rule. First, this final rule increases the current $10,000 civil penalty amount to $11,000 for violations of most provisions of Chapter 401, including the anti-discrimination provisions of section 401217 (general provision) and 41705 (discrimination against the disabled), and rules and orders issued under those provisions. Second, this final rule raises the current $5,000 civil penalty amount to $5,500 for violations of section 41719 regarding essential air service and consumer protection rules or orders issued under that section. The current maximum civil penalty of $2,500 for violations of section 41712 (unfair and deceptive practices and unfair methods of competition) is not being raised because of the rounding provision discussed above. Finally, the final rule makes a number of non-substantive editorial changes for clarity.

Regulatory Analyses and Notices

The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures when they are impracticable, unnecessary or contrary to the public interest. We find that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the usual requirements for notice and public comment. This rulemaking is a ministerial action required the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act of 1990. It is based on a statutory formula. Accordingly, we find that opportunity for notice and comment is unnecessary and contrary to the public interest, and we are issuing these updates as a final rule.

Executive Order 12866

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 or DOT's Regulatory Policies and Procedures. The rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The provisions are required by current regulatory language, without interpretation.

Regulatory Flexibility Act

In addition, we must prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–602) unless we certify that a regulation will not have a significant economic impact on a substantial number of small entities. In this case the revision of the civil penalty amounts will raise potential penalties for all aviation businesses; however, there are special reduced penalties for individuals and small businesses with regard to specific kinds of violations. With respect to two categories of violations committed by small businesses and individuals, the inflation adjustment results in no change. Those two categories are the general civil penalty amount of $1,100 and civil penalty of $2,500 for violations of 49 U.S.C. 41712, prohibiting unfair and deceptive business practices and unfair methods of competition. A third category of penalty applicable to small businesses, for violations of 49 U.S.C. 41719, does increase from $5,000 to $5,500 as a result of the inflation adjustment made by this rulemaking. Violations of this provision, having to do with essential air service requirements, are rare and should affect few, if any, small businesses. Violations of most provisions of Chapter 401 increase from $10,000 to $11,000. The aggregate economic impact of this rulemaking on small entities should be minimal. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

This final rule imposes no new reporting or record keeping requirements necessitating paperwork clearance by OMB.

Unfunded Mandates Reform Act of 1995

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995, as amended, do not apply to this rulemaking.

List of Subjects

14 CFR Part 383

Administrative practice and procedures; Penalties.

■ Accordingly, the Department of Transportation revises 14 CFR part 383 to read as follows:

PART 383—CIVIL PENALTIES

Sec.

Authority: Sec. 503, Public Law 108–176, 117 Stat. 2490; Public Law 101–410, 104 Stat. 890; Public Law 104–134, § 31001.

§ 383.1 Purpose and Periodic Adjustment.

(a) *Purpose.* This part adjusts the civil penalty liability amounts prescribed in 49 U.S.C. 46301(a) for inflation in accordance with the Acts cited in paragraph (b) of this section.

(b) *Periodic Adjustment.* DOT will periodically adjust the maximum civil penalties set forth in 49 U.S.C. 46301 and this part as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996.

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than $27,500 (or $1,100 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section, (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general $1,100 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of $11,000 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued thereunder (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of $5,500 applies for violations of section 41719 and rules and orders issued thereunder (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of $2,500 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

Issued in Washington, DC on November 14, 2008.

Mary E. Peters,

Secretary.

[FR Doc. E8–27774 Filed 11–20–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 634

[FHWA Docket No. FHWA–2008–0157]

RIN 2125–AF28

Worker Visibility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim Final Rule (IFR).

SUMMARY: The FHWA is revising its regulations to address safety concerns

raised by the firefighting community regarding high-visibility safety apparel. Due to imminent safety implications to firefighters, the FHWA has determined that there is good cause under the Administrative Procedure Act to dispense with notice and opportunity for comment as it would be contrary to the public interest. Therefore, we are issuing an Interim Final Rule, effective immediately, pursuant to the Administrative Procedure Act, and revising FHWA regulations accordingly.

DATES: *Effective Date:* This rule is effective November 24, 2008.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, submit comments electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Hari Kalla, Office of Transportation Operations, (202) 366–5915. For legal information: Mr. Raymond Cuprill, Office of Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at *http://www.regulations.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 also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

In this IFR, the FHWA is revising existing regulations to address safety concerns raised by the firefighting community. On April 24, 2006, at 71 FR 20925, the FHWA published a Notice of Proposed Rulemaking (NPRM) proposing to require the use of high-visibility safety apparel for workers who work within the Federal-aid highway rights-of-way. This regulation implemented section 1402 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; August 10, 2005), which directed the Secretary of Transportation to, within 1 year, issue regulations to decrease the likelihood of worker injury and maintain the free flow of vehicular traffic by requiring workers whose duties place them on or in close proximity to a Federal-aid highway to wear high-visibility safety apparel. The proposed definition of ''worker'' included any person on foot whose duties place them within the right-of-way of a Federal-aid highway, such as highway construction and maintenance forces, survey crews, utility crews, responders to incidents, including law enforcement personnel, within the highway right-of-way of a Federal-aid highway. ''High-visibility safety apparel'' was defined as any garment meeting the American National Standards Institute (ANSI) 107–2004 Class 2 or 3 standard.

The comment period for the NPRM closed on June 23, 2006. The FHWA received 117 letters, which were submitted to the docket, containing over 300 individual comments submitted by State and local law enforcement agencies, State departments of transportation, city and county government agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA did not receive any comments from the firefighting community either in support of or in opposition to the proposed regulations. Many of the comments received from the law enforcement community, including one from the International Association of Chiefs of Police, requested an exception for law enforcement personnel engaged in law enforcement activities, as opposed to traffic control type activities. The law enforcement community commenters contended that an officer wearing a high-visibility garment would stand out in situations where the additional conspicuity could be hazardous for the officer. The intent of the regulation was to improve the safety of workers by providing increased visibility to approaching motorists and construction traffic, not to place an officer in a more dangerous position during enforcement activities. Therefore, the FHWA agreed with the recommendation from the International Association of Chiefs of Police and provided an exception for law enforcement personnel in the Final Rule.

On November 24, 2006, at 72 FR 67792, the Final Rule establishing 23 CFR part 634 was published in the **Federal Register**. A compliance date of November 24, 2008, was established to provide a 2-year phase-in period. During this period, the firefighting community became aware of the regulation and the implications for their operations. Many of the letters that the FHWA has received from the firefighting community during the phase-in period indicate support of the regulation in general, but raise concerns about situations where the requirement to wear a high-visibility garment could cause operational problems for firefighters and could result in decreased safety for individual firefighters. During the NPRM comment period, an equipment manufacturer commented that, due to the competing hazards that exist for workers, such as heat and flame, the FHWA should consider incorporating worker categories, or at a minimum, exempt fire services responders, and instead encourage best practices in the use of high-visibility apparel in emergency situations in accordance with hazard assessments or specific environments. In response, in the preamble for the Final Rule, the FHWA indicated, ''If an agency determines that the material must be fire resistant, it can include a provision in the specification for the garments that they purchase.'' It appears that, a material that meets the fluorescent color of the ANSI 107–2004 standard and is heat- and flame-resistant to the degree required by firefighters and the National Fire Protection Association (NFPA) standards has not been developed. Therefore, it is possible that, by complying with 23 CFR part 634, a firefighter wearing a high-visibility garment could be at a greater risk of injury.

The firefighting community has also identified issues related to the amount of other personal protection equipment (PPE) required for firefighters in situations where high heat or flames are

present. In addition to the ''turnout gear'' worn by most firefighters required by a NFPA 1971 standard, they are often required to wear a Self-Contained Breathing Apparatus. Requiring the use of the high-visibility garment as the outer layer of a firefighter's apparel in such situations would not be practical. Additionally, the firefighting community contends that wearing a garment outside the turnout gear could create a snag hazard in the extraction operations at some incident scenes. This could hinder the operations and decrease safety for a firefighter.

In certain situations, such as responding to incidents on the roadway, firefighters and other emergency personnel must consider competing hazards. Conflicting regulations to 23 CFR part 634 may also exist. For example, the NFPA standards specify the type of PPE that firefighters must wear based on the different conditions they encounter. The Occupational Safety and Health Association regulations also require employers to complete and certify PPE Hazard Assessments that identify all job hazards and the correct PPE for workers to wear when engaged in work duties. While these regulations do not always conflict with 23 CFR part 634, certain conditions where they do so may exist.

In April 2008, the University of Michigan, Ann Arbor, Transportation Research Institute released a study on the conspicuity of first-responder safety garments. The study was conducted on a closed track in both daytime and nighttime conditions to compare the conspicuity of three different types of safety garments used by first responders: NFPA 1971 turnout gear coats, ANSI/ISEA 107 safety vests, and ANSI/ISEA 207 safety vests. Eight participants, balanced for gender and age, drove instrumented vehicles on the closed track indicating the distance at which they could detect workers at a simulated emergency response scene. The results show no statistically significant difference in the distance at which workers were detected, regardless of which garment was worn. In other words, all three garment standards provided equal levels of conspicuity under the conditions examined. The results suggest that all of the garments studied should be considered equivalent relative to first responder conspicuity when working in close proximity to traffic.[1] Based upon this research, the FHWA believes that the PPE for firefighters specified in the NFPA 1971 standard is equivalent to the ANSI 107–2004 Class 2 garment.

[1] Tuttle, S.J., Sayer, J.R., Buonarosa, M.L.; ''The conspicuity of first-responder safety garments''; *available at http://hdl.handle.net/2027.42/58734*; University of Michigan, Ann Arbor, Transportation Research Institute (2008).

Section-by-Section Analysis

Section 634.2

This subsection is amended to revise the definition of ''worker'' to exclude firefighters when they are exposed to flame, fire, high heat or hazardous materials.

Section 634.3

This subsection is amended to exempt firefighters from the requirement to use high-visibility safety apparel, as defined in this rule, when they are exposed to hazardous conditions where the use of such apparel may increase the risk of injury to firefighter personnel.

Rulemaking Analyses and Notices

Due to the imminent safety implications to firefighters, the FHWA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) to dispense with notice and opportunity for comment as it would be contrary to the public interest. And, in addition, for the same reason, we are making this Interim Final Rule effective immediately under 5 U.S.C. 553(d)(3), and, therefore, revising 23 CFR part 634 accordingly.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this action on small entities and has determined that the action would not have a significant economic impact on a substantial number of small entities. This action does not affect any funding distributed under any of the programs administered by the FHWA. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

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)

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

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. 4321–4347) 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 634

Design standards, Highways and roads, Incorporation by reference, Workers, Traffic regulations.

Issued on: November 14, 2008.

Thomas J. Madison, Jr.

Administrator, Federal Highway Administration.

■ In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, as set forth below:

PART 634—WORKER VISIBILITY

■ 1. The authority citation for part 634 continues to read as follows:

Authority: 23 U.S.C. 101(a), 109(d), 114(a), 315, and 402(a); Sec. 1402 of Pub. L. 109–59; 23 CFR 1.32; and 49 CFR 1.48(b).

■ 2. Amend § 634.2 to revise the definition of ''Workers'' as follows:

§ 634.2 Definitions.

* * * * *

Workers means people on foot whose duties place them within the right-of-way of a Federal-aid highway, such as highway construction and maintenance forces; survey crews; utility crews; responders to incidents within the highway right-of-way; firefighters and other emergency responders when they are not directly exposed to flame, fire, heat, and/or hazardous materials; and law enforcement personnel when directing traffic, investigating crashes, and handling lane closures, obstructed roadways, and disasters within the right-of-way of a Federal-aid highway.

■ 3. Revise § 634.3 to read as follows:

§ 634.3 Rule.

All workers within the right-of-way of a Federal-aid highway who are exposed either to traffic (vehicles using the highway for purposes of travel) or to construction equipment within the work area shall wear high-visibility safety apparel. Firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in emergency operations that directly expose them to flame, fire, heat, and/or hazardous materials may wear retroreflective turn-out gear that is specified and regulated by other organizations, such as the National Fire Protection Association. Firefighters or other emergency responders working within the right-of-way of a Federal-aid highway and engaged in any other types of operations shall wear high-visibility safety apparel.

[FR Doc. E8–27671 Filed 11–20–08; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[EPA–HQ–OEI–2003–0001; FRL–8743–3]

RIN 2025–AA23

Extension of Cross-Media Electronic Reporting Rule Deadline for Authorized Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received comment, we are withdrawing the direct final rule for extension of the Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit applications for EPA approval under CROMERR, published on October 17, 2008.

DATES: Effective November 21, 2008, EPA withdraws the direct final rule published at 73 FR 61737, on October 17, 2008.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1697; *huffer.evi@epa.gov,* or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1704; *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Because EPA received comment, we are withdrawing the direct final rule for extension of the Cross-Media Electronic Reporting Rule (CROMERR) deadline for authorized programs (states, tribes, or local governments) with existing electronic document receiving systems to submit applications for EPA approval under CROMERR, published on October 17, 2008. We stated in that direct final rule that if we received comment by November 3, 2008, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on October 17, 2008 (73 FR 61737). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.