

## PART 588—CHILD RESTRAINT SYSTEMS RECORDKEEPING REQUIREMENTS

1. The authority citation for part 588 would be revised to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 588.5 would be revised to read as follows:

### § 588.5 Records.

Each manufacturer, or manufacturer's designee, shall record and maintain records of the owners of child restraint systems who have submitted a registration form. The record shall be in a form suitable for inspection such as computer information storage devices or card files, and shall include the names, mailing addresses, and if collected, e-mail addresses of the owners, and the model name or number and date of manufacture (month, year) of the owner's child restraint systems.

Issued on: June 4, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04-13052 Filed 6-10-04; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 578

[Docket No. NHTSA-04-17571; Notice 1]

RIN 2127-AJ32

#### 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 motor vehicle safety, bumper standards, and consumer information. 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 August 13, 2004.

**ADDRESSES:** All comments on this document should refer to the docket and notice number set forth above and be

submitted to Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. The docket room hours are from 9 a.m. to 5 p.m., Monday through Friday. Comments may also be submitted to the docket electronically. Documents may be filed electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. You may also visit the Federal E-Rulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

#### 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.

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, consumer group, 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>.

#### 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, Public Law 101-410), as amended by the Debt Collection Improvement Act of 1996, Public Law 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.

We have reviewed the amounts of civil penalties 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 motor vehicle safety, bumper standards, and consumer information regarding crashworthiness and damage susceptibility.

#### 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, 2004, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" would be the CPI for June 2003. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor" is 550.4.<sup>1</sup> The penalty amounts that NHTSA seeks to adjust based on the Act's requirements were last adjusted in 1999 for violations related to bumper standards and consumer information regarding crashworthiness and damage susceptibility and in 2000 for violations

<sup>1</sup> 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>. Select "US ALL ITEMS 1967=100—CUUR0000AA0", select the appropriate time frame covering the information sought, and select "Retrieve Data" from the menu.

related to motor vehicle safety. The CPI figures for June 1999 and June 2000 were 497.9 and 516.5, respectively. Accordingly, the factors that we are using in calculating the increase, are 1.10 (550.4/497.9) for adjustments to the bumper standard and consumer information penalties and 1.07 (550.4/516.5) for adjustments to the motor vehicle safety penalties. Using 1.10 and 1.07 as the inflation factors, 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.

#### **Motor Vehicle Safety Act, 49 U.S.C. Chapter 301 (49 CFR 578.6(a))**

The maximum civil penalty for a related series of violations of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of title 49 of the United States Code or a regulation thereunder is \$15,000,000, as specified in 49 CFR 578.6(a)(1). Likewise, the maximum penalty for a related series of daily violations of 49 U.S.C. 30166 or a regulation thereunder is \$15,000,000, as specified in 49 CFR 578.6(a)(2). The agency has not adjusted these penalty amounts since the enactment of the TREAD Act. Under the rounding formula set by the Adjustment Act, any increase in a penalty shall be rounded to the nearest multiple of \$25,000 in the case of penalties greater than \$200,000. Applying the formula using the

appropriate inflation factor (1.07) and the accompanying rounding rules, the increase in the penalty amounts would be \$1,050,000. Accordingly, we propose that 49 CFR 578.6(a)(1) and (a)(2) be amended to increase the maximum civil penalty to \$16,050,000 for a related series of motor vehicle safety violations. However, the maximum civil penalties for a single violation would remain at \$5,000 under 49 CFR 578.6(a) because the inflation-adjusted figures are not yet at a level to be increased under the Adjustment Act.

#### **Bumper Standards, 49 U.S.C. Chapter 325 (49 CFR 578.6(c)(2))**

The agency last adjusted its civil penalties for violations of bumper requirements under 49 U.S.C. chapter 325 in 1999. The maximum civil penalty for a related series of violations of 49 U.S.C. 32506(a) is \$925,000, as specified in 49 CFR 578.6(c)(2). Applying the appropriate inflation factor (1.10) to the calculation raises this figure to \$1,017,500, an increase of \$92,500. Under the rounding 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 case, the increase would be \$100,000. Accordingly, we propose that section 578.6(c)(2) be amended to increase the maximum civil penalty to \$1,025,000 for a related series of violations of the bumper standard provisions. However, the maximum civil penalty for a single violation remains at \$1,100 because the inflation-adjusted figure is not yet at a level to be increased.

#### **Consumer Information, 49 U.S.C. Chapter 323 (Crashworthiness and Damage Susceptibility (Section 578.6(d)))**

The civil penalties related to consumer information regarding crashworthiness and damage susceptibility were last adjusted in 1999. Under 49 CFR 578.6(d), the maximum civil penalty for a related series of violations of 49 U.S.C. 32308(a) is \$450,000. Applying the appropriate inflation factor (1.10) raises this figure to \$495,000, which is an increase of \$45,000. 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 \$50,000. Accordingly, we propose that section 578.6(d) be amended to increase the maximum civil penalty to \$500,000 for a related series of violations that pertain to NHTSA's crashworthiness and damage

susceptibility consumer information provisions. However, the maximum penalty for a single violation remains at \$1,100 because the inflation-adjusted figure is not yet at a level to be increased.

#### **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 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 Codes ("SIC"), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies," which used 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.<sup>2</sup>

<sup>2</sup> 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,

Many small businesses are subject to the penalty provisions of 49 U.S.C. chapters 301 (motor vehicle safety), 325 (bumpers) or 323 (consumer information) 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, out of 72 reporting we are aware of approximately 50 light vehicle manufacturers that are small businesses. In addition, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Additionally, many of the more than 70 manufacturers of medium-heavy medium heavy vehicles and buses, the more than 150 trailer manufacturers, and the 12 motorcycle manufacturers providing comprehensive EWR reports are small businesses and there are numerous others that are below the production threshold for comprehensive reporting. There are over 6 manufacturers of child restraints and 18 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 160 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

The bumper and consumer information 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 motor vehicle safety, bumper standards, and certain consumer information. The proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the motor vehicle safety and consumer information statutes, the penalty provisions require 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. 30165(b) (motor

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.

vehicle safety) and 49 U.S.C. 32308(b)(3) (consumer information). While the bumper standards penalty provision does not specifically require the agency to consider the size of the business, the agency would 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.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980, Public Law 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 Executive Order 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, Public Law 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.

#### **List of Subjects in 49 CFR Part 578**

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

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 578 as follows:

#### **PART 578—CIVIL AND CRIMINAL 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, 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 (a)(1), (a)(2), (c)(2), and (d) to read as follows:

\* \* \* \* \*

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

(a)(1) *Motor vehicle safety.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is \$16,050,000.

(2) *Section 30166.* A person who violates section 30166 of title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph is \$5,000 per violation per day. The maximum penalty under this paragraph for a

related series of violations is \$16,050,000.

\* \* \* \* \*

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

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$1,025,000.

(d) *Consumer information regarding crashworthiness and damage susceptibility.* A person that violates 49 U.S.C. 32308(a) is liable to the United States Government for a civil penalty of not more than \$1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is \$500,000.

\* \* \* \* \*

Issued on: June 4, 2004.

**Jacqueline Glassman,**  
*Chief Counsel.*

[FR Doc. 04-13056 Filed 6-10-04; 8:45 am]

**BILLING CODE 4910-59-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AJ16**

#### **Endangered and Threatened Wildlife and Plants; Extension of the Public Comment Period on the Proposed Designation of Critical Habitat for the California Red-legged Frog (*Rana aurora draytonii*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on the proposed designation of critical habitat for the California red-legged frog (*Rana aurora draytonii*). The comment period will provide the public, and Federal, State, and local agencies and Tribes with an opportunity to submit written comments on the proposal. Comments previously submitted for this proposal need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

**DATES:** The original comment period is scheduled to close on June 14, 2004 (69 FR 19620, April 13, 2004). The public comment period for this proposal is now extended for an additional 30 days. We will now accept comments and