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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 361, 362, 363, and 364

[FHWA Docket No. MC-96-18]

RIN 2125-AD64

Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties
AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); extension of comment period.

SUMMARY: On April 29, 1996, the FHWA published notice of its proposal to amend its rules of practice for motor carrier administrative proceedings. (61 FR 18866). The FHWA now proposes to supplement that notice of proposed rulemaking to make the rules applicable to proceedings arising under section 103 of the ICC Termination Act of 1995 (ICCTA) as well. Before the ICCTA became effective on January 1, 1996, these proceedings fell under the jurisdiction of the Interstate Commerce Commission (ICC) and were implemented and administered pursuant to ICC regulations. But the ICCTA abolished the ICC and gave the Secretary of Transportation responsibility for carrying out the provisions of section 103. The Secretary has delegated that responsibility to the FHWA. By broadening the scope of the proposed rules of practice to include proceedings arising under the ICCTA, the FHWA proposes to adopt uniform and consistent procedures to govern all investigation and civil forfeiture proceedings which it institutes.

DATES: Comments must be received on or before November 20, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-96-18, FHWA, Office of the Chief Counsel, HCC-10, Room 4232, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal

holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Judy Rutledge, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This supplemental notice of proposed rulemaking addresses procedural changes that will facilitate implementation of the ICCTA, Pub.L. No. 104-88, 109 Stat. 803. Effective January 1, 1996, the ICCTA abolished the Interstate Commerce Commission (ICC) but reenacted various statutory provisions that the ICC previously administered. Among the statutes reenacted are civil and criminal penalty provisions that apply to violations of Part B of Subtitle IV, Title 49, United States Code (49 U.S.C. 13101 *et seq.*). Those provisions appear in Chapter 149 of Part B.

The ICCTA charges the Secretary of Transportation with responsibility for carrying out Part B, including the civil penalty provisions in Chapter 149. The Secretary has delegated that responsibility to the Federal Highway Administration (FHWA). Thus, the FHWA now oversees compliance with Part B of the ICCTA and is authorized to conduct investigations and implement enforcement proceedings to obtain compliance.

Currently, investigation and enforcement proceedings relating to violations of Part B are governed by procedures in former ICC regulations, which the FHWA adopted as an interim measure. (61 FR 14372, April 1, 1996). Those procedures differ from FHWA's procedures that apply to investigations and enforcement proceedings for violations of the safety regulations. For example, civil forfeiture proceedings arising from violations of the motor carrier safety regulations are governed by 49 CFR Part 386, whereas, similar proceedings for violations of Part B of the ICCTA are governed by 49 CFR Part 1021. Although civil forfeiture claims under Part 386 and Part 1021 are asserted the same way—by letter containing prescribed information—only Part 386 requires the respondent to reply to the claim letter in a specified time with prescribed information in order to administratively resolve the claim. (49 CFR 386.14). In contrast, Part 1021 does not require a response to the claim letter and does not establish

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administrative procedures for resolving the claims.

While the ICC existed, these procedural differences were inconsequential because the regulations were applied by separate agencies to different violations. The ICC applied Part 1021 procedures to civil penalties it assessed under Subtitle IV, Title 49, U.S. Code, while the FHWA applied Part 386 procedures to civil penalties it assessed under Subtitle VI of Title 49. But now that the FHWA oversees the statutes previously administered by the ICC, having one set of procedures will eliminate confusion and duplicative regulatory provisions.

To establish uniform and consistent procedures for all proceedings, the FHWA intends to adopt new rules of practice. An extensive revision of its rules of practice has already been proposed in a notice of proposed rulemaking (NPRM). (61 FR 18866, April 29, 1996). This supplemental notice of proposed rulemaking contains the amendments that the FHWA considers necessary to unite the separate procedures that now exist.

In this supplemental proposal, the FHWA is adopting the term "Commercial Regulations" to refer to the requirements imposed on motor carriers as a result of the transfer of functions from the former Interstate Commerce Commission in the ICCTA. The procedures to be followed by the FHWA in carrying out the transferred functions are integrated into the proposed procedures published in the April 29 Federal Register. Therefore, it would be helpful for commenters to read the two proposals together. No substantive changes are being proposed in this notice.

Part 361—Administrative Enforcement

The changes offered in this proposed Part are principally limited to the insertion of references to the statutory authority for the functions transferred from the ICC. A definition of "Commercial Regulations" is included and that term is inserted in the various sections along with the new statutory authority for those regulations.

Part 362—Safety Ratings

No changes are being made to proposed Part 362.

Part 363—Enforcement Proceedings

A reference to enforcement of the commercial regulations is inserted in the authority note and the section headed Nature of the Proceedings.

Part 364—Violations, Penalties and Collections

Substantial additions are made to this proposed part, primarily incorporating the various violations and penalties included in chapter 149 of Title 49, added by the ICCTA. Comments are particularly invited on this Part as it relates to the determinative factors in assessing civil penalties.

In order to provide ample notice and opportunity for comment to the public, the comment period on the April 29, 1996 NPRM was extended 45 days (61 FR _____, August 6, 1996), by which time comments on both the NPRM and this SNPRM must be received.

Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposal contained in this document would not result in an annual effect on the economy of \$100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This proposal would amend provisions in the proposed Rules of Practice for Motor Carrier Proceedings, Investigations, Disqualifications and Penalties, published at 61 FR 18866, April 29, 1996, to make them applicable to proceedings arising under the ICC Termination Act of 1995. Because the FHWA acquired new statutory responsibilities under the Act, this action will establish one set of procedures that apply to all FHWA proceedings and thereby reduce duplicative regulation. Any economic consequences flowing from the procedures in the proposal are primarily mandated by statute. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the agency has evaluated the effects of this Supplemental NPRM on small entities. No economic impacts of this rulemaking are foreseen as the rule would impose no additional substantive burdens that are not already required by the statutes and regulations to which these procedural rules apply. Therefore, the FHWA certifies that this proposed action would not have a significant

economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rules proposed herein do not preempt State authority or jurisdiction beyond the preemption established by Federal statute, nor do they establish any conflicts with existing State roles in regulating carriers and brokers operating in interstate commerce. It has, therefore, been determined that the SNPRM does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed rule does not require a collection of information for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*)

National Environment Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that the proposed rules would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 April and October 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 in 49 CFR 361, 362, 363, and 364

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

Issued on: October 8, 1996.

Rodney E. Slater,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend the notice of

proposed rulemaking, 61 FR 18866, April 29, 1996, in the manner set forth below:

PART 361—ADMINISTRATIVE ENFORCEMENT

1. The authority citation for Part 361 is revised to read as follows:

Authority: 49 U.S.C. 104, 307, Chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315.

2. In proposed Section 361.101, the introductory text is republished and the section is amended by revising paragraphs (a) and (c) to read as follows:

§ 361.101 Purpose

This part:

(a) Restates the authority of the Department of Transportation (DOT) to regulate and investigate persons, property, equipment, and records relating to commercial motor vehicle transportation, intermodal safe container transportation, the highway transportation of hazardous materials, and carriers and brokers performing, or arranging, transportation subject to the jurisdiction of the Secretary;

(b) * * *

(c) Identifies the DOT officials authorized to enforce motor carrier, broker, freight forwarder, water carrier, and hazardous materials regulations.

3. Section 361.102 is amended by revising the first sentence of paragraph (a) and adding a new second sentence and by revising paragraph (b) to read as follows:

§ 361.102 Authority and delegation.

(a) The authority of the Secretary of Transportation to regulate and investigate commercial motor vehicle safety, including motor carriers, commercial motor vehicles and drivers, and the highway transportation of hazardous materials, is codified in 49 U.S.C. Chapters 5, 51, 311, 313, and 315, and 42 U.S.C. 4917. The authority of the Secretary to regulate and investigate motor carriers, brokers, freight forwarders, and water carriers is codified in 49 U.S.C. Chapters 131–141 and 145–149. * * *

(b) The authority of the Secretary listed in paragraph (a) of this section has been delegated to the Federal Highway Administrator (49 U.S.C. 104(c); 49 CFR 1.48), and is codified in 49 CFR part 325 (Noise Control), the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR Parts 350–399), relevant portions of the Hazardous Materials Regulations (HMRs) (primarily 49 CFR Parts 171–173, 177–178, and 180), and the Commercial Regulations (CRs) (49 CFR Parts 370–379). The Federal Highway Administrator has delegated the

authority to enforce the FMCSRs, the HMRs, and the CRs to the Associate Administrator for Motor Carriers.

* * * * *

4. In § 361.103, the introductory text of the section and of paragraph (a)(2) is republished and paragraphs (a) introductory text, (a)(1), (a)(2)(i), and (a)(2)(ii) are revised to read as follows:

§ 361.103 Inspection and investigation.

The FHWA may begin an investigation on its own initiative or on a complaint.

(a) Upon a display of official DOT credentials, special agents may enter without delay at reasonable times any place of business, lands, buildings, property, equipment, or commercial motor vehicle of a person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 131–141, 145–149, and 42 U.S.C. 4917. Special agents may take the following actions:

(1) Inspect the equipment, land, buildings, and property of a motor carrier, broker, freight forwarder, water carrier, or other person on the premises of the motor carrier, or the equipment of the carrier at any other location, and inspect any commercial motor vehicle of the motor carrier whether or not in operation; and

(2) Inspect and copy any record of—
(i) A carrier, broker, lessor, association, or other person subject to the provisions of 49 U.S.C. Chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315, and 42 U.S.C. 4917; and

(ii) A person controlling, controlled by, or under common control with a carrier or broker if the agent considers inspection relevant to that person's relation to, or transaction with, that carrier.

* * * * *

5. Section 361.104 is amended by revising the introductory paragraph and by adding a definition for "Commercial Regulations" in alphabetical order, to read as follows:

§ 361.104 Definitions.

Words or phrases defined in 49 U.S.C. 13102 and in 49 CFR 383.5 and 390.5 of this subchapter apply in parts 361–364. In addition—

* * * * *

Commercial Regulations (CRs) means statutes and regulations that apply to persons providing or arranging transportation for compensation subject to the Secretary's jurisdiction under 49 U.S.C. Chapter 135. The statutes are codified in Part B of Subtitle IV, Title 49, U.S. Code (49 U.S.C. 13101 through 14913). The regulations include those issued by the Federal Highway

Administration or its predecessor under authority provided in 49 U.S.C. 13301 or a predecessor statute.

* * * * *

6. Section 361.105 is amended by revising paragraph (d)(3) to read as follows:

§ 361.105 Employer obligations.

* * * * *

(d) * * *

(3) Any equipment, land, buildings, or property used in the transportation of persons or property or to ensure compliance with the Federal Motor Carrier Safety Regulations, the Hazardous Materials Regulations, and the Commercial Regulations.

* * * * *

7. Section 361.109 is amended by adding paragraph (g) to read as follows:

§ 361.109 Depositions and production of records.

* * * * *

(g) A party to a proceeding pending under Part B of Subtitle IV, Title 49, U.S. Code, may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and waiver. If a witness fails to be deposed or to produce records the Associate Administrator may subpoena the witness to take a deposition, produce the records, or both.

PART 363—ENFORCEMENT PROCEEDINGS

8. The authority citation for Part 363 is added as follows:

Authority: 49 U.S.C. Chapters 5, 51, 133, 147, 149, 311, 313, and 315.

9. In § 363.101 the first sentence of the introductory paragraph is revised to read as follows:

§ 363.101 Nature of Proceeding.

Civil penalty proceedings are proceedings pursuant to 5 U.S.C. 554 in which the agency makes a monetary claim or seeks an order against the respondent, based on violation of the FMCSRs, HMRs, or CRs. * * *

* * * * *

PART 364—VIOLATIONS, PENALTIES, AND COLLECTIONS

10. The authority citation for Part 364 is revised to read as follows:

Authority: 49 U.S.C. Chapters 5, 51, 133, 149, 311, 313, and 315.

11. Section 364.101 is revised to read as follows:

§ 364.101 Purpose.

The purposes of this part are to define the various types of violations of the

Federal Motor Carrier Safety Regulations (FMCSRs), the Hazardous Materials Regulations (HMRs), the Commercial Regulations (CRs), and orders authorized to be issued thereunder; to describe the range of penalties that may be imposed for such violations and how those penalties are assessed; and to identify the means that may be employed to collect those penalties once it has been finally decided by the agency that they are due.

12. Section 364.102 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 364.102 Policy.

(a) Penalties are assessed administratively by the agency for violations of the FMCSRs, HMRs, CRs, and administrative orders at levels sufficient to bring about satisfactory compliance. Criminal penalties are also authorized to be sought in U.S. District Court under certain circumstances. The civil and criminal penalties authorized for violations of the ERs are not exclusive remedies and may be pursued along with a civil action for injunctive relief that is authorized by 49 U.S.C. 14702.

(b) The amounts of civil penalties that can be assessed for regulatory violations subject to the proceedings in this subchapter are established in the statutes granting enforcement powers. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In addition to those factors, a civil penalty assessed under 49 U.S.C. 14901 (a) and (d) concerning the transportation of household goods is also based on the degree of harm caused to a shipper and whether the shipper has been adequately compensated before institution of the civil penalty proceeding. In adjudicating the claims and orders under the administrative procedures in this subchapter, additional information may be developed regarding these factors that may affect the final amount of the claim.

(c) * * *

(d) Criminal penalties for violating the FMCSRs, HMRs, and administrative orders may be sought against a motor carrier, its officers or agents, a driver, or other persons when it can be established that violations were deliberate or

resulted from a willful disregard for the regulations. Criminal penalties may be sought against an employee only when a causative link can be established between a knowing and willful violation and an accident or hazardous materials incident or the risk thereof. Criminal penalties for violating the ERs may be sought against a person when it can be established that the person acted with the criminal intent specified in the statute governing the violation.

* * * * *

13. Section 364.201 is amended by revising the first sentence of paragraph (a)(4)(i) and by adding paragraph (f) to read as follows:

§ 364.201 Types of violations and maximum monetary penalties.

(a) * * *

(4) * * *

(i) Owner operators. For purposes of § 364.201(a) which applies to violations of the FMCSRs, an owner operator while in the course of personally operating a commercial motor vehicle is considered an employee. * * *

* * * * *

(f) 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 fails to make a report, to specifically, completely, and truthfully answer a question, or to make, prepare, or preserve a record in the form and manner prescribed is liable for a minimum penalty of \$500 per violation.

(2) A person who operates as a carrier or broker for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$500 per 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 \$2,000 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$500 per violation.

(5) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions 49 U.S.C. 13901 is liable for a maximum penalty of \$20,000 per violation.

(6) 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 \$1,000 per violation.

(7) A person

(i) That 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) That 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 \$2,000 for the first violation and \$5,000 for each subsequent violation.

(8) 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 3 times the amount accepted as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset for the 6-year period before the action is begun.

(9) A person that 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 \$100,000 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.

(10) Any person that 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 \$200 for the first violation and \$250 for each subsequent violation.

(11) 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 \$500 for the first violation and up to \$2,000 for each subsequent violation.

(12) A person that 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 \$500 for the first

violation and up to \$2,000 for each subsequent violation.

(13) 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 \$10,000 per violation.

(14) A person, or an officer, employee, or agent of that person, who tries to evade regulation under Part B of Subtitle IV, Title 49, U.S. Code, for carriers or brokers is liable for a penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

(15) 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. CODE, or an officer, agent, or employee of that person, commits a 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. Maximum penalty: \$5,000 per violation.

(16) 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, commits a violation if they disclose information identified in 49 U.S.C. 14908 without the permission of the shipper or consignee. Maximum penalty: \$2,000.

(17) A person who violates a provision of Part B, Subtitle IV, Title 49, U.S. Code, 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 § 13902, is liable for a penalty of \$500 for each violation if another penalty is not provided in 49 U.S.C. Chapter 149.

(18) A violation of Part B 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.

(19) In a proceeding begun under 49 U.S.C. 14902 or 14903, the rate that a carrier publishes, files, or participates in under § 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.

14. Section 364.202 is amended by revising the sixth sentence of paragraph (a), by revising paragraphs (b)(1), (b)(2), (b)(4), and (b)(5), and by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c), to read as follows:

§ 364.202 Civil penalty assessment factors.

(a) * * * Similarly, when the circumstances in which violations occur are so obvious that any responsible person could easily correct them, the continuation of such violations is an aggravating factor to be considered in assessing the level of civil penalty.

* * * * *

(b) * * *

(1) Degree of culpability. This factor requires an evaluation of blameworthiness on the part of the violator. It will range from the low end, where a person may have had various knowledge of violations but little actual involvement, to the high end, where the person had actual knowledge and disregarded or even promoted noncompliance.

(2) History of prior offenses. This factor reflects a person's commitment to compliance with both economic and safety regulations. Persistent noncompliance with safety regulations reflects a disregard for safety which, in turn, increases the prospect for imminently hazardous conditions leading to accidents. Timely correction of violation patterns should prevent imminent hazards from developing and reduce the likelihood of accidents. Similarly, repeated violations of the economic regulations reflect indifference to the adverse financial impact that noncompliance has on the public and other entities in the transportation industry.

(3) * * *

(4) Effect on ability to continue to do business. Insofar as this factor is distinguishable from paragraph (b)(3) of this section, it relates to the timeliness of payment and abatement of violations. Evidence that immediate payment of even a mitigated civil penalty will effectively terminate a person's business will be considered in determining whether to defer payment or to allow

installment payments of the civil penalty assessed.

(5) Other matters as justice and public safety may require. Matters other than those specifically included in the factors listed in this section may also be either aggravating or mitigating in the interest of justice or public safety. These may include such factors as cooperation or lack thereof; general attitude toward compliance; institution or revision of a safety program; hiring or assignment of personnel with specifically defined compliance and safety responsibilities; comprehensiveness of corrective actions; and effectiveness and speed of compliance.

(c) Additional violator factors applying to household goods shipments. In assessing a civil penalty under 49 U.S.C. 14901 (a) or (d) concerning the transportation of household goods, the factors listed in paragraph (b) of this section are considered along with the following factors:

(1) Degree of harm to shipper. A violation of regulations governing the transportation of household goods will be evaluated to determine its effect on shippers. The level of penalty assessed will likely be higher if the violation resulted in direct harm to a shipper. It will range from the low end, where the violation did not harm a shipper, to the high end where the violation caused harm to multiple shippers.

(2) Whether the shipper has been adequately compensated before institution of the civil penalty proceeding. This factor enables a carrier or broker to mitigate the penalty by fairly compensating a shipper for harm caused by a violation before enforcement action is instituted. A carrier or broker that, on its own initiative, accepts responsibility for damage caused by its violations demonstrates a commitment to comply with the economic regulations governing household goods transportation. Consequently, the civil penalty assessed for the violations will likely be lower if the carrier or broker adequately compensates the shipper before the civil penalty proceeding is begun.

(d) * * *

15. Section 364.301 is amended by redesignating paragraphs (d) and (e) as paragraphs (h) and (i), respectively, and by adding new paragraphs (d), (e), (f), and (g), to read as follows:

§ 364.301 Criminal Penalties.

* * * * *

(d) Any person who violates 49 U.S.C. 14903(b) shall be fined under title 18 of the United States Code, imprisoned not more than 2 years, or both.

(e) A person who violates 49 U.S.C. 14905 shall be fined under title 18 of the United States Code, imprisoned not more than 2 years, or both.

(f) A person who violates 49 U.S.C. 14909 shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both.

(g) Any person who violates 49 U.S.C. 14912 shall be fined under title 18 of the United States Code, imprisoned not more than 2 years, or both.

(h) * * *

(i) * * *

16. Section 364.302 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 364.302 Injunctions.

(a) The Associate Administrator may file a civil action to enforce or redress a violation of a commercial motor vehicle safety regulation, an economic regulation, or an order of the FHWA under 49 U.S.C. Chapters 5, 51, 131-141, 145-149, 311 (except §§ 31138 and 31139), and 315, in an appropriate District Court of the United States.

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