

**Subpart B—[Amended]**

■ 8. Amend § 112.8 by revising paragraphs (c)(2) and (c)(11) to read as follows:

**§ 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).**

\* \* \* \* \*

(c) \* \* \*

(2) Construct all bulk storage tank installations (except mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be safely confined in a facility catchment basin or holding pond.

\* \* \* \* \*

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

\* \* \* \* \*

**Subpart C—[Amended]**

■ 9. Amend § 112.12 by revising the section heading and by revising paragraphs (c)(2) and (c)(11) to read as follows:

**§ 112.12 Spill Prevention, Control, and Countermeasure Plan requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) Construct all bulk storage tank installations (except mobile refuelers) so that you provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must ensure that diked areas are sufficiently impervious to contain discharged oil. Dikes, containment curbs, and pits are commonly employed for this purpose. You may also use an alternative system consisting of a drainage trench enclosure that must be arranged so that any discharge will terminate and be

safely confined in a facility catchment basin or holding pond.

\* \* \* \* \*

(11) Position or locate mobile or portable oil storage containers to prevent a discharge as described in § 112.1(b). Except for mobile refuelers, you must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

**§ 112.13 [Removed and Reserved]**

■ 10. Remove and reserve § 112.13.

**§ 112.14 [Removed and Reserved]**

■ 11. Remove and reserve § 112.14.

**§ 112.15 [Removed and Reserved]**

■ 12. Remove and reserve § 112.15.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 209**

[FRA-2006-24512]

RIN 2130-AB70

**Revisions to Civil and Criminal Penalties; Penalty Guidelines**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Federal Railroad Administration is revising its regulations to reflect revisions to the penalty provisions in the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), enacted on August 10, 2005. We are also revising baseline assessments for several categories of violations, including those related to training and security plans, in our Civil Penalty Assessment Guidelines. We publish our Guidelines in order to provide the regulated community and the general public with information on the hazardous materials civil penalty assessment process for violations related to the transportation of hazardous materials by rail.

**DATES:** *Effective Date:* This final rule is effective December 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Roberta Stewart, Trial Attorney, Office

of Chief Counsel, RCC-12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202-493-6027).

**SUPPLEMENTARY INFORMATION:**

**I. Civil and Criminal Penalties**

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144. Title VII of SAFETEA-LU—the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005—revises the maximum and minimum civil penalties, and the maximum criminal penalty, for violations of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) or a regulation, order, special permit, or approval issued under Federal hazmat law (including 49 CFR subtitle B, chapter I, subchapters A and C). The Federal Railroad Administration (FRA) is revising references in our regulations to the maximum and minimum civil penalties, and the maximum criminal penalties, to reflect the following statutory changes:

- The maximum civil penalty was increased from \$32,500 to \$50,000 for a knowing violation, and to \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property.
- The minimum civil penalty has reverted from \$275 to \$250, except that a minimum civil penalty of \$450 applies to a violation related to training.
- Criminal penalties now apply to both reckless and willful violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder. The criminal penalties also apply to a knowing violation of the prohibition in 49 U.S.C. 5104(b) against tampering with a marking, label, placard, or description on a shipping document.
- The maximum criminal penalty of five years' imprisonment and a fine in accordance with Title 18 of the United States Code (\$250,000 for an individual, \$500,000 for a corporation) was retained, except that the maximum amount of imprisonment has been increased to 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to a person.

**II. Revisions to Civil Penalty Guidelines**

FRA's hazardous material transportation enforcement civil penalty

guidelines are published in Appendix B to 49 CFR Part 209, to provide the regulated community and the general public with information concerning the manner in which FRA 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. These guidelines were first published in the **Federal Register** on July 25, 1996 in response to a request contained in Senate Report 103–150 that accompanied the Department of Transportation and Related Agencies Appropriations Act of 1994. 61 FR 38644. These guidelines are periodically updated, and we previously published revisions to them on May 28, 2004. 69 FR 30590.

These guidelines are used by FRA's enforcement personnel and attorneys as a means of determining a proposed civil penalty for violations of Federal hazardous material transportation law and the regulations issued under that law. As a general statement of agency policy and practice, these guidelines are not fully determinative of any issues or rights, and do not have the force of law. They are informational, impose no requirements, and constitute a statement of agency policy for which no notice of proposed rulemaking is necessary.

In this final rule, we are revising baseline assessments to reflect the increase to \$450 in the minimum civil penalty for a violation related to training. We are adding baseline assessments applicable to the failure to develop or adhere to a security plan and provide security training when a security plan is required. We have also revised other baseline assessments in an effort to account for the relative severity of violations, and to update penalties to more appropriate amounts, as some time has passed since many of the baselines have been revised.

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The provisions adopted in this final rule simply set forth changes in the law and our general statements of agency policy and procedure, for which notice-and-comment procedure is not necessary.

### III. Rulemaking Analyses and Notices

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

This final rule is published under the authority of 49 U.S.C. 5123 and 5124, which provide civil and criminal penalties for violations of Federal hazardous material transportation law or a regulation, order, special permit, or

approval issued under that law. The hazardous material transportation regulations are issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA). 49 CFR 1.53(b). Responsibility for the enforcement of the hazardous materials transportation law and regulations primarily in instances where violations involve railroads and those entities who ship by rail has been delegated to FRA. 49 CFR 1.49(s). This rule revises references in FRA's regulations to reflect revisions to the civil and criminal penalties in the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of SAFETEA-LU), which was enacted on August 10, 2005. This rule also adds baseline assessments relating to training and security plans in our penalty guidelines, and revises other baseline assessments.

#### B. 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 rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

#### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). As amended in SAFETEA-LU, 49 U.S.C. 5125(i) provides that the preemption provisions in Federal hazardous material transportation law do "not apply to any \* \* \* penalty \* \* \* utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material." Accordingly, this final rule does not have any preemptive effect on State, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

#### D. Regulatory Flexibility Act and Executive Order 13272

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers, offerors and carriers of hazardous materials by rail, manufacturers, and repairers of packagings used in the transport of hazardous materials by rail,

and any other persons involved in the transportation of hazardous materials by rail. Some of these entities are classified as small entities; however, there is no economic impact on any person that complies with Federal hazardous materials law and the regulations and orders issued under that law.

#### E. Paperwork Reduction Act

There are no new information requirements in this final rule.

#### F. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of \$128,100,000 or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

#### G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

#### H. 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 in 49 CFR Part 209

Hazardous materials, Penalties.

■ Therefore, in consideration of the foregoing, chapter II, subtitle B of title 49 of the Code of Federal Regulations is amended as follows:

#### PART 209—[AMENDED]

■ 1. The authority citation for part 209 is revised to read as follows:

**Authority:** 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 209.3 is amended by adding a definition of *Federal hazardous material transportation law* in alphabetical order to read as follows:

#### § 209.3 Definitions.

\* \* \* \* \*  
*Federal hazardous material transportation law* means 49 U.S.C. 5101 *et seq.*

\* \* \* \* \*

■ 3. Revise § 209.103 to read as follows:

**§ 209.103 Minimum and maximum penalties.**

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A or C of Chapter I, subtitle B, of this title, or a special permit or approval issued under subchapter A or C of Chapter I, subtitle B, of this title is liable for a civil penalty of at least \$250 but not more than \$50,000 for each violation, except that—

(1) The maximum civil penalty for a violation is \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property and

(2) A minimum \$450 civil penalty applies to a violation related to training.

(b) When the violation is a continuing one, each day of the violation constitutes a separate offense. 49 U.S.C. 5123.

(c) The maximum and minimum civil penalties described in paragraph (a) above apply to violations occurring on or after August 10, 2005.

■ 4. Revise the last sentence of § 209.105(c) to read as follows:

**§ 209.105 Notice of probable violation.**

(c) \* \* \* In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$50,000 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of \$100,000.

■ 5. Revise § 209.109(a) to read as follows:

**§ 209.109 Payment of penalty; compromise.**

(a) Payment of a civil penalty may be made by certified check, money order, or credit card. Payments made by certified check or money order should be made payable to the Federal Railroad Administration and sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, P.O. Box 25082, Oklahoma City, OK 73125.

Overnight express payments may be sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, 6500 South MacArthur Blvd. Headquarters Building, Room 176, Oklahoma City, OK 73169. Payment by credit card must be made via the Internet at <https://www.pay.gov/paygov/>. Instructions for online payment are found on the Web site.

■ 6. Revise § 209.131 to read as follows:

**§ 209.131 Criminal penalties generally.**

A person who knowingly violates 49 U.S.C. 5104(b) or § 171.2(l) of this title or willfully or recklessly violates a requirement of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person.

■ 7. Revise the first sentence of § 209.133 to read as follows:

**§ 209.133 Referral for prosecution.**

If an inspector, including a certified state inspector under part 212 of this chapter, or another employee of FRA becomes aware of a possible knowing violation of 49 U.S.C. 5104(b) or a willful or reckless violation of the Federal hazardous materials transportation law or a regulation issued under those laws for which FRA exercises enforcement responsibility, he or she shall report it to the Chief Counsel. \* \* \*

■ 8. In appendix A to part 209, revise the first two sentences of the fourth paragraph under the heading “Extraordinary Remedies” to read as follows:

**Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws**

Extraordinary Remedies

Criminal penalties are available for knowing violations of 49 U.S.C. 5104(b), or for willful or reckless violations of the Federal hazardous materials transportation law or a regulation issued under that law. See 49 U.S.C. Chapter 51, and 49 CFR 209.131, 133. \* \* \*

■ 9. Amend Appendix B to part 209 as follows:

- A. Revise the second sentence of the first paragraph of text;
- B. Revise the last sentence of the second paragraph of text;
- C. Revise the last sentence of the third paragraph of text;
- D. Revise the table in its entirety.

The revisions read as set forth below:

**Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Materials Assessments**

\* \* \* The guideline penalty amounts reflect the best judgment of the FRA Office of Safety Assurance and Compliance (RRS) and of the Safety Law Division of the Office of Chief Counsel (RCC) on the relative severity of the various violations routinely encountered by FRA inspectors on a scale of \$250 to \$50,000, except the maximum civil penalty is \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, and a minimum \$450 penalty applies to a violation related to training. \* \* \*

\* \* \* When a violation of the Federal hazardous materials transportation law, an order issued thereunder, the Hazardous Materials Regulations or a special permit, approval, or order issued under those regulations results in death, serious illness or severe injury to any person, or substantial destruction of property, a maximum penalty of at least \$50,000 and up to and including \$100,000 shall always be assessed initially.

\* \* \* In fact, FRA reserves the express authority to amend the NOPV to seek a penalty of up to \$50,000 for each violation, and up to \$100,000 for any violation resulting in death, serious illness or severe injury to any person, or substantial destruction of property, at any time prior to issuance of an order. FRA periodically makes minor updates and revisions to these guidelines, and the most current version may be found on FRA’s Web site at <http://www.fra.dot.gov>.

**CIVIL PENALTY ASSESSMENT GUIDELINES**  
[As of December 26, 2006]

Emergency orders		Guideline amount <sup>1</sup>
EO16 .....	Penalties for violations of EO16 vary depending on the circumstances .....	Varies.
EO17 .....	Penalties for violations of EO17 vary depending on the circumstances .....	Varies.
	Failure to file annual report .....	\$5,000.

**CIVIL PENALTY ASSESSMENT GUIDELINES—Continued**  
[As of December 26, 2006]

Emergency orders		Guideline amount <sup>1</sup>
EO23 .....	Penalties for violations of EO23 vary depending on the circumstances .....	Varies.

<sup>1</sup> Any person who violates an emergency order issued under the authority of 49 U.S.C. Ch. 201 is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused a death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day that the violation continues is a separate offense. 49 U.S.C. 21301; 28 U.S.C. 2461, note.

49 CFR section	Description	Guideline amount <sup>2</sup>
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**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

107.608 .....	Failure to register or to renew registration. (Note: registration—or renewal—is mitigation.)	1,500.
107.620(d) .....	Failure to show records on proper request .....	2,000.
	Deliberate attempt to hide records—considerable aggravation possible .....	Varies.

**PART 171—GENERAL REGULATIONS**

171.2(a), (b), (c), (e), (f) .....	General duty sections—may be cited in support of another, more specific citation to the actual regulatory section violated.	
171.2(d) .....	Offering or accepting a hazardous material (hazmat or HM) without being registered	1,500.
171.2(g) .....	Representing (marking, certifying, selling, or offering) a packaging as meeting regulatory specification when it does not.	8,000.
171.2(i) .....	Certifying that a hazardous material is offered for transportation in commerce in accordance with the regulations (packaged, marked, labeled, etc.) when it is not. A more specific citation to the actual underlying regulation violated should be used instead of this section, or accompanying this section, if possible.	5,000.
171.2(j) .....	Representing (by marking or otherwise) that a container or package for transportation of a hazardous material is safe, certified, or in compliance with the regulations when it is not.	8,000.
171.2(k) .....	Representing, marking, etc. for the presence of HM when no HM is present. (Mitigation required for shipments smaller than a carload, e.g., single drum penalty is \$1,000.)	2,000.
171.2(l) .....	Tampering with (altering, removing, defacing, or destroying) any marking, label, placard, or description on a document required by hazmat law or regulations; unlawfully tampering with a package, container, motor vehicle, rail car, aircraft, or vessel used for the transportation of hazardous materials.	Varies—considerable aggravation possible.
171.2(m) .....	Falsifying or altering an exemption, approval, registration, or other grant of authority issued under hazmat regulations. Offering or transporting a hazmat under an altered exemption, approval, registration, or other grant of authority without the consent of the issuing authority. Representing, marking, certifying, or selling a packaging or container under an altered exemption, approval, registration, or other grant of authority.	Varies—considerable aggravation possible.
171.12 .....	Import shipments—Importer not providing shipper and forwarding agent with U.S. requirements. Cannot be based on inference.	4,000.
	Import shipments—Failure to certify by shipper or forwarding agent .....	2,000.
171.15 .....	Failure to provide immediate notice of certain hazardous materials incidents .....	6,000.
171.16 .....	Failure to file incident report (form DOT 5800.1). (Multiple failures will aggravate the penalty.)	4,000.

**PART 172—SHIPPING PAPERS**

172.200–.203 .....	Offering hazardous materials for transportation when the material is not properly described on the shipping paper as required by §§ 172.200–.203. (The “shipping paper” is the document tendered by the shipper/offeror to the carrier. The original shipping paper contains the shipper’s certification at § 172.204.) Considerable aggravation of penalties under these sections is possible, particularly in case involving undeclared hazmat.	
	—Undeclared shipment: offering a hazardous material without shipping papers, package markings, labels, or placards (see also §§ 172.300, 172.400, 172.500 for specific requirements).	15,000.
	—Information on the shipping paper is wrong to the extent that it caused or materially contributed to a reaction by emergency responders that aggravated the situation or caused or materially contributed to improper handling by the carrier that led to or materially contributed to a product release.	15,000.
	—Total lack of hazardous materials information on shipping paper. (Some shipping names alone contain sufficient information to reduce the guideline to the next lower level, but there may be such dangerous products that aggravation needs to be considered.)	7,500.
	—Some information is present, but the missing or improper description could cause mishandling by the carrier or a delay or error in emergency response.	5,000.

49 CFR section	Description	Guideline amount <sup>2</sup>
	—When the improper description is not likely to cause serious problem (technical defect). —Shipping paper includes a hazardous material description and no hazardous material is present. (Technically, this is also a violation of § 171.2(k); it is presented here as a convenience.) Failure to include emergency response information is covered at §§ 172.600–604; while the normal unit of violation for shipping papers is the whole document, failure to provide emergency response information is a separate violation.	2,000. 7,500.
172.201(d) .....	Failure to put emergency response telephone number on shipping paper .....	4,000.
172.201(e) .....	Failure to retain shipping paper for required period (1 year if carrier, 2 years if offeror).	7,500.
172.204 .....	Offeror's failure to certify .....	2,000.
172.205 .....	Hazardous waste manifest. (Applies only to defects in the Hazardous Waste Manifest form [EPA Form 8700–22 and 8700–22A]; shipping paper defects are cited and penalized under § 172.200–.203.).	Parallel the penalties for §§ 172.200–.203, depending on circumstances.
<b>Marking:</b>		
172.301 .....	Failure to mark a non-bulk package as required (e.g., no commodity name on a 55-gallon drum). (Shipment is the unit of violation.)	1,000.
172.302 .....	Failure to follow standards for marking bulk packaging .....	2,000.
172.302(a) .....	ID number missing or in improper location. (The guideline is for a portable tank; for smaller bulk packages, the guideline should be mitigated downward.)	2,500.
172.302(b) .....	Failure to use the correct size of markings. (Note: If § 172.326(a) is also cited, it takes precedence and § 172.302(b) is not cited. Note also: the guideline is for a gross violation of marking size—1/2" where 2" is required—and mitigation should be considered for markings approaching the required size.)	2,000.
172.302(c) .....	Failure to place exemption number markings on bulk package .....	2,000.
172.303 .....	Prohibited marking. (Package is marked for a hazardous material and contains either another hazardous material or no hazardous material.) —The marking is wrong and caused or contributed to a wrong emergency response —Use of a tank car stenciled for one commodity to transport another .....	10,000. 5,000.
	—Inconsistent marking; e.g., shipping name and ID number do not agree .....	5,000.
	—Marked as a hazardous material when package does not contain a hazardous material.	2,000.
172.304 .....	Obscured marking .....	2,000.
172.313 .....	"Inhalation Hazard" not marked .....	2,500.
172.322 .....	Failure to mark for MARINE POLLUTANT where required .....	1,500.
172.325(a) .....	Improper, or missing, HOT mark for elevated temperature material .....	1,500.
172.325(b) .....	Improper or missing commodity stencil .....	2,500.
172.326(a) .....	Failure to mark a portable tank with the commodity name .....	2,500.
	Failure to have commodity name visible ("legible") when portable tank is loaded on intermodal equipment.	2,500.
172.326(b) .....	Owner's/lessee's name not displayed .....	500.
172.326(c) .....	Failure to mark portable tank with ID number .....	2,500.
	Failure to have ID number visible when portable tank is loaded on intermodal equipment.	2,500.
172.330(a)(1)(i) .....	Offering/transporting hazardous material in a tank car that does not have the required ID number displayed on the car.	2,500.
172.330(a)(1)(ii) .....	Offering/transporting hazardous material in a tank car that does not have the required shipping name or common name stenciled on the car. This section "lists" the materials that require such markings on the tank. For tank car marking requirements for molten aluminum and molten sulfur, see § 172.325(b).	2,500.
172.330(c) .....	Failing to mark tank car as NON-ODORIZED or NOT ODORIZED when offering/transporting tank car or multi-unit tank car containing unodorized LPG.	2,500.
172.331(b) .....	Offering bulk packaging other than a portable tank, cargo tank, or tank car (e.g., a hopper car) not marked with ID number. (E.g., a hopper car carrying a hazardous substance, where a placard is not required).	2,500.
172.332 .....	Improper display of identification number markings. Citation of this section and §§ 172.326(c) (portable tanks), 172.328 (cargo tanks), or 172.330 (tank cars) does not create two separate violations.	2,000.
172.334(a) .....	Displaying ID numbers on a RADIOACTIVE, EXPLOSIVES 1.1, 1.2, 1.3, 1.4, 1.5, or 1.6, or DANGEROUS, or subsidiary hazard placard.	4,000.
172.334(b) .....	—Improper display of ID number that caused or contributed to a wrong emergency response. —Improper display of ID number that could cause carrier mishandling or minor error in emergency response.	15,000. 5,000.
	—Technical error .....	2,000.
172.334(f) .....	Displaying ID number on orange panel not in proximity to the placard .....	1,500.

49 CFR section	Description	Guideline amount <sup>2</sup>
Labeling:		
172.400–406 .....	Failure to label properly. (See also § 172.301 regarding the marking of packages.) ..	2,500.
Placarding:		
172.502 .....	—Placarded as hazardous material when car does not contain a hazardous material —Hazardous material is present, but the placard does not represent hazard of the contents. —Display of sign or device that could be confused with regulatory placard. Photograph or good, clear description necessary.	2,000. 4,000. 2,000.
172.503 .....	Improper display of ID number on placards .....	See § 172.334.
172.504(a) .....	Failure to placard; affixing or displaying wrong placard. (See also §§ 172.502(a), 172.504(a), 172.505, 172.512, 172.516, 174.33, 174.59, 174.69; all applicable sections should be cited, but the penalty should be set at the amount for the violation most directly in point.) (Generally, the car is the unit of violation, and penalties vary with the number of errors, typically at the rate of \$1,000 per placard.)	
	—Complete failure to placard .....	7,500.
	—One placard missing (add \$1,000 per missing placard up to a total of three; then use the guideline above).	1,000.
	—Complete failure to placard, but only two (2) placards are required (e.g., intermediate bulk containers [IBCs]).	2,500.
172.504(b) .....	Improper use of DANGEROUS placard for mixed loads .....	5,000.
172.504(c) .....	Placarded for wrong hazard class when no placard was required due to “1,001 pound” exemption.	2,000.
172.504(e) .....	Use of placard other than as specified in the table:	
	—Improper placard caused or contributed to improper reaction by emergency response forces or caused or contributed to improper handling by carrier that led to a product release.	15,000.
	—Improper placard that could cause improper emergency response or handling by carrier.	5,000.
	—Technical violation .....	2,500.
172.505 .....	Improper application of placards for subsidiary hazards. (This is in addition to any violation on the primary hazard placards.)	5,000.
172.508(a) .....	Offering hazardous material for rail transportation without affixing placards. (The preferred section for a total failure to placard is § 172.504(a); only one section should be cited to avoid a dual penalty.) (Note also: Persons offering hazardous material for rail movement must <i>affix</i> placards; if offering for highway movement, the placards must be <i>tendered</i> to the carrier. § 172.506.)	7,500.
	One placard missing (per car). (Add \$1,000 per missing placard up to a total of three; if all placards are missing, the guideline above applies.)	1,000.
	Placards OK, except they were International Maritime Dangerous Goods (IMDG) labels instead of 10” placards. (Unit of violation is the packaging, usually a portable tank.)	500.
	Placards on Container on Flatcar/Trailer on Flatcar (TOFC/COFC) units not readily visible. (§ 172.516 should be cited).	See § 172.516.
172.508(b) .....	Accepting hazardous material for rail transportation without placards affixed .....	5,000.
172.510(a) .....	EXPLOSIVES 1.1, EXPLOSIVES 1.2, POISON GAS, (Division 2.3, Hazard Zone A), POISON, (Division 6.1, Packing Group I, Hazard Zone A), or a Division 2.1 material transported in a Class DOT 113 tank car, placards displayed without square background.	5,000.
172.512(a) .....	Improper placarding of freight containers .....	Follow § 172.504 guidelines.
172.514 .....	Improper placarding of bulk packaging other than a tank car: For the “exception” packages in 174.514(c). Use the regular placarding sections for the guideline amounts for larger bulk packages.	2,000.
172.516 .....	Placard not readily visible, improperly located or displayed, or deteriorated. Placard is the unit of violation.	1,000.
	—When placards on an intermodal container are not visible, for instance, because the container is in a well car. Container is the unit of violation, and, as a matter of enforcement policy, FRA accepts the lack of visibility of the end placards.	2,000.
	—Note that, while placards on freight containers, portable tanks, or TOFC vehicles may be used in lieu of placards on the rail cars, if both are placarded, each must be done properly. Thus, for instance, EXPLOSIVES 1.1 placards on intermodal containers do not require white square backgrounds, but if the rail car carrying such a container is placarded, the white square background is required on the rail car.	
172.519(b)(4) .....	Improper display of hazard class on placard—primary hazard .....	2,500.

49 CFR section	Description	Guideline amount <sup>2</sup>
	Improper display of hazard class on placard—secondary hazard .....	2,500.
Emergency Response Information.	Violations of §§ 172.600–.604 are in addition to shipping paper violations. In citing a carrier, if the railroad’s practice is to carry an emergency response (E/R) book or to put the E/R information as an attachment to the consist, the unit of violation is generally the train (or the consist). “Telephone number” violations are generally best cited against the shipper; if against a railroad, there should be proof that the number was given to the railroad; that is, the number was on the original shipping document. Considerable aggravation of the penalties under these sections is possible.	
172.600–.602 .....	Where improper emergency response information has caused an improper reaction from emergency forces and the improper response has aggravated the situation.	15,000.
	Bad, missing, or improper emergency response information that could cause a significant difference in response.	5,000.
	Bad, missing, or improper emergency response information not likely to cause a significant difference in response.	2,500.
172.602(c) .....	Failure to have emergency response information “immediately accessible,” resulting in delay or confusion in emergency response.	15,000.
	Failure to have emergency response information “immediately accessible” with no negative effect on emergency response.	7,500.
172.604 .....	Emergency response telephone number.	
	—Failure to include emergency response telephone number on a shipping paper ....	4,000.
	—Listing an unauthorized, incorrect, non-working, or unmonitored (24 hrs. a day) emergency response telephone number on a shipping paper.	4,000.
Training .....	NOTE: The statutory minimum penalty for training violations is \$450.	
172.702(a) .....	General failure to train hazardous material employees .....	7,500.
172.702(b) .....	Hazardous material employee performing covered function without training. (Unit of violation is the employee.)	1,000.
172.704(a) .....	—Failure to train in a required area:	2,500.
	—General awareness/familiarization;	
	—Function-specific;	
	—Safety;	
	—Security awareness;	
	—In-depth security training.	
172.704(c) .....	(Unit of violation is the “area,” per employee. For a total failure to train, § 172.702(a) applies.)	
172.704(d) .....	Initial and recurrent training. (This section should be cited with the relevant substantive section, e.g., § 172.702(a), and use penalty provided there.)	Varies.
	Failure to maintain record of training. (Unit of violation is the employee.)	2,500.
	There is some evidence of training, but no (or inadequate) records and the employee demonstrates no or very little knowledge or skills in doing the job.	4,000.
Security:		
172.800 .....	Total failure to develop security plan. Factors to consider are the size of the entity (is it a small business?); the type of hazmat handled; and the quantities of hazmat handled. Aggravation should be considered, for example, if it is a large entity that handles significant quantities of chlorine or other toxic inhalation hazard (TIH) material.	5,000 to 10,000.
	Failure to adhere to the developed security plan—considerable aggravation possible. Factors to consider include size of entity, quantities and types of hazmat handled, number of security plan components not complied with.	1,000 to 10,000.
172.802(a) .....	Failure to include each required component in plan:	2,000.
	—Personnel security;	
	—Unauthorized access;	
	—En route security.	
172.802(b) .....	(Unit of violation is the “area.” For a total failure to have a security plan, cite § 172.800 and use that penalty instead of § 172.802.)	
	Failure to have security plan (or appropriate portions of it) available to implementing employees. (A failure to have the plan “in writing” is treated as a violation of the requirement to have a plan and cited under § 172.800, using that penalty.)	5,000.
	Failure to revise/update the plan. (The requirement to revise/update is based on “changing circumstances.” Specific, clear, and detailed explanations of the circumstances that changed will be necessary.)	5,000.
	Failure to update all copies of the plan to the current level (i.e. all copies should be identical). (As in the tank car quality control area, the requirement to conform copies applies only to the “official” copies of the plan. Uncontrolled (and non-updated) copies of the security plan are not a violation if the uncontrolled copies are clearly marked as such.)	5,000.

49 CFR section	Description	Guideline amount <sup>2</sup>
<b>PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGES</b>		
General:		
173.1 .....	General duty section applicable to shippers; also includes subparagraph (b), the requirement to train employees about applicable regulations. (Cite the appropriate section in the 172.700–704 series for training violations.)	2,000.
173.9(a) .....	Early delivery of transport vehicle that has been fumigated. (48 hours must have elapsed since fumigation.)	5,000.
173.9(b) .....	Failure to display fumigation placard. (Ordinarily cited against shipper only, not against railroad.)	1,000.
173.10 .....	Delivery requirements for gases and for flammable liquids. See also §§ 174.204 and 174.304.	3,000.
Preparation of Hazardous Materials for Transportation:		
173.22 .....	Shipper responsibility: This general duty section should ordinarily be cited only to support a more specific charge.	See specific section.
173.22a .....	Improper use of packagings authorized under exemption .....	2,500.
	Failure to maintain copy of exemption as required .....	1,000.
173.24(b)(1) and 173.24(b)(2) and 173.24(f)(1) and 173.24(f)(1)(ii).	Securing closures: These subsections are the general “no leak” standard for all packagings. § 173.24(b) deals primarily with <i>packaging</i> as a whole, while § 173.24(f) focuses on <i>closures</i> . Use § 173.31(d) for tank cars, when possible. Cite the sections accordingly, using both the leak/non-leak criteria and the package size considerations to reach the appropriate penalty. Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of \$50,000, and up to \$100,000 if the violation results in death, serious illness or injury or substantial destruction of property. For intermodal (IM) portable tanks and other tanks of that size range, use the tank car penalty amounts, as stated in § 173.31.	
	—Small bottle or box .....	1,000.
	—55-gallon drum .....	2,500.
	—Larger container, e.g., IBC; not portable tank or tank car .....	5,000.
	—IM portable tank, cite § 173.24(f) and use the penalty amounts for tank cars: Residue, generally, § 173.29(a) and, loaded, § 173.31(d).	
	—Residue adhering to outside of package (i.e., portable tanks, tank cars, etc.) .....	5,000.
173.24(c) .....	Use of package not meeting specifications, including required stencils and markings. The most specific section for the package involved should be cited (see below). The penalty guideline should be adjusted for the size of the container. Any actual leak will aggravate the guideline by, typically, 50%; a leak with contact with a human being will aggravate by at least 100%, up to the maximum of \$50,000, and up to \$100,000 if the violation results in death, serious illness or injury or substantial destruction of property.	
	—Small bottle or box .....	1,000.
	—55-gallon drum .....	2,500.
	—Larger container, e.g., IBC; not portable tank or tank car, but this section is applicable to a hopper car.	5,000.
	For more specific sections: Tank cars—§ 173.31(a), portable tanks—§ 173.32, and IM portable tanks—§§ 173.32a, 173.32b, and 173.32c.	
173.24a(a)(3) .....	Non-bulk packagings: Failure to secure and cushion inner packagings .....	1,000.
	—Causes leak .....	5,000.
	—Leak with any contact between product and any human being .....	15,000.
173.24a(b) and (d) .....	Non-bulk packagings: Exceeding filling limits .....	1,000.
	—Causes leak .....	5,000.
	—Leak with any contact between product and any human being .....	15,000.
173.24b(a) .....	Insufficient outage:	
	—<1% .....	3,000.
	—Causes leak .....	5,000.
	Outage <5% on PIH material .....	5,000.
	—Causes leak .....	7,500.
	—Leak with any contact between product and any human being .....	15,000.
173.24b(d)(2) .....	Overloaded to exceed the maximum weight of lading marked on the specification plate.	5,000.
173.26 .....	Loaded beyond gross weight or capacity as stated in specification. (Applies only if quantity limitations do not appear in packaging requirements of part 173.) (For tank cars, see § 179.13.) For gross weight and capacity requirements, see § 179.13. § 173.26 should be the citation for the violation and civil penalty; § 179.13 can be cited as a reference section.	5,000.
173.28 .....	Improper reuse, reconditioning, or remanufacture of packagings .....	1,000.



49 CFR section	Description	Guideline amount <sup>2</sup>
173.29(a) .....	<p>Offering residue tank car for transportation when openings are not tightly closed (§ 173.31(d) is also applicable for tank cars). The regulation requires offering "in the same manner as when" loaded and may be cited when a car not meeting specifications (see § 173.31(a)(1)) is released back into transportation after unloading; same guideline amount. Guidelines vary with the type of commodity involved. In addition to the vapor pressure factor cited below, the RQ (reportable quantity) is a fair measure of the danger of a commodity to the environment. For RQ values ≤ 10, consider aggravating the penalties below by no less than 50 percent.</p> <p>—Hazardous material with insignificant vapor pressure and without classification as "poison" or "inhalation hazard." 2,000.</p> <p>—With actual leak ..... 5,000.</p> <p>—With leak allowing the product to contact any human being ..... 15,000.</p> <p>—Hazardous material with vapor pressure (essentially any gas or compressed gas) and/or with classification as "poison" or "inhalation hazard." 5,000.</p> <p>—With actual leak ..... 7,500.</p> <p>—With leak allowing the product (or fumes or vapors) to contact any human being. (In the case of fumes, the "contact" must be substantial.) 15,000.</p> <p>—Where only violation is failure to secure a protective housing, e.g., the covering for the gaging device. 1,000.</p>	
173.30 .....	A general duty section that should be cited with the explicit statement of the duty.	
173.31(a)(1) .....	<p>Use of a tank car not meeting specifications and the "Bulk packaging" authorization in Column 8 of the § 172.101 Hazardous Materials Table reference is:</p> <p>§ 173.240 ..... 1,000.</p> <p>§ 173.241 ..... 2,500.</p> <p>§ 173.242 ..... 5,000.</p> <p>§ 173.243 ..... 5,000.</p> <p>§ 173.244 ..... 7,500.</p> <p>§ 173.245 ..... 7,500.</p> <p>§ 173.247 ..... 1,000.</p> <p>§ 173.249 ..... 7,500.</p> <p>§ 173.314 ..... 5,000.</p> <p>§ 173.315 ..... 5,000.</p> <p>§ 173.319 ..... 5,000.</p> <p>§ 173.320 ..... 5,000.</p> <p>§ 173.323 ..... 7,500.</p> <p>—Minor defect not affecting the ability of the package to contain a hazardous material, e.g., no chain on a bottom outlet closure plug. 500.</p> <p>—Defect of greater importance, e.g., safety valve tested, but test date not stenciled on valve. 1,000.</p> <p>—Tank meets specification, but specification is not stenciled on car. § 179.1(e) implies that only the builder has the duty here, but it is the presence of the stencil that gives the shipper the right to rely on the builder. (See § 173.22(a)(3).) 1,000.</p> <p>—Tank car not stenciled according to Appendix C of the Tank Car Manual. The sub-reference is to § 179.22 which requires each tank car to be marked in accordance with Appendix C of the Tank Car Manual. For example, Appendix 3.03(a)(5), requires marking of the tank "NOT FOR FLAMMABLE LIQUIDS" or "NOT FOR FLAMMABLE OR POISONOUS LIQUIDS." 2,500.</p>	
173.31(a)(2) .....	Tank cars and appurtenances used for a material not authorized on the certificate of construction (or by addendum on Association of American Railroads (AAR) form R-1).	7,500.
173.31(a)(3) .....	Filling a tank car overdue for a periodic inspection with a hazardous material and then offering it for transportation. (Note: Offering a residue car, overdue for inspection, is not a violation; neither is filling the car—so long as it is not offered for transportation.) (Adjust penalty if less than one month or more than one year overdue.)	7,500.
173.31(a)(4) .....	Use of tank car without air brake support attachments welded to pads. ....	5,000.
173.31(a)(5) .....	Use of a tank car with a self-energized manway located below the liquid level of the lading.	15,000.
173.31(b)(1) .....	Use of DOT-specification tank car, or any tank car used for transportation of a hazardous material, without shelf couplers.	10,000.
173.31(b)(2) .....	—Against a carrier, cite § 174.3 and this section. ....	6,000.
	<p>Tank car with nonreclosing pressure relief device used to transport Class 2 gases, Class 3 or 4 liquids, or Division 6.1 liquids, PG I or II. 7,500.</p> <p>Tank car has a nonreclosing pressure relief device and the wrong pressure is stenciled on the tank. Cite this section where the standard in § 179.22(a) is not met and the respondent is other than the builder or manufacturer. 1,000.</p> <p>Where either the rupture disc is unmarked for pressure or manufacturer name or is marked but is of the wrong pressure. Cite this section for a violation of § 179.156(h) against other than the builder or manufacturer. 5,000.</p>	

49 CFR section	Description	Guideline amount <sup>2</sup>
173.31(b)(3) .....	Use of a tank car for the transportation of a hazardous material without the required tank-head protection. See paragraphs (b)(3)(iii) and (iv) for compliance periods.	
	—Class 2 ..... —Tank car constructed from aluminum or nickel plate ..... —Against a carrier, cite § 174.3 and this section .....	10,000. 7,500. 6,000.
173.31(b)(4) .....	Use of a tank car for the transportation of a Class 2 material without the required thermal protection. See paragraphs (b)(4)(i) for compliance periods.	10,000.
173.31(b)(5) .....	Use of a tank car for the transportation of a hazardous material without the required bottom-discontinuity protection. See the paragraph for compliance periods.	5,000.
173.31(b)(6) .....	Failure to submit a progress report to the FRA .....	2,500.
173.31(c) .....	Use of a tank car with an incorrect tank test pressure .....	10,000.
173.31(d) .....	Offering a tank car for transportation with a hazardous material, or a residue of a hazardous material, that is not in proper condition or that is unsafe for transportation. Sections 173.24(b) and (f) establish a “no-leak” design standard, and 173.31 imposes that standard on operations. In addition to the vapor pressure factor cited below, the RQ (reportable quantity) is a fair measure of the danger of a commodity to the environment. For RQ values ≤ 10, consider aggravating the penalties below by no less than 50 percent. The unit of violation is the car, aggravated if necessary for truly egregious condition.	5,000.
	Loaded car:	
	—Failure to inspect the tank car, service equipment, or markings prior to offering the car for transportation.: If the failure to inspect resulted in a release of product, the appropriate penalty amount below applies.	5,000.
	—With actual leak of product .....	10,000.
	—With actual leak allowing the product (or fumes or vapors) to contact any human being. (With safety vent, be careful because carrier might be at fault).	15,000.
	—Minor violation, e.g., bottom outlet cap loose on tank car of molten sulfur (because product is a solid when shipped).	1,000.
	Residue car: (The penalties are the same as in 173.29(a).)	
	Offering residue tank car for transportation when openings are not tightly closed (§ 173.29(a) is also applicable for tank cars) Guidelines vary with the type of commodity involved:	
	—Hazardous material with insignificant vapor pressure and without classification as “poison” or “inhalation hazard.”	2,000.
	—With actual leak .....	5,000.
	—With leak allowing the product to contact any human being .....	15,000.
	—Hazardous material with vapor pressure (essentially any gas or compressed gas) and/or with classification as “poison” or “inhalation hazard.”	5,000.
	—With actual leak .....	7,500.
	—With leak allowing the product (or fumes or vapors) to contact any human being. (In the case of “fumes,” the “contact” must be substantial.).	15,000.
	Whether loaded or residue:	
	—Where the only violation is the failure to secure a protective housing, e.g., the covering for the gaging device.	1,000.
	—Where “other conditions” than a loose closure make a tank car not “in proper condition for transportation” (e.g., loose ladders, seals thrown into safety valves, etc.).	2,500 (Varies to account for seriousness).
173.31(e)(1) .....	Tank car with interior heating coils used to transport Division 2.3 or Division 6.1, PG I, based on inhalation toxicity.	7,500.
173.31(e)(2) .....	Use of a tank car for a material poisonous by inhalation that does not meet the minimum specification i.e., 300 pound tank test pressure, head protection, and a metal jacket.) See the paragraph for the compliance dates.	10,000.
173.31(f) .....	Use of a tank car for a “listed” hazardous substance that does not meet the minimum specification (i.e., 200 pound tank test pressure, head protection, and a metal jacket.): See the paragraph for the compliance dates and § 173.31(f)(2) for the list of hazardous substances.	5,000.
173.31(g)(1) .....	Unloading a tank car without securing access to the track to prevent entry by other rail equipment. Derails, lined and blocked switches, or other equipment that provides equivalent level of security is acceptable.	4,000.
173.31(g)(2) .....	Unloading a tank car without caution signs properly displayed. (See Part 218, Subpart B).	2,000.

49 CFR section	Description	Guideline amount <sup>2</sup>
173.31(g)(3) .....	Unloading without brakes set and/or wheels blocked. (The enforcement standard, as per 1995 Hazardous Materials Technical Resolution Committee, is that sufficient handbrakes must be applied on one or more cars to prevent movement and each car with a handbrake set must be blocked in both directions. The unloading facility must make a determination on how many brakes to set.) —No brakes set, no wheels blocked, or fewer brakes set/wheels blocked than facility's operating plan. —No brakes set, but wheels blocked .....	5,000. 3,000. 4,000.
173.32(a)(1) .....	Using a portable tank for transportation of hazardous materials, when tank does not meet regulatory requirements. (For loose closures or leaks on portable tanks use 173.24.)	5,000.
173.32(a)(2) .....	Filling and offering portable tank when periodic test or inspection overdue .....	5,000.

Gases; Preparation and Packaging:

173.314(c) .....	Compressed gas loaded in excess of filling density (same basic concept as insufficient outage).	6,000.
173.314(e) through (o)	Failure to comply with a special requirement for a compressed gas .....	5,000.

**PART 174—CARRIAGE BY RAIL**

General Requirements:

174.3 .....	Acceptance of improperly prepared shipment. This general duty section shall be accompanied by a citation to the specific section violated.	
174.9 .....	Failure to properly inspect a rail car containing a hazardous material when accepted for transportation or placed in a train: The carrier shall inspect the rail car, at ground level, for required markings, labels, placards, securement of closures and leakage. The inspection may be performed in conjunction with the inspections required under parts 215 and 232. This requirement will not "trigger" an inspection and thereby require a train to be stopped. For example, in run-through train operations, the train crew of the receiving railroad simply assumes responsibility for the train from the delivering crew. Acceptance of responsibility includes the right to receive a penalty action for transporting a rail car with a non-complying condition. Note also that the presence of a non-complying condition by itself does not prove that there was a failure to inspect. See also § 174.50 for violations against the carrier for loose (visible from ground level) closures on cars.	For loaded car 5,000. For residue car 2,000.
174.14 .....	Failure to expedite: Violation of "48-hour rule." .....	2,500.

General Operating Requirements.

	This subpart (Subpart B) of Part 174 has two sections referring to shipment documentation: § 174.24 relating to <i>accepting</i> documents, and § 174.26 relating to movement documents in the <i>possession</i> of the train crew. Only the most relevant section should be cited. In most cases, the unit of violation is the shipment, although where a unified consist is used to give notice to the crew, there is some justification for making it the train, especially where the discrepancy was generated using automated data processing and the error is repetitious.	
174.24(a) .....	Accepting hazardous material shipment without properly prepared shipping paper. (The carrier's duty extends only to the document received, that is, a shipment of hazardous material in a non-placarded transport vehicle with a shipping paper showing other than a hazardous material is not a violation against the carrier unless knowledge of the contents of the vehicle is proved. Likewise, receipt of a tank car placarded for Class 3 with a shipping paper indicating a flammable liquid does not create a carrier violation if the car, in fact, contains a corrosive. On the other hand, receipt of a placarded trailer with a shipping paper listing only FAK ("freight-all-kinds"), imposes a duty on the carrier to inquire further and to reject the shipment if it is improperly billed.)  —Improper hazardous material information that could cause delay or error in emergency response. —Total absence of hazardous material information .....	7,500. 5,000. 1,000. 500.
	Failure to include emergency response information is covered at §§ 172.600–.604; while the normal unit of violation for movement documents is the whole document, failure to provide emergency response information is a separate violation.	
174.24(b) .....	Failure to retain shipping papers for one year. (Variation over a wide range is not unusual, depending upon circumstances.)	7,500.

49 CFR section	Description	Guideline amount <sup>2</sup>
174.26(a) .....	<p>Train crew does not have a document indicating position in train of each rail car containing a hazardous material. Routinely aggravate by 50% for Poison Gas, 2.3, and Explosives, 1.1 and 1.2. (Train is the unit of violation—this is generally going to be the consist list for a train.).</p> <p>Train crew has documents described above but they have not updated the document to account for delivery or pickup of car or cars. Penalty amount may vary depending on the number of cars not listed or out of place, the number of places the cars are off, the type of commodity in the car, and the potential effects on safe handling of the cars or emergency response. (Each failure to update is a separate unit of violation—if the crew picked up one out of cars and failed to update the document, that would be one unit of violation. The “update” requirement only matures when the crew has placed the cars into the train—or removed them from the train—re-laced the air hoses, and are ready to depart.).</p>	<p>6,000.</p> <p>2,000 to 4,000.</p>
174.26(b) .....	<p>Improper paperwork in possession of train crew. (Shipment is unit of violation, although there is justification for making it the train if a unified consist [e.g. one that shows both train car order and hazmat information] is used to carry this information and the violation is a pattern one throughout all, or almost all, of the hazardous material shipments. For intermodal traffic, “shipment” can mean the container or trailer—e.g., a UPS trailer with several non-disclosed hazardous material packages would be one unit.)</p> <p>—Information on the document possessed by the train crew is wrong to the extent that it caused or materially contributed to a reaction by emergency responders that aggravated the situation or caused or materially contributed to improper handling by the carrier that led to or materially contributed to a product release. 15,000.</p> <p>—Information is present and wrong, but without adverse emergency response effect (e.g. insignificant error in shipping name for the hazmat; name is incorrect but the emergency response would be the same). 3,000.</p> <p>—Total lack of hazardous material information on movement document. (Some shipping names alone contain sufficient information to reduce the guideline to the next lower level, but there may be such dangerous products that aggravation needs to be considered.). 7,500.</p> <p>—Some information is present but the error(s) could cause mishandling by the carrier or a delay or error in emergency response. Includes missing RESIDUE description required by § 172.203(e)(2). 5,000.</p> <p>—Improper information, but the hazardous material are small shipments (e.g., UPS moves) and PG III (e.g., the “low hazard” material allowed in TOFC/COFC service without an exemption since HM-197). 3,000.</p> <p>—Lack of emergency response phone number ..... 4,000.</p> <p>—Technical defect or minor error not likely to cause delay or error in emergency response or carrier handling. 500–1,000.</p>	
174.50 .....	<p>Forwarding a bulk packaging (e.g. a tank car) that no longer conforms to the hazmat regulations without first repairing the defect. This includes such non-conforming conditions as loose closures visible from ground level (e.g. loose bottom outlet caps), improper stenciling or marking.</p> <p>—Forwarding a leaking, or non-conforming non-bulk package containing a hazardous material without repair or over-packing. 5,000.</p> <p>—Forwarding a leaking bulk package beyond the movement “as necessary to reduce or to eliminate an immediate threat * * *.” Consider mitigation for low hazard HM (e.g., HOT) and for bulk packages smaller than tank cars. 10,000.</p> <p>—Loss of product resulted in human contact because of improper carrier handling .. 15,000.</p> <p>—Failure to obtain movement approval from the FRA for the transportation of a bulk packaging that no longer conforms to the regulations. 7,500.</p> <p>—Failure to follow directives in a movement approval ..... 5,000.</p> <p>—Failure to report corrective actions (or any other reporting requirement in the movement approval). 5,000.</p>	<p>For loaded car 5,000. For residue car 2,000.</p>
General Handling and Loading Requirements:		
174.55 .....	<p>Failure to block and brace as prescribed. (See also §§ 174.61, 174.63, 174.101, 174.112, 174.115; where these more specific sections apply, cite them.) Note: The regulatory requirement is that hazardous material packages be loaded and securely blocked and braced to prevent the packages from changing position, falling or sliding into each other. If the load is tight and secure, pieces of lumber or other material may not be necessary to achieve the “tight load” requirement.</p> <p>—General failure to block and brace ..... 5,000.</p> <p>—Inadequate blocking and bracing (an attempt was made but blocking/bracing was insufficient). 2,500.</p> <p>—Inadequate blocking and bracing leading to a leak ..... 7,500.</p> <p>—Inadequate blocking and bracing leading to a leak and human being contact ..... 15,000.</p>	
174.59 .....	Other specific placarding and marking sections may also be applicable.	

49 CFR section	Description	Guideline amount <sup>2</sup>
	<p>Marking and placarding. A railroad's placarding duties are to <i>not</i> accept a car without placards [§ 172.508(b)], and to <i>not</i> transport a car without placards [§ 174.59]. At each inspection point, a railroad must determine that all placards are in place. [§ 174.9]. The "next inspection point" replacement requirement in this section refers to placards that disappear <i>between</i> inspection points. A car at an inspection point must be placarded because it is "in transportation" [49 U.S.C. 5102(12)], even if held up at that point. Because the statute creates civil penalty liability only if a violation is "knowing," that is, "a reasonable person knew or should have known that an act performed by him was in violation of the HMR," and because railroads are not under a duty to inspect hazardous material cars merely standing in a yard, <i>violations written for unplacarded cars in yards must include proof that the railroad knew about the unplacarded cars and took no corrective action within a reasonable time.</i> (Note also that the real problem with unplacarded cars in a railyard may be a lack of emergency response information, §§ 172.600–172.604, and investigation may reveal that those sections should be cited instead of this one.)</p> <p>—Complete failure to placard or to replace missing placards ..... 7,500.                      —One placard missing (per car). (Add \$1,000 per missing placard up to a total of three; then use the guideline above). 1,000.</p> <p>For other placarding violations, see §§ 172.500–.560 and determine if one of them more correctly states the violation. For marking violations, see §§ 172.300–.338 and determine if one of them more correctly states the violation. Note that marking violations, except for the UN number, are generally applicable to the shipper/offerrer.</p>	
<p>174.61 .....</p> <p>174.63(a) and (c) .....</p>	<p>Improper transportation of transport vehicle or freight container on flat car. (If improper lading restraint is the violation, see § 174.55; if improper restraint of a bulk packaging inside a closed transport vehicle is the violation, see § 174.63(b).)</p> <p>—Improper transportation of portable tank or other bulk packaging in TOFC/COFC service. 3,000.</p> <p>—Portable tank double stacked with container above or below. (§ 174.63(c)(5)(i).) ... 5,000.                      —Portable tank transported in a well car with its outlet valve facing inward. (§ 174.63(c)(5)(ii).) 3,000.                      —Portable tank transported without securement fittings engaged and locked or void filling devices not properly deployed. 5,000.                      —Improper transportation leading to a release of product ..... 7,500.                      —Improper transportation leading to a release and human being contact ..... 15,000.</p>	
<p>174.63(b) .....</p>	<p>Improper securement of bulk packaging inside enclosed transport vehicle or freight container.</p> <p>—General failure to secure ..... 5,000.                      —Inadequate securement (an attempt to secure was made but the means of securement were inadequate). 2,500.                      —Inadequate securement leading to a leak ..... 7,500.                      —Inadequate securement leading to a leak and human being contact ..... 15,000.</p>	
<p>174.63(e) .....</p> <p>174.67(a)(1) .....</p>	<p>Transportation of cargo tank or multi-unit tank car tank in TOFC or COFC service without authorization and in the absence of an emergency. 7,500.</p> <p>Tank car transloading operations performed by persons not properly instructed (case cannot be based on inference). (Note: for all transloading requirements, there must be clear evidence that the hazmat shipment is continuing in transportation by another mode. For example, shipping papers show another destination than the one where the tank car is being unloaded/transloaded, and the contents of the tank car are being transloaded into a highway tank truck. Otherwise, the tank car unloading requirements contained in section 173.31(g) apply). 5,000.</p>	
<p>174.67(a)(2) .....</p>	<p>Unloading/transloading hazmat without brakes set and/or wheels blocked. (The enforcement standard, as per 1995 Hazardous Materials Technical Resolution Committee, is that sufficient handbrakes must be applied on one or more cars to prevent movement and each car with a handbrake set must be blocked in both directions. The unloading facility must make a determination on how many brakes to set.)</p> <p>—No brakes set, no wheels blocked, or fewer brakes set/wheels blocked than facility's operating plan. 5,000.                      —No brakes set, but wheels blocked ..... 3,000.                      —Brakes set, but wheels not blocked ..... 4,000.</p>	
<p>174.67(a)(3) .....</p>	<p>Unloading/transloading without securing access to the track to prevent entry by other rail equipment. Derails, lined and blocked switches, or other equipment that provides equivalent level of security is acceptable. 4,000.</p>	
<p>174.67(a)(4) .....</p>	<p>Unloading/transloading without caution signs properly displayed. (See Part 218, Subpart B). 2,000.</p>	
<p>174.67(a)(5) .....</p>	<p>Failure of transloading facility to maintain written safety procedures (such as those it may already be required to maintain pursuant to the Department of Labor's Occupational Safety and Health Administration requirements in 29 CFR 1910.119 and 1910.120) in a location where they are immediately available to hazmat employees responsible for the transloading operation. 2,500.</p>	

49 CFR section	Description	Guideline amount <sup>2</sup>
174.67(c)(2) .....	Failure to use non-metallic block to prop manway cover open while unloading through bottom outlet.	
	—Flammable or combustible liquid, or other product with a vapor flash point hazard	3,000.
174.67(h) .....	—Material with no vapor flammability hazard .....	500.
174.67(i) .....	Insecure unloading connections, resulting in actual leak of product .....	10,000.
174.67(j) .....	Insecure unloading connections, no leak of product .....	5,000.
174.67(k) .....	Unattended/unmonitored unloading. Tank car must be attended by a designated employee or monitored by a signaling system.	5,000.
174.67(j) .....	Noncompliance with piping requirements .....	2,000.
174.67(k) .....	Failure to comply with requirements for leaving tank car unloading connections attached.	
	—Hazardous material with insignificant vapor pressure and without classification as “poison” or “inhalation hazard.” (One count can be assessed for each element not followed. May also assess per tank car if more than one is involved in violation)..	2,000.
	—With actual leak .....	5,000.
	—With leak allowing the product to contact any human being .....	15,000.
	—Hazardous material with vapor pressure (essentially any gas or compressed gas) and/or with classification as “poison” or “inhalation hazard.”.	5,000.
	—With actual leak .....	7,500.
	—With leak allowing the product (or fumes or vapors) to contact any human being). Contact with “fumes” must be substantial.	15,000.
174.67(l) .....	Failure to remove connections, tighten all valves with a “suitable tool” and tighten all other closures once unloading is complete.	2,000.
174.81 .....	—Failure to obey segregation requirements for materials forbidden to be stored or transported together. (“X” in the table).	6,000.
	—Failure to obey segregation requirements for materials that must be separated to prevent commingling in the event of a leak. (“O” in the table).	4,000.
Handling of Placarded Rail Cars, Transport Vehicles and Freight Containers:		
174.83(a) .....	Improper switching of placarded rail cars .....	5,000.
174.83(b) .....	Improper switching of loaded rail car containing Division 1.1/1.2, 2.3 PG I Zone A, or Division 6.1 PG I Zone A, or DOT 113 tank car placarded for 2.1.	8,000.
174.83(c)–(e) .....	Improper switching of placarded flatcar .....	5,000.
174.83(f) .....	Switching Division 1.1/1.2 without a buffer car or placement of Division 1.1/1.2 car under a bridge or alongside a passenger train or platform.	8,000.
174.84 .....	Improper handling of Division 1.1/1.2, 2.3 PG I Zone A, 6.1 PG I Zone A in relation to guard or escort cars.	4,000.
174.85 .....	Improper Train Placement (The unit of violation under this section is the car. Where more than one placarded car is involved, <i>e.g.</i> , if two (2) placarded cars are too close to the engine, both are violations. Where both have a similar violation, <i>e.g.</i> , a Division 1.1 car next to a loaded tank car of a Class 3 material, each car gets the appropriate penalty as listed below)	
	RESIDUE car without at least 1 buffer from engine or occupied caboose .....	3,000.
Placard Group 1—Division 1.1/1.2 materials (Class A explosive) See chart at § 174.85.		
	—Fewer than six (6) cars (where train length permits) from engine or occupied caboose.	8,000.
	—As above but with at least one (1) buffer .....	7,000.
	—No buffer at all (where train length doesn’t permit five (5) cars) .....	8,000.
	—Next to open top car or car with permanent bulkheads, where lading extends beyond car ends/bulkheads or, if shifted, would be beyond car ends/bulkheads.	7,000.
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices.	6,000.
	—Next to operating temperature-control equipment or internal combustion engine in operation.	7,000.
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	7,000.
Placard Group 2—Division 1.3/1.4/1.5 (Class B and C explosives); Division 2.1/2.2 (compressed gas, other than Division 2.3, PG 1 Zone A; Class 3 (flammable liquids); Class 4 (flammable solid); Class 5 (oxidizing materials); Class 6 (poisonous liquids), except 6.1 PG 1 Zone A; Class 8 (corrosive materials). See chart at § 174.85.		
For tank cars:		
	—Fewer than six (6) cars (where train length permits) from engine or occupied caboose.	6,000.
	—As above but with at least one (1) buffer .....	5,000.
	No buffer at all (where train length doesn’t permit five (5)) .....	6,000.
	—Next to open top car or car with permanent bulkheads, where lading extends beyond car ends/bulkheads or, if shifted, would be beyond car ends/bulkheads.	5,000.

49 CFR section	Description	Guideline amount <sup>2</sup>
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices.	5,000.
	—Next to operating temperature-control equipment or internal combustion engine in operation.	5,000.
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	5,000.
	For other rail cars:	
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	5,000.
	Placard Group 3—Divisions 2.3 (PG 1 Zone A; poisonous gases) and 6.1 (PG 1 Zone A; poisonous materials).	
	For tank cars:	
	—Fewer than six (6) cars (where train length permits) from engine or occupied caboose.	8,000.
	—As above but with at least one (1) buffer	7,000.
	No buffer at all (where train length doesn't permit five (5))	8,000.
	—Next to open top car or car with permanent bulkheads, where lading extends beyond car ends/bulkheads or, if shifted, would be beyond car ends/bulkheads.	7,000.
	—Next to loaded flat car, except closed TOFC/COFC equipment, auto carriers, specially equipped car with tie-down devices.	6,000.
	—Next to operating temperature-control equipment or internal combustion engine in operation.	7,000.
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	7,000.
	For other rail cars:	
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	5,000.
	Placard Group 4—Class 7 (radioactive) materials	
	For rail cars:	
	—Next to locomotive or occupied caboose	8,000.
	—Next to placarded car, except one from same placard group or COMBUSTIBLE ...	5,000.
	—Next to carload of undeveloped film	3,000.
174.86	Exceeding maximum allowable operating speed (15 mph) while transporting molten metals or molten glass.	3,000.
<b>Class 1 (Explosive) Materials:</b>		
174.101(o)(4)	Failure to have proper explosives placards on flatcar carrying trailers/containers placarded for Class 1. (Except for a complete failure to placard, the unit of violation is the placard.)	
	—Complete failure to placard	7,500.
	—One placard missing (add \$1,000 per missing placard up to a total of three, then use the guideline above).	1,000.
174.104(b)	Car used to transport Division 1.1 or 1.2 materials does not meet requirements. (Aggravation to be considered, and may be considerable, for multiple failures to meet requirements.)	5,000.
174.104(c)	Failure to inspect and certify car before placing for loading with Division 1.1 or 1.2 materials.	7,500.
174.104(e)	Failure to supervise the loading and securement of a container (of Division 1.1 or 1.2 materials) on a flat car and failure to certify the car. (Unit of violation is the container.)	5,000.
174.104(f)	Failure to retain car certificates at "forwarding station."	1,000.
	Failure to attach car certificates to car. (Unit of violation is the certificate, two (2) are required.)	1,000.
<b>Detailed Requirements for Class 2 (Gases) Materials:</b>		
174.204	Improper tank car delivery of gases (Class 2 materials)	3,000.
<b>Detailed Requirements for Class 3 (Flammable Liquid) Materials:</b>		
174.304	Improper tank car delivery of flammable liquids (Class 3 materials)	3,000.
<b>Detailed Requirements for Division 6.1 (Poisonous) Materials:</b>		
174.600	Improper tank car delivery of materials extremely poisonous by inhalation (Division 2.3 Zone A or 6.1 Zone A materials).	5,000.

49 CFR section	Description	Guideline amount <sup>2</sup>
<b>PART 178—SPECIFICATIONS FOR PACKAGINGS</b>		
178.2(b) .....	Package not constructed according to specifications—also cite specific section not complied with.	
	—Bulk packages, including portable tanks .....	8,000.
	—55-gallon drum .....	2,500.
	—Smaller package .....	1,000.
<b>PART 179—SPECIFICATIONS FOR TANK CARS</b>		
179.1(e) .....	Tank car not constructed according to specifications—also cite section not complied with. (Part 179 violations are against the builder or repairer. Sections in this Part are often cited in conjunction with violations of §§ 172.330 and 173.31(a) and (b) by shippers. In such cases, the part 179 sections are cited as references, not as separate alleged violations.)	8,000.
179.3 .....	Constructing tank car without securing approval from Tank Car Committee .....	10,000.
179.5(a) .....	Failure to furnish a Certificate of Construction before tank car is placed in service ...	7,500.
179.6 .....	Repair procedures not in compliance with Appendix R of the Tank Car Manual .....	10,000.
179.7 .....	Section 179.7 requires that each tank car facility have a quality assurance (QA) program that encompasses at least the elements in § 179.7(b). A tank car facility is an entity that manufactures, repairs, inspects, tests, qualifies, or maintains a tank car to ensure that the tank car conforms to parts 179 and 180, or alters the certificate of construction of the car. As a rule, a facility “qualifies” a tank by “inspecting” it and then “representing” it as meeting the standard. In addition to the following penalty amounts, the agency may “recall” all tanks qualified by the tank car facility during the period the facility failed to comply with the quality assurance requirements. See, for example, § 180.509(b)(4).	
	Total failure to have a quality assurance program .....	15,000.
	Failure to perform activities as a tank car facility other than in accordance with the quality assurance program. See 180.509(l) for applicability to tank car maintenance activities. Note that failures to perform ministerial activities such as updating the pages in a quality assurance manual or calibrating an instrument carry a lesser penalty (e.g. \$2,500), unless they are the cause of a release or an injury or death.	10,000.
	The quality assurance program does not contain one or more of the elements in § 179.7(b). (The “element” is the unit of violation.)	7,500.
	Failure to provide written procedures to its employees .....	7,500.
	Use of an employee to perform nondestructive testing on a tank when that employee does not have the qualifications for that type of nondestructive testing.	10,000.
179.11 .....	Use of an employee to perform welding on a tank when that employee does not have the qualifications for that type of welding procedure. Note: also reference §§ 179.100–9, 179.200–10, 179.220–10, 179.300–9, and 179.400–11 as appropriate.	10,000.
179.13 .....	Tank cars may not be built or converted to exceed 34,500 gallons capacity or 263,000 pounds gross weight on rail. This is the building specification only; for tank cars loaded beyond capacity or gross weight see 173.26.	Varies. See 173.26 for overloaded cars.
179.15 .....	Pressure relief device (e.g. rupture disc) that does not conform to the requirements (loaded car). May also cite 173.31(d).	5,000.
179.201–3(a) .....	Failure to properly line a rubber-lined tank car .....	7,500.
179.201–3(b) .....	Three possible violations under this section: (1) Failure to produce report certifying that tank car and its equipment have been brought into compliance with specification. Must occur prior to lining tank car with rubber or rubber compound. (2) Failure of tank car liner to provide copy of report and certification that tank has been lined in compliance with specs to tank car owner. (3) Failure of tank car owner to retain reports of latest lining application until next re-lining has been accomplished and recorded.	5,000.
<b>PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS</b>		
180 .....	Part 180 prescribes the requirements applicable to any person that manufactures, fabricates, marks, maintains, repairs, inspects, or services tank cars to ensure that the tank cars are in proper condition for transportation. In addition to the following penalty amounts, the agency may “recall” all tanks qualified by the tank car facility during the period the facility failed to comply with the quality assurance requirements. See, for example, § 180.509(b)(4).	
180.505 .....	This section brings the quality assurance requirements of § 179.7 (car construction) into the tank car maintenance arena. See § 179.7 for penalty guidelines, cite this section and reference the applicable paragraph(s) or subparagraph(s). No dual penalty will apply. (Part 180 applies the construction standards of Part 179 to service life maintenance and requalification of tank cars.)	

Tank car specific provisions:



49 CFR section	Description	Guideline amount <sup>2</sup>
180.509(a)	Failure to comply with requirements for inspection and test.	
	—Failure to mark a car passing a periodic inspection and test	See § 180.515.
	—Failure to prepare written report for inspection and test performed under this section.	See § 180.517.
180.509(b)	Failure to perform inspection and test when at least one of the qualifying conditions has been met.	5,000.
180.509(c)	Failure to perform inspection and test at specified interval	5,000.
180.509(d)	Failure to properly perform visual inspection	7,500.
180.509(e)	Failure to properly perform structural integrity inspection and test	10,000.
180.509(f)	Failure to properly perform thickness test	10,000.
180.509(h)	Failure to properly inspect safety systems	7,500.
180.509(i)	Failure to properly perform lining and coating inspection and test	10,000.
180.509(j)	Failure to properly perform leakage pressure test	7,500.
180.509(l)	Failure to perform inspection and test in accordance with the quality assurance program. (Applies to all non-DOT specification tank cars as of July 1, 2000, but see § 180.509(l)(3) for “20-year” cars. See also § 179.7(f).)	10,000.
180.513	Failure to repair the tank according to Appendix R of the AAR Tank Car Manual	10,000.
	Use of an employee to perform welding on a tank when that employee does not have the qualifications for that type of welding procedure.	10,000.
180.515	Failure to mark the tank as required	7,500.
180.517	Failure to report, record, and retain required documentation	7,500.

Provisions for tank cars other than single unit tank car tanks:

180.519(a)	Failure to retest at required interval	Cite 180.519(b)(5).
180.519(b)(1)	Failure to perform hydrostatic pressure/expansion test as required	7,500.
180.519(b)(2)	Failure to perform interior air pressure test as required	7,500.
180.519(b)(3)	Failure to test pressure relief valves as required	7,500.
180.519(b)(4)	Failure to remove and inspect frangible discs and fusible plugs	5,000.
180.519(b)(5)	Failure to retest at required interval	3,000.
180.519(b)(6)	Failure to stamp tank as required	5,000.
180.519(c)	Failure to visually inspect as required	5,000.
	Failure to use competent persons to perform visual inspection	5,000.
180.519(d)	Failure to record and retain documentation. Mitigate/aggravate depending on the extent of the violation.	7,500.

<sup>2</sup>A person who knowingly violates the hazardous materials transportation law, or regulation, special permit, approval, or order issued thereunder, is subject to a civil penalty of at least \$250 but not more than \$50,000 for each violation, except that the maximum civil penalty for a violation is \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property; and a minimum \$450 civil penalty applies to a violation related to training. Each day that the violation continues is a separate offense. 49 U.S.C. 5123; 28 U.S.C. 2461, note.

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**Joseph H. Boardman,**  
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