

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****RTCA Government/Industry Air Traffic Management Advisory Committee; Correction**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction; Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

**SUMMARY:** The FAA is correcting a notice of a meeting that was published on March 20, 2009 (72 FR 11987; FR Doc. E9-6176). In that notice the FAA advised the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee. Inadvertently the notice was published with an incorrect meeting date of March 16, 2009. The correct date of the RTCA Government/Industry Air Traffic Management Advisory Committee meeting is May 27, 2009.

**DATES:** The meeting will be held May 27, 2009, from 1 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org>. **METRO:** L'Enfant Plaza Station (Use 7th & Maryland Exit).

**SUPPLEMENTARY INFORMATION:**

Correction: In the **Federal Register** of March 20, 2009 (FR Doc. E9-6176) in the third column in the **DATES** section change the date of the meeting from "March 16, 2009" to "May 27, 2009". Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions);
- Report from RTCA Task Force on NextGen Mid-Term Implementation (NextGen TF);
- ATMAC Member Discussion and Recommendations;
- Closing Plenary (Other Business, Member Discussion, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 20, 2009.

**Meredith Gibbs,**

*RTCA Advisory Committee.*

[FR Doc. E9-6991 Filed 3-27-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****Supplemental Policy on Assessing Maximum Fines under the Motor Carrier Safety Improvement Act of 1999 (MCSIA) Section 222**

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

**ACTION:** Notice of policy change.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) provides notice to the motor carrier industry of policy changes regarding the assessment of maximum fines under section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 222 requires the Agency to assess maximum statutory penalties if a person is found to have committed a pattern of violations of critical or acute regulations, or previously committed the same or a related violation of critical or acute regulations.

**DATES: Effective Date:** This change in policy is effective April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Mancl, Acting Chief, Enforcement and Compliance Division, MC-ECE, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-6830. Office hours are from 7:45-4:45 p.m., e.t., Monday through Friday, except Federal holidays. Web site address: <http://www.fmcsa.dot.gov>.

**SUPPLEMENTARY INFORMATION****Background**

Section 222 of MCSIA directs the Secretary of Transportation to "assess the maximum civil penalty for each violation by any person who is found to have committed a pattern of violations of critical or acute regulations, or to have previously committed the same or a related violation of critical or acute regulations." [Pub. L. 106-159, 113 Stat. 1748, 1769, Dec. 9, 1999; codified in 49 U.S.C. 521 note.]

On September 8, 2000, FMCSA issued a policy memorandum that changed its

fine assessment policy to meet the requirements of section 222 of MCSIA. On December 28, 2004, FMCSA published a clarification of its September 8, 2000, policy statement implementing section 222 of MCSIA (69 FR. 77828). The memorandum and subsequent **Federal Register** notice defined both a "pattern of violations" and "previously committed the same or related violation" as three cases closed with findings of violation occurring within the last six years. The three cases—also known as "three strikes"—consist of two cases that have been closed with findings of violations, followed by a third case, in which the discovery of violations during an on-site compliance review, shipper review or terminal review involved the same part of the Federal Motor Carrier Safety Regulations (FMCSR) and/or Federal Hazardous Materials Regulations (HMR) in Title 49 of the Code of Federal Regulations.

In an August 2007 report,<sup>1</sup> the Government Accountability Office (GAO) concluded that FMCSA's "three-strikes" policy failed to assess maximum penalties against all serious violators and achieve MCSIA's statutory intent that maximum penalties be imposed in two distinct situations for a pattern of violations, and for repeat violations of the same or related regulations. The GAO recommended that FMCSA revise its policy to include (1) a definition for a pattern of violations that is distinct from a repeated violation of the same or related regulations and (2) a two-strike, rather than a three-strike, policy. In an earlier 2006 report,<sup>2</sup> the Department of Transportation's Office of Inspector General (OIG) similarly recommended that FMCSA develop procedures to implement the section 222 "pattern of violations" provision and additionally to count for section 222 purposes all acute and critical violations discovered during a compliance review. Based on these recommendations, FMCSA re-examined its policy and adopts the revisions contained in this notice.

**Policy**

This policy supplements FMCSA's existing policy and continues its implementation of section 222 of MCSIA consistent with the statutory language and in response to the GAO

<sup>1</sup> "Federal Safety Agency Identifies Many High-Risk Carriers but Does Not Assess Maximum Fines as Often as Required by Law" (GAO-07-584, August 2007).

<sup>2</sup> "Significant Improvements for Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing" (OIG Report No. MH-2006-046, April 21, 2006).

and OIG recommendations. In order to ensure adequate notice to the regulated industry, only those investigations and cases initiated on or after the effective date of this notice will be used to support imposition of maximum penalties under the “two-strikes” policy. Investigations and cases initiated prior to the effective date of this notice will continue to be considered for maximum penalty assessment under the “three-strikes” policy.

#### “Pattern of Violations”

Effective with this policy, FMCSA is separately defining a “pattern of violations” as occurring when the Agency discovers two or more critical and/or acute violations<sup>3</sup> in each of three or more different regulatory parts (i.e., a minimum of six acute and/or critical violations). A “pattern of violations” does not require previous enforcement and can be found even during a first-time investigation. A motor carrier will be subject to maximum fines when a “pattern” of critical or acute violations is discovered after having previous contact with FMCSA, a State motor carrier safety enforcement agency, or other FMCSA-designated representative acting on behalf of FMCSA. This contact may have been through a previous New Entrant Safety Audit, Pre-Authorization Safety Audit, Expedited Action Letter, Compliance Review, Notice of Violation, Notice of Claim, Warning Letter or other significant documented contact reasonably likely to have alerted the motor carrier to FMCSA’s regulatory and enforcement jurisdiction. The previous contact may have occurred prior to the effective date of this notice. A roadside inspection, alone, however, is not a previous contact for the purpose of subjecting a motor carrier to a section 222 pattern of violations finding. Notices of Claim that allege the requisite pattern of violations described herein will include a proposed civil penalty in the maximum amount authorized by statute for each qualifying violation.

#### “Two Strikes”

Effective with this policy, FMCSA expands its interpretation of “previously committed the same or related violation” and adopts a “two-strikes” policy that is similar to the Agency’s existing “three-strikes” policy. Under this supplemental policy, maximum penalties will be applied in cases where an acute violation is discovered during an investigation

within six years of a previously closed case that contained a finding of violation of a critical or acute regulation in the same FMCSR and/or HMR part. The same standards applied by FMCSA under the three-strikes policy will apply to cases being used as a previous strike under the two-strikes policy. The previous case must have been closed within six years prior to the completion of the investigation in which the second strike is discovered (but no earlier than the effective date of this two-strikes policy); it must contain one or more violations of critical or acute regulations in the same regulatory part(s); and those violations must have been admitted or adjudicated with a finding of violation. FMCSA will continue to measure the six-year period from the date the previous enforcement case was closed to the date the investigation is completed. The revision of the definition of “previously committed the same or related violation” in this supplemental policy is consistent with the emphasis FMCSA places on violations of acute regulations.

#### Categories of Investigations

Effective with this supplemental policy, FMCSA also expands the category of investigations during which violations of acute and/or critical regulations discovered may be subject to assessment of section 222 maximum penalties to include rated and unrated compliance reviews, terminal reviews, shipper reviews, focused reviews, on- and off-site assessment investigations, and on- and off-site investigations arising under the Agency’s Comprehensive Safety Analysis 2010 program or successor programs.

#### Settlement Policy

The Agency’s December 28, 2004, policy clarification stated that in order to ensure uniformity in implementing section 222 of MCSIA, FMCSA Service Centers would not be permitted to settle section 222 cases for less than the maximum penalty assessed. The policy permitted settlement agreements establishing a payment plan and noted that the settlement limitation would be re-evaluated as the Agency gained more experience in applying the statutory requirement. The Agency has reviewed this settlement limitation in light of its experience since the issuance of its section 222 policy. The Agency now lifts this settlement restriction and will allow FMCSA Service Centers to evaluate on a case-by-case basis whether section 222 penalty matters are appropriate for approved settlement options. The Agency will continue to monitor its settlement policy on section

222 cases to ensure uniformity and appropriate use of settlement options.

Issued on: March 24, 2009.

**Rose A. McMurray,**

*Acting Deputy Administrator.*

[FR Doc. E9-7057 Filed 3-27-09; 8:45 am]

**BILLING CODE 4910-EX-P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2009-0028]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel Stewardship.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2009-0028 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

**DATES:** Submit comments on or before April 29, 2009.

**ADDRESSES:** Comments should refer to docket number MARAD-2009-0028. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

<sup>3</sup> Critical and acute regulations are listed in 49 CFR Part 385, Appendix B. “Critical violations” are violations of a critical regulation discovered at or above a 10% violation rate; they involve more than one discovered violation.