

$\frac{1}{16}$ inch ceramic sheathed, type K, grounded thermocouples with a nominal 30 American wire gage (AWG) size conductor. The seven thermocouples must be attached to a steel angle bracket to form a thermocouple rake for placement in the test stand during burner calibration.

(5) *Apparatus Arrangement.* The test burner must be mounted on a suitable stand to position the exit of the burner cone a distance of 8 inches from the ceiling liner panel and 2 inches from the sidewall liner panel. The burner stand should have the capability of allowing the burner to be swung away from the test specimen during warm-up periods.

(6) *Instrumentation.* A recording potentiometer or other suitable instrument with an appropriate range must be used to measure and record the outputs of the calorimeter and the thermocouples.

(7) *Timing Device.* A stopwatch or other device must be used to measure the time of flame application and the time of flame penetration, if it occurs.

(e) *Preparation of Apparatus.* Before calibration, all equipment must be turned on and allowed to stabilize, and the burner fuel flow must be adjusted as specified in paragraph (d)(2).

(f) *Calibration.* To ensure the proper thermal output of the burner the following test must be made:

(1) Remove the burner extension from the end of the draft tube. Turn on the blower portion of the burner without turning the fuel or igniters on. Measure the air velocity using a hot wire anemometer in the center of the draft tube across the face of the opening. Adjust the damper such that the air velocity is in the range of 1550 to 1800 ft./min. If tabs are being used at the exit of the draft tube, they must be removed prior to this measurement. Reinstall the draft tube extension cone.

(2) Place the calorimeter on the test stand as shown in Figure 2 at a distance of 8 inches (203 mm) from the exit of the burner cone to simulate the position of the horizontal test specimen.

(3) Turn on the burner, allow it to run for 2 minutes for warm-up, and adjust the damper to produce a calorimeter reading of 8.0 ± 0.5 BTU per ft.² sec. (9.1 ± 0.6 Watts/cm²).

(4) Replace the calorimeter with the thermocouple rake.

(5) Turn on the burner and ensure that each of the seven thermocouples reads 1700 °F. ± 100 °F. (927 °C. ± 38 °C.) to ensure steady state conditions have been achieved. If the temperature is out of this range, repeat steps 2 through 5 until proper readings are obtained.

(6) Turn off the burner and remove the thermocouple rake.

(7) Repeat (1) to ensure that the burner is in the correct range.

(g) *Test Procedure.* (1) Mount a thermocouple of the same type as that used for calibration at a distance of 4 inches (102 mm) above the horizontal (ceiling) test specimen. The thermocouple should be centered over the burner cone.

(2) Mount the test specimen on the test stand shown in Figure 1 in either the

horizontal or vertical position. Mount the insulating material in the other position.

(3) Position the burner so that flames will not impinge on the specimen, turn the burner on, and allow it to run for 2 minutes. Rotate the burner to apply the flame to the specimen and simultaneously start the timing device.

(4) Expose the test specimen to the flame for 5 minutes and then turn off the burner. The test may be terminated earlier if flame penetration is observed.

(5) When testing ceiling liner panels, record the peak temperature measured 4 inches above the sample.

(6) Record the time at which flame penetration occurs if applicable.

(h) *Test Report.* The test report must include the following:

(1) A complete description of the materials tested including type, manufacturer, thickness, and other appropriate data.

(2) Observations of the behavior of the test specimens during flame exposure such as delamination, resin ignition, smoke, etc., including the time of such occurrence.

(3) The time at which flame penetration occurs, if applicable, for each of the three specimens tested.

Issued in Washington, DC, on September 17, 2007 under authority delegated in 49 CFR part 1.

Krista Edwards,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 300 to 399, revised as of October 1, 2006, on page 276, in Appendix A to Part 386, reinstate Section IV to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$2,100 per violation. (For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during

the period the driver was placed out of service.

Penalty—Up to \$16,000 per violation. (This violation applies to motor carriers, including an independent contractor who is not a “driver,” as defined under paragraph IVa above.)

c. Violation—Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—\$2,100 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty—Up to \$16,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a “driver,” as defined in IVa above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$650 per violation.

f. Violation—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$16,000 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Conducting operations during a period of suspension under §§ 386.83 or 386.84 for failure to pay penalties.

Penalty—Up to \$11,000 for each day that operations are conducted during the suspension period.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

RIN 2126-AB12

Civil Penalties Adjustments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule specifies inflation adjustments to civil penalties

for violating the FMCSA regulations. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. This final rule also makes a technical correction to include a reference to a paragraph created by an earlier rulemaking action.

DATES: Effective September 28, 2007.

FOR FURTHER INFORMATION CONTACT:

Jason Hartman, Regulatory Development Division, (202) 366-5043, jason.hartman@dot.gov. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

The Debt Collection Improvement Act of 1996

In order to preserve the remedial effect of civil penalties and foster compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (the Act) (Pub. L. 104-134, 110 Stat. 1321-1373), requires Federal agencies to regularly adjust certain civil penalties for inflation (see 28 U.S.C. 2461 note). The law requires each agency to make an initial inflationary adjustment for all applicable civil penalties and to make further adjustments to these penalty amounts at least once every four years.

The FMCSA previously adjusted civil penalties for inflation by regulation on March 31, 2003 (68 FR 15381). Subsequent to these adjustments, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) on August 10, 2005 (Pub. L. 109-59, 119 Stat. 1144). SAFETEA-LU reset several penalties at amounts required prior to adjustment for inflation and created new categories of penalties. The current penalties are found in 49 CFR part 386, Appendix A and B and 49 CFR 383.53(b).

Under 5 U.S.C. 553(b), the FMCSA finds good cause to dispense with prior notice and opportunity for comment. These procedures are unnecessary because inflation adjustments are ministerial acts required by statute. The adjustment simply recognizes that as inflation occurs, penalties should keep pace so that the impact of the penalty is not diminished with the passage of time.

Method of Calculation

Under the Act (28 U.S.C. 2461 note) the inflation adjustment for each applicable civil penalty is determined

by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the amount by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the year in which the amount of such civil penalty was last set or adjusted pursuant to law (section 5(b), 28 U.S.C. 2461 note). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the Act (section 5(a), 28 U.S.C. 2461 note).

For example, under Appendix A of 49 CFR part 386, part IV, paragraph (e), failure to return a written certification of correction as required by an out-of-service order is subject to a civil penalty. The penalty was adjusted for inflation on March 31, 2003 (68 FR 15381), resulting in a maximum penalty of \$650 for per violation. The CPI was 203 in June 2006, and was 184 in June 2003 (see U.S. Department of Labor CPI index at [ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt](http://ftp.bls.gov/pub/special.requests/cpi/cpi.txt)). Thus the inflation factor is 203/184 or 1.10. The new penalty amount after the increase is the result of multiplying $\$650 \times 1.10 = \715 . Under the statute, however, the increase is to be rounded to the nearest multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000. The amount of the increase in the daily maximum penalty was \$65, rounded to the nearest multiple of \$100 equals \$100, so the new daily maximum penalty is \$750. Therefore, Appendix A of 49 CFR part 386, part IV, paragraph (e) is revised to provide an adjusted maximum penalty of \$750 per violation.

The 1.10 inflation factor is used to adjust penalties previously adjusted in 2003, which included penalties under the Federal Hazardous Materials Regulations (49 CFR parts 171-180); penalties under the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107); commercial penalties established in the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 809); and penalties enacted in the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748 (Dec. 9, 1999)).

SAFETEA-LU revised or established several civil penalty amounts, which have been promulgated by final rule in 72 FR 36760, July 5, 2007. The FMCSA adjusts these penalties for inflation, using an inflation factor of 203/195 or 1.04, even though the penalties are less than four years old, to place all penalties on the same adjustment schedule. The Debt Collection Improvement Act of 1996 allows for

more frequent adjustments, so long as agencies adjust civil penalties at least every four years.

Some penalties established by SAFETEA-LU were not included in the July 5, 2007, final rule. Footnote 2 in the preamble to that rule explained that changes in penalties made by section 4102(a) of SAFETEA-LU (amending 49 U.S.C. 521(b)(2)(B) to increase the penalties for recordkeeping and reporting violations) do not require any change in FMCSA regulations because they are automatically implemented by 49 CFR 386.81. Nevertheless, to avoid confusion on the part of the regulated community and to ensure that the listed regulatory penalties are consistent with those specified in SAFETEA-LU, FMCSA is updating the penalties in Appendix B to 49 CFR part 386, paragraphs (a)(1) and (a)(2).

Section 4209 of SAFETEA-LU also established new penalties for household goods brokers and motor carriers. In a proposed rule entitled "Brokers of Household Goods Transportation by Motor Vehicle" (RIN 2126-AA84), the FMCSA has proposed to add the penalties to 49 CFR part 386, paragraph (e) of Appendix B (72 FR 5947, Feb. 8, 2007). Those penalty amounts will not, however, be adjusted at this time because that rule is not yet final.

Appendices A and B are now adjusted for inflation. Because of the relatively low rate of recent inflation and the rounding formula required by the Act, most penalties remain unchanged from their previous levels.

In addition, the July 5, 2007, revisions to Appendix B to part 386 added paragraph (h). Today's rule modifies the second sentence of the introductory paragraph to Appendix B to reference paragraph (h).

Rulemaking Analyses and Notices

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause on the basis that those procedures are "impracticable, unnecessary, or contrary to the public interest." (See 5 U.S.C. 553(b).) As stated above, the amendments made by this final rule are mandated by Congress. By making these amendments, the Agency is performing a nondiscretionary ministerial act. For this reason, the FMCSA finds good cause that notice and public comment are unnecessary. Further, the agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication.

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 within the meaning of Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule, which is statutorily mandated to preserve the remedial effect of civil penalties, will have minimal costs. Therefore, a full regulatory evaluation is unnecessary.

Executive Order 13132 (Federalism Assessment)

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 federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The FMCSA is an Administration within the Department of Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations implementing NEPA (40 CFR parts 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement since this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate,

or by the private sector, of \$120 million or more in any one year.

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 FMCSA has 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 environment 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 13211 (Energy Effects)

The FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a “significant energy action” under that Executive Order because it will not be economically significant and will not be likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

■ In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, subtitle, B, chapter III, part 386 as set forth below:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

Appendix A to Part 386—[Amended]

■ 2. Appendix A to part 386 is amended by revising the figure “\$650” to read as “\$750,” whenever it appears throughout the appendix.

Appendix B to Part 386—[Amended]

■ 3. In Appendix B to part 386 the introductory text is amended by revising the second sentence to read as follows:

* * * Pursuant to that authority, the inflation-adjusted civil penalties listed in paragraphs (a) through (h) of this appendix supersede the corresponding civil penalty amounts listed in title 49, United States Code.

* * * * *

■ 4. Appendix B to part 386 is further amended as follows:

■ a. Paragraph (a)(1) is amended by revising the figure “\$550” to read as “\$1,000,” and the figure “\$5,500” to read as “\$10,000.”

■ b. Paragraph (a)(2) is amended by revising the figure “\$5,500” to read as “\$10,000.”

■ c. Paragraph (e)(5) is amended by revising the figure “\$100,000” to read as “\$105,000.”

■ d. Paragraph (f)(2) is amended by revising the figure “\$100,000” to read as “\$105,000.”

■ e. Paragraph (g) is amended by revising the figure “\$550” to read as “\$650,” the figure “\$5,500” to read as “\$6,500,” the figure “\$27,500” to read as “\$32,500,” and the figure “\$110,000” to read as “\$120,000,” whenever they appear throughout paragraph (g).

Issued on: September 24, 2007.

John H. Hill,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2005–23082]

RIN 2132–AA90

Buy America Requirements; End Product Analysis and Waiver Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Transit Administration published in the **Federal Register** of September 20, 2007, a final rule (effective October 22, 2007) which amended the Buy America