

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *MO&O on Remand* gives eligible wide-area 800 MHz SMR licensees the option of complying with the terms of their EI authorizations or applying EA-type construction requirements to their wide area footprints. If a licensee chooses the former, it need only comply with the requirements already imposed by the Commission's rules.

(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The action taken by this *MO&O on Remand* not only gives eligible incumbent wide-area 800 MHz SMR licensees greater flexibility to leave certain sites and frequencies unconstructed (for potential future use), but also establishes reasonable parity between incumbent wide-area licensees and EA licensees in the 800 MHz SMR service. Eligible incumbent licensees need only report their compliance with the construction requirements in the same fashion that EA 800 MHz licensees do (i.e., in a certification and, if the substantial service option is elected, a demonstration).

(6) Report to Congress

The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this *MO&O on Remand*, in a report to Congress pursuant to the Small Business Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

V. ORDERING CLAUSES

Accordingly, it is ordered that incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must comply with the terms of their extended implementation authorizations or apply the alternative construction requirements described herein. This action is taken pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i).

It is further ordered that incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must certify in a filing with the Wireless Telecommunications Bureau their compliance with the construction requirements as described herein within the later of fifteen days after the licensee's applicable construction deadline or April 17, 2000.

It is further ordered that the temporary suspension of the construction timetable for incumbent wide-area SMR licensees as set forth in

Public Notice DA 99-698 released April 15, 1999, is terminated.

It is further ordered that the Commission's Consumer Information Bureau, the Reference Information Center, SHALL SEND a copy of this *MO&O on Remand*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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reflect recent organizational changes, remove obsolete statutory citations, and incorporate recent statutory changes affecting the civil penalty schedule.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Neill Thomas, Office of Bus and Truck Standards and Operations, (202) 366-2983, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; and Mr. Michael J. Falk, Office of the Chief Counsel, HCC-20, (202) 366-1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Creation of New Agency

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (see, 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration as a new operating administration within the Department of Transportation, effective January 1, 2000 (Pub. L. 106-159, 113 Stat. 1748,

December 9, 1999). Under 49 U.S.C. 113(f), the Administrator of the FMCSA is delegated authority to carry out the duties and powers vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 315 and 317 of title 49, United States Code, as well as additional duties. Effective January 1, 2000, the Secretary rescinded the authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred without change to the FMCSA Resource Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FHWA and continued under the OMCS will be completed by the FMCSA.

Background

On April 29, 1996, the FHWA published a notice of proposed rulemaking (NPRM) proposing to amend its rules of practice for motor carrier administrative proceedings arising under the Federal Motor Carrier Safety and Hazardous Materials regulations (61 FR 18866). This proposal envisioned a comprehensive revision and reorganization of the rules of practice and motor carrier safety rating procedures, replacing 49 CFR parts 385 and 386 with new parts 361 through 364. On October 21, 1996, the FHWA published a supplemental notice of proposed rulemaking (SNPRM) which proposed making the revised rules of practice also applicable to proceedings arising under the ICCTA (Pub. L. 104-88, 109 Stat. 803) by inserting in the regulatory text references to the ICCTA and regulations implementing that statute (designated the commercial regulations) (61 FR 54601). The SNPRM also proposed to amend the rules of practice by incorporating the civil penalties provided in the ICCTA.

Following publication of the NPRM and the SNPRM, it was decided to incorporate revised rules of practice into the FHWA-initiated zero-base rulemaking proceeding, a comprehensive reorganization and redrafting of the Federal Motor Carrier Safety Regulations (FMCSRs) in a more reader-friendly format. Accordingly, the FMCSA plans to supersede the NPRM with a new proposal to be published in connection with the zero-base

proceeding. As a result, final implementation of revised rules of practice will be delayed for an indefinite period of time.

The FMCSA believes, however, that it is necessary to implement the proposed expansion of the rules of practice to include ICCTA-related administrative proceedings without further delay. As stated in the SNPRM, civil penalty procedures for safety and hazardous materials violations are governed by part 386, while violations of the ICCTA and the commercial regulations are subject to 49 CFR part 1021, the old ICC civil penalty procedures. These two parts have significant differences. For example, part 386 requires recipients of civil forfeiture claim letters to reply within a specified time with prescribed information in order to administratively resolve the claim. Failure to respond may result in the entry of an administratively final agency order enforceable in court. On the other hand, part 1021 does not require responses to claim letters or establish specific procedures for resolving claims. Failure to respond does not result in an agency order. If an FMCSA investigation or compliance review discloses violations of both the safety and commercial regulations, the FMCSA would have to issue two separate claim letters and apply different administrative procedures in resolving the claim. The confusion and inefficiency engendered by these procedural dissimilarities would be eliminated by adopting uniform procedures for all FMCSA civil penalty proceedings.

The FHWA received no public comments in response to the October 1996 SNPRM. Because the proposal to apply the rules of practice to commercial violations is uncontroversial and can be accomplished by making relatively minor changes to the regulatory text of part 386, we are implementing this proposal immediately by amending part 386 rather than waiting for final implementation of revised rules of practice in connection with the zero-base rulemaking proceeding.

Summary of Changes

References to the ICCTA are added to § 386.1, which delineates the scope of the rules, and to the definition of "civil forfeiture proceedings" in § 386.2. A definition of "commercial regulations" is added to § 386.2 and that term is inserted in §§ 386.11 and 386.21. Section 386.81 is amended to reflect the fact that many of the penalties provided under the ICCTA are stated in terms of minimum, rather than maximum, amounts. This section is also amended

to incorporate the ICCTA requirement that civil penalties related to the transportation of household goods be based on the degree of harm caused to the shipper and whether the shipper has been adequately compensated before institution of the civil penalty proceeding. The penalty schedule for part 386 (Appendix B) is amended to include the penalties prescribed in the ICCTA, as well as reflect changes to statutory penalties enacted in the MCSIA and the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107 (1998)). Prior to TEA-21, non-recordkeeping violations of the FMCSRs were classified as either Serious Patterns of Safety violations or Substantial Health or Safety violations. The TEA-21 eliminated these classifications, established a uniform maximum civil penalty of \$10,000 for non-recordkeeping offenses, eliminated the "reckless disregard" and "gross negligence" liability standard for assessing civil penalties against employees, and raised the maximum penalty for employees to \$2,500. The TEA-21 also reestablished a \$500 penalty for recordkeeping violations and increased the maximum amount assessable for all offenses related to any single violation to \$5,000. The penalty schedule, which had increased the penalty per violation to \$550 in accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, 110 Stat. 1321-358), is adjusted accordingly.

Technical amendments have been made to part 386 to reflect organizational changes brought about by the MCSIA. The responsibilities formerly exercised by the FHWA's Associate Administrator for Motor Carriers have been assumed by the FMCSA's Acting Deputy Administrator and Acting Chief Safety Officer, effective January 1, 2000. The responsibilities of the former FHWA's Office of Motor Carrier Safety Field Operations have been assumed by the new FMCSA's Office of Motor Carrier Enforcement. The FHWA restructuring also eliminated the FHWA's regional offices and transferred many of the responsibilities formerly held by the Regional Directors of Motor Carriers to the State Directors of Motor Carriers, who are now part of the FMCSA. Obsolete titles and organizational references have been removed and replaced by their current organizational equivalents.

Part 386 contains numerous statutory citations which have become obsolete as a result of recodification or repeal.

These citations are updated to reflect the revised codification.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The rulemaking merely amends provisions of the rules of practice for motor carrier safety and hazardous materials proceedings by making technical changes and expanding their application to proceedings arising under the ICC Termination Act of 1995. Because the DOT acquired new statutory responsibilities under the ICCTA, this action establishes one set of procedures and thereby reduces duplicative regulation. A regulatory evaluation is not required because of the ministerial nature of such action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this rule on small entities. No economic impacts are foreseen as the rule imposes no additional substantive burdens that are not already required by the statutes and regulations to which these procedural rules apply. Accordingly, the FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not

an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highway safety, Motor carriers.

Issued on: February 9, 2000.

Julie Anna Cirillo,
Acting Deputy Administrator.

In consideration of the foregoing and under the authority of section 103 of the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, and 49 CFR 1.73, the FMCSA amends title 49, chapter III, as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER 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; and 49 CFR 1.45 and 1.73.

2. Revise the part heading to read as shown above.

3. In part 386, revise all references to “Federal Highway Administration” to read “Federal Motor Carrier Safety Administration” and “FHWA” to read “FMCSA”.

4. In part 386, revise all references to “Associate Administrator” to read “Assistant Administrator” and “Associate Administrator’s” to read “Assistant Administrator’s”.

5. Revise § 386.1 to read as follows:

§ 386.1 Scope of rules in this part.

The rules in this part govern procedures in proceedings before the Assistant Administrator authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Chapter 313); the Motor Carrier Safety Act of 1984 (49 U.S.C. Chapter 311, Subchapter III); the recodification of title 49, United States Code, Transportation (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); the Hazardous Materials Transportation Act of 1975, as amended (49 U.S.C. Chapter 51); section 18 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 31138); section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 31139); and the ICC Termination Act of 1995 (49 U.S.C. Chapters 131–149). The purpose of the proceedings is to enable the Assistant Administrator to determine whether motor carriers, property brokers or freight forwarders, their agents, employees, or any other person subject to the jurisdiction of the FMCSA under any of the above-mentioned Acts has failed to comply with any provision or requirement of these statutes and the regulations issued under them and, if such a violation is found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

6. Amend § 386.2 by removing the definition of “Associate Administrator”; by revising the definitions of “Administration”, “civil forfeiture

proceedings" and "motor carrier" and by adding the definitions of "Assistant Administrator" and "commercial regulations" to read as follows:

§ 386.2 Definitions.

* * * * *

Administration means the Federal Motor Carrier Safety Administration.

* * * * *

Assistant Administrator means the Assistant Administrator of the Federal Motor Carrier Safety Administration and Chief Safety Officer, or his/her authorized delegate.

Civil forfeiture proceedings means proceedings to collect civil penalties for violations under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. Chapter 313); the Hazardous Materials Transportation Act of 1975, as amended (49 U.S.C. Chapter 51); the Motor Carrier Safety Act of 1984 (49 U.S.C. Chapter 311, Subchapter III); section 18 of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 31138); section 30 of the Motor Carrier Act of 1980 (49 U.S.C. 31139); and the ICC Termination Act of 1995 (49 U.S.C. Chapters 131–149).

* * * * *

Commercial regulations means statutes and regulations that apply to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49, U.S.C. (49 U.S.C. 13101 through 14913). The regulations include those issued by the Federal Motor Carrier Safety Administration or its predecessors under authority provided in 49 U.S.C. 13301 or a predecessor statute.

* * * * *

Motor carrier means a motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501.

* * * * *

7. Amend § 386.11 by removing the words "Motor Carrier Standards" and adding "Truck and Bus Standards and Operations" in paragraph (a); by revising the first sentence of the introductory text of paragraph (c); and by revising paragraph (c)(1)(ii) to read as follows:

§ 386.11 Commencement of proceedings.

* * * * *

(c) *Notice of Investigation.* This is a notice to respondent that the FMCSA has discovered violations of the Federal Motor Carrier Safety Regulations, Hazardous Materials Regulations, or Commercial Regulations under circumstances which may require a

compliance order and/or monetary penalties. * * *

* * * * *

(c) * * *

(1) The name and address of each motor carrier, broker, or freight forwarder against whom relief is sought;

* * * * *

8. Revise § 386.21(b)(7) to read as follows:

§ 386.21 Compliance order.

* * * * *

(b) * * *

(7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 31502, the Motor Carrier Safety Act of 1984 or sections 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986; or as provided in 5 U.S.C. 701 *et seq.*, for violations of regulations issued under the authority of 49 U.S.C. 5123 (hazardous materials proceedings) or 49 U.S.C. 31138–31139 (financial responsibility proceedings) or violations of the commercial regulations.

* * * * *

9. Revise § 386.23(a)(5) to read as follows:

§ 386.23 Content of consent order.

(a) * * *

(5) Provisions that the order has the same force and effect, becomes final, and may be modified, altered, or set aside in the same manner as other orders issued under 49 U.S.C. Chapters 5, 131–149, 311 and 315.

* * * * *

§ 386.48 [Amended]

10. Amend § 386.48 by removing the words "Motor Carrier Standards" and adding "Truck and Bus Standards and Operations".

§ 386.71 [Amended]

11. Amend § 386.71 by removing the words "section 3102" and adding "section 13502"; by removing the words "Federal Highway Administrator" and adding "Federal Motor Carrier Safety Administrator"; and by removing the figure "1810" and adding "5122".

§ 386.72 [Amended]

12. Amend § 386.72 by removing the figure "1810" and adding "5122" in paragraph (a); by removing the words "49 U.S.C. 3102" and adding "49 U.S.C. 13502" in paragraph (b)(1); by removing the words "Motor Carrier Safety Field Operations" and adding "Office of Enforcement and Compliance" in paragraph (b)(1); and by moving the

words "Regional Director of Motor Carriers" and adding "State Director" in paragraph (b)(1).

13. Revise § 386.81(a) to read as follows:

§ 386.81 General.

(a) The amounts of civil penalties that can be assessed for regulatory violations subject to the proceedings in this subchapter are established in the statutes granting enforcement powers. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits or minimums and consideration of information available at the time the claim is made concerning the nature, gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In addition to these factors, a civil penalty assessed under 49 U.S.C. 14901(a) and (d) concerning household goods is also based on the degree of harm caused to a shipper and whether the shipper has been adequately compensated before institution of the civil penalty proceeding. In adjudicating the claims and orders under the administrative procedures herein, additional information may be developed regarding these factors that may affect the final amount of the claim.

* * * * *

14. Amend appendix B to part 386 in the introductory paragraph by revising the second sentence; by revising paragraphs (a)(1) through (a)(4), and (b); and by adding paragraph (g) to read as follows:

Appendix B to Part 386—Penalty Schedule; Violations and Maximum Monetary Penalties

* * *. Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a)(5) and (b) through (f) below supersede the corresponding civil penalty amounts listed in title 49, United States Code.

* * * * *

(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 \$500 for each day the violation continues, up to \$5,000.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates or changes a report or record required by parts 385 and 390–399 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 or order of the Secretary is subject to a maximum civil penalty of \$5,000 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 who violates parts 385 or 390–399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$10,000 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 385 and 390–399 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$2,500.

(5) * * *

(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 of \$2,750.

* * * * *

(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 fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed is liable for a minimum penalty of \$500 per violation.

(2) A person who operates as a carrier or broker for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$500 per 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 \$2,000 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the provisions of 49 U.S.C. 13902 (c) is liable for a minimum penalty of \$500 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 \$10,000 for an intentional violation and a maximum penalty of \$25,000 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 maximum penalty of \$20,000 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 \$1,000 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 \$2,000 for the first violation and \$5,000 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(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 \$100,000 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 and 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 \$200 for the first violation and \$250 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 \$500 for the first violation and up to \$2,000 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 \$500 for the first violation and up to \$2,000 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 \$10,000 per violation.

(15) A person, or an officer, employee, or agent of that person, 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 \$200 for the first violation and at least \$250 for a subsequent violation.

(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 maximum penalty of \$5,000 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 \$2,000.

(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 or 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 \$500 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

[FR Doc. 00–3661 Filed 2–15–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE30

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Sidalcea keckii* (Keck's checker-mallow) From Fresno and Tulare Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.