

(possible delivery) that is added to the customer's list. \* \* \*

\* \* \* \* \*

[Amend 5.5 by revising paragraph a to read as follows:]

#### 5.5 Free Services

\* \* \* \* \*

a. If the customer includes a rural address (box number) in a deck of cards or address file submitted for sequencing, and a street address is assigned to that box number so it can be served on a city delivery route, a correct address card or address is included at no charge.

\* \* \* \* \*

#### 6.0 SUBMITTING PROPERLY SEQUENCED MAILINGS

[Revise the first sentence of 6.1 to read as follows:]

#### 6.1 Customer Responsibility

The customer must ensure that mailings are prepared in correct carrier route delivery sequence and resequence cards or an address file when necessary.

\* \* \*

[Revise 6.2 to read as follows:]

#### 6.2 Changes

If delivery changes occur that affect delivery sequence, but do not cause scheme changes, the customer is notified in writing and must then submit cards or an address file for the affected routes or the complete ZIP Code for resequencing.

[Revise the third sentence of 6.3 to read as follow:]

#### 6.3 Out-of-Sequence Mailing

\* \* \* If the customer does not take corrective action, the USPS gives written notice that the customer is no longer allowed to submit address cards to the post office or address files to the National Customer Support Center for sequencing. \* \* \*

[Revise 6.4 to read as follows:]

#### 6.4 Reinstatement

Generally, a customer denied address card or address file sequencing service for a specific ZIP Code may not submit cards for sequencing at the post office or submit address files for sequencing at the National Customer Support Center where that sequencing service was terminated for 1 year after the effective date of termination. After that time, the customer is again authorized to submit the ZIP Code address cards (to the post office) or an address file (to the National Customer Support Center) for sequencing. At any time during the year after termination of service, the customer may renew the submission if the postmaster (for address cards) or the

National Customer Support Center (for address files) is convinced that the customer has taken all necessary action to correct the past errors.

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00-23658 Filed 9-18-00; 8:45 am]

BILLING CODE 7710-12-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 385 and 386

[Docket No. FMCSA-00-7332]

RIN 2126-AA54

#### Sanctions Against Motor Carriers, Brokers, and Freight Forwarders for Failure to Pay Civil Penalties

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

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA proposes to implement section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) by amending the penalty provisions of the rules of practice of the Federal Motor Carrier Safety Regulations (FMCSRs). This action would prohibit a motor carrier that does not pay civil penalties assessed by the FMCSA, or that does not arrange and abide by its payment agreements, from operating in interstate commerce. Furthermore, the registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty would be suspended. The prohibition would begin on the 91st day after the payment date specified in the final agency order or on the 91st day after the due date of a missed payment arranged in a payment plan. Motor carriers that continue to operate would be subject to additional penalties, including revocation of their registrations. However, the prohibition would not apply to anyone who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

**DATES:** Comments must be received on or before October 19, 2000.

**ADDRESSES:** Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S.

DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001.

All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

All comments will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001; or Mr. Charles Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

##### Background

Section 206 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Public Law 106-159, 113 Stat.

1748, at 1763) addresses two issues related to delinquent payment of penalties. Section 206(a) amends 49 U.S.C. 13905(c) by authorizing the Secretary of Transportation (Secretary) to suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder if that entity has not paid a civil penalty within 90 days of the time specified by official order for payment, or has not arranged and abided by a payment plan. However, the Secretary may not revoke the registration of a person unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code (11 U.S.C. 362 *et seq.*)

The term "registration" applies to for-hire motor carriers, freight forwarders, and brokers that register with the FMCSA to provide transportation under 49 U.S.C. chapter 139. This includes entities that held operating authority from the Interstate Commerce Commission as of the effective date of the ICC Termination Act of 1995 (ICCTA) (Public Law 104-88, 109 Stat. 803), as well as entities registered by the Federal Highway Administration (FHWA) after January 1, 1996 and by the Federal Motor Carrier Safety Administration on or after January 1, 2000.

Section 206(b) amends 49 U.S.C. 521(b) to prohibit operations in interstate commerce by an owner or operator of a commercial motor vehicle (CMV) who fails to pay a civil penalty, or to arrange and abide by an acceptable payment plan. A CMV owner or operator must cease its interstate operations if it has not paid its fine within 90 days of the time specified by the Secretary's order for payment, or has not arranged and abided by a payment plan. Similar to the exception contained in section 206(a), the Secretary may not apply this prohibition to anyone unable to pay penalties because the person is a debtor in a case under chapter 11 of the Bankruptcy Code.

#### Sections of U.S. Code and Implementing Regulations Affected

Section 206(a) of the MCSIA authorizes the Secretary to suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder that fails to pay, or

fails to abide by a payment plan, for civil penalties imposed under several chapters of title 49 of the United States Code: Chapter 5, Special Authority; Chapter 51, Transportation of Hazardous Materials; Chapter 149, Civil and Criminal Penalties; and Chapter 311, Commercial Motor Vehicle Safety. The subject matter included is quite broad. Chapter 149 encompasses violations of the ICCTA and the commercial regulations. Chapter 311 includes a broad range of safety regulations, most of which are also covered in Chapter 5.

#### Recommendations of DOT Office of Inspector General

Section 216 of the MCSIA requires the Secretary to implement all of the recommendations contained in the April 26, 1999, report of the Office of the DOT Inspector General (IG) ("Motor Carrier Safety Program," Report TR-1999-091, available at <http://www.oig.dot.gov/hywards.htm>) assessing the effectiveness of the DOT's motor carrier safety programs, "except to the extent to which such recommendations are specifically addressed in sections 206, 208, 217, and 222 of this Act." One of those recommendations was to "[i]mplement a procedure that removes the operating authority from motor carriers that fail to pay civil penalties within 90 days after final orders are issued or settlement agreements completed," which is specifically addressed in section 206 of the MCSIA.

The IG report provided the background for its recommendation in the following narrative:

Standards for administrative collection of penalties, cited in Code of Federal Regulations, Title 4, Volume 1, Section 102.9, allow agencies to suspend or revoke licenses or operating authority for nonpayment of fines. However, OMC [the FHWA's former Office of Motor Carriers, now the FMCSA] has not exercised these sanctions. For example, one motor carrier has had \$126,653 in outstanding fines since October 1995 and continues normal operations. Another motor carrier has a penalty in excess of \$22,000, which has been outstanding for more than four years. OMC's records indicate a settlement was reached between this motor carrier and the Department of Justice; however, OMC has not received payment. In addition, OMC's records indicate the motor

carrier had a more recent penalty assessment in excess of \$17,000. The continued practice of permitting motor carriers with outstanding fines or repetitive penalties to continue normal operations limits the effectiveness of OMC's enforcement program.

The subject matter of this NPRM is limited to the sanctions provided in section 206 of the MCSIA for failure to pay civil penalties imposed under the procedures of 49 CFR part 386.

The following table summarizes the recent history of the FHWA and the FMCSA civil fines and forfeitures. The number of new cases has fluctuated considerably from year to year. Following the decision in the *MST Express v. Federal Highway Administration*, 108 F. 3d 401 (D.C. Cir. 1997) case, which held that the FHWA's safety fitness rating methodology was invalid because it was not published in accordance with the notice-and-comment requirements of the Administrative Procedure Act (5 U.S.C. 553), the FHWA published an interim final rule reestablishing the rating system for motor carriers of passengers and hazardous materials and later issued a final rule establishing a new safety rating system (62 FR 60035, November 6, 1997). Although the decision in *MST Express* did not prohibit the FHWA from bringing new civil penalty actions, which are independent of the rating process, it had the effect of reducing the number of compliance reviews, which are a primary generator of enforcement actions. In addition, some motor carriers that would have requested compliance reviews to upgrade a conditional or an unsatisfactory safety rating, and some unrated carriers, probably did not request compliance reviews during the time the decision in *MST Express* was in force, because the agency would not have been able to change a rating of record or to issue a new rating during this time.

The following table provides a summary history of civil fines and forfeitures assessed and collected by the FMCSA and its predecessor agencies. The data in this table reflect fiscal records (accounts receivables) that cover enforcement actions that cross fiscal years.

TABLE 1.—FMCSA CIVIL FINES AND FORFEITURES

		FY 1996	FY 1997	FY 1998	FY 1999
New Penalties Assessed .....	No. of cases .....	2,339	2032	2445	2987
	Amount .....	\$8,099,961	\$5,209,833	\$6,835,647	\$8,749,408
Collections .....	No. of cases .....	2,128	1,101	2,027	3,748
	Amount paid .....	\$8,437,434	\$4,438,350	\$6,009,032	\$7,027,544
Written Off .....	No. of cases .....	86	84	112	34

TABLE 1.—FMCSA CIVIL FINES AND FORFEITURES—Continued

		FY 1996	FY 1997	FY 1998	FY 1999
Delinquent Claims with Agency .....	Amount .....	\$394,015	\$387,021	\$510,478	\$114,579
	No. of cases .....	1,237	1,080	968	1,436
Outstanding Claims with DOJ .....	Amount due .....	\$3,711,317	\$4,002,140	\$3,665,392	\$5,118,361
	No. of cases .....	99	88	50	28
Total Outstanding Claims with Agency and DOJ.	Amount due .....	\$713,898	\$431,940	\$406,379	\$296,746
	No. of cases .....	1,336	1,168	1,018	1,464
	Amount due .....	\$4,425,215	\$4,434,080	\$4,071,771	\$5,415,107

Cases were written off for the following reasons:

TABLE 2.—REASONS FOR WRITING-OFF CASES

Reason	FY 1996	FY 1997	FY 1998	FY 1999
Carrier out of business .....	\$201,773	\$228,258	\$74,475	\$8,785
Bankruptcy .....	100,178	58,028	369,172	75,382
Closed by Regional Counsel .....	43,554	30,848	10,373	2,400
Closed by U.S. Attorney .....	0	25,450	0	0
Statute of limitations expired .....	10,901	7,876	0	0
Principal incarcerated .....	11,260	0	1,555	0
Principal deceased .....	2,665	8,548	20,286	0
Not cost effective to pursue .....	23,684	21,035	856	0
Foreign debtor (no collection means) .....	0	4,678	33,761	36,797
Files destroyed in OK City bombing .....	0	2,300	0	0
Total .....	\$394,015	\$387,021	\$510,478	\$114,579

The amounts written off varied considerably from year to year. The largest reductions in write-offs are due to a motor carrier's bankruptcy and motor carriers that had gone out of business.

#### Penalty Procedure

The rules of practice for motor carrier proceedings are contained in 49 CFR part 386. They were recently amended (65 FR 7753, February 16, 2000) to include proceedings concerning violations of the commercial regulations that were formerly implemented and administered by the Interstate Commerce Commission. The purpose of the amendment was to ensure that all civil forfeiture and investigation proceedings instituted by the FMCSA are governed by uniform and consistent procedures.

A Notice of Claim (NOC) is the official charging document used by the agency to initiate an enforcement action for violations of applicable provisions of the FMCSRs (49 CFR parts 350–399, including the commercial regulations (49 CFR parts 360–379)) and the Hazardous Materials Regulations (HMRs, 49 CFR parts 171–180). The NOC lays the foundation for the claim. Among other things, it lists the violations discovered during the compliance review conducted at a specified location on certain date(s), that the agency intends to prosecute; provides a statement of the provisions of

the regulations or law alleged to have been violated; and a brief statement of facts regarding the violations. The NOC also specifies the amount being claimed for each violation and the maximum amount authorized to be claimed under the statute. The rules for commencement of proceedings and for pleadings are described at 49 CFR part 386, subpart B.

An NOC is issued by the appropriate FMCSA State Director within 20 business days of the completion of the compliance review or investigation. To establish a record of delivery, it is mailed certified/return receipt requested to U.S. respondents and sent registered/return receipt requested by commercial express courier service to foreign respondents.

The NOC provides specific instructions to motor carriers on their response options. A motor carrier may pay its penalty in full—the agency advises the motor carrier to do so within 25 business days. The motor carrier may also request a monthly payment schedule to settle the claim. This request must be made within 25 days of service of the NOC. Finally, the motor carrier may contest the NOC and request a hearing on the record on any material issues of fact in dispute—the motor carrier must file a written request for a hearing within 15 days of service of the NOC. If the motor carrier does not file such a request, it waives its right to a hearing.

If the motor carrier does not respond to the FMCSA, the NOC becomes the Final Agency Order (FAO) by default 25 days after the NOC was served and the carrier is so notified.

The FAO is a notice of the outstanding debt the motor carrier owes the Federal government. It may be issued following a proceeding before the Chief Safety Officer<sup>1</sup> or an Administrative Law Judge, or it may follow a carrier's default as discussed above. An order issued by the Chief Safety Officer is final on the day it is served and specifies a payment due date. An order issued by an Administrative Law Judge is final 45 days after it is served (unless it is modified by the Chief Safety Officer); it will also specify a payment due date.

If the motor carrier appeals the FAO to a Federal Circuit Court of Appeals, the terms and payment due date of the FAO are not stayed unless the Court so specifies.

The FAO advises the motor carrier that, in addition to the amount of the penalty assessed, the motor carrier may be liable for interest and administrative penalties based upon the outstanding balance. The respondent must pay the fine within 30 days of receipt of the FAO. The respondent may petition the

<sup>1</sup> The Chief Safety Officer is also the Assistant Administrator of the FMCSA (Title 1, Sec. 101 of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1750, December 9, 1999).

FMCSA for reconsideration of the FAO within 20 days after it is served.

If the motor carrier has not paid its fine in full, or if it has not executed an agreement with the appropriate FMCSA Service Center for a payment schedule for its fine, an accounts receivable memorandum is issued by the FMCSA to the FHWA Finance Division which will pursue collection through administrative channels. (The FHWA is providing certain administrative support for the FMCSA under an interagency agreement until the FMCSA is authorized to fully staff its administrative offices.) If the agency has not received payment 30 days after the FAO is served on a motor carrier, the FHWA will send a letter to the motor carrier by certified mail, return receipt requested. The agency sends additional letters if it has still not received payment by 60 days and 90 days after service of the order. After 180 days, the FHWA refers the case to the Department of Treasury for collection of the fine in accordance with the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–358.

This NPRM would add one additional step to the penalty procedure. If the FMCSA has not received payment 45 days after service of the FAO, the agency will send the motor carrier a letter by certified mail, return receipt requested. This 45-day letter would provide the motor carrier one additional notice that its operations in interstate commerce (in the case of private and for-hire motor carriers) and its operating authority (in the case of authorized for-hire motor carriers, brokers, and freight forwarders) may be suspended on the 91st day after service of the FAO. Section 206 of the MCSIA specifically states that the cessation of operations and suspension of operating authority provisions do not apply to motor carriers unable to pay civil penalties because they are debtors in bankruptcy proceedings under chapter 11 of the Bankruptcy Code. Therefore, those carriers must provide the following information: (1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, Chapter 7 or 11); (2) the bankruptcy case number; (3) the court in which the bankruptcy proceeding was filed; and (4) any other information requested by the agency to determine a debtor's bankruptcy status. This written response by the debtor will enable the FMCSA to verify debtor status and to assess the debtor's ability to pay penalties.

Motor carriers, freight forwarders, and brokers are cautioned, however, not to construe the 45-day letter as an

opportunity to reargue the merits of the penalty assessment, or put into issue their ability to pay. They will have had several opportunities to address these concerns with the FMCSA at earlier stages in the penalty procedure. The only written response from a carrier, broker, or freight forwarder sufficient to prevent suspension of operations and operating authority, would be proof of payment, or proof of bankruptcy debtor status.

Brokers, freight forwarders, and for-hire motor carriers that continue to operate in interstate commerce in violation of the suspension of their operating authority may have that authority revoked after notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of Appendix A to part 386 on all carriers, freight forwarders, and brokers that operate during a period of suspension.

#### **Motor Carriers Subject to Penalties**

Part 386 defines a motor carrier as a [for-hire] motor carrier, motor private carrier, or motor carrier of migrant workers as defined in 49 U.S.C. 13102 and 31501 (65 FR 7753 at 7756, February 16, 2000). There are currently two categories of motor carriers of passengers warranting special mention: (1) Non-business private motor carriers of passengers, such as, churches or social groups, and (2) owners and operators of vehicles designed to transport fewer than 16 passengers, including the driver, for compensation.

Non-business private motor carriers of passengers are not required to maintain most of the records otherwise mandated by the FMCSRs and do not receive safety ratings from the FMCSA. However, they are still subject to many of the substantive regulations and to safety enforcement at roadside. Violations of the FMCSRs, HMRs, or the commercial regulations discovered during the course of a compliance review or at roadside could subject these motor carriers to enforcement action and other sanctions. In addition, if a motor carrier in this category were found to have such unsafe operational practices and/or to have committed such severe safety violations as to make it an imminent hazard to public health, the FMCSA may issue an imminent hazard out-of-service order under 49 CFR 386.72.

The second category of passenger motor carrier of interest is comprised of for-hire operators of limousines and vans that are designed to transport between 9 and 15 passengers, including the driver. These for-hire motor carriers

were required to register and obtain operating authority from the former Interstate Commerce Commission. Since 1996, they have been required to register with the FHWA's former Office of Motor Carriers, now the FMCSA. They were not subject to most provisions of the FMCSRs because their vehicles were not considered "commercial motor vehicles" under 49 CFR 390.5—the definition covered only passenger vehicles designed to transport 16 or more passengers, including the driver.

In 1998, section 4008 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, at 405, June 9, 1998) changed the statutory definition of "commercial motor vehicle" to include those designed or used to transport "more than 8 passengers (including the driver) for compensation" (49 U.S.C. 31132(1)(B)). Most of the FMCSRs (except parts 382, 383, and a few other requirements) became applicable to these smaller passenger vehicles on June 9, 1999; subpart B of part 387, minimum levels of financial responsibility for for-hire motor carriers of passengers, already was applicable to those carriers subject to the registration requirements.

Section 212 of the MCSIA subsequently required the FMCSA to amend the FMCSRs to cover certain commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation. At a minimum, the Congress indicated that the rulemaking shall apply the FMCSRs to "camionetas," commercial vans operating in the area of the U.S.-Mexico border, as well as those commercial vans operating in interstate commerce that have been determined to pose serious safety risks. A rulemaking on this topic is under development. As this class of carriers becomes subject to the FMCSRs, they will also be subject to the consequences proposed in today's NPRM—namely, revocation of operating authority and prohibition against operating in interstate commerce, if they fail to pay civil penalties assessed by the FMCSA.

#### **Motor Carriers With Penalties Outstanding**

This rulemaking will not be retroactive. The provisions of this proposed action would apply only to penalties included in FAOs issued on or after the effective date of a final rule issued in this matter. There is nothing in the language of section 206 of the MCSIA that suggests that the Congress intended it to apply retroactively. As the FMCSA noted in the preamble to the final rule concerning the application of

the provisions of section 4009 of the TEA-21 (Safety Fitness), the Supreme Court's discussion of retroactive and prospective application of laws in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), was carefully nuanced. It said, among other things:

When a case implicates a federal statute enacted after the events in suit, the court's first task is to determine whether Congress has expressly prescribed the statute's proper reach. If Congress has done so, of course, there is no need to resort to judicial default rules. When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, i.e., whether it would \* \* \* increase a party's liability for past conduct \* \* \*. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.

*Id.*, at 280.

We find that section 206 of the MCSIA includes no "express command" to shut down motor carriers based on non-payment of penalties assessed before the provision was enacted. Therefore, the presumption against retroactive application of laws applies.

#### Exclusion of Chapter 11 Debtors

The final paragraphs of MCSIA sections 206(a) and (b) note that the suspension or revocation of registration and the prohibition on operation in interstate commerce after nonpayment of penalties "shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under Chapter 11 of title 11, United States Code."

The FMCSA believes that the Congress, in creating the bankruptcy exemption, did not intend to exempt all Chapter 11 debtors from the license suspension/revocation provision and the requirement to cease operations in interstate commerce. The express language of the statutory exemption applies not to all Chapter 11 debtors, but to any person *who is unable to pay a civil penalty* by reason of being in Chapter 11. Congress recognized that the determination of whether a Chapter 11 debtor is able to pay certain debts is within the jurisdiction of the bankruptcy court. The FMCSA interprets the statutory language as requiring the agency to seek a determination from the bankruptcy court that a motor carrier is able to pay a civil penalty claim prior to imposing a suspension of its operating authority or ordering it to cease its interstate operations.

Under the automatic stay provisions of the Bankruptcy Code, a petition filed in bankruptcy "operates as a stay,

applicable to all entities of—(1) the commencement or continuation \* \* \* of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case. \* \* \* 11 U.S.C. 362(a). However, "the filing of a petition \* \* \* does not operate as a stay—(4) \* \* \* of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power \* \* \* and (5) \* \* \* Of the enforcement of a judgment, other than a monetary judgment, obtained in an action or proceeding by a governmental unit to enforce such unit's police or regulatory power." 11 U.S.C. 362(b).

In determining whether an agency action fits within the exemption of section 362(b)(4), the courts have developed the "public policy" test which distinguishes between governmental proceedings aimed at effectuating public policy and those aimed at protecting the government's pecuniary interest in the debtor's property. See *Eddleman v. U.S. Department of Labor*, 923 F. 2d 782 (10th Cir. 1991); and *NLRB v. Edward Cooper Painting, Inc.*, 804 F. 2d 934 (6th Cir. 1986). Agency proceedings under section 206 of the MCSIA are clearly designed to bring about the public policy of encouraging compliance with the FMCSRs, HMRs, and commercial regulations. As a result, filing for bankruptcy protection under Chapter 11 or any other chapter does not automatically relieve a motor carrier, broker, or freight forwarder from its regulatory obligations.

#### Relationship of Penalty Provision to Safety Rating

As a result of section 15(b) of the Motor Carrier Safety Act of 1990 (Public Law 101-500, 104 Stat. 1218), motor carriers receiving an *unsatisfactory* safety rating from the FHWA/FMCSA have been prohibited from using CMVs to transport more than 15 passengers, including the driver, or placardable quantities of hazardous materials, in interstate commerce. Furthermore, those motor carriers could not be used by Federal agencies. These prohibitions and the procedures for applying them are contained in 49 CFR 385.13. Section 4009 of the TEA-21 extended a similar prohibition to all other motor carriers, irrespective of their cargo, which are found by the FMCSA to be unfit. These owners and operators may not operate CMVs in interstate commerce beginning on the 61st day after such fitness determination. Regulations have been

issued to implement this provision (65 FR 50919, August 22, 2000).

There are circumstances when the FMCSA assesses penalties against a motor carrier but does not assign that motor carrier an unsatisfactory safety rating. However, under the rules proposed today, the impact of an unpaid fine on a motor carrier's operations would be the same—the motor carrier would be prohibited from operating CMVs in interstate commerce. Those motor carriers that do not pay civil penalties or abide by payment plans as required will be in violation of the law.

#### Discussion of Proposal

The proposed changes to 49 CFR part 386 are a straightforward implementation of the amendments to 49 U.S.C. 521(b) and 13905(c) made by section 206 of the MCSIA. The regulatory changes prohibit interstate operations by motor carriers delinquent in payment of penalties assessed by the FMCSA, unless the motor carrier is unable to pay because it is a debtor in a case under Chapter 11, title 11, United States Code. Brokers, freight forwarders, and for-hire motor carriers may also have their registrations suspended, amended, or revoked for failure to pay civil penalties in a timely manner.

The proposed rule would apply prospectively. It would only apply to FAOs issued on or after the effective date of the final rule. FAOs issued before that date would not be subject to the provisions of the rule.

The FMCSA is providing a comment period of 30 days on this proposed rule. While E.O. 12866 and DOT policy generally favor at least a 60-day period, FMCSA is setting an earlier deadline in order to meet the statutory deadline for issuing the final rule.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FMCSA has determined that this proposed regulatory action is not significant within the meaning of Executive Order 12866 nor under the regulatory policies and procedures of the DOT. This proposed rule would require any motor carrier in interstate commerce that had not paid a penalty assessed by the FMCSA within 90 days of the final agency order, or had not abided by a payment plan that it had arranged with the FMCSA, from providing interstate transportation.

As of May 25, 2000, the FMCSA's MCMIS and Enforcement Tracking Systems and the FHWA's DAFIS fiscal accounting system contained the

following information concerning motor carrier enforcement cases that resulted in fines being assessed:

TABLE 3.—ENFORCEMENT CASES INVOLVING FINES, U.S. MOTOR CARRIERS

	1-6	7-20	21-100	101-400	401-1000	1001+	Total	Percent
FY 1998 Total cases .....	255	269	167	36	6	3	736	100.0
Paid immediately .....	154	177	128	31	6	3	499	67.8
Billings current .....	21	17	9	2	0	0	49	6.7
Billings outstanding <sup>1</sup> .....	80	75	30	3	0	0	188	25.5
FY 1999 Total cases .....	799	760	419	66	11	7	2062	100.0
Paid immediately .....	487	538	336	54	11	7	1433	69.5
Billings current .....	106	82	52	9	0	0	249	12.1
Billings outstanding <sup>1</sup> .....	206	140	31	3	0	0	380	18.4
FY 2000 <sup>1</sup> Total cases .....	295	300	160	18	2	1	776	100.0
Paid immediately <sup>1</sup> .....	112	153	85	12	1	1	364	46.9
Billings current <sup>1</sup> .....	66	69	38	1	0	0	174	22.4
Billings outstanding <sup>1</sup> .....	117	78	37	5	1	0	238	30.7

<sup>1</sup> Year-to-date.

**Note:** "Billings Outstanding" in this and the following two tables (tables No. 4 and 5) refers to motor carriers that are more than 30 days delinquent in their payments.

TABLE 4.—FINES AGAINST U.S. MOTOR CARRIERS, DOLLARS

Fines	1-6	7-20	21-100	101-400	401-1000	1001+	Total
FY 1998 Total fine .....	\$637,446	\$1,071,130	\$1,220,525	\$425,220	\$52,030	\$72,500	\$3,478,851
Paid immediately .....	307,464	646,025	882,435	348,460	51,670	72,500	2,308,554
Billings current .....	13,076	56,814	65,246	16,296	0	0	151,432
Billings outstanding .....	235,955	338,937	201,035	49,310	0	0	825,237
FY 1999 Total fine .....	1,934,845	3,241,918	3,257,668	768,359	70,290	88,000	9,361,080
Paid immediately .....	1,078,740	1,939,570	2,271,852	561,684	64,790	88,000	6,004,636
Billings current .....	201,975	235,982	342,877	90,372	0	0	871,206
Billings outstanding .....	614,914	939,860	405,880	126,630	0	0	2,087,284
FY 2000 <sup>1</sup> Total fine .....	587,477	1,197,055	1,260,461	144,340	18,670	43,510	3,251,513
Paid immediately .....	270,204	613,232	526,369	141,040	4,800	43,510	1,599,155
Billings current .....	68,813	156,473	68,813	156,473	187,424	13,800	651,796
Billings outstanding .....	302,946	429,825	455,043	74,550	13,870	0	1,276,234

<sup>1</sup> Year-to-date.

TABLE 5.—AVERAGE FINES PER CASE AGAINST U.S. MOTOR CARRIERS, DOLLARS

	1-6	7-20	21-100	101-400	401-1000	1001+	Total
FY 1998 Total fine .....	\$2,500	\$3,982	\$7,309	\$11,812	\$8,672	\$24,167	\$4,727
Paid immediately .....	1,997	3,650	6,894	11,241	8,612	24,167	4,626
Billings current .....	623	3,342	7,250	8,148	n/a	n/a	3,090
Billings outstanding .....	2,949	4,519	6,701	16,437	0	0	4,390
FY 1999 Total fine .....	2,422	4,266	7,775	11,642	6,390	12,571	4,540
Paid immediately .....	2,215	3,605	6,761	10,402	5,890	12,571	4,190
Billings current .....	1,905	2,878	6,594	10,041	n/a	n/a	3,499
Billings outstanding .....	2,985	6,713	13,093	42,210	0	0	5,493
FY 2000 <sup>1</sup> Total fine .....	1,991	3,990	7,878	8,019	9,335	43,510	4,190
Paid immediately .....	2,413	4,008	6,193	11,753	4,800	43,510	4,393
Billings current .....	1,043	2,268	1,811	156,473	0	0	3,746
Billings outstanding .....	2,589	5,511	12,298	14,910	13,870	0	5,362

<sup>1</sup> Year-to-date.

The number of motor carriers with fines outstanding is a minute fraction of the motor carriers in the FMCSA's MCMIS. For example, in fiscal year 1999, 380 motor carriers had not paid their fines, or were more than 30 days overdue in their payment plans. In that

year, there were approximately 500,000 motor carriers listed as active. However, the dollar value of the outstanding claims is substantial (see Tables 1 and 4), and has remained relatively constant over time.

Table 6 expands upon the information contained in Table 2 and illustrates the payment records from motor carriers of different size categories for Federal fiscal year 1999, the most recent year for which a full year's worth of data is available.

TABLE 6.—FISCAL YEAR 1999 PAYMENT PATTERNS OF U.S. MOTOR CARRIERS, BY POWER UNITS OPERATED

	1–6	7–20	21–100	101–400	401–1000	1001+	Total
Rated carriers .....	88,825	25,617	11,824	2,135	360	178	128,939
Unrated carriers .....	298,350	17,381	4,149	490	80	37	320,487
Total carriers .....	387,175	42,998	15,973	2,625	440	215	449,426
Total cases .....	799	760	419	66	11	7	2,062
Paid immediately .....	487	538	336	54	11	7	1,433
(Percent cases) .....	61.0%	70.8%	80.2%	81.8%	100.0%	100.0%	69.5%
Billings current .....	106	82	52	9	0	0	249
(Percent cases) .....	13.3%	10.8%	12.4%	13.6%	0.0%	0.0%	12.1%
Billings outstanding .....	206	140	31	3	0	0	380
(Percent cases) .....	25.8%	18.4%	7.4%	4.5%	0.0%	0.0%	18.4%

Finally, the data from a recent FHWA report of accounts receivable (as of April 30, 2000, and covering accounts for the prior 12 month period) provides a

snapshot of motor carriers' progress in adhering to their payment plans. Because of the particular reporting period, the data in Table 7 is not

directly comparable to the other tables. However, the average principal per account is comparable to the "Billings outstanding" figures in Table 5.

TABLE 7.—PAYMENT PLANS ACCOUNTS, MAY 1999–APRIL 2000

Status	Number	Principal	Avg/acct
Current .....	177	\$947,313	\$5,352
1–30 days .....	155	887,981	5,729
31–60 days .....	196	795,232	4,057
61–90 days .....	142	507,839	3,576
91–180 days .....	226	998,224	4,417
	896	4,136,589	4,617

Out of the 896 cases, 670 (75 percent) of the motor carriers would be able to continue operating in interstate commerce under the provisions of the NPRM, provided that no other sanctions (such as a determination of unfitness) had been issued. (Because of the accounting case coding method used, there is no readily available breakdown by the size categories of motor carriers, nor could we determine readily how these cases were divided among U.S., Canadian, or Mexican motor carriers.) Not shown in the table are an additional 1,539 cases that were delinquent over 181 days—these had been referred to the Department of Treasury for collection, and include cases referred prior to May 1999.

Based upon the data presented here, the FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. Statistics on enforcement actions taken during each of Federal fiscal years 1996 through 1999 indicate that approximately 300 to 500 motor carriers per year did not pay their assessed penalties within 90 days after receiving a final agency order. Under the proposed regulations, these motor carriers would be required to cease their operations in interstate commerce until they paid their penalties. That sanction may induce most such motor carriers to pay the civil penalty within 90 days or to abide by their agreed-upon payment

plans. It is assumed that the costs of paying the fines, which have historically averaged between 3,500 and 5,500, would be less than the potential significantly higher cost of not paying, and facing the shutdown of interstate operations. Thus, the entities involved would take steps to achieve compliance with the lower cost alternative. For the purpose of this analysis, the FMCSA estimates that between 50 and 75 percent of these motor carriers would pay their fines within 90 days rather than face additional sanctions. Therefore, approximately 75 to 250 motor carriers annually might not pay their assessed fines and would face the penalties attached to this proposed rule. This estimate is conservative because it does not account for those motor carriers in Chapter 11 bankruptcy proceedings that would not be subject to this proposed rule.

As noted above, the data presented also show that the average fines assessed on the motor carriers range between 3,500 and 5,500. The majority of fines that are paid under payment plans arranged with the FMCSA—75 percent—are not more than 90 days in arrears. However, this analysis is limited to the subject of this NPRM, namely, timely payment of fines. It does not take into consideration the final rule concerning "unfit" motor carriers that the agency published in the **Federal Register** on August 22, 2000 (65 FR

50919). That rulemaking implements the provisions of section 4009 of TEA–21 (Pub. L. 105–178, Title, IV, section 4009(a), 112 Stat. 405, (June 9, 1998)). Some carriers may be forced to halt operations both because they have an unsatisfactory safety rating and because they have not paid outstanding penalties. Although this number may be small, it complicates the task of separately determining the impact of this rule. The agency is interested in any information that will help to determine the economic impact of this proposed rule on motor carrier transportation and any additional impacts on industry customers.

Based upon its analysis of statistical information concerning motor carriers' improvement in their safety ratings, the FMCSA believes that the vast majority of motor carriers interested in continuing their operations would be able to do so. The adverse impact that this rule would have on those few motor carriers not involved in bankruptcy proceedings which fail to pay their penalties in a timely manner, is exactly the effect intended by Congress.

This proposed rule would only affect the operations of the small number of motor carriers that do not pay civil penalties assessed as part of enforcement actions. The number of motor carriers involved is expected to continue to be extremely small—fewer than one-tenth of one percent of motor

carriers per year listed as active in the MCMIS. The FMCSA believes the number of motor carriers potentially subject to this level of impact is much smaller than the number of motor carriers that cease operations as a result of normal economic fluctuations. This rulemaking reinforces the importance of complying with the safety regulations by putting into place a mechanism to require motor carriers to pay penalties assessed, unless they are unable to pay because they are debtors in Chapter 11 bankruptcy proceedings.

This rulemaking imposes no requirements that would generate new costs for motor carriers, brokers, and freight forwarders. Those entities would see no change to their operations, provided they pay assessed monetary penalties within the time frames that they arrange with the FMCSA. Based upon the extremely small number of motor carriers projected to be affected, the agency believes that the overall adverse economic effects of this rulemaking would be minimal. This rulemaking, if adopted, would allow the FMCSA to require those very few motor carriers that do not pay civil penalties, or abide by payment agreements, to cease their operations in interstate commerce. Brokers, freight forwarders, and for-hire motor carriers operating in interstate commerce would also lose their operating authority until they paid their overdue civil penalties. This proposed rule would provide the FMCSA with an essential tool to take prompt and effective action against these motor carriers.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. The FMCSA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. The motor carriers that would be economically impacted by this rulemaking would be those who do not pay their civil penalties by the 90th day after the FMCSA's final agency order or that have failed to arrange and abide by a payment plan.

Motor carriers can avoid the consequences of this proposed rule simply by paying their civil penalties. The FMCSA does not assess fines at a level that would cause a motor carrier to shortchange its safety and soundness of operations in order to pay its fine. In determining the level of penalties, the

FMCSA takes into account, among other things, a motor carrier's ability to pay. The FMCSA also allows motor carriers to arrange a payment plan with the agency. Both of these considerations are tailored to the financial needs of small motor carriers and are part of the agency's current procedures. Therefore, the FMCSA hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities. The FMCSA invites public comment on this determination.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

#### *Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

We have analyzed this proposal under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This proposed rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

#### *Executive Order 12630 (Taking of Private Property)*

This proposed rule would implement a statutory mandate to prohibit motor carriers that do not pay assessed penalties from operating in interstate commerce. Motor carriers can avoid all of the implications of this mandate by complying with the FMCSRs, thereby avoiding adverse enforcement actions. Failing that, the motor carrier can avoid the new sanctions this NPRM would attach by paying penalties assessed within 90 days of the final agency order. If the motor carrier arranges a payment plan with the FMCSA, it can avoid the new sanctions by abiding by its payment plans. The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the FMCSA is revising part 386 of the FMCSRs, States are not required to adopt part 386 as a condition for receiving Motor Carrier Safety Assistance Program grants. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

#### *Executive Order 12372 (Intergovernmental Review)*

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

#### *Paperwork Reduction Act*

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

#### *National Environmental Policy Act*

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

#### *Regulatory Identification Number*

A regulatory 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**

##### *49 CFR Part 385*

Highway safety, Motor carriers.



## 49 CFR Part 386

Highway safety, Motor carriers, Rules of practice.

Issued on: September 14, 2000.

Clyde J. Hart, Jr.,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, Chapter III, parts 385 and 386 as set forth below:

## PART 385—SAFETY FITNESS PROCEDURES

1. Revise the authority citation for part 385 to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b)(5)(A) and (b)(8), 5113, 31136, 31144, 31502; and 49 CFR 1.73.

2. Add § 385.14 to read as follows:

### § 385.14 Motor carriers, brokers, and freight forwarders delinquent in paying civil penalties: prohibition on transportation.

(a) A motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating CMVs in interstate commerce under 49 CFR 386.83.

(b) A broker, freight forwarder, or for-hire motor carrier that has failed to pay civil penalties imposed by the FMCSA, or has failed to abide by a payment plan, may be prohibited from operating in interstate commerce, and its registration may be suspended under the provisions of 49 CFR 386.84.

## PART 386—RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS

3. Revise the authority citation for part 386 to read as follows:

**Authority:** 49 U.S.C. 113, Chapters 5, 51, 59, 131-141, 145-149, 311, 313, and 315; sec. 206, Pub. L. 106-159; and 49 CFR 1.45 and 1.73.

4. Revise § 386.1 to read as follows:

### § 386.1 Scope of rules in this part.

The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399), including the commercial regulations (49 CFR parts 360-379) and the Hazardous Materials Regulations (49 CFR parts 171-180). The purpose of the proceedings is to enable the Assistant Administrator to determine whether motor carriers, property brokers, freight forwarders, or their agents, employees, or any other person subject to the

jurisdiction of the FMCSA, have failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations and, if such violations are found, to issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both.

5. In § 386.2, remove “Federal Highway Administration” and add “Federal Motor Carrier Safety Administration” each place it appears; and add the new definitions of *Assistant Administrator*, *Broker*, *Final agency order*, and *Freight forwarder*, in alphabetical order, to read as follows:

### § 386.2 Definitions.

\* \* \* \* \*

*Assistant Administrator* means the Assistant Administrator of the Federal Motor Carrier Safety Administration. The Assistant Administrator is the Chief Safety Officer of the agency pursuant to 49 U.S.C.113(d), and the final agency decisionmaker in motor carrier safety and hazardous materials proceedings under this part.

\* \* \* \* \*

*Broker* means a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they themselves have accepted and legally bound themselves to transport.

\* \* \* \* \*

*Final agency order* means a notice of final agency action issued pursuant to this part by either the appropriate FMCSA Field Administrator (for default judgements under § 386.14(e)), the FMCSA Chief Safety Officer, or an Administrative Law Judge (ALJ), typically requiring payment of a civil penalty by a broker, freight forwarder, or motor carrier.

*Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments;

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to FMCSA jurisdiction.

\* \* \* \* \*

6. Add §§ 386.83 and 386.84 to read as follows:

### § 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) *General rule.* A motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's Final Agency Order is prohibited from operating in interstate commerce starting on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a motor carrier to pay a civil penalty in installments. If the motor carrier fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. A motor carrier that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (*i.e.*, the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so specifies.

(b)(1) *Notification of delinquent payment.* The FMCSA will notify the motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the motor carrier being prohibited from operating in interstate commerce.

(2) The notice will be delivered by certified mail or commercial express service. If a motor carrier's principal place of business is in a foreign country, it will be delivered to the motor carrier's designated agent.

(c) Motor carriers that continue to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV (h) of Appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor

in a case under chapter 11, title 11, United States Code. Motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, Chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

**§ 386.84 Sanction for failure to pay civil penalties or abide by payment plan; suspension or revocation of registration.**

(a)(1) *General rule.* The registration of a broker, freight forwarder, or for-hire motor carrier that fails to pay a civil penalty in full within 90 days after the date specified for payment by the FMCSA's final agency order, will be suspended starting on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of the penalty.

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a respondent broker, freight forwarder, or for-hire motor carrier to pay a civil penalty in installments. If the respondent fails to make an installment payment on schedule, the payment plan is void and the entire debt is payable immediately. The registration of a respondent that fails to pay the remainder of its civil penalty in full within 90 days after the date of the missed installment payment, is suspended on the next (*i.e.*, the 91st) day. The suspension continues until the FMCSA has received full payment of entire penalty.

(3) *Appeals to Federal Court.* If the motor carrier appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so specifies.

(b)(1) *Notification of delinquent payment.* The FMCSA will notify a respondent broker, freight forwarder, or for-hire motor carrier in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the suspension of the respondent's registration.

(2) The notice will be delivered by certified mail or commercial express service. If a respondent's principal place

of business is in a foreign country, it will be delivered to the respondent's designated agent.

(c) The registration of a broker, freight forwarder or for-hire motor carrier that continues to operate in interstate commerce in violation of this section may be revoked after notice and opportunity for a proceeding in accordance with 49 U.S.C. 13905(c). Additional sanctions may be imposed under paragraph IV (h) of Appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil penalty because the person is a debtor in a case under chapter 11, title 11, United States Code. Brokers, freight forwarders, or for-hire motor carriers in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (*i.e.*, Chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

\* \* \* \* \*

**Appendix A to Part 386 [Amended]**

7. Add paragraph h to part IV of Appendix A to part 386 to read as follows:

\* \* \* \* \*

h. *Violation*—conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

*Penalty*—Up to \$10,000 for each day that operations are conducted during the suspension period.

[FR Doc. 00-24105 Filed 9-18-00; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis on Proposed Critical Habitat Designation for the Great Lakes Breeding Population of the Piping Plover**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of the draft economic analysis of the proposed designation of critical habitat for the Great Lakes breeding population of the piping plover. We also provide notice of the reopening of the comment period for the proposal to allow all interested parties to submit written comments on the proposal and on the draft economic analysis. The new comment period will allow all interested parties to submit comments on the draft Economic Analysis and proposed designation. Comments received on the proposal after the close of the original comment period but before this reopening will be incorporated into the public record as a part of this reopening and do not need to be resubmitted.

**DATES:** The original comment period for the critical habitat proposal closed on September 5, 2000. The comment period is reopened and we will accept comments received on or before October 19, 2000. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Copies of the draft economic analysis for the Great Lakes breeding population of piping plovers are available by writing to Piping Plover Information, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111, on the Internet at <http://www.fws.gov/pipingplover>, or by calling (612) 713-5350. Written comments on the proposal for the Great Lakes breeding population should be sent to "Piping Plover Comments" at the above address, by e-mail to [pipingplovercomments@fws.gov](mailto:pipingplovercomments@fws.gov), or by facsimile to (612) 713-5292. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:**

Laura Ragan at the U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056. Telephone: (612/713-5157); Fax: (612/713-5292)

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 6, 2000, the Service published a proposed rule to designate critical habitat for the Great Lakes breeding population of the piping plover in the