

approach to selecting State Advisory Committee members. Additionally, the Commission decides that the use of racial preferences and caps in the selection of State Advisory Committee members would deprive the Committees of members with much-needed skill sets in a time of diminishing financial support. Denying membership in this manner could also diminish the quality of State Advisory Committee research and reports.

One comment addressed balance in political representation. The guidance as provided in the new Administrative Instruction will provide for representation by both major political parties, while also allowing independent and third party members. The Commission has chosen to rely on its requirement for a broadly diverse membership, instead of seeking a required balance that could be perceived as a quota or cap.

Others commenting on the proposed regulation chose to focus on the skills, experiences and professional backgrounds sought in potential State Advisory Committee members. The identified professions represent no change from previous guidance. Since at least 1991, educators, lawyers, business and labor leaders, corporate officers, social scientists, researchers and news gatherers have been identified as professions that should be represented in State Advisory Committee membership. The Commission has also chosen to introduce the consideration of technical skills and abilities, including, but not limited to, background in social science research, legal research and analysis, and statistical analysis. Consideration of these skills and abilities in selecting State Advisory Committee members will enhance the ability of these Committees in continuing their work in the face of diminished fiscal resources. The inclusion of these skill sets will also encourage the selection of members with the knowledge and experience necessary to produce effective and influential reports. The established criteria are not exclusionary; they are broadly inclusive and would not bar individuals from a variety of backgrounds, including persons with a background in advocacy.

List of Subjects in 45 CFR Part 703

Advisory Committees, organization and functions (Government agencies).

- Accordingly, 45 CFR part 703 is amended as follows:

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

- 1. The authority citation for part 703 continues to read as follows:

Authority: 42 U.S.C. 1975a(d).

- 2. Revise § 703.5 to read as follows:

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) No person is to be denied an opportunity to serve on a State Advisory Committee because of race, age, sex, religion, national origin, or disability. The Commission shall encourage membership on the State Advisory Committee to be broadly diverse.

Kenneth L. Marcus,

Staff Director/Acting General Counsel.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 171

[Docket No. PHMSA-05-22461]

RIN 2137-AE14

Hazardous Materials: Revisions to Civil and Criminal Penalties; Penalty Guidelines

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is revising its regulations to reflect revisions to the civil and criminal penalties in the Hazardous Materials Safety and Security Reauthorization Act (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), enacted on August 10, 2005. We are also revising baseline assessments for violations related to training and security plans and making editorial changes in our List

of Frequently Cited Violations in our Guidelines for Civil Penalties. We publish our Guidelines for Civil Penalties in order to provide the regulated community and the general public with information on the hazardous material penalty assessment process.

EFFECTIVE DATE: This rule is effective February 17, 2006.

FOR FURTHER INFORMATION CONTACT:

Douglas S. Smith, Office of Hazardous Materials Enforcement, (202) 366-4700; or Joseph Solomey, Office of Chief Counsel, (202) 366-4400, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Civil and Criminal Penalties

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144. Title VII of SAFETEA-LU—the Hazardous Materials Safety and Security Reauthorization Act of 2005—revised the maximum and minimum civil penalties, and the maximum criminal penalty, for violations of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) or a regulation, order, special permit, or approval issued under Federal hazmat law (including 49 CFR subtitle B, Chapter I, subchapters A and C). The Pipeline and Hazardous Materials Safety Administration (PHMSA; we) is revising references in our regulations to the maximum and minimum civil penalties, and the maximum criminal penalties, to reflect the following statutory changes:

- The maximum civil penalty was increased from \$32,500 to \$50,000 for a knowing violation, and to \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property.
- The minimum civil penalty has reverted from \$275 to \$250, except a minimum civil penalty of \$450 applies to a violation related to training.
- Criminal penalties now apply to both reckless and willful violations (as well to as a knowing violation of the prohibition in 49 U.S.C. 5104(b) against tampering with a marking, label, placard, or description on a shipping document) of Federal hazardous material transportation law or the regulations, orders, special permits, and approvals issued thereunder.

—The maximum criminal penalty of 5 years imprisonment and a fine in accordance with Title 18 of the United States Code (\$250,000 for an individual, \$500,000 for a corporation) was retained, except the maximum time of imprisonment has been increased to 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to a person.

II. Revisions to Civil Penalty Guidelines

PHMSA's hazardous material transportation enforcement civil penalty guidelines are published in Appendix A to 49 CFR part 107, subpart D, to provide the regulated community and the general public with information concerning the manner in which PHMSA generally begins its hazmat penalty assessment process and the types of information which respondents in enforcement cases should provide to justify reduction of proposed penalties. These guidelines were first published in the **Federal Register** on March 6, 1995 (60 FR 12139), in response to a request contained in Senate Report 103–150 which accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994. These guidelines are periodically updated. We previously published revisions to these guidelines on January 21, 1997 (62 FR 2970), August 28, 2001 (66 FR 45177), and September 8, 2003 (68 FR 52844).

These guidelines are used in PHMSA's enforcement program 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 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 PHMSA's use of these penalty guidelines in the preamble to the final rules published on March 6, 1995 (60 FR 12139–40), January 21, 1997 (62 FR 2970–71), and September 8, 2003 (68 FR 52845).

In this final rule, we are revising baseline assessments in the General Requirements section of the List of Frequently Cited Violations (Part II of PHMSA's Guidelines for Civil penalties in Appendix A to 49 CFR part 107, subpart D) to reflect the increase to \$450 in the minimum civil penalty for a violation related to training and to clarify the baseline assessments applicable to the failure to develop or adhere to a security plan and provide

security training when a security plan is required. In other sections of the List of Frequently Cited Violations, we are revising the entry for failing to retain shipping papers to reflect revisions to 49 U.S.C. 5110(d) in SAFETEA–LU, and we are correcting an error in an entry in the Cylinder Requalification violations.

Because the provisions adopted in this final rule simply set forth changes in the law and our general statements of agency policy and procedure, notice-and-comment procedure is not necessary.

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5123 and 5124 which provide civil and criminal penalties for violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises references in PHMSA's regulations to reflect revisions to the civil and criminal penalties in the Hazardous Materials Safety and Security Reauthorization Act (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), enacted on August 10, 2005. This rule also revises baseline assessments relating to training and security plans in our penalty guidelines.

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, 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, and preparation of a regulatory evaluation is not warranted.

C. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). As amended in SAFETEA–LU, 49 U.S.C. 5125(i) provides 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 State, local, or Indian tribe enforcement procedures and penalties,

and preparation of a federalism assessment is not warranted.

D. Regulatory Flexibility Act and Executive Order 13272

I certify 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 whom 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.

E. Paperwork Reduction Act

There are no new information requirements in this final rule.

F. 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 \$120.7 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.

G. Environmental Assessment

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

H. 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 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, Incorporation by reference, Penalties, 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; 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.

- 2. Revise § 107.329 to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training.

- 3. Revise § 107.333 to read as follows:

§ 107.333 Criminal penalties generally.

A person who knowingly violates § 171.2(l) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18,

United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

- 4. In Appendix A to subpart D of part 107, make the following changes:

■ a. In Part I, revise the parenthetical phrase “(as of October 1, 2003)” to read: “(as of October 1, 2005)”.

■ b. In Part II, in the List of Frequently Cited Violations, revise the “General Requirements” section; entry B.3 under “Offeror Requirements—All Hazardous Materials”; and entry F.12 under “Manufacturing, Reconditioning, Retesting Requirements.”

■ c. In Part IV, under the section entitled “Penalty Increase for Multiple Counts” (Section IV.C.), revise the words “\$32,500 (\$27,500 for a violation occurring after January 21, 1997, and before October 1, 2003)” to read: “\$50,000 or \$100,000 for a violation occurring on or after August 10, 2005”.

The revisions to Part II of Appendix A to subpart D read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

II.—LIST OF FREQUENTLY CITED VIOLATIONS

Violation description	Section or cite	Baseline assessment
General Requirements		
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		\$450 and up each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702	\$450 and up each area.
3. Failure to provide security training when a security plan is required but has not been developed.	172.702	Included in penalty for no security plan.
4. Failure to provide security training when a security plan has been developed but hazmat employees have not been trained concerning the security plan and its implementation.	172.702	\$2,500.
5. 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. § 172.504 table 1 materials		\$7,500.
b. Packing Group I		\$6,000.
c. Packing Group II		\$4,500.
d. Packing Group III		\$3,000.
2. Incomplete security plan or incomplete adherence (one or more of four required elements missing).		One-quarter (25%) of above for each element.
3. Failure to update a security plan to reflect changing circumstances	172.802(b)	One-third (33%) of baseline for no plan.
4. Failure to put security plan in writing; failure to make all copies identical	172.800(b)	One-third (33%) of baseline for no plan.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
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		
* * * * *	* * * * *	* * * * *
B. Shipping Papers:		
* * * * *	* * * * *	* * * * *
3. Failure to retain shipping papers:		
a. by an offeror, for two years after the date the shipment is provided to the carrier (or 3 years if the material is a hazardous waste).		
b. by a carrier, for one year after the date the shipment is provided to the carrier (or 3 years if the material is a hazardous waste).	172.201(e), 174.24(b), 175.30(a), 176.24(b), 177.817(f).	\$1,000.
* * * * *	* * * * *	* * * * *
Manufacturing, Reconditioning, Retesting Requirements		
* * * * *	* * * * *	* * * * *
F. Cylinder Requalification:		
* * * * *	* * * * *	* * * * *
12. Failure to perform a second retest, after equipment failure, at a pressure increased by the lesser of 10% or 100 psi (includes exceeding 90% of test pressure prior to conducting a retest).	180.205(g)	\$3,100.
* * * * *	* * * * *	* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. 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. 2461 note); Pub. L. 104–134 section 31001.

■ 6. In § 171.1, revise paragraph (g) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter

A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$50,000 and not less than \$250 for each violation, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property, and a minimum \$450 civil penalty applies to a violation relating to training. When a violation is a continuing one and involves transporting of hazardous material or causing them to be transported, each day of the violation is a separate offense. Each person who knowingly violates § 171.2(l) or willfully or recklessly violates a provision of the Federal hazardous material transportation law, an order issued under Federal

hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter, shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which a violation involves the release of a hazardous material which results in death or bodily injury to any person.

Issued in Washington, DC on February 13, 2006, under authority delegated in 49 CFR part 1.

Brigham A. McCown,

Acting Administrator.

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