<br>safety rating<br>(generally)  | MAP-21, Pub.<br>L. 112-141, sec.<br>32503, 126 Stat.<br>405, 803 (2012)<br>(49 U.S.C.<br>521(b)(2)(F)).   | \$25,000  | \$25,000  | 2012 | 1.02819 | \$25,705  | \$25,705  |
| Appendix B (f)(2)<br>Operating after being<br>declared unfit by<br>assignment of a final<br>“unsatisfactory”<br>safety rating<br>(hazardous<br>materials)--maximum<br>penalty   | MAP-21, Pub.<br>L. 112-141, sec.<br>33010, 126 Stat.<br>405, 837 (49<br>U.S.C.<br>5123(a)(1)).            | \$75,000  | \$75,000  | 2012 | 1.02819 | \$77,114  | \$77,114  |
| Appendix B (f)(2):<br>Operating after being<br>declared unfit by<br>assignment of a final<br>“unsatisfactory”<br>safety rating<br>(hazardous<br>materials)--maximum<br>penalty if death,<br>serious illness, severe<br>injury to persons;<br>destruction of<br>property | MAP-21, Pub.<br>L. 112-141, sec.<br>33010, 126 Stat.<br>405, 837 (2012)<br>(49 U.S.C.<br>5123(a)(2)).     | \$175,000 | \$175,000 | 2012 | 1.02819 | \$179,933 | \$179,933 |
| Appendix B (g)(1)<br>New Appendix B<br>(g)(1): Violations of<br>the commercial<br>regulations (CR)<br>(property carriers)   | MAP-21, Pub.<br>L. 112-141, sec.<br>32108(a), 126<br>Stat. 405, 782<br>(2012) (49<br>U.S.C.<br>14901(a)). | \$10,000  | \$10,000  | 2012 | 1.02819 | \$10,282  | \$10,282  |
| Appendix B (g)(2)<br>Violations of the CRs<br>(brokers)   | MAP-21 Pub. L.<br>112-141, sec.<br>32919(a), 126<br>Stat. 405, 827<br>(2012) (49<br>U.S.C.<br>14916(c)).  | \$10,000  | \$10,000  | 2012 | 1.02819 | \$10,282  | \$10,282  |

|   |   |          |          |      |         |          |          |
|---|---|----------|----------|------|---------|----------|----------|
| Appendix B (g)(3)<br>Violations of the CRs<br>(passenger carriers)  | MAP-21, Pub. L. 112-141, sec . 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).        | \$25,000 | \$25,000 | 2012 | 1.02819 | \$25,705 | \$25,705 |
| Appendix B (g)(4)<br>Violations of the CRs<br>(foreign motor carriers, foreign motor private carriers)  | MAP-21, Pub. L. 112-141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).         | \$10,000 | \$10,000 | 2012 | 1.02819 | \$10,282 | \$10,282 |
| Appendix B (g)(5)<br>Violations of the CRs<br>(foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)--<br>maximum penalty for intentional violation               | MCSIA of 1999, Pub. L. 106-59, sec. 219(b), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note). | \$16,000 | \$10,000 | 1999 | 1.41402 | \$14,140 | \$14,140 |
| Appendix B (g)(5)<br>Violations of the CRs<br>(foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)--<br>maximum penalty for a pattern of intentional violations | MCSIA of 1999, Pub. L. 106-59, sec. 219(c), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note). | \$37,500 | \$25,000 | 1999 | 1.41402 | \$35,351 | \$35,351 |
| Appendix B (g)(6)<br>Violations of the CRs<br>(motor carrier or broker for transportation of hazardous wastes)--<br>minimum penalty   | MAP-21, Pub. L. 112-141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(b)).            | \$20,000 | \$20,000 | 2012 | 1.02819 | \$20,564 | \$20,564 |

|  |  |           |           |      |         |           |           |
|--|--|-----------|-----------|------|---------|-----------|-----------|
| Appendix B (g)(6)<br>Violations of the CRs<br>(motor carrier or<br>broker for<br>transportation of<br>hazardous wastes)--<br>maximum penalty   | MAP-21 Pub. L.<br>112-141, sec.<br>32108, 126 Stat.<br>405,782 (2012)<br>(49 U.S.C.<br>14901(b)).  | \$40,000  | \$40,000  | 2012 | 1.02819 | \$41,128  | \$41,128  |
| Appendix B (g)(7):<br>Violations of the CRs<br>(HHG carrier or<br>freight forwarder, or<br>their receiver or<br>trustee)                       | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>914 (1995) (49<br>U.S.C.<br>14901(d)(1)).              | \$1,100   | \$1,000   | 1995 | 1.54742 | \$1,547   | \$1,547   |
| Appendix B (g)(8)<br>Violation of the CRs<br>(weight of HHG<br>shipment, charging<br>for services)--<br>minimum penalty for<br>first violation | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>914 (1995) (49<br>U.S.C.<br>14901(e)).                 | \$3,200   | \$2,000   | 1995 | 1.54742 | \$3,095   | \$3,095   |
| Appendix B (g)(8)<br>Violation of the CRs<br>(weight of HHG<br>shipment, charging<br>for services)   | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>914 (1995) (49<br>U.S.C.<br>14901(e)).                 | \$7,500   | \$5,000   | 1995 | 1.54742 | \$7,737   | \$7,737   |
| Appendix B (g)(10)<br>Tariff violations  | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>868-869, 915<br>(1995) (49<br>U.S.C.<br>13702, 14903). | \$140,000 | \$100,000 | 1995 | 1.54742 | \$154,742 | \$154,742 |
| Appendix B (g)(11)<br>Additional tariff<br>violations (rebates or<br>concessions)--first<br>violation  | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>915-916 (1995)<br>(49 U.S.C.<br>14904(a)).             | \$320     | \$200     | 1995 | 1.54742 | \$309     | \$309     |

|  |   |          |          |      |         |          |          |
|--|---|----------|----------|------|---------|----------|----------|
| Appendix B (g)(11)<br>Additional tariff<br>violations (rebates or<br>concessions)--<br>subsequent violations                                   | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>915-916 (1995)<br>(49 U.S.C.<br>14904(a)).  | \$375    | \$250    | 1995 | 1.54742 | \$387    | \$387    |
| Appendix B (g)(12):<br>Tariff violations<br>(freight forwarders)--<br>maximum penalty for<br>first violation                                   | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>916 (49 U.S.C.<br>14904(b)(1)).             | \$750    | \$500    | 1995 | 1.54742 | \$774    | \$774    |
| Appendix B (g)(12):<br>Tariff violations<br>(freight forwarders)--<br>maximum penalty for<br>subsequent violations                             | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>916 (1995) (49<br>U.S.C. §<br>14904(b)(1)). | \$3,200  | \$2,000  | 1995 | 1.54742 | \$3,095  | \$3,095  |
| Appendix B (g)(13):<br>service from freight<br>forwarder at less than<br>rate in effect--<br>maximum penalty for<br>first violation            | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>916 (1995) (49<br>U.S.C.<br>14904(b)(2)).   | \$750    | \$500    | 1995 | 1.54742 | \$774    | \$774    |
| Appendix B (g)(13):<br>service from freight<br>forwarder at less than<br>rate in effect--<br>maximum penalty for<br>subsequent<br>violation(s) | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>916 (1995) (49<br>U.S.C.<br>14904(b)(2)).   | \$3,200  | \$2,000  | 1995 | 1.54742 | \$3,095  | \$3,095  |
| Appendix B (g)(14):<br>Violations related to<br>loading and<br>unloading motor<br>vehicles   | ICC<br>Termination Act<br>of 1995, Pub. L.<br>104-88, sec.103,<br>100 Stat. 803,<br>916 (1995) (49<br>U.S.C. 14905).            | \$16,000 | \$10,000 | 1995 | 1.54742 | \$15,474 | \$15,474 |

|  |  |          |          |      |         |          |          |
|--|--|----------|----------|------|---------|----------|----------|
| Appendix B (g)(16):<br>Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c)--minimum penalty | MAP-21, Pub. L. 112-141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901).                      | \$1,000  | \$1,000  | 2012 | 1.02819 | \$1,028  | \$1,028  |
| Appendix B (g)(16):<br>Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B--maximum penalty                            | ICC Termination Act of 1995, Pub. L. 104-88, sec.103, 100 Stat. 803, 916-917 (1995) (49 U.S.C. 14907). | \$7,500  | \$5,000  | 1995 | 1.54742 | \$7,737  | \$7,737  |
| Appendix B (g)(17):<br>Unauthorized disclosure of information  | ICC Termination Act of 1995, Pub. L. 104-88, sec.103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14908).     | \$3,200  | \$2,000  | 1995 | 1.54742 | \$3,095  | \$3,095  |
| Appendix B (g)(18):<br>Violation of 49 U.S.C. subtitle IV, part B, or condition of registration                                    | ICC Termination Act of 1995, Pub. L. 104-88, sec.103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14910).     | \$750    | \$500    | 1995 | 1.54742 | \$774    | \$774    |
| Appendix B (g)(21)(i):<br>Knowingly and willfully fails to deliver or unload HHG at destination                                    | ICC Termination Act of 1995, Pub. L. 104-88, sec.103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14905).     | \$11,000 | \$10,000 | 1995 | 1.54742 | \$15,474 | \$15,474 |
| Appendix B (g)(22):<br>HHG broker estimate before entering into an agreement with a motor carrier                                  | SAFETEA-LU, Pub. L. 109-59, sec.4209(2), 119 Stat. 1144, 1758, (2005) (49 U.S.C. 14901(d)(2)).         | \$10,900 | \$10,000 | 2005 | 1.19397 | \$11,940 | \$11,940 |
| Appendix B (g)(23):<br>HHG transportation or broker services--registration requirement   | SAFETEA-LU, Pub. L. 109-59, sec.4209(d)(3), 119 Stat. 1144, 1758 (2005) (49 U.S.C. 14901 (d)(3)).      | \$27,250 | \$25,000 | 2005 | 1.19397 | \$29,849 | \$29,849 |

|   |  |          |          |      |         |          |          |
|---|--|----------|----------|------|---------|----------|----------|
| Appendix B (h):<br>Copying of records and access to equipment, lands, and buildings--maximum penalty per day  | SAFETEA-LU, Pub. L. 109-59, sec.4103(2), 119 Stat. 1144, 1716 (2005) (49 U.S.C. 521(b)(2)(E)).   | \$1,100  | \$1,000  | 2005 | 1.19397 | \$1,194  | \$1,194  |
| Appendix B (h):<br>Copying of records and access to equipment, lands, and buildings--maximum total penalty  | SAFETEA-LU, Pub. L. 109-59, sec.4103(2), 119 Stat. 1716 (2005) (49 U.S.C. 521(b)(2)(E)).   | \$11,000 | \$10,000 | 2005 | 1.19397 | \$11,940 | \$11,940 |
| Appendix B (i)(1):<br>Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--minimum penalty for first violation | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).   | \$2,000  | \$2,000  | 2012 | 1.02819 | \$2,056  | \$2,056  |
| Appendix B (i)(1):<br>Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--maximum penalty for first violation | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).   | \$5,000  | \$5,000  | 2012 | 1.02819 | \$5,141  | \$5,141  |
| Appendix B (i)(1):<br>Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--minimum penalty for subsequent      | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).<br>MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524). | \$2,500  | \$2,500  | 2012 | 1.02819 | \$2,570  | \$2,570  |

|   |  |         |         |      |         |         |         |
|---|--|---------|---------|------|---------|---------|---------|
| violation(s)  |  |         |         |      |         |         |         |
| Appendix B (i)(1):<br>Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--maximum penalty for subsequent violation(s) | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).   | \$7,500 | \$7,500 | 2012 | 1.02819 | \$7,711 | \$7,711 |
| Appendix B (i)(2):<br>Evasion of regulations under 49 U.S.C. subtitle IV, part B--minimum penalty for first violation   | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906). | \$2,000 | \$2,000 | 2012 | 1.02819 | \$2,056 | \$2,056 |
| Appendix B (i)(2):<br>Evasion of regulations under 49 U.S.C. subtitle IV, part B--minimum penalty for subsequent violation(s)   | MAP-21 Pub. L. 112-141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906). | \$5,000 | \$5,000 | 2012 | 1.02819 | \$5,141 | \$5,141 |

## V. SECTION-BY-SECTION ANALYSIS

FMCSA updates the civil penalties in Appendices A and B of Part 386 as outlined in Table 1 above and makes minor editorial changes.

## VI. RULEMAKING ANALYSIS AND NOTICES

**A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

This IFR is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Historically, the Agency has never assessed civil penalties that approach \$100 million in any given year.

**B. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the legal basis section, this action is not subject to prior notice and comment under section 553(b) of the Administrative Procedure Act.

**C. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this interim final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the interim final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance please consult the FMCSA point of contact, Ms. LaTonya Mimms, listed in the **For Further Information Contact** section of this interim final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### **D. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$155 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any one year. This interim final rule will not result in such an expenditure.

#### **E. Paperwork Reduction Act**

This interim final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### **F. Federalism (E.O. 13132)**

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA has determined that this rule would not have

substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this interim final rule does not have federalism implications.

**G. Civil Justice Reform (E.O. 12988)**

This interim final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**H. Protection of Children (E.O. 13045)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules to include an evaluation of the regulation's environmental health and safety effects on children if an agency has reason to believe the rule may disproportionately affect children. The Agency determined that this interim final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not pose an environmental or safety risk to children.

**I. Taking of Private Property (E.O. 12630)**

FMCSA reviewed this interim final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

**J. Privacy Impact Assessment**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will

affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

**K. Intergovernmental Review (E. O. 12372)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**L. Energy Supply, Distribution, or Use (E.O. 13211)**

FMCSA analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

**M. Indian Tribal Governments (E.O. 13175)**

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**N. National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**O. Environmental Review (National Environmental Policy Act, Clean Air Act, Environmental Justice)**

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." *Id.* at chapter 1.D. Because Congress specifies the Agency's precise action here, thus leaving the Agency no discretion over such action, and since the Agency lacks jurisdiction and therefore control and responsibility over

the effects of this action, this rulemaking falls under chapter 1.D. Therefore, no further analysis is considered.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898 (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this interim final rule would have no environmental justice effects, nor would its promulgation have any collective environmental impact.

#### **List of Subjects in 49 CFR Part 386**

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

For the reasons stated in the preamble, FMCSA is amending 49 CFR part 386 as follows:

#### **PART 386-RULES OF PRACTICE FOR FMCSA PROCEEDINGS**

1. The authority citation for part 386 is revised to read as follows:

**Authority:** 49 U.S.C. 113, chapters 5, 51, 59, 131-141, 145-149, 311, 313, and 315; 49 U.S.C. 5123; Sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105-159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106-159, 113 Stat. 1763; subtitle

B, title IV of Pub. L. 109-59; Sec. 701 of Pub. L. 114-74, 129 Stat. 584, 599; and 49 CFR 1.81 and 1.87.

2. Amend Appendix A to part 386 by revising the introductory text and sections II, IV.a through e., and IV.g. through j. to read as follows:

APPENDIX A TO PART 386—PENALTY SCHEDULE: VIOLATIONS OF NOTICES AND ORDERS

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114-74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

\* \* \* \* \*

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,028 but not more than \$10,282 per violation.

\* \* \* \* \*

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$1,782 per violation.

(For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$17,816 per violation.

(This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$1,782 each time the vehicle or intermodal equipment is so operated.

(This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$17,816 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a “driver,” as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$891 per violation.

\* \* \* \* \*

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer’s commercial motor vehicle operations or to cease part of an intermodal equipment provider’s operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$25,705 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to \$22,587 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to \$14,502 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under §§ 385.911, 385.913, 385.1009 or 385.1011.

Penalty—Up to \$22,587 for each day that operations are conducted during the suspension or revocation period.

3. Amend Appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (c), (d), (e), (f), (g) introductory text, (g)(1) through (8), (g)(10) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

**APPENDIX B TO PART 386—PENALTY SCHEDULE: VIOLATIONS AND MONETARY PENALTIES**

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114-74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(a) Violations of the Federal Motor Carrier Safety Regulations (FMCSRs):

(1) Recordkeeping. A person or entity that fails to prepare or maintain a record required by parts 40, 382, 385, and 390-99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,194 for each day the violation continues, up to \$11,940.

(2) Knowing falsification of records. A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390-99 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of \$11,940 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) Non-recordkeeping violations. A person or entity that violates parts 382, 385, or 390-99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$14,502 for each violation.

(4) Non-recordkeeping violations by drivers. A driver who violates parts 382, 385, and 390-99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$3,626.

(5) Violation of 49 CFR 392.5. A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$2,985 for a first conviction and not less than \$5,970 for a second or subsequent conviction.

\* \* \* \* \*

(b) Commercial driver's license (CDL) violations. Any person who violates 49 CFR part 383, subparts B, C, E, F, G, or H is subject to a civil penalty not to exceed \$5,391; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$2,985 for a first conviction and not less than \$5,970 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$5,391 or more than \$29,849; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than \$15,474.

(c) [Reserved]

(d) Financial responsibility violations. A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of Part 387 subparts A and B is subject to a maximum penalty of \$15,909. Each day of a continuing violation constitutes a separate offense.

(e) Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in Subpart E of Part 385. This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on

the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$77,114 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not less than \$463 and not more than \$77,114 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on highways are subject to a civil penalty of not more than \$77,114 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than \$77,114.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in

substantial destruction of property, the civil penalty may be increased to not more than \$179,933 for each offense.

(f) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating. (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$25,705 (49 CFR 385.13). Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$77,114 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$179,933 for each offense. Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(g) Violations of the commercial regulations (CRs). Penalties for violations of the CRs are specified in 49 U.S.C. chapter 149. These penalties relate to transportation subject to the Secretary's jurisdiction under 49 U.S.C. chapter 135. Unless otherwise noted, a separate violation occurs for each day the violation continues.

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$10,282 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C 13904 or financial security requirements of 49 U.S.C 13906 is liable for a penalty not to exceed \$10,282 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$25,705 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$10,282 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border, is liable for a maximum penalty of \$14,140 for an intentional violation and a maximum penalty of \$35,351 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of \$20,564 and a maximum penalty of \$41,128 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or

trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of \$1,547 per violation.

(8) A person—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment is liable for a minimum penalty of \$3,095 for the first violation and \$7,737 for each subsequent violation.

\* \* \* \* \*

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of \$154,742 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered to be the acts or omissions of that carrier or shipper, as well as that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$309 for the first violation and \$387 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49

U.S.C. 13702 commits a violation for which the penalty is up to \$774 for the first violation and up to \$3,095 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$774 for the first violation and up to \$3,095 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$15,474 per violation.

(15) [Reserved]

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of \$1,028 and for a maximum penalty of \$7,737 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from

them, who discloses information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$3,095.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under Part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$774 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

\* \* \* \* \*

(21) \* \* \*

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than \$15,474 for each violation. Each day of a continuing violation constitutes a separate offense.

\* \* \* \* \*

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$11,940 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such

transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$29,849 for each violation.

(h) Copying of records and access to equipment, lands, and buildings. A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,194 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$11,940.

(i) Evasion. A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least \$2,056 but not more than \$5,141 for the first violation and at least \$2,570 but not more than \$7,711 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least \$2,056 for the first violation or at least \$5,141 for a subsequent violation.

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T.F. Scott Darling III,  
Acting Administrator

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