for Channel 276A at Robbins, North Carolina, will open on February 24, 1997, and close on March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130. Questions related to the window application filing process for Channel 276A at Robbins, North Carolina, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 95–134, adopted January 3, 1997 and released January 10, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Robbins, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–1098 Filed 1–17–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket No. HM–207F; Amdt. Nos. 107–40; 171–152]

RIN 2137–AC96

Hazardous Materials Regulations; Penalty Guidelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is increasing the maximum civil penalty, from $25,000 to $27,500, for a knowing violation of Federal hazardous materials transportation law or the Hazardous Materials Regulations. RSPA is also publishing revised baseline assessments for frequently cited violations of the Hazardous Materials Regulations, in order to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. These revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $27,500.

EFFECTIVE DATE: This rule is effective January 21, 1997.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Increase in Maximum Penalty

Under Section 4 of the Federal Civil Penalties Inflation Act of 1990 (the Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), all Federal agencies must adjust civil penalties they administer to consider the effects of inflation. These adjustments were to be made no later than October 23, 1996, and must be made at least once every 4 years thereafter, and must be published in the Federal Register. A formula for determining the amount of a periodic adjustment in civil penalty amounts is set forth in Section 5 of the Act; however, the 1996 amendment provided that the initial adjustment may not exceed 10 percent. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

The Credit and Debt Management Division of the Department of the Treasury's Financial Management Service has calculated that the new maximum civil penalty for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* or the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, is $27,500. To carry out the statutory mandate, RSPA is adding a new § 171.1(c) to the HMR specifying that the maximum civil penalty for violations of the Federal hazardous materials transportation law or the HMR, that occur after January 21, 1997, is $27,500. RSPA is also amending the references to the maximum civil penalty in § 107.329 and Appendix A to Part 107, subpart D, to set forth the increased maximum civil penalty applicable to violations that occur after January 21, 1997. In a future rulemaking, RSPA will propose changes to other sections of the HMR that refer to the maximum civil penalty.

There is no change in the statutory minimum $250 civil penalty for a knowing violation of the Federal hazardous material transportation law or HMR.

II. Revisions to Civil Penalty Baseline Guidelines

On March 6, 1995, RSPA published its hazardous material transportation enforcement civil penalty guidelines as Appendix A to 49 CFR Part 107, subpart D, in response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994. *See* Docket No. HM–207D, 60 FR 12139. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

At that time, RSPA explained that its enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the HMR or the Federal hazardous material transportation law. RSPA also explained that the penalty guidelines are periodically updated and were being published as they existed on January 18, 1995. As a general statement of agency policy and practice, these guidelines are informational, impose no requirements, are not finally determinative of any issues or rights, and do not have the force of law. For a further discussion of the nature and RSPA's use of these penalty guidelines, as a statement of agency policy for which no notice of proposed rulemaking is necessary, please see the preamble of the March 6, 1995 final rule. 60 FR 12139–40.

This final rule publishes revisions that RSPA has made to the List of Frequently Cited Violations, and their baseline assessments, since publication of the penalty guidelines in March 1995. These revisions to Part II of the guidelines were the result of an overall review RSPA conducted of its penalty

guidelines during the past year. These revisions consider the increase in the maximum civil penalty to $27,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

RSPA has also changed many of the baseline assessments in an effort to more appropriately reflect the risks posed by, and the likely consequences of, the particular violation of the HMR. For example, the range of penalties applicable to shipping a hazardous material in an unauthorized packaging has been restated as three different numbers for materials in Packing Group I, II, and III, respectively, with the greatest baseline amount for a Packing Group I material in order to reflect the greater hazards posed by that material. Similarly, RSPA has increased the baseline assessment for certain violations that increase the likelihood of a failure of a compressed gas cylinder, with catastrophic results (such as the failure to condemn a cylinder with excessive permanent expansion), while penalties for some violations that appear to have no effect on the actual performance of a cylinder (such as illegible markings) have been reduced. In a few instances where the baseline assessment is stated as a range (*e.g.,* $5,000 to $10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (*e.g.,* the length of time that a continuing violation has lasted). Otherwise, RSPA generally uses the middle of the range for the ''normal'' type of violation.

RSPA has also revised, added, deleted or combined individual violations from the List of Frequently Cited Violations, as considered appropriate, in order to make the guidelines a more useful device for both the public and RSPA personnel. Citations to sections of the HMR were supplied for certain violations, and the wording ''Various'' (rather than ''N/A'') is being used when a generally stated violation may be covered by more than one section of the HMR (*e.g.,* the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). The table has also been reorganized to place offeror violations together, and references to violations of the regulations concerning manufacture and use of packagings have been revised to reflect the fact that, after October 1, 1996, non-bulk packagings manufactured to DOT specifications are no longer authorized (unless filled before October 1, 1996) in place of packagings that must meet the performance-oriented packaging standards adopted in RSPA's rulemaking Docket No. HM–181 and located in 49 CFR Part 178, subpart M. See 49 CFR 171.14(a)(2).

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is less or greater than the initial baseline assessment.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Because this final rule carries out a statutory mandate without interpretation and revises an informational appendix without imposing any requirements, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the HMR.

D. Paperwork Reduction Act

There are no new information requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements.

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

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–134 § 31001.

§ 107.329 [Amended]

2. In § 107.329 (a) and (b), the parenthetical phrase ''($27,500 for a

violation occurring after January 21, 1997)'' is added after ''$25,000.''

3. Appendix A to subpart D of part 107 is amended by replacing the List of Frequently Cited Violations (Part II) to read as follows:

Appendix A—[Amended]

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

* * * * *

II. List of Frequently Cited Violations

Violation description	Section or cite	Baseline assessment
PART 107—REQUIREMENTS		
Failure to register as a carrier or shipper of hazardous material	107.608	$1,000 +, $500 each add'l year.
PART 171—REQUIREMENTS		
Failure to give immediate telephone notice of a reportable hazardous materials incident	171.15	$3,000.
Failure to file a DOT 5800.1 Hazardous Materials Incident Report within 30 days following an unintentional release of hazardous materials in transportation.	171.16	$500 to $2,500.
PART 172—REQUIREMENTS		
Shipping Papers (§ 172.200—172.205):		
Failure to execute a shipping paper for a shipment of hazardous materials	172.201	$3,000 to $6,000.
Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	$1,200.
Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202	$800 to $1,600.
Failure to include a hazard class/division number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect hazard class/identification number	172.202.	
-that does not affect compatibility requirements		$800,
-that affects compatibility requirements		$3,000 to $6,000.
Failure to include an identification number in the shipping description	172.202	$1,000 to $2,000.
Using an incorrect identification number	172.202.	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$800.
Using a shipping description not in required sequence	172.202	$500.
Using a shipping description with two or more required elements missing or incorrect	172.202	
-such that the material is misdescribed		$3,000.
-such that the material is misclassified		$6,000.
Failure to include the total quantity of hazardous material covered by a shipping description	172.202(c)	$400.
The letters ''RQ'' are not used in the shipping description to identify materials that are hazardous substances.	172.203(c)(2)	$500.
Using a shipping description for Class 7 (radioactive) material that fails to contain the required additional entries, or contains incorrect information for these additional entries.	172.203(d)	$2,000 to $4,000.
Failure to include a required technical name in parentheses for a listed generic or ''nos'' material	172.203(k)	$1,000.
Failure to list an exemption number in association with the shipping description	172.203(a)	$800.
Failure to include the required shipper's certification on a shipping paper	172.204(a)	$1,000.
Failure to execute the required shipper's certification on a shipping paper	172.204	$800.
Emergency Response Information Requirements (§ 172.600—172.604):		
Providing or listing incorrect emergency response information with or on a shipping paper	172.602.	
-no significant difference in response		$800,
-significant difference in response		$3,000 to $6,000.
Failure to include an emergency response telephone number on a shipping paper	172.604	$2,600.
Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604	$1,300.
Listing a fraudulent emergency response telephone number on a shipping paper	172.604	$2,600 to $4,200.
Listing an incorrect or non-working emergency response telephone number on a shipping paper	172.604	$1,300.
Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	$1,300.
Package Marking Requirements (§ 172.300—172.338):		
Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a)	$800 to $1,600.

Violation description	Section or cite	Baseline assessment
Failure to mark the identification number on a package	172.301(a)	$1,000 to $2,000.
Marking a package with an incorrect identification number	172.301(a).	
-that does not change the response information		$800,
-that changes the response information		$3,000 to $6,000.
Failure to mark the proper shipping name and identification number on a package	172.301(a)	$3,000 to $6,000.
Marking a package with an incorrect shipping name and identification number	172.301(a).	
-that does not change the response information		$1,500 to $3,000.
-that changes the response information		$3,000 to $6,000.
Failure to include the required technical name(s) in parentheses for a listed generic or ''no'' entry	172.301(c)	$1,000.
Failure to mark a package containing liquid hazardous materials with required orientation marks	172.312	$2,500 to $3,500.
Package Labeling Requirements (§ 172.400–172.450):		
Failure to label a package.	172.400	$5,000.
Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package..	172.400	$5,000.
Placing a label on a package that does not contain a hazardous material.	172.401(a)	$800.
Placing a label on Class 7 (radioactive) material that understates the proper label category.	172.403	$5,000.
Placing a label on Class 7 (radioactive) material that fails to contain, or has erroneous, entries for the name of the radionuclide(s), activity, and transport index..	172.403(g)	$2,000 to $4,000.
Placing a label not conforming to size requirements on a package.	172.407(c)	$800.
Placing a label on a different surface of the package than, or far away from, the proper shipping name..	172.406(a)	$800.
Placing a label that does not meet color specification requirements on a package (depending on the variance)..	172.407(d)	$600 to $2,500.
Failure to place a required subsidiary label on a package.	172.402	$500 to $2,500.
Failure to provide an appropriate class or division number on a label.	172.411	$2,500.
Placarding Requirements (§ 172.500–172.560):		
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 1 is applicable..	172.504	$1,000 to $9,000.
Failure to properly placard a freight container or vehicle containing hazardous materials when Table 2 is applicable..	172.504	$800 to $7,500.
Training Requirements (§ 172.700–172.704):		
Failure to train hazmat employees in the three required areas of training	172.702	
-more than 10 hazmat employees.		$2,400 and up.
-10 hazmat employees or less.		$1,500 and up.
Failure to train hazmat employees in any one of the three required areas of training	172.702	
-more than 10 hazmat employees.		$800 and up.
-10 hazmat employees or less.		$500 and up.
Failure to maintain training records	172.704.	
-more than 10 hazmat employees.		800 and up.
-10 hazmat employees or less.		$500 and up.
PART 173—REQUIREMENTS		
Overpack Requirements (§ 173.25)		
Failure to mark an overpack with a statement indicating that the inside packages comply with prescribed specifications when specification packaging is required..	173.25(a)(4)	$3,000.
Reconditioner Requirements (§173.28):		
Representing, marking, or certifying a drum as a reconditioned UN standard packaging, when the drum did not meet a UN standard..	173.28(c) & (d)	$6,000 to $10,800.
Marking an incorrect registration number on a reconditioned packaging	173.28(b)(2)(ii)	
-incorrect number.		$800.
-fraudulent use of another reconditioner's number.		$7,200.
Failure to properly conduct alternate leakage test	173.28(b)(2)(i)	
-improper test.		$2,000.
-no test at all.		$4,000.
Representing, marking, or certifying a drum as altered from one standard to another, when the drum had not actually been altered..	173.28(d)	$500.
Portable and IM Tank Requirements (§§173.32(e), 173.32c, 173.315)		
Offering hazardous materials for transportation in a DOT specification or exemption portable tank which is out of test..	173.32(a)(1), 173.315(a), Applicable Exemption.	$3,500 to $7,000.
Offering an IM portable tank for transportation that has not been hydrostatically tested within the last 2½ years per 173.32b(a)..	173.32c(c)	$3,500.
Offering an IM portable tank for transportation that has not been visually inspected in last five years per 173.32b(b)..	173.32c(c)	$3,500.

Violation description	Section or cite	Baseline assessment
Offering an IM portable tank for transportation that has not been visually or hydrostatically tested as required, or failing to remove the safety relief valves during testing..	173.32c(c)	$7,000.
Offering a hazardous material for transportation in an IM portable tank equipped with bottom outlets, when the material contained is prohibited from being offered in this type of packaging.	173.32c(g)	
-Packing Group II.		$7,000.
-Packing Group III.		$5,000.
Failure to provide the required outage for a shipment of hazardous materials, that results in the release of hazardous materials..	173.32c(k)	$6,000 to $12,000.
Offering a hazardous material for transportation in an DOT, exemption, or IM portable tank which fails to bear markings that it has been properly retested..	173.32(e)(3), 173.32b(d).	$3,000.
Cylinder Retesters (§§173.23, 173.34, and 173.302):		
Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c)	$600.
Certifying or marking as retested a nonspecification cylinder	173.34	$800.
Marking a cylinder in or on the sidewall area when not permitted by the applicable specification	173.34(c)(1)	$6,000 to $10,800.
Failure to maintain legible markings on a cylinder	173.34(e)	$800.
Failure to perform hydrostatic retesting at the minimum of 5/3 times the service pressure, or at the minimum specified test pressure.	173.34(e)	$2,100 to $5,200.
Failure to conduct a complete visual external and internal examination	173.34(e)(1)	$2,100 to $5,200.
Failure to have a retester's identification number (RIN)	173.34(e)(1)(i)	$4,000.
Failure to have current authority due to failure to renew a retester's identification number	173.34)(e)(1)(i)	$2,000.
Failure to have a retester's identification number and marking another RIN on a cylinder	173.34(e)(1)(i)	$7,200.
Marking a RIN before successfully completing a hydrostatic retest	173.34(e)(1)(ii)	$800.
Requalifying a DOT cylinder without performing the visual inspection or hydrostatic retest	173.34(e)(1)(ii)	$4,200 to $10,400.
Performing hydrostatic retesting without demonstrating the accuracy of the testing equipment	173.34(e)(3)	$2,100 to $5,200.
Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	173.34(e)(3)	$3,100.
Failure to perform a second retest, after equipment failure, at a pressure of 10% more or 100 psi more, whichever is less (includes exceeding 90% of test pressure prior to conducting a retest).	173.34(e)(3)	$3,100.
Failure to condemn a cylinder with permanent expansion of 10% or greater (5% for certain exemption cylinders); failure to condemn cylinders with evidence of internal or external corrosion, denting, bulging, or rough usage.	173.34(e)(4)	$10,000.
Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption.	$6,000 to $10,800.
Failure to keep complete and accurate records of cylinder reinspection and retest.		
—No records kept		$4,000.
—Incomplete or inaccurate records	173.34(e)(5)	$1,000 to $3,000.
Improper marking of the RIN or retest date on a cylinder	173.34(e)(5)	$800
Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp	173.34(e)(13)(iv).	$6,000 to $10,800.
Marking a ''+'' sign on a cylinder without determining the average or maximum wall stress, by calculation or reference to CGA Pamphlet C–5.	173.302(c)(3)	$3,000 to $4,000.
Representing, marking, or certifying a cylinder as meeting the requirements of an exemption, when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), Applicable Exemption.	$2,000 to $6,000.
Rebuilder Requirements (§173.34):		
Representing a DOT–4 series cylinder as meeting the requirements of the Hazardous Materials Regulations without being authorized to do so by the Associate Administrator for Hazardous Materials Safety.	173.34(l)	$6,000 to $10,800.
Offeror Requirements (General):		
Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes the failure to comply with the terms of an exemption authorizing the use of a nonstandard or nonspecification packaging).	Various	
—Packing Group I (includes §172 504 Table 1 materials)		$9,000.
—Packing Group II		$7,000.
-Packing Group III		$5,000.
Offering a hazardous material for transportation in a packaging that has successfully been tested to an applicable UN standard, but is not marked with the required UN marking.	178.3(a), 178.503(a).	$3,600.
Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation.	173.24(b)	
—Packing Group I (includes §172.504 Table 2 materials)		$12,000.
—Packing Group II		$9,000.
—Packing Group III		$6,000.
Overfilling a package so that the effectiveness is substantially reduced	173.24(b)	
—Packing Group I (includes §172.504 Table 1 materials)		$9,000.
—Packing Group II		$6,000.
—Packing Group III		$3,000.
Offering a hazardous material for transportation after October 1, 1996, in an unauthorized non-UN standard packaging marked as manufactured to a DOT specification.	171.14	

Violation description	Section or cite	Baseline assessment
—packaging meets DOT specification		$3,000.
—packaging does not meet DOT specification		$5,000 to $9,000.
Offeror Requirements (Class 1—Explosives):		
Failing to mark the ''EX'' approval number on a package containing an explosive	172.320	$1,200.
Offering an unapproved explosive for transportation	173.54 and 173.56(b).	
—Div 1.3 & 1.4 fireworks meeting the chemistry requirements (both quantity and type) of APA Standard 87–1.		$5,0000 to $10,000.
—all other explosives (including forbidden explosives)		$10,000 to $27,500.
Offering a leaking or damaged package of explosives for transportation	173.54(c)	$10,000 to $27,500.
Offeror Requirements (Class 7—Radioactive Materials):		
Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data.	173.415(a), 173.461.	
-tests and evaluation not performed		$8,400.
-complete records not maintained		$2,000 to $5,000.
Offering a Type B packaging without holding a valid NRC approval certificate	173.416(b), 173.471(d).	
-never having obtained one		$2,500.
-holding an expired certificate		$1,000.
Offering a limited quantity of radioactive materials without marking the inner (or single) packaging ''Radioactive.''	177.421(d)	$5,000 and up.
Offering low specific activity (LSA) radioactive materials consigned as exclusive use without providing instructions for maintenance of exclusive use shipment controls.	173.425(b)(9) & (c)(7).	$800.
Offering a package that exceeds the permitted limits for surface radiation or transport index	173.441	$10,000 and up.
Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$5,000 and up.
Storing packages of radioactive material in a group with a total transport index more than 50	173.447(a)	$5,000 and up.
Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a) & (b)	$2,500.
Offeror Requirements (Cylinders):		
Offering a compressed gas for transportation in a cylinder that is out of test	173.301(c)	$4,200 to $10,400.
Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for at least 30 days.	173.303(d)	$5,000.
Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failing to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130° F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h).	$1,500 to $6,000.
PART 178—REQUIREMENTS		
Third-Party Packaging Certifiers (General):		
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (*e.g.,* steel drum to be marked UN 4G).	1171.2(e), 1178.2(b), 178.3(a), 178.503(a).	$500 per item.
Manufacturers (General):		
Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b)	
—Packing Group I (includes § 172.504 Table 1 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Certifying a packaging as meeting a UN standard when design qualification testing was not performed	178.601(d)	
—Packing Group I (includes §172 504 Table 2 materials)		$10,800.
—Packing Group II		$8,400.
—Packing Group III		$6,000.
Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	$2,000 to $10,800.
Failure to properly conduct testing for UN standard packaging (*e.g.*, testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test).		
—design qualification testing	178.601(d)	$2,000 to $10,800.
—periodic retesting	178.601(e)	$500 to $10,800.

Violation description	Section or cite	Baseline assessment
Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8).	$7,200.
Failure to maintain testing records	178.601(1)	
—design qualification testing		$1,000 to $5,000.
—periodic retesting		$500 to $2,000.
Improper marking of UN certification	178.503	$500 per item.
Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14	
—if packaging does meet DOT specification		$3,000.
—if packaging does not meet DOT specification		$6,000 to $10,800.
Manufacturing Requirements—Drums		
Failure to properly conduct production leakproofness test	178.604(b)(1)	
—improper testing	173.28	$2,000.
—no testing performed		$2,000 to $10,800.
Manufacturing Requirements—Cylinders		
Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various	$7,500 to $15,000.
Failure to have a registration number or failure to mark the registration number on the cylinder	Various	$800.
Marking another company's number on a cylinder	Various	$7,200.
Failure to mark the date of manufacture or lot number on a DOT–39 cylinder	178 65–14	$3,000.
Failure to have a chemical analysis performed in the US for a material manufactured outside the US/ failure to obtain a chemical analysis from the foreign manufacturer.	Various	$5,000.
Failure to meet wall thickness requirements	Various	$7,500 to $15,000.
Failure to heat treat cylinders prior to testing	Various	$5,000 to $15,000.
Failure to conduct a complete visual internal examination	Various	$2,500 to $6,200.
Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment	Various	$2,500 to $6,200.
Failure to conduct a flattening test	Various	$7,500 to $15,000.
Failure to conduct a burst test on a DOT–39 cylinder	178.65–11	$5,000 to $15,000.
Failure to have inspections and verifications performed by an inspector	Various	$7,500 to $15,000.
Failure to maintain a required inspector's reports	Various	
—no reports at all		$5,000.
—incomplete or inaccurate reports		$1,000 to $4,000.
Other Requirements		
Carrier Requirements:		
Transporting packages of hazardous materials that have not been secured against movement within the vehicle.	177.834(a) & (g)	$3,000.
Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage such explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent such damage.	177.835(i)	$5,200.
Transporting railway track torpedoes outside of flagging kits, in violation of E–7991	171.2(b)	$7,000.
Transporting Class 7 (radioactive) material having a total transport index more than 50	177.842(a)	$5,000 and up.
Transporting Class 7 (radioactive) material without maintaining the required separation distance	177.842(b)	$5,000 and up.
Failing to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transport index more than 50.	171.2(b)	
-failure to have the radiation survey record required by ¶¶ 7(f), 8(b)(3)		$5,000.
-failure to have other accompanying documents required by ¶ 8(b)		$500 each.
-other violations of ¶¶ 7 and 8		$5,000 and up.
Exemptions:		
Offering or transporting hazardous materials, or otherwise performing a function, covered by an exemption after expiration of the exemption.	171.2(a), (b), (c), Various.	$1,000 + $500 each add'l year.

4. In Appendix A to subpart D of part 107, under the section entitled ''Penalty Increase for Multiple Counts'' (Section IV.C.), the parenthetical phrase ''($27,500 for a violation occurring after January 21, 1997)'' is added after ''$25,000.'

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, § 4 (28 U.S.C. 2461 note); Pub. L. 104–134, § 31001.

6. In § 171.1, as revised in the final rule under Docket No. HM–200 on January 8, 1997 (62 FR 1215), new paragraph (c) is added to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(c) Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than $25,000 ($27,500 for a violation that occurs after January 21, 1997) and not less than $250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

Issued in Washington, DC on January 14, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 97–1398 Filed 1–17–97; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21, Notice 14]

RIN 2127–AE99

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This document amends the automatic transmission park position test procedure described in Standard No. 114, ''Theft Protection,'' to clarify an ambiguity. The test procedure is unclear in that it requires the service brakes to be applied once in the beginning of the test and once near the end of the test, but does not specify that they should be released anywhere in between these instructions. In addition, outdated sections, i.e., for vehicle manufactured before September 1, 1996, will be removed.

DATES: Effective date: This rule is effective February 20, 1997.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Chris Flanigan, Office of Safety Performance Standards, NPS–21, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–4918. For legal issues: Mr. Paul Atelsek, Office of Chief Counsel, NCC–20, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–2992.

SUPPLEMENTARY INFORMATION: On August 22, 1995, Toyota Motor Corporate Services of North America, Inc. (Toyota) requested an interpretation regarding the automatic transmission park position test procedure outlined in Standard No. 114. The test procedure involves these steps: (1) Drive the subject vehicle forward up a ten percent grade, (2) stop the vehicle with the service brakes, (3) apply the parking brake, (4) move the shift lever to the ''park'' position, (5) apply the service brakes, (6) release the parking brake, (7) release the service brakes, (8) remove the key, (9) verify that the transmission is locked in the ''park'' position, and (10) verify that the vehicle has moved no more than 150 millimeters (mm) from its original position.

The standard currently has a test procedure in S5.2 for vehicles manufactured prior to September 1, 1996 and a test procedure in S5.3 for vehicles manufactured on or after September 1, 1996. The only difference between the two test procedures is that for vehicles manufactured on or after September 1, 1996, the third step (apply the parking brake) is only required if there is a parking brake present. The purpose of using the parking brake is for the safety of those conducting the test. If the parking brake is used in conjunction with the service brakes, there is a backup in case the vehicle operator's foot slips off of the service brakes during the test. This could be hazardous if there is someone in close proximity to the wheels perhaps measuring the vehicle's position.

Toyota states that the unclear part of the test procedure concerns the application of the service brakes. The second step in the procedure is to stop the vehicle on the ten percent grade with the service brakes. The fifth step in the procedure is to apply the service brakes. However, the test procedure does not require the service brakes to be released anywhere in between the second and fifth steps. It is, therefore, unclear whether the service brakes should have been released at any point between the two steps.

In its letter requesting an interpretation of the test procedure, Toyota offers two ways to rectify this ambiguity. First, the fifth step (apply the service brakes) could be removed. In this instance, there would only be one instruction in the procedure (the second step) to apply the service brakes. In this case, the service brakes would remain applied until the seventh step, just before the measurement of vehicle movement is taken.

Second, Toyota proposed inserting an additional step after the third step (apply the parking brake) to release the service brakes. In this case, the service brakes would be applied and then released once the vehicle is on the ten percent grade and the parking brake has been set. Then, once the vehicle's shift mechanism has been placed in the ''park'' position, the service brakes would be applied again while the parking brake is released. Once the parking brake is released, the service brakes would then be released. The measurement of vehicle movement could then be made.

NHTSA believes that, rather than adding more steps to the test procedure, the best way to eliminate this ambiguity is to remove the fifth step. Because the second step in the procedure requires application of the service brakes and there is no direction to release the service brakes until the seventh step, there is no need to require that they be applied again in the fifth step.

Regarding the removal of dated sections, the standard makes reference