

Woodruff, 2708 Hampton Ct. SE, Olympia, WA 98501.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418-2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05-185, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Tenino, Channel 229C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-10116 Filed 5-24-05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA-05-21161; Notice 1]

RIN 2127-AJ62

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT
ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to increase the maximum aggregate civil penalties for violations of statutes and regulations administered by NHTSA pertaining to odometer tampering and disclosure requirements and for vehicle theft protection violations. This action would be taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: Comments on the proposal are due July 25, 2005.

Proposed effective date: 30 days after date of publication of the final rule in the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods:

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting

comments and additional information on the rulemaking process, see the Request for Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366-5263, facsimile (202) 366-3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134) (referred to collectively as the "Adjustment Act" or, in context, the "Act"), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the adjustments in 49 CFR part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties involving odometer requirements and disclosure, consumer information, motor vehicle safety, and bumper standards. 64 FR 37876.

On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer requirements and disclosure and vehicle theft prevention. 66 FR 41149. In addition to increases in authorized penalties under the Adjustment Act, the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act increased penalties under the National Traffic and Motor Vehicle Safety Act as

amended (sometimes referred to as the "Motor Vehicle Safety Act"). We codified those amendments on November 14, 2000. 65 FR 68108. Most recently, on September 28, 2004, we adjusted the maximum penalty amounts for a related series of violations involving the agency's vehicle safety, bumper standards, and consumer information provisions. 69 FR 57864.

We have reviewed the civil penalty amounts authorized in part 578 and propose in this notice to adjust those penalties where warranted under the Adjustment Act. Those civil penalties that we are proposing to adjust address violations pertaining to odometer tampering and disclosure requirements and to vehicle theft protection provisions.

Method of Calculation

Under the Adjustment Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by a cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as:

The percentage (if any) for each civil monetary penalty by which—

- (1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds
- (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the proposed adjustment is intended to be effective before December 31, 2005, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" would be the CPI for June 2004. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor" is 568.2.¹ The penalty amounts that NHTSA seeks to adjust based on the Act's requirements were last adjusted in 2001 for the odometer tampering and disclosure and vehicle theft protection provisions. The CPI figure for June 2001 is 533.3. Accordingly, the factor that we are using in calculating the proposed increases is 1.07 (568.2/533.3) for violations involving the odometer

tampering and disclosure and vehicle theft protection provisions. Using 1.07 as the inflation factor, calculated increases under these adjustments are then subject to a specific rounding formula set forth in Section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest

- (1) multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

Review of Civil Penalties Prescribed by Section 578.6

Section 578.6 contains the civil penalties authorized for the statutes that we enforce. We have reviewed these penalties, applied the formula using the appropriate CPI figures, considered the nearest higher multiple specified in the rounding provisions, and tentatively concluded that only the penalties discussed below may be increased.

Odometer Tampering and Disclosure, 49 U.S.C. Chapter 327 (49 CFR 578.6(f)(1))

The maximum civil penalty for a related series of violations of 49 U.S.C. § 32709 is \$120,000, as specified in 49 CFR 578.6(f)(1). Applying the appropriate inflation factor (1.07) to the calculation raises this figure to \$128,400, an increase of \$8,400. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of \$10,000 in the case of penalties greater than \$100,000. In this case, the increase would be \$10,000. Accordingly, we propose that Section 578.6(f)(1) be amended to increase the maximum civil penalty to \$130,000 for a related series of odometer tampering and disclosure violations. However, the maximum civil penalty for a single violation remains at \$2,200 because the inflation-adjusted figure is not yet at a level to be increased. Similarly, the penalty amount prescribed in Section 578.6(f)(2) for a violation that involves the intent to defraud (the greater of three times actual damages or \$2,000) remains the same.

Vehicle Theft Protection, 49 U.S.C. Chapter 331 (Section 578.6(g)(1)–(2))

Under 49 CFR 578.6(g)(1), the maximum civil penalty for a related series of violations of 49 U.S.C. 33114(a)(1)–(4) is \$300,000. Applying the appropriate inflation factor (1.07) raises this figure to \$321,000, which is an increase of \$21,000. Under the formula, any increase in a penalty's amount shall be rounded to the nearest multiple of \$25,000 in the case of penalties greater than \$200,000. In this instance, the rounding rules provide for an increase of \$25,000. Accordingly, we propose that Section 578.6(g)(1) be amended to increase the maximum civil penalty to \$325,000 for a related series of violations that pertain to NHTSA's vehicle theft protection provisions found at 49 U.S.C. 33114(a)(1)–(4).

With regard to the maximum penalty for a single violation of 49 U.S.C. 33114(a)(5), as provided in 49 CFR 578.6(g)(2), applying the appropriate inflation factor (1.07) raises this amount to \$128,400, an increase of \$8,400. Using the rounding formula, which dictates rounding to the nearest \$10,000 for penalty amounts greater than \$100,000 but less than or equal to \$200,000, the new adjusted amount changes to \$130,000. Accordingly, we propose to amend the maximum civil penalty for a single daily violation of Section 578.6(g)(2) to \$130,000.

However, the maximum penalty for a single violation of 49 U.S.C.

33114(a)(1)–(4) remains at \$1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Other Issues—Technical Correction

Finally, the agency is proposing to amend the language in Section 578.6(g)(2) to achieve consistency within the text of the regulation. Specifically, the word "government" after "United States" will be capitalized to reflect that word's usage within other parts of Section 578.6.

Effective Date

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. The adjusted penalties would apply to violations occurring on and after the effective date.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket

¹ Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at <http://www.bls.gov/cpi/home.htm>. Scroll down to "Most Requested Statistics" and select the "All Urban Consumers (Current Series)" option, select the "U.S. ALL ITEMS 1967=100—CUUR0000AA0" box, and click on the "Retrieve Data" button.

number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the Chief Counsel (NCC-110) at the address given at the beginning of this document under the heading **FOR FURTHER INFORMATION CONTACT**: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).

(2) On that page, click on "search."

(3) On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA-2001-1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action is limited to the proposed adoption of adjustments of civil penalties under statutes that the

agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a final rule based on this proposal will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The proposed amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification ("SIC") Codes. SIC Code 336211 "Motor Vehicle Body Manufacturing" applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System ("NAICS"), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.²

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapters 327 (odometer disclosure and tampering) or 331 (vehicle theft protection) and therefore may be affected by the adjustments that this NPRM proposes to make. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR Part 579, of the more than 60 light vehicle manufacturers reporting, over half are small

² For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. See <http://www.sba.gov/size/sizetable.pdf> for further details.

businesses. Additionally, many of the roughly 80 manufacturers of medium-heavy medium heavy vehicles and buses, the more than 200 trailer manufacturers, and the approximately 12 motorcycle manufacturers providing comprehensive EWR reports are small businesses. Also, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. There are approximately 15 manufacturers of child restraints and over 20 tire manufacturers that are reporting pursuant to the EWR rule. Also, there are numerous other low-volume specialty tire manufacturers that do not provide comprehensive EWR reports. Furthermore, there are about 130 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

The odometer tampering and disclosure and vehicle theft protection statutes addressed by this proposal cover passenger motor vehicles, which are within the compass of the Motor Vehicle Safety Act. As a result, the discussion of the numbers and sizes of light vehicle manufacturers above also covers those statutes.

As noted throughout this preamble, this proposed rule would only increase the maximum penalty amounts that the agency could obtain for violations of provisions related to the odometer and theft protection provisions enforced by NHTSA. The proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the vehicle theft protection statute, the penalty provision requires the agency to take into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 33115(a)(3) (vehicle theft protection—entity's size shall be considered). While the odometer disclosure and tampering statutory penalty provision does not specifically require the agency to consider the size of the business, the statute requires the agency to consider the impact of the penalty on an entity's ability to continue doing business. 49 U.S.C.

32709(a)(3)(B). The agency would also consider business size under its civil penalty policy when determining the appropriate civil penalty amount. See 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act ("SBREFA")). The penalty adjustments that are being proposed would not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this regulation would not establish penalty amounts, this proposal will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

1. The authority citation for 49 CFR Part 578 would continue to read as follows:

Authority: Pub. L. 101-410, Pub. L. 104-134, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 would be amended by revising paragraphs (f)(1), (g)(1), and (g)(2) to read as follows:

**PART 578—CIVIL AND CRIMINAL
PENALTIES**

**§ 578.6 Civil penalties for violations of
specified provisions of Title 49 of the United
States Code.**

* * * * *

(f) *Odometer tampering and disclosure.* (1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$2,200 for each violation. A separate violation occurs for each motor vehicle

or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is \$130,000.

* * * * *

(g) *Vehicle theft protection.* (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than \$1,100 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single

violation. The maximum penalty under this paragraph for a related series of violations is \$325,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than \$130,000 a day for each violation.

* * * * *

Issued on: May 19, 2005.
Jacqueline Glassman,
Chief Counsel.
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