

Penalty—\$550 (A separate violation may be charged each time a failure to post as ordered is discovered.)

III. Final Order

Violation— Failure to comply with final agency order, i.e., failure to pay the penalty assessed therein after notice and opportunity for hearing within time prescribed in the order.

Penalty— Automatic waiver of any reduction in the original claim found to be valid, and immediate restoration to the full amount assessed in the Claim Letter or Notice of Investigation.

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 \$1,100 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 \$11,000 per violation.

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

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

Penalty— \$1,100 each time the vehicle is so operated.

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

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

Penalty— Up to \$11,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

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

Penalty— Up to \$550 per violation.

f. *Violation*— Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty— Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

NOTE: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

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, i.e., failure to cease operations as ordered.

Penalty— Up to \$11,000 per day the operation continues after the effective date and time of the order to cease.

[56 FR 10184, Mar. 11, 1991, as amended at 63 FR 12414, Mar. 13, 1998]

APPENDIX B TO PART 386—PENALTY SCHEDULE; VIOLATIONS AND MAXIMUM MONETARY PENALTIES

The Debt Collection Improvement Act of 1996 [Public Law 104-134, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321-373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation "each civil monetary penalty provided by law within the jurisdiction of the Federal agency * * *" and to publish that regulation in the FEDERAL REGISTER. Pursuant to that authority, the inflation-adjusted civil penalties listed below supersede the corresponding civil penalty amounts listed 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 385 and 390-399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$550 for each day the violation continues, up to \$2,750.

(2) *Serious Pattern of safety violations.* These violations of Parts 385 and 390-399 of this subchapter constitute a middle range of violations. They do not include noncompliance with recordkeeping requirements, while substantial health or safety violations are subject to heavier civil penalties. Serious patterns of safety violations are subject to a maximum civil penalty of \$1,100 for each violation in a pattern, up to a maximum of \$11,000 for each pattern.

(3) *Substantial Health or Safety Violations.* These are violations of Parts 385 and 390-399 of this subchapter which could reasonably lead to, or have resulted in, serious personal injury or death. Substantial health or safety violations are subject to a maximum civil penalty of \$11,000, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(4) *Non-recordkeeping violations by drivers.* A driver who violates Parts 385 or 390-399 of

this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$1,100, provided the driver's actions constituted gross negligence or reckless disregard for safety.

(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 \$2,750 for each violation.

(b) *Commercial driver's license (CDL) violations.* Any person who violates 49 CFR Subparts B, C, E, F, G, or H is subject to a civil penalty of \$2,750.

(c) *Special penalties pertaining to violations of out-of-service orders by CDL-holders.* A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$1,100 nor more than \$2,750. An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that 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 \$2,750 or more than \$11,000.

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter is subject to a maximum penalty of \$11,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs).* 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 highways are subject to a civil penalty of not less than \$250 and not more than \$27,500 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, regulations, or exemptions issued under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair or testing of a packaging or container which 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 less than \$250 and not more than \$27,500 for each violation.

(3) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while trans-

porting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not less than \$250 and not more than \$27,500.

(f) *Operating with an unsatisfactory safety rating.* A motor carrier knowingly transporting hazardous materials in quantities requiring placarding, or passengers in a vehicle designed or used to transport more than 15 passengers, on the 46th or any subsequent day after receiving an unsatisfactory safety rating, is subject to a civil penalty of not less than \$250 and not more than \$27,500. Each day the transportation of hazardous materials continues constitutes a separate violation.

[63 FR 12414, Mar. 13, 1998]

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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Sec.

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387.301 Surety bond, certificate of insurance, or other securities.

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