

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 578**

[Docket No. NHTSA 99-5448]

RIN 2127-AH48

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adjust certain civil penalties authorized for violations of statutes that we enforce. The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires us to take this action periodically. The largest adjustments would occur in penalties for related series of violations of 49 U.S.C. Chapter 301—Motor Vehicle Safety, and 49 U.S.C. Chapter 325—Bumper Standards. The maximum penalties for violations of Chapters 301 and 325 would be increased from \$880,000 to \$925,000 according to the formulae set forth in the statute. Adjustments in two other penalties would be made as well. These adjusted penalties would apply to violations occurring on or after the effective date of the final rule.

DATES: Date that comments are due: May 21, 1999. Proposed effective date: 45 days after publication of final rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366-5263, facsimile (202) 366-3820, electronic mail "TVinson@nhtsa.dot.gov", 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 ("Adjustment Act"), 28 U.S.C. 2461 note, Pub. L. 101-410, as amended by the Debt Collection Improvement Act of 1996 ("Collection Act," Pub. L. 104-134), requires us and other Federal agencies to regularly adjust certain civil penalties for inflation. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil penalties, and must make further adjustments of these penalty amounts at least once every four years. The

Collection Act limited the initial increase to 10 percent of the penalty being adjusted.

Our initial adjustment of civil penalties under these legislative authorities was published on February 4, 1997 (62 FR 5167). We established 49 CFR Part 578, *Civil Penalties*, which applies to violations that occur on and after March 6, 1997. These adjustments resulted in the maximum permissible increases of 10 percent. For example, the maximum penalty of \$1,000 for each violation of 49 U.S.C. 30112(a), up to \$800,000 for a related series of violations, was adjusted to \$1,100 and \$880,000.

In accordance with the mandate to make further adjustments of civil penalty amounts at least once every four years, we propose to adjust some of our penalties now in order to enhance their deterrent effect.

Method of Calculation

Under the Adjustment Act as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the 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 we plan to make the current adjustment effective before July 1, 1999, the "Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment" would be the CPI for June 1998. This figure is 488.2. NHTSA's penalties were initially adjusted based on the CPI figure for June 1996. Since the intent of the legislation is for agencies to adjust their civil penalties to account for increases in inflation in order to preserve their remedial impact, we believe that this is realized by adjusting civil penalties according to the CPI base upon "which the amount of such civil monetary penalty was last set or adjusted pursuant to law." This base was the CPI for June 1996. This was 469.5. The factor that we should use in calculating the increase, then, is 488.2 divided by 469.5, or 1.0398296. Any calculated increase under this adjustment is then subject to a specific rounding formula

set forth in sec. 5(a) of the Adjustment Act. Under the 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.

Penalties That We Are Increasing

Upon review, we have concluded that application of the formulae permit some of our penalties to be increased at this time. We are proposing this action before the passage of four years in order to enhance the deterrent effect of these penalties because of their importance to our enforcement programs. Even with these increases, these penalties appear less than adequate as a full deterrent to violations of the statutes that we enforce. For example, the maximum penalty for a related series of violations under the National Traffic and Motor Vehicle Safety Act of 1966 as amended in 1974 was \$800,000. It would have increased more than threefold, to \$2.45 million, in June 1996 if adjusted for inflation. However, the adjustment was capped at \$880,000. Further, under this aggregate penalty ceiling, on a per vehicle basis the maximum penalty amounts to less than one dollar per vehicle where a substantial fleet was in violation of the Safety Act.

Odometer tampering and disclosure. As shown above, sec. 5(a)(3) of the amended Adjustment Act permits an increase rounded "to the nearest multiple of \$1,000" for penalties between \$1,000 and \$10,000. Under 49 CFR 578.6(f)(2), a penalty of \$1,650 may be imposed (the original penalty was \$1,500). A figure of \$1,716 results when the inflation factor is applied. The nearest multiple of \$1,000 is \$2,000. Therefore, we propose to amend 49 CFR 578.6(f)(2) so that a person who violates a requirement on odometer tampering and disclosure, with intent to defraud, will now be liable for three times the actual damages or \$2,000, whichever is greater.

Consumer information. The rounding provisions of section 5(a)(6) of the Adjustment Act permit raises to the nearest multiple of \$25,000 where the penalty exceeds \$200,000. Section

578.6(d) establishes a maximum penalty of \$440,000 (originally \$400,000) for a related series of violations of consumer information regarding crashworthiness and damage susceptibility. The inflation factor applied to \$440,000 gives \$457,525. As the nearest \$25,000 multiple is \$450,000, we propose adjusting the penalty to this amount.

Violations of safety and bumper requirements. Both 49 CFR 578.6(a) and 49 CFR 578.6(c)(2) establish a maximum penalty of \$880,000 (originally \$800,000) for related series of violations of Chapter 301—Motor Vehicle Safety, and Chapter 325—Bumper Standards. Multiplying this figure by the inflation factor gives \$915,050. Section 5(a)(6) permits a rounding to the nearest multiple of \$25,000, which is \$925,000, and we are proposing adjusting the penalties to this amount.

Effective Date

These amendments would be effective 45 days after publication in the **Federal Register** and would apply to violations of pertinent statutes and regulations occurring on and after that date.

Request for Comments

Interested persons are invited to submit comments on the proposal and other approaches to adjustment of penalties for inflation. It is requested that two copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments

received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action is limited to the 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 this proposed rule would have no significant economic impact on a substantial number of small entities. The following is my statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

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 are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market,

often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1999, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles 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.

Finally, this action would not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of the penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), we state that there are no requirements for information collection associated with this rulemaking action.

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 12612 (Federalism)

We have analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

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.

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 would not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires, Penalties.

PART 578—CIVIL PENALTIES

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, 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 the last sentence in paragraphs (a) and (d), revising paragraphs (c)(2) and (f)(2), and republishing the headings of paragraphs (a), (c), (d), and (f) to read as follows:

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

(a) *Motor Vehicle Safety.* * * * The maximum civil penalty under this paragraph for a related series of violations is \$925,000.

* * * * *

(c) *Bumper standards.* (1) * * *

(2) The maximum civil penalty under this paragraph for a related series of violations is \$925,000.

(d) *Consumer information regarding crashworthiness and damage*

susceptibility. * * * The maximum penalty under this paragraph for a related series of violations is \$450,000.

* * * * *

(f) *Odometer tampering and disclosure.* * * *

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$2,000, whichever is greater.

Issued on: March 29, 1999.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

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