

verify promptly that the report was in fact received by NHTSA and the day it was received by NHTSA.

(5) Submit the report to Chief Counsel (NCC-10), National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590.

[65 FR 81419, Dec. 26, 2000, as amended at 66 FR 38384, July 24, 2001]

§ 578.8 Civil penalty factors under 49 U.S.C. Chapter 301.

(a) *General civil penalty factors.* This subsection interprets the terms nature, circumstances, extent, and gravity of the violation consistent with the factors in 49 U.S.C. 30165(c).

(1) *Nature of the violation* means the essential, fundamental character or constitution of the violation. It includes but is not limited to the nature of a safety-related defect or noncompliance. It also includes what the violation involves.

(2) *Circumstances of the violation* means the context, facts, and conditions having bearing on the violation.

(3) *Extent of the violation* means the range of inclusiveness over which the violation extends including the scope, time frame and/or the degree of the violation. This includes the number of violations and whether the violations are related or unrelated.

(4) *Gravity of the violation* means the importance, significance, and/or seriousness of the violation.

(b) *Discretionary civil penalty factors.* Paragraph (b) of this section interprets the nine discretionary factors in 49 U.S.C. 30165(c)(1) through (9) that NHTSA may apply in making civil penalty amount determinations.

(1) *The nature of the defect or noncompliance* means the essential, fundamental characteristic or constitution of the defect or noncompliance. “Defect” is as defined in 49 U.S.C. 30102(a)(2). “Noncompliance” under this factor includes a noncompliance with a Federal Motor Vehicle Safety Standard (“FMVSS”), as well as other violations subject to penalties under 49 U.S.C. 30165. When considering the nature of a safety-related defect or noncompliance with an FMVSS, NHTSA may examine the conditions or circumstances under which the defect or

noncompliance arises, the performance problem, and actual and probable consequences of the defect or noncompliance. When considering the nature of the noncompliance with the Safety Act or a regulation promulgated thereunder, NHTSA may also examine the circumstances surrounding the violation.

(2) *Knowledge by the respondent of its obligations under this chapter* means all knowledge, legal and factual, actual, presumed and constructive, of the respondent of its obligations under 49 U.S.C. Chapter 301. If a respondent is other than a natural person, including but not limited to a corporation or a partnership, then the knowledge of an employee or employees of that non-natural person may be imputed to that non-natural person. The knowledge of an agent may be imputed to a principal. A person, such as a corporation, with multiple employees may be charged with the knowledge of each employee, regardless of whether the employees have communicated that knowledge among each other, or to a decision maker for the non-natural person.

(3) *The severity of the risk of injury* means the gravity of exposure to potential injury and includes the potential for injury or death of drivers, passengers, other motorists, pedestrians, and others. The severity of the risk includes the likelihood of an injury occurring and the population group exposed.

(4) *The occurrence or absence of injury* means whether injuries or deaths have occurred as a result of a defect, noncompliance, or other violation of 49 U.S.C. Chapter 301 or Chapter 5 of Title 49 of the Code of Federal Regulations. NHTSA may also take into consideration allegations of death or injury. The absence of deaths or injuries shall not be dispositive of manufacturer’s liability for civil penalties.

(5) *The number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance* means the total number of vehicles or items of motor vehicle equipment distributed with the defect or noncompliance with an FMVSS or the percentage of vehicles or items of motor vehicle equipment of the subject population

with the defect or noncompliance with an FMVSS. If multiple make, model and model years of motor vehicles are affected by the defect or noncompliance with an FMVSS, NHTSA may also consider the percentage of motor vehicles that contain the defect or noncompliance with an FMVSS as a percentage of the manufacturer's total annual production of vehicles. NHTSA may choose to make distinction between those defective or noncompliant products distributed in commerce that consumers received, and those defective or noncompliant products distributed in commerce that consumers have not received.

(6) *Actions taken by the respondent to identify, investigate, or mitigate the condition* means actions actually taken, the time frame when those actions were taken, what those actions involved and how they ameliorated or otherwise related to the condition, what remained after those actions were taken, and the speed with which the actions were taken. A failure to act may also be considered. NHTSA may also consider whether the respondent has set up processes to facilitate timely and accurate reporting and timely investigation of potential safety issues, whether it has audited such processes, whether it has provided training to employees on the processes, and whether such processes were followed.

(7) *The appropriateness of such penalty in relation to the size of the business of the respondent, including the potential for undue adverse economic impacts.* NHTSA takes the Small Business Regulatory Enforcement Fairness Act of 1996 into account. Upon a showing that a violator is a small entity, NHTSA may include, but is not limited to, requiring the small entity to correct the violation within a reasonable correction period, considering whether the violation was discovered through the participation by the small entity in a compliance assistance program sponsored by the agency, considering whether the small entity has been subject to multiple enforcement actions by the agency, considering whether the violations involve willful or criminal conduct, considering whether the violations pose serious health, safety or environmental threats, and requiring a

good faith effort to comply with the law. NHTSA may also consider the effect of the penalty on ability of the person to continue to operate. NHTSA may consider a person's ability to pay, including in installments over time, any effect of a penalty on the respondent's ability to continue to do business, and relevant financial factors such as liquidity, solvency, and profitability. NHTSA may also consider whether the business has been deliberately undercapitalized.

(8) *Whether the respondent has been assessed civil penalties under this section during the most recent 5 years* means whether the respondent has been assessed civil penalties, including a settlement agreement containing a penalty, a consent order or a lawsuit involving a penalty or payment of a civil penalty in the most recent 5 years from the date of the alleged violation, regardless of whether there was any admission of a violation or of liability, under 49 U.S.C. 30165.

(9) *Other appropriate factors* means other factors not identified above, including but not limited to aggravating and mitigating factors relating to the violation, such as whether there is a history of violations, whether a person benefitted economically from a violation, the effect of the respondent's conduct on the integrity of programs administered by NHTSA, and whether there was a failure to respond in a complete and timely manner to requests for information or remedial action.

[81 FR 10528, Mar. 1, 2016]

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

Subpart A—General

Sec.

579.1 Scope.

579.2 Purpose.

579.3 Application.

579.4 Terminology.

579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

579.6 Address for submitting reports and other information.