



Billing Code 4910-60-P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 107 and 171**

**[Docket No. PHMSA-2012-0257 (HM-258)]**

**RIN 2137-AE96**

**Hazardous Materials: Revision of Maximum and Minimum Civil Penalties**

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

**ACTION:** Final rule.

**SUMMARY:** PHMSA is revising the references in its regulations to the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. As amended in the “Moving Ahead for Progress in the 21<sup>st</sup> Century Act” (MAP-21), effective October 1, 2012, the maximum civil penalty for a knowing violation is now \$75,000, except that the maximum civil penalty is \$175,000 for a violation that results in death, serious illness, or severe injury to any person or substantial destruction of property. In addition, there is no longer a minimum civil penalty amount, except that the minimum civil penalty amount of \$450 applies to a violation relating to training.

**DATES:** Effective Date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe, Office of Hazardous Materials Safety, (202) 366-8553; or Joseph Solomey, Office of Chief Counsel, (202) 366-4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Civil Penalty Amendments**

In Section 33010 of MAP-21 (Pub. L. 112-141, 126 Stat. 837 [July 6, 2012]), Congress revised the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a) for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. These changes to the civil penalty amounts apply to violations occurring on or after October 1, 2012. Accordingly, PHMSA is revising the references to the maximum and minimum civil penalty amounts in its regulations to reflect

the changes to Section 5123 of the Federal hazardous material transportation law. In 49 CFR 107.329, Appendix A to subpart D of 49 CFR part 107, and 49 CFR 171.1, we are:

- Revising the maximum civil penalty from \$55,000 to \$75,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law.
- Revising the maximum civil penalty from \$110,000 to \$175,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law that results in death, serious illness, or severe injury to any person or substantial destruction of the property.
- Removing the current \$250 minimum civil penalty and revising the minimum penalty amount to \$450 for a violation related to training.

Because these revisions simply set forth changes in the law and are part of PHMSA's general statements of agency policy and procedure, notice and comment is not necessary.

## **II. Rulemaking Analyses and Notices**

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

This final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 et seq.). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises the references in PHMSA's regulations by (1) revising the maximum penalty amount for a knowing violation and a knowing violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to \$75,000 and \$175,000, respectively, and (2) removing the minimum penalty amount, except for the minimum penalty amount of \$450 for a violation related to training.

### **B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563. Accordingly, this final rule was not reviewed by the Office of Management and Budget (OMB). Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT because it is limited to a ministerial act on which the agency has no discretion. 44 FR 11034. The economic impact of the final rule is minimal to the extent that preparation of a

regulatory evaluation is not warranted. Given the low number of penalty actions within the scope of this final rule, the impacts will be very limited. We provide, however, the following information regarding cases and tickets involving the maximum and minimum civil penalties to establish the scope economic impacts associated with this final rule.

#### Maximum Civil Penalty

In reviewing Penalty Action Reports and enforcement data from 2010-2012, PHMSA has found that twenty-one separate cases have been referred by field operations to chief counsel with one or more violations with a recommended penalty greater than \$50,000. Of those cases, seventeen are pending, and four have been finalized. In three of the four finalized cases, the penalty assessed in the Order was reduced below the maximum based on corrective actions, finances, or based on statutory criteria that PHMSA must consider. In one case, the company paid the maximum civil penalty.

#### Minimum Civil Penalty

In reviewing Penalty Action Reports and enforcement data from 2010-2012, PHMSA has found that approximately 325 tickets that are not related to training have been issued with a penalty of \$500 or less. These penalties would include actions in which the minimum civil penalty was assessed for one or more violations. In addition, there were no cases with a recommended penalty less than \$500. Even though these minimum penalties are no longer required, they will likely be issued. The minimum civil penalty is expected to be used in a very limited number of actions under very exceptional circumstances. For example, a person that demonstrates a willingness to comply, works with PHMSA to correct violations, and is facing financial hardship may be granted leniency from a civil penalty.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

This final rule is being undertaken to address our statutory requirements. It does not conflict with Executive Order 12866, Executive Order 13563, or DOT Regulatory Policies and Procedures. This rule imposes no new costs upon persons conducting hazardous materials operations in compliance with the requirements of the HMR. Those entities not in compliance with the requirements of the HMR may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. The amendments in this rule could provide safety benefits (i.e., larger penalties deterring knowing violators). Overall, it is anticipated this rulemaking would be cost neutral.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rule does not impose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

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

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

The Regulatory flexibility Act (5 U.S.C. 601-611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to all business transporting hazardous material. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

There are no new information requirements in this final rule.

G. 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.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, in the aggregate, to any of the following: state, local, or Native American tribal governments, or to the private sector.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 USC 4321 – 4375), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. These amendments would be generally applicable and not be carried out in a defined geographic area. Civil penalties may act as a deterrent to those violating the HMR, and, this can have a negligible positive environmental impact as a result of increased compliance with the HMR. Based on the above discussion PHMSA concludes there are no significant environmental impacts associated with this final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) which may be viewed at <http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations.

#### **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, Reporting and recordkeeping requirements.

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

#### **PART 107--HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 is revised 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 1.81 and 1.97

2. Section 107.329 is revised 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 the 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 \$75,000 for each violation, except the maximum civil penalty is \$175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$450 for violations 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 the 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 \$75,000 for each violation, except the maximum civil penalty is \$175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$450 for violations relating to training.

3. In Appendix A to subpart D of part 107, in Section IV.C., the first sentence is revised to read as follows:

APPENDIX A TO SUBPART D OF PART 107—GUIDELINES FOR CIVIL PENALTIES

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IV. \* \* \*

C. \* \* \*

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations relating to packaging manufacture or qualification) is subject to a civil penalty of up to \$75,000 or \$175,000 for a violation occurring on or after October 1, 2012. \* \* \*

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PART 171-- GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for part 171 is revised 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. 104–134, section 31001; 49 CFR 1.81 and 1.97.

5. In § 171.1, paragraph (g) is revised 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 \$75,000 for each violation, except the maximum civil penalty is \$175,000 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$450 for a violation relating to training.

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Issued in Washington, DC on April 9, 2013 under authority delegated in 49 CFR part 1.

Cynthia Quarterman, Administrator  
Pipeline and Hazardous Materials Safety Administration

[FR Doc. 2013-08981 Filed 04/16/2013 at 8:45 am; Publication Date: 04/17/2013]