

requirements on grantees and subgrantees.

#### List of Subjects

##### 45 CFR Part 74

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, and Reporting and recordkeeping requirements.

##### 45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: July 29, 2003.

**Tommy G. Thompson,**  
*Secretary.*

■ For the reasons discussed in the preamble, the Department amends title 45 of the Code of Federal Regulations as follows:

#### **PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS**

■ 1. The authority citation for part 74 is revised to read as follows:

**Authority:** 5 U.S.C. 301.

■ 2. Revise the heading for part 74 to read as shown above.

■ 3. In § 74.1 remove paragraph (a)(3).

#### **PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS**

■ 1. The authority citation for part 92 continues to read as follows:

**Authority:** 5 U.S.C. 301.

■ 2. Revise the heading for part 92 to read as shown above.

■ 3. In § 92.4:

■ a. Paragraphs (a)(3) through (8) are removed and paragraphs (a)(9) and (10) are redesignated as (a)(3) and (4).

■ b. Paragraph (b) is removed and reserved.

■ 4. Remove Subpart E, Entitlement. [FR Doc. 03–22513 Filed 9–5–03; 8:45 am]

**BILLING CODE 4151–17–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Research and Special Programs Administration**

#### **49 CFR Parts 105, 107 and 171**

[Docket No. RSPA–03–15372 (RSP–5)]

RIN 2137–AD71

#### **Hazardous Materials Regulations: Penalty Guidelines and Other Procedural Regulations**

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, we (RSPA) are increasing to \$32,500 and \$275, respectively, the maximum and minimum civil penalties for a knowing violation of Federal hazardous materials transportation law or a regulation issued under that law. We are publishing revised baseline assessments for frequently cited violations to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. The revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to \$32,500. We are also advising the public that, in proposing or assessing a civil penalty, we will not normally consider a prior violation in a case that was initiated in a calendar year more than six years prior to the year in which the current proceeding is initiated.

In addition, we are updating the address to which civil penalty payments must be sent, and we are making editorial changes to our procedural regulations for issuing an administrative determination of preemption.

**EFFECTIVE DATE:** This rule is effective on September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Frazer C. Hilder, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Increase in Maximum and Minimum Civil Penalties**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) requires each Federal agency to periodically adjust civil penalties it administers to consider the effects of

inflation. (The Act is set forth in the note to 28 U.S.C. 2461.) According to Section 5 of the Act, a maximum civil penalty (or the range of minimum and maximum civil penalties) must be increased 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. The Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of \$5,000, for a penalty between \$10,000 and \$100,000, and that the first adjustment to a civil penalty is limited to 10%. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

In a final rule published in the **Federal Register** on January 21, 1997, RSPA increased the maximum civil penalty from \$25,000 to \$27,500 for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, or RSPA's regulations in subchapters A and C of 49 CFR, Chapter I. 62 FR 2970.

Accordingly, we are now increasing the maximum civil penalty by \$5,000, to \$32,500, based on the increase in the CPI–U from June 1997 (160.3) to June 2002 (179.9), or 12.2%, times \$27,500 equals \$3,355, which must be rounded to \$5,000. We have not previously adjusted the \$250 minimum penalty amount specified in 49 U.S.C.

5123(a)(1), so we are increasing the minimum civil penalty by \$25, to \$275, because of the 10% limitation for the first adjustment.

To implement these adjustments, we are amending 49 CFR 107.329 and 171.1(c) to specify that the higher maximum and minimum civil penalties will apply to a violation of the Federal hazardous materials transportation law, a regulation or order issued under that law, or an exemption issued under subpart B of 49 CFR Part 107 that occurs after September 30, 2003. We are also making a similar change to the reference to the maximum penalty in Section IV.C. of Appendix A to Part 107, subpart D.

##### **II. Revisions to Civil Penalty Guidelines**

RSPA's hazardous material transportation enforcement civil penalty guidelines are published in Appendix A to 49 CFR Part 107, subpart D. These guidelines were first published in the **Federal Register** on March 6, 1995, in response to a request contained in Senate Report 03–150 that accompanied the Department of Transportation and

Related Agencies Appropriations Act of 1994. See the final rule in Docket No. HM-207D, 60 FR 12139. Revisions to these guidelines have been published on January 21, 1997, and August 28, 2001, in the final rules in Docket Nos. HM-207F, 62 FR 2970, and HM-189S, 66 FR 45177, respectively. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

These guidelines, which are periodically updated, are used by RSPA's enforcement personnel and attorneys as a means of determining a proposed civil penalty for violations of Federal hazardous material transportation law and the regulations issued under that law. 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 constitute a statement of agency policy for which no notice of proposed rulemaking is necessary. See also the discussion of the nature and RSPA's use of these penalty guidelines in the preamble to the final rules published on March 6, 1995, 60 FR 12139-40, and January 21, 1997, 62 FR 2970-71.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

#### A. Baseline Penalty Amounts

This final rule publishes the latest revisions that RSPA has made to the List of Frequently Cited Violations and their baseline assessments. These revisions to Part II of the guidelines are the result of revisions to the requirements in RSPA's regulations and our overall review of the penalty guidelines during the past two years. These revisions consider the increase in the maximum civil penalty to \$32,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

In the List of Frequently Cited Violations, we list the section number(s) of 49 CFR for each violation, except the word "Various" is used when a generally stated violation may be covered by more than one section of the regulations (e.g., the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). In those instances where the baseline assessment is stated as a range (e.g., \$5,000 to \$10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (e.g., the length of time that a continuing violation has lasted). Otherwise, we generally apply the top, middle, or bottom of the range depending on the Packing Group of the hazardous material involved in a violation, or we use the middle of the range for the "normal" type of violation.

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, 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 several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is lower or higher than the initial baseline assessment.

#### B. Increasing Penalties for Prior Violations

Section 5123(c) of 49 U.S.C. provides that "any history of prior violations" must be considered in determining the amount of a civil penalty for a violation of Federal hazardous material transportation law or a regulation or order issued under that law. As set forth in Section IV.E of the penalty guidelines, our general standard is to increase the baseline penalty for a violation by 25% for each prior case, up

to a maximum increase of 100%. We are revising this section of the guidelines to clarify that we apply an increase of 10% for each prior ticket against the same company or individual.

Until this year, RSPA has generally limited to five years the time that it will "look back" for prior violations, although we recognize that there may be circumstances in which it would be appropriate to "look back" for a longer period of time. We have measured the five year period according to the calendar years in which the prior case and the new case are initiated. For example, the violations in a prior case initiated any time during 1997 or later were generally considered as an aggravating factor in a new case in which a Notice of Probable Violation was issued at any time during 2002.

We are revising Section IV.E. of the penalty guidelines to advise the public that, starting in 2003, RSPA will "look back" six years (rather than five) for prior violations from the calendar year in which the new case is initiated. Thus, as a general rule, we will disregard prior violations in any civil or criminal hazardous materials enforcement case (or ticket) that was initiated in a calendar year more than six years before the year in which the case is initiated. For example, in any case in which RSPA issues a Notice of Probable Violation during 2003, we will normally consider prior violations in cases and tickets with a number beginning in "97" or later in proposing and assessing a civil penalty for the new violations; in the absence of unusual circumstances, we would not consider prior violations in cases initiated in 1996 or earlier in proposing and assessing a civil penalty for violations in a case initiated during 2003.

### III. Editorial Revisions

#### A. Preemption

In the Homeland Security Act of 2002 (the Act) (Pub. L. 107-296), Congress has made it clear that security is a part of the safe transportation of hazardous materials in commerce. Section 1711 of the Act amended the preemption provisions in 49 U.S.C. 5125(a) and (b) to specify that the Federal hazardous material transportation law preempts non-Federal requirements that conflict with Federal hazardous material transportation law, a regulation issued under that law, "or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security." RSPA is revising its procedural regulations in subpart C of 49 CFR Part 107 accordingly. In other sections, RSPA is removing references

to a non-Federal requirement being preempted “under \* \* \* regulations issued” under the Federal hazardous material transportation law to clarify that, while a non-Federal requirement that conflicts with RSPA’s regulations is preempted under the preemption criteria in 49 U.S.C. 5125, it is preempted by that Federal law and not by the regulations issued pursuant to that law.

RSPA is also revising the definition of “Regulations issued under Federal hazardous material transportation law” in 49 CFR 105.5 (and removing and reserving § 107.201(c)) to explain that, in addition to Subchapters A and C of Title 49, regulations issued by the Federal Motor Carrier Safety Administration and the Transportation Security Administration in Title 49 and regulations issued by the United States Coast Guard in Title 46 are also issued under Federal hazardous material transportation law. In addition, RSPA is providing a facsimile number and an email address (in addition to a mail address) for submission of an application for a preemption determination or for a waiver of preemption).

**B. Enforcement**

Section 107.315 of 49 CFR contains the address of the Financial Operations Division of the Federal Aviation Administration (FAA) which processes the payment of civil penalties in RSPA’s enforcement cases. This rule updates the FAA office code and Post Office box number listed in paragraphs (b) and (c) of that section.

**Rulemaking Analyses and Notices**

**A. Executive Order 12866 and DOT Regulatory Policies and Procedures**

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

**B. Executive Order 13132**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). Because this final rule carries out a statutory mandate without interpretation, revises an informational appendix without imposing any requirements, and makes

editorial changes, preparation of a federalism assessment is not warranted.

**C. Regulatory Flexibility Act**

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

**D. Paperwork Reduction Act**

There are no new information requirements in this final rule.

**E. Unfunded Mandates Reform Act of 1995**

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

**F. Environmental Assessment**

There are no significant environmental impacts associated with 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.

**List of Subjects**

**49 CFR Part 105**

Administrative practice and procedure, Hazardous materials transportation.

**49 CFR Part 107**

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

**49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Penalties, Reporting and recordkeeping requirements.

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

**PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES**

■ 1. The authority citation for part 105 continues to read:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 105.5(b), revise the definition of “Regulations issued under Federal hazardous materials transportation law” to read as follows:

**§ 105.5 Definitions.**

\* \* \* \* \*

(b) \* \* \*

Regulations issued under Federal hazardous material transportation law include this subchapter A (parts 105–110) and subchapter C (parts 171–180) of this chapter, certain regulations in chapter I (United States Coast Guard) of title 46, Code of Federal Regulations, and in chapters III (Federal Motor Carrier Safety Administration) and XII (Transportation Security Administration) of subtitle B of this title, as indicated by the authority citations therein.

\* \* \* \* \*

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

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

**Authority:** 49 U.S.C. 5101–5127, 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; 49 CFR 1.45, 1.53.

■ 4. In § 107.201, revise paragraphs (a)(1) and (a)(2), and remove and reserve paragraph (c) to read as follows:

**§ 107.201 Purpose and scope.**

(a) \* \* \*

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

\* \* \* \* \*

(c) [Reserved]

\* \* \* \* \*

■ 5. In § 107.202, revise paragraphs (a) introductory text, (b)(1), and (b)(2) to read as follows:

**§ 107.202 Standards for determining preemption.**

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

\* \* \* \* \*

(b) \* \* \*

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

\* \* \* \* \*

■ 6. In § 107.203, revise paragraphs (b)(1), (b)(3), and (c) to read as follows:

**§ 107.203 Application.**

\* \* \* \* \*

(b) \* \* \*

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202-366-5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials

Preemption Docket), at *ahms-preemption@rspa.dot.gov*.

\* \* \* \* \*

(3) Specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

\* \* \* \* \*

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

\* \* \* \* \*

■ 7. In § 107.209, revise paragraph (d) to read as follows:

**§ 107.209 Determination.**

\* \* \* \* \*

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.

■ 8. In § 107.215, revise the first sentence in paragraph (a), and paragraphs (b)(1), (b)(4), and (b)(5) to read as follows:

**§ 107.215 Application.**

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), any State or political subdivision thereof, or Indian tribe may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202-366-5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *ahms-preemption@rspa.dot.gov*.

\* \* \* \* \*

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under § 107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

\* \* \* \* \*

■ 9. In § 107.219, revise paragraphs (c)(1) and (c)(2) to read as follows:

**§ 107.219 Processing.**

\* \* \* \* \*

(c) \* \* \*

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under § 107.209 to be inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security

regulations or directives issued by the Secretary of Homeland Security.

\* \* \* \* \*

■ 10. In § 107.221, revise paragraph (e) to read as follows:

**§ 107.221 Determination.**

\* \* \* \* \*

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous materials transportation law, or whether preemption is waived.

**§ 107.315 [Amended]**

■ 11. In § 107.315, in paragraphs (c) and (d), the words “Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125” are revised to read: “Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125”.

**§ 107.329 [Amended]**

■ 12. In § 107.329, in paragraphs (a) and (b), the words “\$25,000 (\$27,500 for a violation occurring after January 21,

1997) and not less than \$250 for each violation.” are revised to read: “\$32,500 and not less than \$275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are \$27,500 and \$250, respectively.)”

**Subpart D, Appendix A [Amended]**

■ 13. In part I of appendix A to subpart D of part 107, the parenthetical phrase “(as of January 18, 1997)” is revised to read: “(as of October 1, 2003)”.

■ 14. Appendix A to subpart D of part 107 is amended by revising the List of Frequently Cited Violations (Part II) to read as follows:

**II.—LIST OF FREQUENTLY CITED VIOLATIONS**

Violation description	Section or cite	Baseline assessment
<b>General Requirements</b>		
A. Registration requirements: Failure to register as an offeror or carrier of hazardous material and pay registration fee.	107.608, 107.612 .....	\$1,000 + \$500 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 .....	.....	\$700 and up each area.
b. 10 hazmat employees or fewer .....	.....	\$400 and up each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702.	
a. more than 10 hazmat employees .....	.....	\$400 and up each area.
b. 10 hazmat employees or fewer .....	.....	\$250 and up each area.
3. Failure to provide in depth security training (when a security plan is required).	172.702.	
a. no security plan developed .....	.....	included in penalty for no security plan \$2,500.
b. security plan developed but employee not trained.		
4. Failure to create and maintain training records .....	172.704.	
a. more than 10 hazmat employees .....	.....	\$800 and up.
b. 10 hazmat employees or fewer .....	.....	\$500 and up.
C. Security plans:		
1. Failure to develop a security plan; failure to adhere to security plan.	172.800..	
a. No security plan at all; no adherence .....	.....	\$6,000 and up.
b. Incomplete security plan or incomplete adherence (one or more of three required elements missing).	.....	\$2,000 and up for each element.
2. Failure to update a security plan to reflect changing circumstances.	172.802(b) .....	\$2,000 and up.
3. Failure to put security plan in writing; failure to make all copies identical.	172.800(b) .....	\$2,000 and up.
D. Notification to a foreign shipper: Failure to provide information of HMR requirements applicable to a shipment of hazardous materials within the United States, to a foreign offeror or forwarding agent at the place of entry into the U.S.	171.12(a) .....	\$1,500 to \$7,500 (corresponding to violations by foreign offeror or forwarding agent).
E. Expired Exemption: Offering or transporting a hazardous material, or otherwise performing a function covered by an exemption, after expiration of the exemption.	171.2(a), (b), (c), Various .....	\$1,000 + \$500 each additional year.

**Offeror Requirements—All hazardous materials**

A. Undeclared Shipment: Offering for transportation a hazardous material without shipping papers, package markings, labels, or placards.	172.200, 172.300, 172.400, 172.500 ....	\$15,000 and up.
B. Shipping Papers:		

## II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Failure to provide a shipping paper for a shipment of hazardous materials.	172.201 .....	\$3,000 to \$6,000.
2. Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1) .....	\$1,200.
3. Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	172.201(e) .....	\$1,000.
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202 .....	\$800 to \$1,600.
5. Failure to include a hazard class/division number in the shipping description.	172.202 .....	\$1,000 to \$2,000.
6. Failure to include an identification number in the shipping description.	172.202 .....	\$1,000 to \$2,000.
7. Using an incorrect hazard class/identification number:	172.202.	
a. that does not affect compatibility requirements .....	.....	\$800.
b. that affects compatibility requirements .....	.....	\$3,000 to \$6,000.
8. Using an incorrect identification number:	172.202..	
a. that does not change the response information .....	.....	\$800.
b. that changes the response information .....	.....	\$3,000 to \$6,000.
9. Failure to include the Packing Group, or using an incorrect Packing Group.	172.202 .....	\$1,200.
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202 .....	\$800.
11. Using a shipping description not in required sequence.	172.202 .....	\$500.
12. Using a shipping description with two or more required elements missing or incorrect:	172.202.	
a. such that the material is misdescribed .....	.....	\$3,000.
b. such that the material is misclassified .....	.....	\$6,000.
13. Failure to include the total quantity of hazardous material covered by a shipping description.	172.202(c) .....	\$500.
14. Failure to list an exemption number in association with the shipping description.	172.203(a) .....	\$800.
15. Failure to indicate "Limited Quantity" or "Ltd Qty" following the basic shipping description of a material offered for transportation as a limited quantity.	172.203(b) .....	\$500.
16. Failure to include "RQ" in the shipping description to identify a material that is a hazardous substance.	172.203(c)(2) .....	\$500.
17. Failure to include a required technical name in parenthesis for a listed generic or "n.o.s." material.	172.203(k) .....	\$1,000.
18. Failure to include the required shipper's certification on a shipping paper.	172.204 .....	\$1,000.
19. Failure to sign the required shipper's certification on a shipping paper.	172.204 .....	\$800.
C. Emergency Response Information Requirements:		
1. Providing or listing incorrect emergency response information with or on a shipping paper:	172.602.	
a. No significant difference in response .....	.....	\$800.
b. Significant difference in response .....	.....	\$3,000 to \$6,000.
2. Failure to include an emergency response telephone number on a shipping paper.	172.604 .....	\$2,600.
3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604 .....	\$1,300.
4. Listing an unauthorized emergency response telephone number on a shipping paper.	172.604 .....	\$2,600 to \$4,200.
5. Listing an incorrect or non-working emergency response telephone number on a shipping paper.	172.604 .....	\$1,300.
6. Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604 .....	\$1,300.
D. Package Marking Requirements:		
1. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a) .....	\$800 to \$1,600.
2. Failure to mark the identification number on a package.	172.301(a) .....	\$1,000 to \$2,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
3. Marking a package with an incorrect identification number.	172.301(a).	
a. that does not change the response information ...	.....	\$800.
b. that changes the response information .....	.....	\$3,000 to \$6,000.
4. Failure to mark the proper shipping name and identification number on a package.	172.301(a) .....	\$3,000 to \$6,000.
5. Marking a package with an incorrect shipping name and identification number.	172.301(a).	
a. that does not change the response information ...	.....	\$1,500 to \$3,000.
b. that changes the response information .....	.....	\$3,000 to \$6,000.
6. Failure to include the required technical name(s) in parenthesis for a listed generic or "n.o.s." entry.	172.301(c) .....	\$1,000.
7. Marking a package as containing hazardous material when it contains no hazardous material.	172.303(a) .....	\$800.
8. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.303(a)(4) .....	\$800.
9. Failure to mark a package containing liquid hazardous materials with required orientation marking.	172.312 .....	\$2,500 to \$3,500.
10. Failure to mark "RQ" on a non-bulk package containing a hazardous substance.	172.324(b) .....	\$500.
E. Package Labeling Requirements:		
1. Failure to label a package .....	172.400 .....	\$5,000.
2. Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package.	172.400 .....	\$5,000.
3. Placing a label on a package that does not contain a hazardous material.	172.401(a) .....	\$800.
4. Failure to place a required subsidiary label on a package.	172.402 .....	\$500 to \$2,500.
5. Placing a label on a different surface of the package than, or away from, the proper shipping name.	172.406(a) .....	\$800.
6. Placing an improper size label on a package .....	172.407(c) .....	\$800.
7. Placing a label on a package that does not meet color specification requirements (depending on the variance).	172.407(d) .....	\$600 to \$2,500.
8. Failure to provide an appropriate class or division number on a label.	172.411 .....	\$2,500.
F. Placarding Requirements:		
Failure to properly placard a freight container or vehicle containing hazardous materials:	172.504.	
a. when Table 1 is applicable .....	.....	\$1,000 to \$9,000.
b. when Table 2 is applicable .....	.....	\$800 to \$7,200.
G. Packaging Requirements:		
1. Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes failure to comply with the terms of an exemption authorizing use of a nonstandard or nonspecification packaging).	Various.	
a. Packing Group I (and §172.504 Table I materials).	.....	\$9,000.
b. Packing Group II .....	.....	\$7,000.
c. Packing Group III .....	.....	\$5,000.
2. 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 I materials).	.....	\$10,800.
b. Packing Group II .....	.....	\$8,400.
c. Packing Group III .....	.....	\$6,000.
3. 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.	178.503(a) .....	\$3,600.
4. Failure to close a UN standard packaging in accordance with the closure instructions.	173.22(a)(4) .....	\$2,500.
5. 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 I materials).	.....	\$12,000.
b. Packing Group II .....	.....	\$9,000.
c. Packing Group III .....	.....	\$6,000.

## II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
6. Overfilling or underfilling a package so that the effectiveness is substantially reduced:	173.24(b).	
a. Packing Group I (and §172.504 Table I materials).	.....	\$9,000.
b. Packing Group II .....	.....	\$6,000.
c. Packing Group III .....	.....	\$3,000.
7. Offering a hazardous material for transportation after October 1, 1996, in a unauthorized non-UN standard packaging marked as manufactured to a DOT specification:	171.14.	
a. packaging meets DOT specification .....	.....	\$3,000.
b. packaging does not meet DOT specification .....	.....	\$5,000 to \$9,000.
8. Failure to mark an overpack with a statement that the inside packages comply with prescribed specifications or standards when specification or standard packaging is required.	173.25(a)(4) .....	\$3,000.
9. Filling an IBC or a portable tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank.	173.32(a), 180.352, 180.605.	
a. All testing overdue .....	.....	\$3,500 to \$7,000.
b. Only periodic (5 year) test overdue .....	.....	\$3,500.
c. Only intermediate periodic (2.5 year) tests overdue.	.....	\$3,500.
10. Failure to provide the required outage in a portable tank that results in a release of hazardous materials.	173.32(f)(6) .....	\$6,000 to \$12,000.

## Offeror Requirements—Specific hazardous materials

A. Cigarette Lighters:		
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.
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 .....	\$1,200.
2. Offering an unapproved explosive for transportation:	.....	173.54,
a. Div. 1.3 and 1.4 fireworks meeting the chemistry requirements (quantity and type) of APA Standard 87-1.	173.56(b) .....	\$5,000 to \$10,000.
b. All other explosives (including forbidden) .....	.....	\$10,000 and up.
3. Offering a leaking or damaged package of explosives for transportation.	173.54(c) .....	\$10,000 and up.
4. Packaging explosives in the same outer packaging with other materials.	173.61 .....	\$2,500 to \$5,000.
C. Class 7—Radioactive Materials:		
1. Failure to include required additional entries, or providing incorrect information for these additional entries.	172.203(d) .....	\$1,000 to \$3,000.
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds.	172.310(a) .....	\$800.
3. Failure to mark each package in letters at least 13 mm (½inch) high with the words "Type A" or "Type B" as appropriate.	172.310(b) .....	\$800.
4. Placing a label on Class 7 material that understates the proper label category.	172.403 .....	\$5,000.
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 \$4,000.
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material.	173.410 .....	\$5,000.
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation.	173.411 .....	\$5,000.
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material.	173.412(a) .....	\$2,000.
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material.	173.412(b)–(i) .....	\$5,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material.	173.412(j)–(l) .....	\$8,400.
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 .....	.....	\$8,400.
b. Complete records not maintained .....	.....	\$2,000 to \$5,000.
12. Offering any Type B, Type B(U), Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.	173.416 .....	\$9,000.
13. Offering a Type B packaging without holding a valid NRC approval certificate:	173.471(a).	
a. Never having obtained one .....	.....	\$3,000.
b. Holding an expired certificate .....	.....	\$1,000.
14. Failure to meet one or more of the special requirements for a package used to ship uranium hexafluoride.	173.420 .....	\$10,800.
15. Offering Class 7 material for transportation as a limited quantity without meeting the requirements for limited quantity.	173.421(a) .....	\$4,000.
16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.	173.423(a) .....	\$500 to \$2,500.
17. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) with an external dose rate that exceeds an external radiation level of 1 rem/hr at 3 meters from the unshielded material.	173.427(a)(1) .....	\$6,000.
18. 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) .....	\$1,000.
19. Offering in excess of Type A quantity of a Class 7 material in a Type A packaging.	173.431 .....	\$12,000.
20. Offering a package that exceeds the permitted limits for surface radiation or transport index.	173.441 .....	\$10,000 and up.
21. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443 .....	\$5,000 and up.
22. Storing packages of radioactive material in a group with a total transport index more than 50.	173.447(a) .....	\$5,000 and up.
23. 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) .....	\$5,000 and up.
24. 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) .....	\$3,000.
25. Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a), (b) .....	\$2,500.
D. Class 2—Compressed Gases in Cylinders:		
1. Filling and offering a cylinder with compressed gas when the cylinder is out of test.	173.301(a)(6) .....	\$4,200 to \$10,400.
2. 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) .....	\$5,000.
3. 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 130°F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h) .....	\$1,500 to \$6,000.

**Manufacturing, Reconditioning, Retesting Requirements**

A. Third-Party Packaging Certifiers (General):

## II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G).	171.2(e), 178.2(b), 178.3(a), 178.503(a).	\$500 per item.
<b>B. Packaging Manufacturers (General):</b>		
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)	\$2,500.
2. Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b).	
a. Packing Group I (and § 172.504 Table 1 materials).		\$10,800.
b. Packing Group II		\$8,400.
c. Packing Group III		\$6,000.
3. Certifying a packaging as meeting a UN standard when design qualification testing was not performed.	178.601(d).	
a. Packing Group I (and § 172.504 table 1 materials).		\$10,800.
b. Packing Group II		\$8,400.
c. Packing Group III		\$6,000.
4. Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	\$2,000 to \$10,800.
5. 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):		
a. Design qualification testing	178.601(d)	\$2,000 to \$10,800.
b. Periodic retesting	178.601(e)	\$500 to \$10,800.
6. Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8)	\$7,200.
7. Failure to maintain testing records	178.601(l).	
a. Design qualification testing		\$1,000 to \$5,000.
b. Periodic retesting		\$500 to \$2,000.
8. Improper marking of UN certification	178.503	\$500 per item.
9. Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14.	
a. If packaging does meet DOT specification		\$3,000.
b. If packaging does not meet DOT specification		\$6,000 to \$10,800.
<b>C. Drum Manufacturers &amp; Reconditioners:</b>		
1. Failure to properly conduct production leakproofness test on a new or reconditioned drum.	178.604(b), (d), 173.28(b)(2)(i).	
a. Improper testing		\$2,000.
b. No testing performed		\$3,000 to \$5,000.
2. Marking an incorrect registration number on a reconditioned drum.	173.28(b)(2)(ii).	
a. Incorrect number		\$800.
b. Unauthorized use of another reconditioner's number.		\$7,200.
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), (d)	\$6,000 to \$10,800.
4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not actually been altered.	173.28(d)	\$500.
<b>D. IBC and Portable Tank Requalification:</b>		
1. 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)	\$500 per item.
2. 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		\$4,000.
b. Incomplete or inaccurate records		\$1,000 to \$3,000.
3. Failure to make reinspection and retest records available to a DOT representative upon request.	180.352(f), 49 U.S.C. 5121(b)(2)	\$1,000.
<b>E. Cylinder Manufacturers &amp; Rebuilders:</b>		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various .....	\$7,500 to \$15,000.
2. Failure to have a registration number or failure to mark the registration number on the cylinder.	Various .....	\$800.
3. Marking another company's number on a cylinder .....	Various .....	\$7,200.
4. Failure to mark the date of manufacture or lot number on a DOT-39 cylinder.	178.65(i) .....	\$3,000.
5. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S./failure to obtain a chemical analysis from the foreign manufacturer.	Various .....	\$5,000.
6. Failure to meet wall thickness requirements .....	Various .....	\$7,500 to \$15,000.
7. Failure to heat treat cylinders prior to testing .....	Various .....	\$5,000 to \$15,000.
8. Failure to conduct a complete visual internal examination.	Various .....	\$2,500 to \$6,200.
9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.	Various .....	\$2,500 to \$6,200.
10. Failure to conduct a flattening test .....	Various .....	\$7,500 to \$15,000.
11. Failure to conduct a burst test on a DOT-39 cylinder	178.65(f)(2) .....	\$5,000 to \$15,000.
12. Failure to have inspections and verifications performed by an inspector.	Various .....	\$7,500 to \$15,000.
13. Failure to maintain required inspector's reports .....	Various.	
a. No reports at all .....	.....	\$5,000.
b. Incomplete or inaccurate reports .....	.....	\$1,000 to \$4,000.
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) .....	\$6,000 to \$10,800.
F. Cylinder Requalification:		
1. Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c) .....	\$800.
2. Certifying or marking as retested a nonspecification cylinder.	180.205(a) .....	\$800.
3. Failure to have retester's identification number (RIN)	180.205(b) .....	\$4,000.
4. Failure to have current authority due to failure to renew a retester's identification number (RIN).	180.205(b) .....	\$2,000.
5. Failure to have a retester's identification number and marking another RIN on a cylinder.	180.205(b) .....	\$7,200.
6. Marking a RIN before successfully completing a hydrostatic retest.	180.205(b) .....	\$800.
7. Representing, marking, or certifying a cylinder as meeting the requirements of an exemption when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), (e), 178.205(c), Applicable Exemption.	\$2,000 to \$6,000.
8. Failure to conduct a complete visual external and internal examination.	180.205(f) .....	\$2,100 to \$5,200.
9. Failure to conduct visual inspection or hydrostatic retest.	180.205(f) & (g) .....	\$4,200 to \$10,400.
10. Performing hydrostatic retesting without confirming the accuracy of the test equipment.	180.205(g)(3) .....	\$2,100 to \$5,200.
11. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	180.205(g)(5) .....	\$3,100.
12. Failure to perform a second retest, after equipment failure, at a pressure increased by the greater of 10% or 100 psi (includes exceeding 90% of test pressure prior to conducting a retest).	180.205(g)(5) .....	\$3,100.
13. Failure to condemn a cylinder when required (e.g., permanent expansion of 10% [5% for certain exemption cylinders], internal or external corrosion, denting, bulging, evidence of rough usage).	180.205(i) .....	\$6,000 to \$10,800.
14. Failure to properly mark a condemned cylinder or render it incapable of holding pressure.	180.205(i)(2) .....	\$800.
15. Failure to notify the cylinder owner in writing when a cylinder has been condemned.	180.205(i)(2) .....	\$1,000.
16. Failure to perform hydrostatic retesting at the minimum specified test pressure.	180.209(a)(1) .....	\$2,100 to \$5,200.
17. Marking a star on a cylinder that does not qualify for that mark.	180.209(b) .....	\$2,000 to \$4,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
18. 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) .....	\$2,000 to \$4,000.
19. Marking a cylinder in or on the sidewall when not permitted by the applicable specification.	180.213(b) .....	\$6,000 to \$10,800.
20. Failure to maintain legible markings on a cylinder .....	180.213(b)(1) .....	\$800.
21. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp.	180.213(c)(2) .....	\$6,000 to \$10,800.
22. Improper marking of the RIN or retest date on a cylinder.	180.213(d) .....	\$800.
23. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption .....	\$6,000 to \$10,800.
24. Failure to maintain current copies of 49 CFR, DOT exemptions, and CGA Pamphlets applicable to inspection, retesting, and marking activities.	180.215(a) .....	\$600 to \$1,200.
25. Failure to keep complete and accurate records of cylinder reinspection and retest.	180.215(b).	
a. No records kept .....	.....	\$4,000.
b. Incomplete or inaccurate records .....	.....	\$1,000 to \$3,000.
26. Failure to report in writing a change in name, address, ownership, test equipment, management, or retester personnel.	171.2(c) & (e), Approval Letter .....	\$600 to \$1,200.

Carrier Requirements

A. Incident Notification:		
1. Failure to give immediate notification of a reportable hazardous materials incident.	171.15 .....	\$3,000.
2. Failure to file a written hazardous material incident report within 30 days following an unintentional release of hazardous materials in transportation (or other reportable incident).	171.16 .....	\$500 to \$2,500.
B. Shipping Papers:		
Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	174.24(b), 175.30(a)(2), 176.24(b), 177.817(f).	\$1,000.
C. Stowage/transportation Requirements:		
1. Transporting packages of hazardous material that have not been secured against movement.	Various .....	\$3,000.
2. Failure to properly segregate hazardous materials .....	Various .....	\$7,500 and up.
3. 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) .....	\$5,200.
4. Transporting railway track torpedoes outside of flagging kits, in violation of DOT-E 7991.	171.2(b) & (e) .....	\$7,000.
5. Transporting Class 7 (radioactive) material having a total transport index greater than 50.	177.842(a) .....	\$5,000 and up.
6. Transporting Class 7 (radioactive) material without maintaining the required separation distance.	177.842(b) .....	\$5,000 and up.
7. Failure to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transportation index of 50.	171.2(b) & (e).	
a. Failure to have the required radiation survey record.	.....	\$5,000.
b. Failure to have other required documents .....	.....	\$500 each.
c. Other violations .....	.....	\$5,000 and up.

■ 15. In part IV of appendix A to subpart D of part 107, under Section IV.C. ("Penalty Increases for Multiple Counts"), the words in the first sentence "up to \$25,000 (\$27,500 for a violation occurring after January 21, 1997)" are

revised to read: "up to \$32,500 (\$27,500 for a violation occurring after January 21, 1997, and before October 1, 2003)."

■ 16. In part IV of appendix A to subpart D of part 107, the text to Section IV.E.

entitled "Penalty Increases for Prior Violations" is revised to read as follows:

The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty.

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% increase over the pre-mitigation recommended penalty.
2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.
3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.
4. A case or ticket of prior violations initiated in a calendar year more than six years before the calendar year in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

#### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

■ 17. The authority citation for part 171 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

##### **§ 171.1 [Amended]**

■ 18. In § 171.1, in paragraph (c), the words “\$25,000 (\$27,500 for a violation that occurs after January 21, 1997) and not less than \$250 for each violation.” in the first sentence are revised to read: “\$32,500 and not less than \$275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are \$27,500 and \$250, respectively.)”

\* \* \* \* \*

Issued in Washington, DC on August 25, 2003, under authority delegated in 49 CFR part 1.

**Samuel G. Bonasso,**

*Acting Administrator.*

[FR Doc. 03–22569 Filed 9–5–03; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 679**

[Docket No. 021212306–2306–01; I.D. 090203A]

##### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 20,421 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003)

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,400 mt, and is setting aside the remaining 1,021 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

##### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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