



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 386

[Docket Number: FMCSA-2016-0128]

RIN 2126-AB93

Federal Civil Penalties Inflation Adjustment of 2015

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

ACTION: Final rule.

SUMMARY: FMCSA amends the civil penalties listed in its regulations to ensure that the civil penalties assessed or enforced by the Agency reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), FMCSA is required to promulgate annual adjustments each year by January 15th. Pursuant to the Administrative Procedure Act, FMCSA finds that good cause exists for immediate implementation of this final rule because prior notice and comment are unnecessary, per the specific provisions of the 2015 Act.

DATES: This rule is effective [INSERT DATE 10 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. LaTonya Mimms, Enforcement Division, by email at civilpenalty@dot.gov or phone at 202-366-0991. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. EXECUTIVE SUMMARY

A. Purpose and Summary of the Major Provisions

This final rule adjusts the amount of FMCSA’s civil penalties to account for inflation as directed by the 2015 Act. The final rule implements the 2017 annual adjustments, which will update the adjustments made by interim final rule on June 27, 2016 (81 FR 41453). The specific inflation adjustment methodology is described later in this document.

B. Benefits and Costs

The changes imposed by this final rule affect civil penalty amounts, which are considered by the Office of Management and Budget (OMB) Circular A-4, Regulatory Analysis,¹ as transfer payments, not costs. Transfer payments are payments from one group to another that do not affect total resources available to society. By definition they are not considered in the monetization of societal costs and benefits of rulemakings.

Congress stated in the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) that increasing penalties over time will “maintain the deterrent effect of civil monetary penalties and promote compliance with the law.”² Therefore, with this continued deterrence, FMCSA infers that there may be some safety benefits that occur due to this final rule. The deterrence effect of increasing penalties, which Congress has recognized, cannot be reliably quantified into safety benefits.

II. LEGAL BASIS FOR THE RULEMAKING

A. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

¹ Office of Management and Budget (OMB). Circular A-4. Regulatory Analysis. September 17, 2003. Available at: <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf> (accessed January 5, 2017)

² 28 U.S.C. 2461 note (Pub. L. 101-410, Oct. 5, 1990, 104 Stat. 890.)

This rulemaking is based primarily on the 2015 Act, Pub. L. 114-74, title VII, sec. 701, 129 Stat. 599, 28 U.S.C. 2461 note (Nov. 2, 2015). The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act) (28 U.S.C. 2461 note). The basic findings and purpose of the amended 1990 Act remain unchanged and include supporting the role civil penalties play in Federal law and regulations in deterring violations by allowing for regulatory adjustments to account for inflation.

OMB must provide annual guidance by December of each year on implementing the 2015 Act. In response to this provision, OMB has provided guidance to agencies regarding the methodology to implement the 2017 annual adjustment required under the 2015 Act,³ as further discussed in the Background section, below.

B. Administrative Procedure Act (APA).

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides an exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest.” FMCSA finds that prior notice and comment is unnecessary because section 4 of the 2015 Act specifically requires the annual adjustments to be accomplished through final rule without notice and comment.

Also pursuant to the APA (5 U.S.C. 553 (d)(3)), the rule will be effective [INSERT DATE 10 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Delaying the

³ OMB Memorandum for the Heads of Executive Departments and Agencies; Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015: https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

effective date for 30 days after publication would be contrary to the direction provided in the 2015 Act, which states that annual adjustments be made by January 15th of each year. As this final rule is already past that deadline, further delay would be contrary to the public interest.

III. BACKGROUND

A. Regulatory History

On June 27, 2016, FMCSA published an interim final rule using an initial “catch up” adjustment, as required by section 4 of the 2015 Act (81 FR 41453). That interim final rule included an explanation of how FMCSA would apply adjusted civil penalty amounts to ongoing enforcement cases. As stated in that rule:

FMCSA has concluded that, for those open enforcement matters in which a penalty was proposed before the date of the “catch-up” adjustment or an annual adjustment but in which a Final Agency Action has not been issued, recalculating the amount of the proposed penalty would not induce further compliance, and would thus be contrary to the goal of 49 U.S.C. 521(b)(2)(D). Moreover, the length of time between the date that a person is notified of the amount of the proposed penalty and the issuance of the Final Agency Action can vary, but is sometimes several years, depending on litigation schedules and other factors. Applying an inflation adjustment to proposed penalties in cases long awaiting administrative review could raise questions of equity. FMCSA therefore will not retroactively adjust the proposed penalty amounts in notices of claim issued prior to the effective date. Otherwise, the 2015 Act applies prospectively, and does not retroactively change previously assessed or enforced penalties an agency is actively collecting or has collected.⁴

B. Method of Calculation

OMB published a memorandum on December 16, 2016 (see footnote 3), providing guidance to the Agencies for implementation of the 2017 annual adjustment under the 2015 Act (OMB implementation guidance). The OMB implementation guidance detailed a cost-of-living adjustment multiplier of 1.01636 for 2017. This adjustment applies to all civil

⁴ 81 FR 41453, 41454, June 27, 2016

monetary penalties covered by the Inflation Adjustment Act. OMB guidance requires the multiplier to be applied to the most recent penalty amount, i.e., the catch-up adjustment that the 2015 Act required agencies to issue not later than July 1, 2016. FMCSA, therefore, bases these adjustments on the changes contained in the interim final rule published June 27, 2016 (81 FR 41453).

IV. DISCUSSION OF COMMENTS AND RESPONSES

On June 27, 2016, FMCSA published an interim final rule using an initial “catch up” adjustment. While that interim final rule was issued without notice and comment, FMCSA did request comments on any errors or discrepancies that the public might find. No comments were received on the interim final rule.

V. INTERNATIONAL IMPACTS

The FMCSRs, and any exceptions to the FMCSRs, apply to foreign entities operating within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VI. SECTION-BY-SECTION ANALYSIS

Today’s amendments to part 386 finalize the changes made to the introductory text of the Appendices A and B to Part 386 in the interim final rule published on June 27, 2016 (81 FR 41453). The amendments also revise the penalty amounts found within Appendices A and B. Below are two tables describing the changes to the civil penalty amounts in Appendices A and B. The first and second columns show the location of the change in the appendices and the legal authority. Column three shows the current penalty as adjusted by the interim final

rule. The fourth column presents the “Annually Adjusted Penalty,” which is the current penalty adjusted using the OMB-prescribed multiplier of 1.01636. As noted in the regulatory text (Part 386, Appendices A and B) in today’s rule, the adjusted civil penalties identified in the appendices supersede, where a discrepancy exists, the corresponding civil penalty amounts identified in title 49, United States Code.

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

The introduction to Appendix A is republished, but is unchanged from the interim final rule. Table 1, below, describes the changes in the penalties in Appendix A made by today’s final rule.

Table 1: Inflation Adjustments for Appendix A to Part 386

Civil Penalty Location (1)	Legal Authority (2)	Current Penalty (3)	Annually Adjusted Penalty (Current Penalty × 1.01636) (4)
Appendix A II Subpoena	MAP-21 Pub. L. 112-141, § 32110 126 Stat. 405, 782, (2012) (49 U.S.C. § 525).	\$1,028	\$1,045
Appendix A II Subpoena	MAP-21 Pub. L. 112-141, § 32110, 126 Stat. 405, 782 (2012) (49 U.S.C. § 525).	\$10,282	\$10,450
Appendix A IV (a) Out-of-service order (operation of CMV by driver)	Pub. L. 98-554, § 213(b), 98 Stat. 2829, 2841-2843 (1984) (49 U.S.C. § 521(b)(7)), 55 FR 11224 (March 27, 1990).	\$1,782	\$1,811
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver)	Pub. L. 98-554, § 213(a), 98 Stat. 2829 (1984) (49 U.S.C. § 521(b)(7)), 55 FR 11224 (March 27, 1990).	\$17,816	\$18,107

Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service)	Pub. L. 98-554, § 213(a), 98 Stat 2829 (1984) (49 U.S.C. § 521(b)(7)), FR 11224 (March 27, 1990).	\$1,782	\$1,811
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service)	Pub. L. 98-554, § 213(a), 98 Stat 2829 (1984) (49 U.S.C. § 521(b)(7)); 55 FR 11224 (March 27, 1990).	\$17,816	\$18,107
Appendix A IV (e) Out-of-service order (failure to return written certification of correction)	49 U.S.C. § 521 (b)(2)(B), 49 CFR 396.9 (d)(3).	\$891	\$906
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered)	MAP-21, Pub. L. 112-141, § 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. § 521(b)(2)(F)).	\$25,705	\$26,126
Appendix A IV (h) Out-of-service order (operating in violation of order)	Pub. L. 98-554, § 213(a), 98 Stat, 2829, 2841-2843 (1984) (49 U.S.C. § 521(b)(7)).	\$22,587	\$22,957
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties)	TEA-21, Pub. L. 105-178, § 4015(b), 112 Stat. 411-12 (1998) (49 U.S.C. §§ 521(b)(2)(A)), 521 (b)(7)); 65 FR 56521, 56530 (September 19, 2000).	\$14,502	\$14,739
Appendix A IV (j) (conducting operations during suspension or revocation)	Pub. L. 98-554, § 213(a), 98 Stat, 2829, 2841-2843 (1984) (49 U.S.C. § 521(b)(7)).	\$22,587	\$22,957

B. Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

The introduction to Appendix B is republished, but is unchanged from the interim final rule. Table 2, below, describes the changes in the penalties in Appendix B made by today’s final rule.

Table 2: Inflation Adjustments for Appendix B to Part 386

Civil Penalty Location (1)	Legal Authority (2)	Current Penalty (3)	Annually Adjusted Penalty (Current Penalty × 1.01636) (4)
Appendix B (a)(1) Recordkeeping--maximum penalty per day	SAFETEA-LU, Pub. L. 109–59, § 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. § 521(b)(2)(B)(i)).	\$1,194	\$1,214
Appendix B (a)(1) Recordkeeping--maximum total penalty	SAFETEA-LU, Pub. L. 109–59, § 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. § 521(b)(2)(B)(i)).	\$11,940	\$12,135
Appendix B (a)(2) Knowing falsification of records	SAFETEA-LU, Pub. L. 109–59, § 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. § 521(b)(2)(B)(ii)).	\$11,940	\$12,135
Appendix B (a)(3) Non- recordkeeping violations	TEA-21, Pub. L. 105- 178, § 4015(b), 112 Stat. 107, 411-12 (1998) (49 U.S.C. § 521(b)(2)(A)).	\$14,502	\$14,739
Appendix B (a)(4) Non- recordkeeping violations by drivers	TEA-21, Pub. L. 105- 178, § 4015(b), 112 Stat. 107, 411-12 (1998) (49 U.S.C. § 521(b)(2)(A)).	\$3,626	\$3,685
Appendix B (a)(5) Violation of 49 CFR 392.5 (first offense)	SAFETEA-LU, Pub. L. 109–59, 119 Stat. 1144, 1715; § 4102 (b), 119 Stat. 1715-16 (2005) (49 U.S.C. § 31310 (i)(2)(A)).	\$2,985	\$3,034
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction)	SAFETEA-LU, Pub. L. 109–59, 119 Stat. 1144, 1715; § 4102 (b), 119 Stat. 1715-16 (2005) (49 U.S.C. § 31310 (i)(2)(A)).	\$5,970	\$6,068
Appendix B (b) Commercial driver’s license (CDL) violations	Pub. L. 99-570, § 12012(b), 100 Stat. 3207-184-85 (1986) (49 U.S.C. § 521(b)(2)(C)).	\$5,391	\$5,479

Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction)	SAFETEA-LU, Pub. L. 109-59, § 4102(b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. § 31310 (i)(2)(A)).	\$2,985	\$3,034
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction)	SAFETEA-LU, Pub. L. 109-59, 119, § 4102 (b), Stat. 1144, 1715 (2005) (49 U.S.C. § 31310 (i)(2)(A)).	\$5,970	\$6,068
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty)	Pub. L. 99-570, § 12012(b), 100 Stat. 3207-184-85 (1986) (49 U.S.C. § 521(b)(2)(C)).	\$5,391	\$5,479
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty)	SAFETEA-LU, Pub. L. 109-59, § 4102 (b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. § 31310 (i)(2)(C)).	\$29,849	\$30,337
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations	ICC Termination Act of 1995, Pub. L. 104-88, § 403(a), 109 Stat. 956 (1995) (49 U.S.C. § 31310(j)(2)(B)).	\$15,474	\$15,727
Appendix B (d) Financial responsibility violations	Pub. L. 103-272, § 31139(f), 108 Stat. 745, 1006-1008 (1994) (49 U.S.C. § 31139(g)(1)).	\$15,909	\$16,169
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials)	MAP-21 Pub. L. 112-141, § 33010, 126 Stat. 405, 837-838 (2012) (49 U.S.C. § 5123(a)(1)).	\$77,114	\$78,376
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)-- minimum penalty	MAP-21 Pub. L. 112-141, § 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. § 5123(a)(3)).	\$463	\$471

Appendix B (e)(2) : Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)--maximum penalty	MAP-21 Pub. L. 112- 141, § 33010 126 Stat. 405, 837 (2012) (49 U.S.C. § 5123(a)(1)).	\$77,114	\$78,376
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container)	MAP-21 Pub. L. 112- 141, § 33010, 126 Stat. 405, 837, (2012) 49 U.S.C. § 5123(a)(1)).	\$77,114	\$78,376
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs)	MAP-21 Pub. L. 112- 141, § 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. §5123(a)(1)).	\$77,114	\$78,376
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property)	MAP-21 Pub. L. 112- 141, § 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. § 5123(a)(2)).	\$179,933	\$182,877
Appendix B (f)(1) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (generally)	MAP-21, Pub. L. 112- 141, § 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. § 521(b)(2)(F)).	\$25,705	\$26,126
Appendix B (f)(2) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (hazardous materials)- -maximum penalty	MAP-21, Pub. L. 112- 141, § 33010, 126 Stat. 405, 837 (49 U.S.C. § 5123(a)(1)).	\$77,114	\$78,376
Appendix B (f)(2): Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (hazardous materials)--maximum penalty if death, serious illness, severe injury to persons; destruction of property	MAP-21, Pub. L. 112- 141, § 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. § 5123(a)(2)).	\$179,933	\$182,877

Appendix B (g)(1) New Appendix B (g)(1): Violations of the commercial regulations (CR) (property carriers)	MAP-21, Pub. L. 112-141, § 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901(a)).	\$10,282	\$10,450
Appendix B (g)(2) Violations of the CRs (brokers)	MAP-21 Pub. L. 112-141, § 32919(a), 126 Stat. 405, 827 (2012) (49 U.S.C. § 14916(c)).	\$10,282	\$10,450
Appendix B (g)(3) Violations of the CRs (passenger carriers)	MAP-21, Pub. L. 112-141, § 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901(a)).	\$25,705	\$26,126
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers)	MAP-21, Pub. L. 112-141, § 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901(a)).	\$10,282	\$10,450
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)-- maximum penalty for intentional violation	MCSIA of 1999, Pub. L. 106-59, § 219(b), 113 Stat. 1748, 1768 (1999) (49 U.S.C. § 14901 note).	\$14,140	\$14,371
Appendix B (g)(5) Violations of the CRs (foreign motor carriers, foreign motor private carriers before implementation of North American Free Trade Agreement land transportation provisions)-- maximum penalty for a pattern of intentional violations	MCSIA of 1999, Pub. L. 106-59, § 219(c), 113 Stat. 1748, 1768 (1999) (49 U.S.C. § 14901 note).	\$35,351	\$35,929
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)--minimum penalty	MAP-21, Pub. L. 112-141, § 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901(b)).	\$20,564	\$20,900

Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)--maximum penalty	MAP-21 Pub. L. 112-141, § 32108, 126 Stat. 405,782 (2012) (49 U.S.C. § 14901(b)).	\$41,128	\$41,801
Appendix B (g)(7): Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee)	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 914 (1995) (49 U.S.C. § 14901(d)(1)).	\$1,547	\$1,572
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)--minimum penalty for first violation	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 914 (1995) (49 U.S.C. § 14901(e)).	\$3,095	\$3,146
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services) subsequent violation	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 914 (1995) (49 U.S.C. § 14901(e)).	\$7,737	\$7,864
Appendix B (g)(10) Tariff violations	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 868-869, 915 (1995) (49 U.S.C. §§ 13702, 14903).	\$154,742	\$157,274
Appendix B (g)(11) Additional tariff violations (rebates or concessions)--first violation	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 915-916 (1995) (49 U.S.C. § 14904(a)).	\$309	\$314
Appendix B (g)(11) Additional tariff violations (rebates or concessions)--subsequent violations	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 915-916 (1995) (49 U.S.C. § 14904(a)).	\$387	\$393
Appendix B (g)(12): Tariff violations (freight forwarders)--maximum penalty for first violation	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (49 U.S.C. § 14904(b)(1)).	\$774	\$787
Appendix B (g)(12): Tariff violations (freight forwarders)--maximum penalty for subsequent violations	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14904(b)(1)).	\$3,095	\$3,146

Appendix B (g)(13): service from freight forwarder at less than rate in effect-- maximum penalty for first violation	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14904(b)(2)).	\$774	\$787
Appendix B (g)(13): service from freight forwarder at less than rate in effect-- maximum penalty for subsequent violation(s)	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14904(b)(2)).	\$3,095	\$3,146
Appendix B (g)(14): Violations related to loading and unloading motor vehicles	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14905).	\$15,474	\$15,727
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))--minimum penalty	MAP-21, Pub. L. 112-141, § 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901).	\$1,028	\$1,045
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B--maximum penalty	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916-917 (1995) (49 U.S.C. § 14907).	\$7,737	\$7,864
Appendix B (g)(17): Unauthorized disclosure of information	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 917 (1995) (49 U.S.C. § 14908).	\$3,095	\$3,146
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 917 (1995) (49 U.S.C. § 14910).	\$774	\$787
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination	ICC Termination Act of 1995, Pub. L. 104-88, § 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14905).	\$15,474	\$15,727
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier	SAFETEA-LU, Pub. L. 109-59, § 4209(2), 119 Stat. 1144, 1758, (2005) (49 § U.S.C. 14901(d)(2)).	\$11,940	\$12,135

Appendix B (g)(23): HHG transportation or broker services--registration requirement	SAFETEA-LU, Pub. L. 109-59, § 4209(d)(3), 119 Stat. 1144, 1758 (2005) (49 U.S.C. 14901 (d)(3)).	\$29,849	\$30,337
Appendix B (h): Copying of records and access to equipment, lands, and buildings--maximum penalty per day	SAFETEA-LU, Pub. L. 109-59, § 4103(2), 119 Stat. 1144, 1716 (2005) (49 U.S.C. § 521(b)(2)(E)).	\$1,194	\$1,214
Appendix B (h): Copying of records and access to equipment, lands, and buildings--maximum total penalty	SAFETEA-LU, Pub. L. 109-59, § 4103(2), 119 Stat. 1716 (2005) (49 U.S.C. § 521(b)(2)(E)).	\$11,940	\$12,135
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--minimum penalty for first violation	MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 524).	\$2,056	\$2,090
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--maximum penalty for first violation	MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 524).	\$5,141	\$5,225
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--minimum penalty for subsequent violation(s)	MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 524). MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 524).	\$2,570	\$2,612
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of 311 (except 31138 and 31139), 31302-31304, 31305(b), 31310(g)(1)(A), 31502--maximum penalty for subsequent violation(s)	MAP-21 Pub. L. 112-141, §32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 524).	\$7,711	\$7,837

Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B-- minimum penalty for first violation	MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 14906).	\$2,056	\$2,090
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B-- minimum penalty for subsequent violation(s)	MAP-21 Pub. L. 112-141, § 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. § 14906).	\$5,141	\$5,225

VII. REGULATORY ANALYSES

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This final rule is not a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This final rule would not have an annual effect on the economy of \$100 million or more because transfer payments, by definition, do not affect total resources available to society. Historically, the Agency has never assessed civil penalties that approach \$100 million in any given year.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the legal basis section, this action is not subject to prior notice and comment under section 553(b) of the Administrative Procedure Act.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Ms. LaTonya Mimms, listed in the **For Further Information Contact** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any 1 year. This final rule will not result in such an expenditure.

E. Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

F. Federalism (E.O. 13132)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this rule preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

G. Civil Justice Reform (E.O. 12988)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Protection of Children (E.O. 13045)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules to include an evaluation of the regulation's environmental health and safety effects on children if an agency has reason to believe the rule may disproportionately affect children. The Agency determined that this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate

that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

I. Taking of Private Property (E.O. 12630)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

K. Intergovernmental Review (E. O. 12372)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

L. Energy Supply, Distribution, or Use (E.O. 13211)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Indian Tribal Governments (E.O. 13175)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

O. Environmental Review (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) and FMCSA’s NEPA Implementing Procedures

and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." Id. at chapter 1.D. Because Congress specifies the Agency's precise action here, thus leaving the Agency no discretion over such action, and since the Agency lacks control and responsibility over the effects of this action, this rulemaking falls under chapter 1.D. Therefore, no further analysis is considered.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898 (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this final rule would have no environmental justice effects, nor would its promulgation have any collective environmental impact.

List of Subjects

49 CFR Part 386

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

For the reasons stated in the preamble, FMCSA is amending title 49 CFR part 386 to read as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

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

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131-141, 145-149, 311, 313, and 315; 49 U.S.C. 5123; 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; Sec. 206, Pub. L. 106-159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109-59; Sec. 701 of Pub. L. 114-74, 129 Stat. 584, 599; and 49 CFR 1.81 and 1.87.

2. Amend Appendix A to part 386 by revising the introductory text and sections II, IV. a. through e., and IV. g. through j. to read as follows:

APPENDIX A TO PART 386—PENALTY SCHEDULE: VIOLATIONS OF NOTICES AND ORDERS

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114-74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,045 but not more than \$10,450 per violation.

* * * * *

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 \$1,811 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 \$18,107 per violation.

(This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) above.)

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

Penalty—\$1,811 each time the vehicle or intermodal equipment is so operated.

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

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

Penalty—Up to \$18,107 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a “driver,” as defined in IV(a) above.)

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

Penalty—Up to \$906 per violation.

* * * * *

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 or to cease part of an intermodal equipment provider’s operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$26,126 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to \$22,957 per day the operation continues after the effective date and time of the out-of-service order.

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

Penalty—Up to \$14,739 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under §§ 385.911, 385.913, 385.1009 or 385.1011.

Penalty—Up to \$22,957 for each day that operations are conducted during the suspension or revocation period.

3. Amend Appendix B to part 386 by revising the introductory text and paragraphs (a)(1) through (5), (b), (c), (d), (e), (f), (g) introductory text, (g)(1) through (8), (g)(10) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

APPENDIX B TO PART 386—PENALTY SCHEDULE: VIOLATIONS AND MONETARY PENALTIES

The Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [Public Law 114-74, sec. 701, 129 Stat. 584, 599] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust civil penalties for inflation. Pursuant to that authority, the inflation adjusted civil penalties identified in this appendix supersede the corresponding civil penalty amounts identified in title 49, United States Code.

What are the types of violations and maximum monetary penalties?

(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 40, 382, 385, and 390-99 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,214 for each day the violation continues, up to \$12,135.

(2) Knowing falsification of records. A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, 385, and 390-99 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 order of the Secretary is subject to a maximum civil penalty of \$12,135 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 that violates parts 382, 385, or 390-99 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$14,739 for each violation.

(4) Non-recordkeeping violations by drivers. A driver who violates parts 382, 385, and 390-99 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$3,685.

(5) Violation of 49 CFR 392.5. A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$3,034 for a first conviction and not less than \$6,068 for a second or subsequent conviction.

* * * * *

(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 not to exceed \$5,479; except: (1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$3,034 for a first conviction and not less than \$6,068 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$5,479 or more than \$30,337; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than \$15,727.

(c) [Reserved]

(d) Financial responsibility violations. A motor carrier that fails to maintain the levels of financial responsibility prescribed by Part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of Part 387 subparts A and B is subject to a maximum penalty of \$16,169. Each day of a continuing violation constitutes a separate offense.

(e) Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in Subpart E of Part 385. This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$78,376 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not less than \$471 and not more than \$78,376 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or

shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$78,376 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than \$78,376.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$182,877 for each offense.

(f) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating. (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$26,126 (49 CFR 385.13). Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final “unsatisfactory” safety rating, to a civil penalty of not more than \$78,376 for each offense. If the violation results in death, serious illness, or severe injury to

any person or in substantial destruction of property, the civil penalty may be increased to not more than \$182,877 for each offense. Each day the transportation continues in violation of a final “unsatisfactory” safety rating constitutes a separate offense.

(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 operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$10,450 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C 13904 or financial security requirements of 49 U.S.C 13906 is liable for a penalty not to exceed \$10,450 for each 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 \$26,126 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$10,450 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 \$14,371 for an

intentional violation and a maximum penalty of \$35,929 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 minimum penalty of \$20,900 and a maximum penalty of \$41,801 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 \$1,572 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 \$3,146 for the first violation and \$7,864 for each subsequent violation.

* * * * *

(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 \$157,274 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 or 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 \$314 for the first violation and \$393 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 \$787 for the first violation and up to \$3,146 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 \$787 for the first violation and up to \$3,146 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 \$15,727 per violation.

(15) [Reserved]

(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 minimum penalty of \$1,045 and for a maximum penalty of \$7,864 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 \$3,146.

(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 of 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 \$787 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * * *

(21) A person—

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G of this chapter, is liable for a civil penalty of not less than \$15,727 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to

provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$12,135 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$30,337 for each violation.

(h) Copying of records and access to equipment, lands, and buildings. A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,214 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$12,135.

(i) Evasion. A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51, subchapter III of chapter 311 (except sections 31138 and 31139) or sections 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation issued under any of those provisions, shall be fined at least \$2,090 but not more

than \$5,225 for the first violation and at least \$2,612 but not more than \$7,837 for a subsequent violation.

(2) 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 at least \$2,090 for the first violation or at least \$5,225 for a subsequent violation.

Issued under the authority of delegation in 49 CFR 1.87 on: April 5, 2017

Daphne Y. Jefferson,
Deputy Administrator

[FR Doc. 2017-07316 Filed: 4/11/2017 8:45 am; Publication Date: 4/12/2017]