

that the requirements of the *Second Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

12. The Commission will send a copy of the *Second Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A). In addition, the *Second Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Second Order on Reconsideration and this certification (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

### III. Ordering Clauses

13. Accordingly, *it is ordered* pursuant to sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration of the Fifth Report and Order filed by the Public Safety Communications Council on June 12, 2013, *is granted* to the extent set forth herein.

14. *It is further ordered* that part 90 of the Commission's rules *is amended*, effective May 4, 2015.

#### List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

For the reasons discussed, the Federal Communications Commission amends 47 CFR part 90 as follows:

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7) and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96 Stat. 156.

■ 2. Section 90.187 is amended by revising paragraphs (d)(1)(ii)(A) and (d)(3) to read as follows:

##### § 90.187 Trunking in the bands between 150 and 512 MHz.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) Licensees (and filers of previously filed pending applications) with a

service contour (37 dBu for stations in the 150–174 MHz band, and 39 dBu for stations in the 421–512 MHz band) that is overlapped by the proposed centralized trunked station's interference contour (19 dBu for stations in the 150–174 MHz band, and 21 dBu for stations in the 421–512 MHz band). Contour calculations are required for base station facilities. Contour calculations are required for associated mobile stations only in the 150–174 MHz band, with the associated base station's service contour used as both the mobile station's service contour and its interference contour.

\* \* \* \* \*

(3) In addition, the service contour for proposed centralized trunked stations on Industrial/Business Pool frequencies shall not be overlapped by an incumbent licensee's interference contour. An application filed for Public Safety Pool frequencies, *see* § 90.20, for a proposed centralized trunked station in which the service contour of the proposed station is overlapped by the interference contour of the incumbent station(s) is allowed, but the applicant must accept any resultant interference.

\* \* \* \* \*

[FR Doc. 2015–07600 Filed 4–2–15; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 383, 385, 386 and 387

[Docket Number: FMCSA–2014–0261]

RIN 2126–AB75

#### Civil Penalties Inflation Adjustments

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

**ACTION:** Final rule.

**SUMMARY:** The FMCSA specifies inflation adjustments to civil penalty amounts assessed to those who violate the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Some of these adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), as amended by the Debt Collection Improvement Act of 1996 (DCIA). Most of the civil penalties were last adjusted for inflation in 2007, and some have not been changed since 2003. Other changes to the civil penalties were mandated by Congress in the Moving Ahead for Progress in the 21st Century Act (MAP–21). This final rule ensures that

FMCSA's civil penalties are consistent with the applicable statutes.

**DATES:** Effective June 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nikki McDavid, Enforcement Division, by email at [nikki.mcdavid@dot.gov](mailto:nikki.mcdavid@dot.gov) or phone at 202–366–0831. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

The Supplementary Information section of this rule is organized as follows.

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#### 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 Adjustment Act, as amended by the DCIA. The specific inflation adjustment methodology is described below. This final rule also eliminates existing inconsistencies between regulatory language in Appendices A and B of 49 U.S.C. part 386 and other parts of the FMCSRs by removing the penalty amounts from the regulatory language and listing all penalty amounts in these appendices only. Finally, this rulemaking addresses changes to the hazardous material civil penalties violations which were mandated by MAP–21.

##### B. Benefits and Costs

The changes imposed by this final rule upon the civil penalty amounts alter only the magnitude of transfer payments; transfer payments by definition are not considered in the monetization of societal costs and benefits of rulemakings. Congress has stated in the Adjustment Act, section 2, that increasing penalties over time will deter violations. Therefore, with this 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, however.

## II. Legal Basis for the Rulemaking

This rulemaking is based primarily on three statutes.

### A. *The Debt Collection Improvement Act of 1996*

To preserve the remedial effect of civil penalties and foster compliance with applicable regulations, the Adjustment Act (Pub. L. 101–410, 104 Stat. 890, October 5, 1990), as amended by the DCIA, (Pub. L. 104–134, April 26, 1996, 110 Stat. 1321–1373; 28 U.S.C. 2461), requires Federal agencies to regularly adjust certain civil penalties for inflation. The statute requires each agency to make an initial inflationary adjustment for all applicable civil penalties and to make further adjustments to these penalty amounts. The detailed methodology required by statute is discussed in the Background section below.

### B. MAP–21

This rule's authority is partly based on MAP–21 (Pub. L. 112–141, 126 Stat. 405, July 6, 2012). Specifically, the authority comes from Title III of MAP–21, the Hazardous Materials Transportation Safety Improvement Act of 2012, including section 33010, which amended 49 U.S.C. 5123, a civil penalty provision, effective on October 1, 2012.

Previously, 49 U.S.C. 5123 provided for penalties of not less than \$250 and not more than \$50,000 for violations of regulations related to the transportation of hazardous materials, and not less than \$450 and not more than \$50,000 for violations of regulations related to hazardous materials training. For violations that resulted in death, serious illness, or severe injury to any person or substantial destruction of property, section 5123 provided for penalties up to \$100,000. MAP–21 amended section 5123 to remove the minimum penalty for violations related to the transportation of hazardous materials, provide for penalties up to \$75,000 for violations related to the transportation of hazardous materials or training, and \$175,000 in the event of death, serious illness, severe injury or substantial destruction of property. To implement these changes, this final rule amends 49 CFR part 386, Appendix B (e)(1–5).

Other MAP–21 provisions that are the basis for changes to additional civil penalties in this final rule include: Section 32108, Reporting and recordkeeping related to operating authority registration (49 U.S.C. 14901(a)); section 32108, Passenger carrier operating without registration

(49 U.S.C. 14901(a)); section 32108, Property carrier operating without registration (49 U.S.C. 14901(a)); section 32108, a motor carrier or broker transporting hazardous waste without registration (49 U.S.C. 14901(b)); section 32110, Disobedience to a subpoena (49 U.S.C. 525); section 32503, Operating in violation of an unsatisfactory/unfit out of service order (49 U.S.C. 521(b)(2)(F)); section 32503, Operating in violation of an imminent hazard order (49 U.S.C. 521(b)(2)(F)); section 32505, Strikes “knowingly and willfully” from 49 U.S.C. 524 (evasion of safety-related regulations); section 32505, Evasion of commercial regulations (49 U.S.C. 14906); and section 32919, Unlawful brokering (49 U.S.C. 14916).

### C. SAFETEA–LU

Two provisions under the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), (SAFETEA–LU) provides authority to increase civil penalties. First, section 4102 (b), codified at 49 U.S.C. 31310 (i)(2)(C), addresses an employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV when the CDL-holder is subject to an out-of-service order. Second, section 4209 (d)(3), codified at 49 U.S.C. 14901 (d)(3), addresses providing household good transportation without a registration.

### D. Other Authorities

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 Administrative Procedure Act (5 U.S.C. 551–706) (APA), as provided in 5 U.S.C. 553(b) and (c). The APA provides a good cause exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(3)(B)). However, the good cause exception requires an agency finding that includes a brief statement of reasons in the rules issued to dispense with notice and comment procedures.

In this instance, FMCSA finds that notice and comment is unnecessary prior to adoption of this final rule because adjustments to civil penalties are statutorily mandated by Congress and the Agency's final rule is a nondiscretionary, ministerial act to implement these statutory obligations. The amendments made in this final rule merely adjust penalty provisions for inflation and do not impose new

discretionary requirements on the public. For these reasons, the FMCSA finds good cause that notice and public comment in accordance with the APA on this final rule is unnecessary. For the same reasons the agency finds notice and comment procedures unnecessary under 49 U.S.C. 553(b)(3)(B), the agency also finds good cause under 49 U.S.C. 553(d) that this rule be effective on the date of publication in the **Federal Register**.

Finally, 49 U.S.C. 31138 (c)(4) and 49 U.S.C. 31139 (c) are authorities relied upon to address technical amendments to part 387 regarding factors FMCSA must take into account in assessing penalties, which includes the ability of parties to pay violations. These changes to part 387 capture the precise statutory language of those authorities.

## III. Background

This final rule eliminates existing inconsistencies between regulatory language in Appendices A and B of part 386 and other parts of the FMCSRs by removing the penalty amounts from the regulatory language and listing all penalty amounts in these appendices only. Specifically, for ease of reference, the penalty amounts contained in sections 383.53 (b) and (c), section 385.111(h), section 387.17, and section 387.41 are removed and now referenced only in Appendix B.

### A. Method of Calculation

Under the DCIA, the inflation adjustment for each civil penalty is determined by increasing the maximum civil penalty amount per violation by applying a cost-of-living adjustment. The DCIA specifies the cost-of-living adjustment as the percentage 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))). Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the DCIA as follows:

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) multiple of \$25,000 in the case of penalties greater than \$200,000.

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 September 28, 2007 (72 FR 55100), resulting in a maximum penalty of \$750 per violation. The CPI was approximately 238 in June 2014, and 208 in June 7, 2007 (see U.S. Bureau of Labor Statistics at <http://www.bls.gov/cpi/>). Thus, the inflation factor is  $238/208$  or 1.14.<sup>1</sup> The new penalty amount after the increase is the result of multiplying  $\$750 \times 1.14 = \$855$ . Under the statute, however, the inflation adjustment 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. In this example, the amount of the increase in the daily maximum penalty was \$105, and when rounded to the nearest multiple of \$100 equals \$100, so the new daily maximum penalty is \$850. Therefore, Appendix A, 49 CFR part 386, part IV, paragraph (e) is revised to provide an adjusted maximum penalty of \$850 ( $\$750 + \$100$ ) per violation.

The 1.14 inflation factor is used to adjust penalties that were adjusted in 2007, which included penalties: Under the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107); established in the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 809); and enacted in the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)).

Some penalties were adjusted in 2003 but not adjusted in 2007. The

adjustment factor used to update those amounts in this final rule uses the June 2003 CPI value of 184:  $238/184 = 1.30$ . For example, the penalty for operating a CMV when the driver was placed out of service (49 CFR part 386, Appendix B, paragraph (b)) was \$3,750 per violation. This penalty has not been adjusted since 2003, so it will be increased to \$4,750, applying the following calculation: The increment of \$1,125 ( $\$3,750 \times 1.30 = \$4,875$ , less the original penalty of \$3,750) will be rounded to the nearest thousand and added to the original value of the penalty. If the penalty is less than half the rounding amount, no inflation factor will be added. See the table, Inflation Adjustments for part 386, in the Section-by-Section discussion, directly below.

However, the statute requires that any penalty being adjusted for the first time not exceed 10% of such penalty. Each of these are marked with an asterisk in the following table. For example, the penalty for 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 (part 386, Appendix B (b)(3)) is \$10,000 for each offense. The adjustment would be \$3,000 based on the following calculation:  $\$10,000 \times 1.30 = \$13,000$ , or an increase of \$3,000. But since its first adjustment would be greater than 10%, the actual adjustment is capped at \$1,000, which means the inflated penalty amount is now \$11,000 ( $\$10,000 + \$1,000$ ).

MAP–21 revised several civil penalties under the Federal Hazardous

Materials Regulations (49 CFR parts 171–180), which have been promulgated by final rule in 78 FR 60226, (October 1, 2013). The FMCSA is not adjusting these penalties for inflation or any penalties established in 2011 and 2012, because, given their comparatively recent establishment, the inflationary adjustments would have, at most, a minimal impact on these penalties. However, the agency will increase such penalties in future rulemakings as appropriate.

#### IV. Section-by-Section Analysis

##### Summary of Penalty Adjustments

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.

##### Part 383

The penalty amounts contained in Sections 383.53 (b) and (c) are removed and now referenced in Appendix B (b)(1), (b)(2), and (b)(3).

##### Part 385

The penalty amount contained in Section 385.111(h) is removed and now referenced in Appendix B (f)(1).

##### Part 386

Part 386 Appendix A has a new introduction to mirror the language at the beginning of Appendix B. Below is the table with the current civil penalty amounts in the appendices of part 386 and increases applied:

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386

Civil penalty location in Part 386	Current penalty amount	Inflation rate	Increment applied	Final adjusted value:	Legal authority
Appendix A II Subpoena .....	\$1,000	0.00	\$0	\$1,000	MAP–21 Pub. L. 112–141, sec. 32110, 126 Stat. 405, 782, (2012) (49 U.S.C. 525).
Appendix A II Subpoena .....	10,000	0.00	0	10,000	MAP–21 Pub. L. 112–141, sec. 32110, 126 Stat. 405, 782 (2012) (49 U.S.C. 525).
Appendix A IV (a) Out-of-service order (operation of CMV by driver).	2,100	1.30	1,000	3,100	Pub. L. 98–554, sec. 213(b), 98 Stat. 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver).	16,000	1.30	5,000	21,000	Pub. L. 98–554, sec. 213(a), 98 Stat. 2829 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).

<sup>1</sup> For this calculation, FMCSA utilized the unrounded CPI values and rounded the inflation

factor to the nearest tenth. The exact calculation is  $(238.343/208.352) = 1.14$ .

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location in Part 386	Current penalty amount	Inflation rate	Increment applied	Final adjusted value:	Legal authority
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service).	2,100	1.30	1,000	3,100	Pub. L. 98–554, sec. 213(a), 98 Stat 2829 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service).	16,000	1.30	5,000	21,000	Pub. L. 98–554, sec. 213(a), 98 Stat 2829 (1984) (49 U.S.C. 521(b)(7)), 55 FR 11224 (March 27, 1990).
Appendix A IV (e) Out-of-service order (failure to return written certification of correction).	750	1.14	100	850	49 U.S.C. sec. 521 (b)(2)(B), 49 CFR 396.9 (d)(3).
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered).	25,000	0.00	0	25,000	MAP–21, Pub. L. 112–141, sec. 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. 521(b)(2)(F)).
Appendix A IV (h) Out-of-service order (operating in violation of order.).	16,000	0.00	0	16,000	Pub. L. 98–554, sec. 213(a), 98 Stat, 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)).
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties).	11,000	1.30	5,000	16,000	TEA–21, Pub. L. 105–178, sec. 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).
Appendix A IV (j) (conducting operations during suspension or revocation).	11,000	0.00	0	11,000	Pub. L. 98–554, sec. 213(a), 98 Stat, 2829, 2841–2843 (1984) (49 U.S.C. 521(b)(7)).
Appendix B (a)(1)* Recordkeeping—maximum penalty per day.	1,000	1.10	100	1,100	SAFETEA–LU, Pub. L. 109–59, sec. 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(i)).
Appendix B (a)(1)* Recordkeeping—maximum total penalty.	10,000	1.10	1,000	11,000	SAFETEA–LU, Pub. L. 109–59, sec. 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(i)).
Appendix B (a)(2)* Knowing falsification of records.	10,000	1.10	1,000	11,000	SAFETEA–LU, Pub. L. 109–59, sec. 4102 (a), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 521(b)(2)(B)(ii)).
Appendix B (a)(3) Non-recordkeeping violations.	11,000	1.30	5,000	16,000	TEA–21, Pub. L. 105–178, sec. 4015(b), 112 Stat. 107, 411–12 (1998) (49 U.S.C. 521(b)(2)(A)).
Appendix B (a)(4) Non-recordkeeping violations by drivers.	2,750	1.30	1,000	3,750	TEA–21, Pub. L. 105–178, sec. 4015(b), 112 Stat. 107, 411–12 (1998) (49 U.S.C. 521(b)(2)(A)).
Appendix B (a)(5)* Violation of 49 CFR 392.5.	3,750	1.10	375	4,125	SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, 1715; sec. 4102 (b), 119 Stat. 1715–16 (2005) (49 U.S.C. 31310 (i)(2)(A)).
Appendix B (b) Commercial driver's license (CDL) violations.	3,750	1.30	1,000	4,750	Pub. L. 99–570, sec. 12012(b), 100 Stat. 3207–184–85 (1986) (49 U.S.C. 521(b)(2)(C)).
Appendix B (b)(1)* <sup>M</sup> Special penalties pertaining to violation of out-of-service orders (first conviction).	2,500	1.10	250	2,750	SAFETEA–LU, Pub. L. 109–59, sec. 4102(b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 31310 (i)(2)(A)).
Appendix B (b)(1)* <sup>M</sup> Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction).	5,000	1.10	500	5,500	SAFETEA–LU, Pub. L. 109–59, 119, sec. 4102 (b), Stat. 1144, 1715 (2005) (49 U.S.C. 31310 (i)(2)(A)).
Appendix B (b)(2) <sup>M</sup> Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty).	3,750	1.30	1,000	4,750	Pub. L. 99–570, sec. 12012(b), 100 Stat. 3207,184–85 (1986) (49 U.S.C. 521(b)(2)(C)).
Appendix B (b)(2)* <sup>M</sup> Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty).	25,000	1.10	2,500	27,500	SAFETEA–LU, Pub. L. 109–59, sec. 4102 (b), 119 Stat. 1144, 1715 (2005) (49 U.S.C. 31310 (i)(2)(C)).

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location in Part 386	Current penalty amount	Inflation rate	Increment applied	Final adjusted value:	Legal authority
Appendix B (b)(3) <sup>M*</sup> Special penalties pertaining to railroad-highway grade crossing violations.	10,000	1.10	1,000	11,000	ICC Termination Act of 1995, Pub. L. 104–88, sec. 403(a), 109 Stat. 956 (1995) (49 U.S.C. 31310(j)(2)(B)).
Appendix B (d) Financial responsibility violations.	16,000	1.30	5,000	21,000	Pub. L. 103–272, sec. 31139(f), 108 Stat. 745, 1006–1008 (1994) (49 U.S.C. 31139(g)(1)).
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials).	75,000	0.00	0	75,000	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837–838 (2012) (49 U.S.C. 5123(a)(1)).
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	450	0.00	0	450	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(3)).
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	75,000	0.00	0	75,000	MAP–21 Pub. L. 112–141, sec. 33010 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(1)).
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	75,000	0.00	0	75,000	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837, (2012) 49 U.S.C. 5123(a)(1)).
Appendix B (e)(4) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	75,000	0.00	0	75,000	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(1)).
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	175,000	0.00	0	175,000	MAP–21 Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(2)).
Appendix B (f)(1) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (generally).	25,000	0.00	0	25,000	MAP–21, Pub. L. 112–141, sec. 32503, 126 Stat. 405, 803 (2012) (49 U.S.C. 521(b)(2)(F)).
Appendix B (f)(2) Operating after being declared unfit by assignment of a final “unsatisfactory” safety rating (hazardous materials)—maximum penalty.	75,000	0.00	0	75,000	MAP–21, Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (49 U.S.C. 5123(a)(1)).
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.	175,000	0.00	0	175,000	MAP–21, Pub. L. 112–141, sec. 33010, 126 Stat. 405, 837 (2012) (49 U.S.C. 5123(a)(2)).
Appendix B (g)(1) <sup>M</sup> Violations of the commercial regulations (CR) (property carriers).	10,000	0.00	0	10,000	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).
Appendix B (g)(2) Violations of the CRs (brokers).	10,000	0.00	0	10,000	MAP–21 Pub. L. 112–141, sec. 32919(a), 126 Stat. 405, 827 (2012) (49 U.S.C. § 14916(c)).
Appendix B (g)(3) Violations of the CRs (passenger carriers).	25,000	0.00	0	25,000	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. § 14901(a)).
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	10,000	0.00	0	10,000	MAP–21, Pub. L. 112–141, sec. 32108(a), 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(a)).

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location in Part 386	Current penalty amount	Inflation rate	Increment applied	Final adjusted value:	Legal authority
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.	11,000	1.30	5,000	16,000	MCSIA of 1999, Pub. L. 106–59, sec. 219(b), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note).
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.	32,500	1.14	5,000	37,500	MCSIA of 1999, Pub. L. 106–59, sec. 219(c), 113 Stat. 1748, 1768 (1999) (49 U.S.C. 14901 note).
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	20,000	0.00	0	20,000	MAP–21, Pub. L. 112–141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901(b)).
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	40,000	0.00	0	40,000	MAP–21 Pub. L. 112–141, sec. 32108, 126 Stat. 405,782 (2012) (49 U.S.C. 14901(b)).
Appendix B (g)(7) Violations of the CRs (HHG carrier or freight forwarder, or their receiver or trustee).	1,100	1.30	0	1,100	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. § 14901(d)(1)).
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	2,200	1.30	1,000	3,200	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. § 14901(e)).
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—subsequent violations.	6,500	1.14	1,000	7,500	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 914 (1995) (49 U.S.C. 14901(e)).
Appendix B (g)(10) Tariff violations ..	120,000	1.14	20,000	140,000	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 868–869, 915 (1995) (49 U.S.C. 13702, 14903).
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	220	1.30	100	320	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 915–916 (1995) (49 U.S.C. 14904(a)).
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	275	1.30	100	375	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 915–916 (1995) (49 U.S.C. 14904(a)).
Appendix B (g)(12) Tariff violations (freight forwarders)—maximum penalty for first violation.	650	1.14	100	750	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (49 U.S.C. 14904(b)(1)).
Appendix B (g)(12) Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	2,200	1.30	1,000	3,200	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. § 14904(b)(1)).
Appendix B (g)(13) service from freight forwarder at less than rate in effect—maximum penalty for first violation.	650	1.14	100	750	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14904(b)(2)).
Appendix B (g)(13) service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	2,200	1.30	1,000	3,200	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14904(b)(2)).
Appendix B (g)(14) Violations related to loading and unloading motor vehicles.	11,000	1.30	5,000	16,000	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14905).
Appendix B (g)(16) Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c)—minimum penalty.	1,000	0.00	0	1,000	MAP–21, Pub. L. 112–141, sec. 32108, 126 Stat. 405, 782 (2012) (49 U.S.C. 14901).

TABLE 1—INFLATION ADJUSTMENTS FOR PART 386—Continued

Civil penalty location in Part 386	Current penalty amount	Inflation rate	Increment applied	Final adjusted value:	Legal authority
Appendix B (g)(16) Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	6,500	1.14	1,000	7,500	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916–917 (1995) (49 U.S.C. 14907).
Appendix B (g)(17) Unauthorized disclosure of information.	2,200	1.30	1,000	3,200	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14908).
Appendix B (g)(18) Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	650	1.14	100	750	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 917 (1995) (49 U.S.C. 14910).
Appendix B (g)(21)(i)*M: Knowingly and willfully fails to deliver or unload HHG at destination.	10,000	1.10	1,000	11,000	ICC Termination Act of 1995, Pub. L. 104–88, sec. 103, 100 Stat. 803, 916 (1995) (49 U.S.C. 14905).
Appendix B (g)(22)* HHG broker estimate before entering into an agreement with a motor carrier.	10,000	1.09	900	10,900	SAFETEA–LU, Pub. L. 109–59, sec. 4209(2), 119 Stat. 1144, 1758, (2005) (49 U.S.C. 14901(d)(2)).
Appendix B (g)(23)* HHG transportation or broker services—registration requirement.	25,000	1.09	2,250	27,250	SAFETEA–LU, Pub. L. 109–59, sec. 4209(d)(3), 119 Stat. 1144, 1758 (2005) (49 U.S.C. 14901(d)(3)).
Appendix B (h)* Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	1,000	1.10	100	1,100	SAFETEA–LU, Pub. L. 109–59, sec. 4103(2), 119 Stat. 1144, 1716 (2005) (49 U.S.C. 521(b)(2)(E)).
Appendix B (h)* Copying of records and access to equipment, lands, and buildings—maximum total penalty.	10,000	1.10	1,000	11,000	SAFETEA–LU, Pub. L. 109–59, sec. 4103(2), 119 Stat. 1716 (2005) (49 U.S.C. 521(b)(2)(E)).
Appendix B (i)(1) <sup>M</sup> 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.	2,000	0.00	0	2,000	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).
Appendix B (i)(1) <sup>M</sup> 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.	5,000	0.00	0	5,000	MAP–21 Pub. L. 112–141, § sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).
Appendix B (i)(1) <sup>M</sup> 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).	2,500	0.00	0	2,500	MAP–21 Pub. L. 112–141, sec. 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).
Appendix B (i)(1) <sup>M</sup> 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).	7,500	0.00	0	7,500	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 524).
Appendix B (i)(2) <sup>M</sup> Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	2,000	0.00	0	2,000	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906).
Appendix B (i)(2) <sup>M</sup> Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	5,000	0.00	0	5,000	MAP–21 Pub. L. 112–141, sec. 32505, 126 Stat. 405, 804 (2012) (49 U.S.C. 14906).

The provisions that are being updated for the first time here are marked with an asterisk. Their adjustment is capped at 10%. There are two penalties from 2010 that will be updated for the first time in this rule and will have an inflation rate of 1.09 (238/218). Penalties that were established recently will not be adjusted and are marked with an n/a for not applicable. Penalties marked with an “M” were moved from other locations in Appendix B or other regulatory provisions, as noted in this section. Of these moved provisions, two contain no penalty amounts because they were reserved for future use. Penalties that were last adjusted in 2003 have an inflation rate of 1.30, and those that were adjusted for inflation in 2007 have an inflation rate of 1.14.

In Appendix B subsection (c), Special penalties pertaining to violations of out-of-service orders by CDL holders, was reserved, and its former provisions were placed into two subsections Appendix B (b)(1) and (2) in the same order they appeared in subsection (c). The first provision relates to a CDL holder, while the second relates to an employer of a CDL holder. This change clarifies Appendix B by placing all penalties related to commercial driver license programs into one section for ease of use. To implement this change, the reserved subsection (c) title, “Special penalties pertaining to violations of out-of-service orders by CDL holders,” was deleted. Second, the phrase “except: (1)” Was inserted before the new provision beginning with the phrase “A CDL holder.” Third, the word “and” was added between new subsections (b)(1) and (b)(2) to properly mark them as separate provisions.

Appendix B subsection (g)(1) is deleted and moved to current subsection (g)(16) in order that both the minimum and maximum penalties appear in one consolidated provision.

Former Appendix B subsection (g)(2) is now divided into two separate subsections, the first regarding motor carriers and the second addressing brokers. Specifically, former subsection (g)(2) is renamed subsection (g)(1) and the term “broker” is deleted and the term “motor” added before the term “carrier” to clarify its application to motor carriers only. In addition, a new subsection (g)(2) is amended based on a statutory provision in MAP–21, sec. 32919(a), 49 U.S.C. 14916, which contains penalties associated with knowingly violating registration (49 U.S.C. 13904) and financial security requirements (49 U.S.C. 13906) for brokers.

Subsection (g)(15), regarding evasion of commercial regulations was reserved.

And its provisions were moved to section (i) in a new paragraph (2). Existing paragraph (1) regarding evasion of safety regulations remains in place.

#### Part 387

The penalty amounts contained in Sections 387.17 and 387.41 are removed and now referenced in Appendix B (d) only. This also corrects a discrepancy between the Appendix B penalty amount, that had been properly inflated, and the amount in the regulatory text, which had not been properly inflated. In addition, the phrase “ability to pay and any” was added before the phrase “effect on ability” in both sections 387.17 and 387.41 to capture the precise statutory language in 49 U.S.C. 31138 (c)(4) and 49 U.S.C. 31139 (c) regarding factors FMCSA must consider before assessing penalties.

### V. Rulemaking Analyses and Notices

#### Regulatory Planning and Review (Executive Order (E.O.) 12866) 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, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011) or within the meaning of Department of Transportation Regulatory Policies and Procedures. The Office of Management and Budget (OMB) did not review this document. The changes imposed by this final rule upon the civil penalty amounts alter only the magnitude of transfer payments, which by definition are not considered in the monetization of societal costs and benefits of rulemakings. Congress has stated in the Adjustment Act, section 2, that increasing penalties over time will deter violations. Therefore, FMCSA infers that there may be some safety benefits that occur due to this final rule. The deterrence effect of increasing penalties that Congress has recognized, however, cannot be quantified into safety benefits. The Agency expects 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.

#### 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. Nikki McDavid, 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.

#### Unfunded Mandates Reform Act of 1995

The final rule will 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 \$151 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2012 levels) or more in any 1 year.

#### 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 document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### 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, eliminates ambiguity, and reduce burden.



*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, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on 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.

*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.

*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).

*Intergovernmental Review (E.O. 12372)*

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

*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 and Clean Air Act*

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph

(6)(b). The Categorical Exclusion (CE) in paragraph 6(b) covers technical or minor amendments to existing FMCSRs. The content in this rule is covered by this CE. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under **ADDRESSES**.

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.

*Environmental Justice (E.O. 12898)*

Under E.O. 12898, 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 evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

*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.

*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.

*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.

**List of Subjects***49 CFR Part 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

*49 CFR Part 385*

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 386*

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

*49 CFR Part 387*

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons stated in the preamble, FMCSA is amending title 49 CFR parts 383, 385, 386, and 387 to read as follows:

**PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

■ 1. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

- 2. Revise § 383.53 to read as follows:

**§ 383.53 Penalties.**

(a) *General rule.* Any person who violates the rules set forth in subparts B and C of this part may be subject to civil or criminal penalties under 49 U.S.C. 521(b), as provided in part 386, Appendix B, of this chapter.

(b) *Special penalties pertaining to violation of out-of-service orders—(1) Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty as stated in part 386 Appendix B, in addition to disqualification under § 383.51(e).

(2) *Employer violations.* An employer who is convicted of a violation of § 383.37(d) shall be subject to a civil penalty as stated in part 386, appendix B, of this chapter.

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(e) shall be subject to a civil penalty stated in part 386, appendix B, of this chapter.

**PART 385—SAFETY FITNESS PROCEDURES**

- 3. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5123, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.87.

- 4. Amend § 385.111 by revising paragraph (h) to read as follows:

**§ 385.111 Suspension and revocation of Mexico-domiciled carrier registration.**

\* \* \* \* \*

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it shall be subject to the penalty provisions in 49 U.S.C. 521(b) and the amount as stated in part 386, appendix B, of this chapter.

\* \* \* \* \*

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

- 5. The authority citation for part 386 is revised 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; and 49 CFR 1.81 and 1.87.

- 6. Revise Appendix A to part 386 to read as follows:

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

The Debt Collection Improvement Act of 1996 [Pub. L. 104–134, title III, chapter 10, sec. 31001, par. (s), 110 Stat. 1321–1373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation “each civil monetary penalty provided by law within the jurisdiction of the Federal agency . . .” and to publish that regulation in the **Federal Register**. 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.

**I. Notice to Abate**

**Violation—**Failure to cease violations of the regulations in the time prescribed in the notice. (The time within which to comply with a notice to abate shall not begin to run with respect to contested violations, *i.e.*, where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

**Penalty—**Reinstatement of any deferred assessment or payment of a penalty or portion thereof.

**II. Subpoena**

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

**Penalty—**minimum of \$1,000 but not more than \$10,000 per violation.

**III. Final Order**

**Violation—**Failure to comply with Final Agency Order.

**Penalty—**Automatic reinstatement of any penalty previously reduced or held in abeyance and restoration of the full amount assessed in the Notice of Claim less any payments previously made.

**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 \$3,100 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 \$21,000 per violation. (This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) of this appendix.)

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—**\$3,100 each time the vehicle or intermodal equipment is so operated. (This violation applies to drivers as defined in paragraph IV(a) of this appendix.)

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 \$21,000 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 paragraph IV(a) of this appendix.)

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

**Penalty—**Up to \$850 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 IV(c) and IV(d) of this appendix, 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 or to cease part of an intermodal equipment provider’s operations, *i.e.* failure to cease operations as ordered.

**Penalty—**Up to \$25,000 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 \$16,000 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 \$16,000 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 \$11,000 for each day that operations are conducted during the suspension or revocation period.

■ 7. Revise Appendix B to part 386 to read as follows:

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

The Debt Collection Improvement Act of 1996 [Pub. L. 104–134, title III, chapter 10, sec. 31001, par. (s), 110 Stat. 1321–1373] amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require agencies to adjust for inflation “each civil monetary penalty provided by law within the jurisdiction of the Federal agency . . .” and to publish that regulation in the **Federal Register**. Pursuant to that authority, the inflation-adjusted civil penalties listed in this appendix supersede the corresponding civil penalty amounts listed 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 \$1,100 for each day the violation continues, up to \$11,000.

(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 \$11,000 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 \$16,000 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 \$3,750.

(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 \$4,125 for each violation.

(6) *Egregious violations of driving-time limits in 49 CFR part 395*. A driver who exceeds, and a motor carrier that requires or permits a driver to exceed, by more than 3 hours the driving-time limit in 49 CFR 395.3(a) or 395.5(a), as applicable, shall be deemed to have committed an egregious driving-time limit violation. In instances of an egregious driving-time violation, the Agency will consider the “gravity of the violation,” for purposes of 49 U.S.C. 521(b)(2)(D), sufficient to warrant imposition of penalties up to the maximum permitted by law.

(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 \$4,750; 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 \$2,750 for a first conviction and not less than \$5,500 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 \$4,750 or more than \$27,500; 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 \$11,000.

(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 \$21,000. 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 person 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 \$75,000 for each violation. Each day of 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 highways are subject to a civil penalty of not less than \$450 and not more than \$75,000 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 highways are subject to a civil penalty of not more than \$75,000 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 \$75,000.

(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 \$175,000 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 \$25,000 (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 \$75,000 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 \$175,000 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 \$10,000 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 \$10,000 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 \$25,000 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 \$10,000 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 \$16,000 for an intentional violation and a maximum penalty of \$37,500 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 \$20,000 and a maximum penalty of \$40,000 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 \$1,100 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 \$3,200 for the first violation and \$7,500 for each subsequent violation.

(9) A person who knowingly accepts or receives from a carrier a rebate or offset against the rate specified in a tariff required under 49 U.S.C. 13702 for the transportation of property delivered to the carrier commits a violation for which the penalty is equal to three times the amount accepted as a rebate or offset and three times the value of other consideration accepted or received as a rebate or offset for the six-year period before the action is begun.

(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 \$140,000 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 and 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 \$320 for the first violation and \$375 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 \$750 for the first violation and up to \$3,200 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 \$750 for the first violation and up to \$3,200 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 \$16,000 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 \$1,000 and for a maximum penalty of \$7,500 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 \$3,200.

(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 or 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 \$750 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(19) A violation of Part B, Subtitle IV, Title 49, U.S.C., committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier that is a corporation is also a violation by the corporation to which the penalties of Chapter 149 apply. Acts and omissions of individuals acting in the scope of their employment with a carrier are considered to be the actions and omissions of the carrier as well as the individual.

(20) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a

carrier publishes, files, or participates in under section 13702 is conclusive proof against the carrier, its officers, and agents that it is the legal rate for the transportation or service. Departing, or offering to depart, from that published or filed rate is a violation of 49 U.S.C. 14902 and 14903.

(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 \$11,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(ii) Who is a carrier or broker and is found to be subject to the civil penalties in paragraph (i) of this appendix may also have his or her carrier and/or broker registration suspended for not less than 12 months and not more than 36 months under 49 U.S.C. chapter 139. Such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(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 \$10,900 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 \$27,250 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 \$1,100 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 \$11,000.

(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 section 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 \$2,000 but not more than \$5,000 for the first violation and at least \$2,500 but not more than \$7,500 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 \$2,000 for the first violation of at least \$5,000 for a subsequent violation.

#### **PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS**

■ 8. The authority citation for part 387 continues to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

■ 9. Revise § 387.17 to read as follows:

##### **§ 387.17 Violation and penalty.**

Any person (except an employee who acts without knowledge) who

knowingly violates the rules of this subpart shall be liable to the United States for a civil penalty as stated in part 386, appendix B, of this chapter, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by FMCSA's Administrator, by written notice. In determining the amount of such penalty, the Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior violations, ability to pay, and any effect on ability to continue to do business, and such other matters as justice may require.

■ 10. Revise § 387.41 to read as follows:

##### **§ 387.41 Violation and penalty.**

(a) Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for a civil penalty as stated in part 386, appendix B, of this chapter, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Administrator or his/her designee, by written notice.

(b) In determining the amount of such penalty, the Administrator or his/her designee shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue to do business, and such other matters as justice may require.

Issued under the authority of delegation in 49 CFR 1.87 on March 26, 2015.

**T.F. Scott Darling, III,**

*Chief Counsel.*

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