

because this rule pertains to acquisition planning that is performed by the Government.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 207 and 227

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 207 and 227, which was published at 72 FR 51188 on September 6, 2007, is adopted as a final rule with the following changes:

### PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR part 207 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 207.106 is amended by revising paragraph (S-70)(1)(ii) to read as follows:

#### 207.106 Additional requirements for major systems.

\* \* \* \* \*

(S-70)(1) \* \* \*

(ii) Establish acquisition strategies that provide for the technical data and computer software deliverables and associated license rights needed to sustain those systems and subsystems over their life cycle. The strategy may include—

\* \* \* \* \*

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BILLING CODE 5001-08-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 107 and 171

[Docket No. PHMSA-2009-0411]

RIN 2137-AE48

### Hazardous Materials: Adjustment of Maximum and Minimum Civil Penalties

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

**ACTION:** Final rule.

**SUMMARY:** PHMSA is adjusting the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. The maximum civil penalty is increased to \$55,000, and to \$110,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. The minimum civil penalty is increased to \$275, and to \$495 for a violation related to training. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996.

**DATES:** *Effective Date:* This final rule is effective on December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Douglas S. Smith, Office of Hazardous Materials Enforcement, 202-366-4700, or Joseph Solomey, Assistant Chief Counsel for Hazardous Materials Safety, 202-366-4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996, 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, the maximum and minimum 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.

Section 7120 of the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU,” Pub. L. 109-59, 119 Stat. 1905)) amended 49 U.S.C. 5123(a) to reset the maximum and minimum civil penalties for a knowing violation of Federal hazardous

material transportation law, 49 U.S.C. 5101 *et seq.*, or a regulation, order, special permit, or approval issued under that law as follows:

- Maximum civil penalty—\$50,000, except that amount may be increased to \$100,000 for a violation that results in death, serious illness, or severe injury to a person or substantial destruction of property.
- Minimum civil penalty—\$250, except that the minimum civil penalty for a violation related to training is \$450.

Because these maximum and minimum civil penalties were reset by statute, they applied to any violation that occurred on or after August 10, 2005, the date on which SAFETEA-LU became law.

Under the Act, PHMSA is now required to adjust the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a), as amended by SAFETEA-LU. Because these adjustments are the first adjustment to the amounts reset in SAFETEA-LU, any increase in the maximum and minimum civil penalty amounts is limited to 10%.

Applying the adjustment formula in the Act, PHMSA has compared the CPI-U in June 2008 (218.815)—the year before the year in which the adjustment is being made—to the CPI-U in June 2005 (194.5)—the year in which the maximum and minimum civil penalties were reset in SAFETEA-LU. This comparison shows that the CPI-U increased by 12.5% during that period, which is greater than the 10% maximum increase allowed for the first adjustment. Accordingly, PHMSA is increasing the maximum and minimum civil penalties by 10%. Because this adjustment and the amount thereof are mandated by statute, notice of proposed rulemaking is unnecessary, and there is good cause to make the adjusted maximum and minimum civil penalties applicable to any violation occurring on or after January 1, 2010. 5 U.S.C. 553(b), (d).

### Rulemaking Analyses and Notices

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

This final rule is published under the authority of (1) Federal hazardous material transportation law, which, at 49 U.S.C. 5123, provides civil penalties for a knowing violation of that law or a regulation, order, special permit, or approval issued under that law, and also (2) the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act), as amended by the Debt Collection Improvement Act of 1996 (see 28 U.S.C. 2461 note) which requires that maximum and minimum civil penalties

must be adjusted periodically to consider the effects of inflation.

*B. 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 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 11024). The economic impact of this final rule is minimal, and preparation of a regulatory evaluation is not warranted.

*C. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's May 20, 2009 memorandum on "Preemption" (74 FR 24693, May 22, 2009). As amended in 2005, 49 U.S.C. 5125(h) provided that the preemption provisions in Federal hazardous material transportation law do "not apply to any \* \* \* penalty \* \* \* utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material. Accordingly, this final rule does not have any preemptive effect on the amount or nature of penalties imposed by a State, local, or Indian tribe for violations of their requirements which are consistent with requirements in Federal hazardous material transportation law and the regulations prescribed under that law. Preparation of a federalism assessment is not warranted.

*D. Executive Order 13175*

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

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

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 and persons who manufacture, mark, certify or sell packagings, containers, and packaging components as qualified for

use in transporting hazardous materials in commerce, some of whom are small entities. However, there is no economic impact on any person who complies with Federal hazardous material transportation law and the regulations, orders, special permits, and approvals issued under that law.

*F. Paperwork Reduction Act*

There are no new information requirements in this final rule.

*G. Environmental Assessment*

There are no significant environmental impacts associated with this final rule.

*H. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of \$141.3 million or more to either State, local, or Indian tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

*I. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477-78) or online at <http://www.dot.gov/privacy.html>.

*J. 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 the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action in the Unified Agenda.

**List of Subjects**

*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 wastes, Imports, Incorporation by reference,

Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR, Subtitle B, Chapter I is amended as follows:

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

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

**Authority:** 49 U.S.C. 5101-5128, 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.

**§ 107.329 [Amended]**

■ 2. In § 107.329(a) and (b), revise the following dollar figures:

- a. Revise "\$50,000" to read "\$55,000" each time it appears.
- b. Revise "\$250" to read "\$275" each time it appears.
- c. Revise "\$100,000" to read "\$110,000" each time it appears.
- d. Revise "\$450" to read "\$495" each time it appears.

**Appendix A to Subpart D of Part 107 [Amended]**

■ 3. In Appendix A to subpart D of part 107, in Part IV under the section entitled "Penalty Increases for Multiple Counts" (Section IV.C.), revise "\$50,000 or \$100,000 for a violation occurring on or after August 10, 2005" to read "\$55,000 or \$110,000 for a violation occurring on or after January 1, 2010."

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

■ 4. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101-410 section 4 (28 U.S.C. 1461 note), Pub. L. 104-134 section 31001.

**§ 171.1 [Amended]**

■ 5. In § 171.1(g), revise the following dollar figures:

- a. Revise "\$50,000" to read "\$55,000".
- b. Revise "\$250" to read "\$275".
- c. Revise "\$100,000" to read "\$110,000".
- d. Revise "\$450" to read "\$495".

Issued in Washington, DC on December 18, 2009, under authority delegated in 49 CFR part 1.

**Cynthia Douglass,**

*Assistant Administrator/Chief Safety Officer.*

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