§65.450 Net income.

* * * *

(d) Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600– 7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

3. Section 65.820(a) is revised to read as follows:

§65.820 Included items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction), and, to the extent such inclusions are allowed by this Commission. Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization. Any interest cost for funds used during construction capitalized on assets recorded in these accounts shall be computed in accordance with the procedures in $\S 32.2000(c)(2)(x)$ of this chapter.

[FR Doc. 95–5187 Filed 3–3–95; 8:45 am] BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-207D; Amdt. No. 107-33]

RIN 2137-AC60

Hazardous Materials Regulations; Penalty Guidelines

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

SUMMARY: In this final rule, RSPA is publishing its hazardous material transportation enforcement civil penalty guidelines. This action provides the regulated community and the general public with guidance as to the factors RSPA considers in its hazmat penalty assessment process.

EFFECTIVE DATE: This rule is effective April 7, 1995.

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

SUPPLEMENTARY INFORMATION:

I. Background

In response to a request contained in Senate Report 103-150 that accompanied the Department of Transportation and Related Agencies Appropriations Act, 1994, RSPA is publishing its hazardous material transportation (hazmat) enforcement civil penalty guidelines as an appendix to its regulations. This action will provide the regulated community and the general public with information concerning how RSPA generally begins its hazmat penalty assessment process and types of information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

RSPA enforcement personnel and attorneys use these guidelines as a partial means of determining a baseline civil penalty for selected violations of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), or the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.* (formerly the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*).

Because these guidelines are nonbinding and are periodically updated, they are being published as an informational appendix to the enforcement regulations, Subpart D of Part 107 in Title 49 of the Code of Federal Regulations (CFR). They are being published without public notice or comment because they are merely informational, are not finally determinative of any issues or rights, and do not have the force of law. Because these guidelines are merely a general statement of agency policy and practice and because they impose no requirements, no notice of proposed rulemaking is necessary.

This rule publishes the guidelines as they existed on January 18, 1995. In any particular case, the Office of Hazardous Materials Enforcement will use the version of the guidelines in effect at the time of its referral of a matter to the Office of the Chief Counsel for possible issuance of a notice of probable violation (NOPV). However, since the guidelines are not legally binding, later changes in the guidelines may be considered in a particular case before a final order is issued.

On November 16, 1990, Congress amended the HMTA by passing the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA; Public Law 101-615); in HMTUSA, Congress increased the maximum penalties for HMTA and HMR violations from \$10,000 to \$25,000 per violation per day. The guidelines reflect the culmination of a five-year program under which RSPA increased the baseline penalty for most violations by 20 percent per year (on November 16 of each year between 1990 and 1994) to effect Congress' 1990 increase of the maximum penalty for hazmat violations.

These guidelines are a preliminary assessment tool used by RSPA personnel, and they create no rights in any party. They contain baseline amounts or ranges for violations that frequently have been cited in RSPA hazmat NOPVs. When a violation not described in the guidelines is encountered, it sometimes is possible to determine a baseline penalty by analogy to a similar violation in the guidelines.

Even when the guidelines are applicable to a violation, the use of the guidelines is only a starting point. They promote consistency and generally are used to provide some standard for imposing similar penalties in similar cases. However, no two cases are identical, and ritualistic use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria. Therefore, regardless of whether the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. These criteria are in 49 U.S.C. 5123 and 49 CFR 107.331.

The criteria that RSPA applies are the nature, extent, circumstances, and gravity of each violation; the degree of the violator's culpability; the violator's history of prior violations (if any); the violator's ability to pay; any effect of the penalty on the violator's ability to continue to do business, and other matters that justice requires. The baseline amount or range is an initial reflection of the nature, extent, circumstances, and gravity of the violation as compared with other types of violations. This amount then may be modified on the basis of case-specific information on nature, extent, circumstances, and gravity, as well as information with respect to the other enumerated factors.