

■ 16. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256C1 and adding Channel 256C2 at Walla Walla.

■ 17. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 292C3 and adding Channel 292A at Cheyenne.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04-21727 Filed 9-27-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 578

[Docket No. NHTSA-04-17571; Notice 2]

RIN 2127-AJ32

#### Civil Penalties

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

**ACTION:** Final rule.

**SUMMARY:** This document amends NHTSA's regulation on civil penalties by increasing 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 is 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:** This rule is effective on October 28, 2004. If you wish to submit a petition for reconsideration of this rule, your petition must be received by November 12, 2004.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to the docket.

**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, 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 in a notice published on November 14, 2000. 65 FR 68108.

On June 14, 2004, based on our review of the amounts of civil penalties authorized in part 578, we proposed to adjust those penalties where warranted under the Adjustment Act. 69 FR 32963. Our proposal addressed 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 adjustment will be effective before December 31, 2004, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" is 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 is adjusting 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 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 used 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;

<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.

(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.

#### **Revision of Civil Penalties Prescribed by Section 578.6**

In the Notice of Proposed Rulemaking, we reviewed penalties in section 578.6, calculated updated penalties using the appropriate CPI figures, considered the nearest higher multiple specified in the rounding provisions, and proposed that the penalties discussed below may be increased.

We received one comment on our proposal from a private individual who recommended that the agency impose no penalty under \$500 and that a maximum penalty of \$150,000 be imposed on violators of the provisions that we proposed to adjust. We are not modifying our proposal based on this comment because it is inconsistent with the penalty provisions in the statutes addressed in this notice and with the Adjustment Act. We are adjusting the penalties as proposed and as addressed below.

#### **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). 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 are amending 49 CFR 578.6(a)(1) and (a)(2) 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 will 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 are amending section 578.6(c)(2) 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 are amending section 578.6(d) 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.

#### **Rulemaking Analyses and Notices**

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, "Regulatory Planning and Review," provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to

the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures and has determined that it is not significant. This action is limited to the adoption of statutorily mandated adjustments of civil penalties under statutes that the agency enforces, raises no novel issues, and does not otherwise interfere with other actions. This final rule does not impose any costs that would exceed the \$100 million threshold or otherwise materially impact entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The agency has therefore determined this final rule 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 rule 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 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 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>

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 made by this rule. 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 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 rule 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 rule increases only 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 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 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 in today's rule will 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 does not establish penalty amounts, this rule will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this rule. As explained above, this action is limited to the 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, as amended, 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 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 rule does not have a retroactive or preemptive effect. A petition for reconsideration need not be filed prior to seeking judicial review, when available.

#### *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.

#### **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 continues 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 is amended by revising paragraphs (a)(1), (a)(2), (c)(2), and (d) 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.**

(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

<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, 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.

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: September 22, 2004.

Jeffrey W. Runge,  
Administrator.

[FR Doc. 04-21735 Filed 9-27-04; 8:45 am]

BILLING CODE 4910-59-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 579**

[Docket No. NHTSA 2001-8677; Notice 12]

RIN 2127-AJ41

**Reporting of Information and Documents About Potential Defects**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the date by which quarterly early warning reports are to be submitted to the agency from 30 days following the end of a calendar quarter to 60 days following the end of a calendar quarter. The final rule also amends the date by which copies of non-dealer field reports are to be submitted from 30 days after the quarterly reports are due to 15 days after those reports are due.

**DATES:** *Effective Date:* The effective date of this final rule is October 28, 2004. *Petitions for Reconsideration:* Petitions for reconsideration of the final rule must be received not later than November 12, 2004.

**ADDRESSES:** Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to

Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202-366-5226). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202-366-5263).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, 49 U.S.C. 30166(m) 67 FR 45822. The EWR final rule established a schedule for the reporting of information and submission of copies of certain field reports required by the rule. The first calendar quarter for which reports were required was the second calendar quarter of 2003. See 49 CFR 579.28(a)(2002). For the quarterly reporting periods in 2003, the reports were due within 60 days after the end of the quarter. Thereafter, starting in 2004, reports were to be due within 30 days after the end of the quarter. See 49 CFR 579.28(b) (2002).

In response to a petition for reconsideration of the final rule, on June 11, 2003, NHTSA amended the reporting dates. 68 FR 35145. Under the revised rule, the initial reporting period for all quarterly data<sup>1</sup> other than historical reports and copies of non-dealer field reports was the third quarter of 2003. Reports covering the last two quarters of 2003 and the first quarter of 2004 were due to NHTSA within 60 days after the close of the reporting period. Thereafter, reports currently are due within 30 days after the close of the quarter. NHTSA also amended the requirements for submission of copies of non-dealer field reports. The initial reporting period for the submission of copies of non-dealer field reports was the first calendar quarter of 2004. Under that amendment, the dealer field reports are due within 30 days after the quarterly data are due. 49 CFR 579.28(b), (n) (2003); see 68 FR 35145.

<sup>1</sup> In general, quarterly reports include information on production, incidents involving death or injury, numbers of property damage claims, numbers of consumer complaints, numbers of warranty claims or warranty adjustments, and numbers of field reports. See e.g., 49 CFR 579.21 (2003).

**II. Notice of Proposed Rulemaking**

In response to a petition for rulemaking filed by the Alliance of Automobile Manufacturers (Alliance), on June 29, 2004, NHTSA published a proposal to amend the date by which quarterly early warning reports are to be submitted to the agency from 30 days following the end of a calendar quarter to 60 days following the end of a calendar quarter. In addition, the agency proposed to amend the date by which copies of non-dealer field reports are to be submitted from 30 days after the quarterly reports are due to 15 days after those reports are due. 69 FR 38860. In the NPRM, the agency stated that based upon the experience of the Alliance's members, it appeared that manufacturers need more than 30 days to provide complete and accurate EWR reports to NHTSA. The agency further explained that complete reports best serve its EWR program because its analysts use the quarterly reports to assist in the identification of possible defect trends, and incomplete reports would disrupt the analytical process.

We received comments from industry trade associations and the public. For the industry, the Rubber Manufacturers Association (RMA), the Motor & Equipment Manufacturers Association (MEMA), the Association of International Automobile Manufacturers, Inc. (AIAM), the Alliance, and the Truck Manufacturers Association (TMA) submitted comments. In general, the industry supported the proposal and urged NHTSA to adopt it. Specifically, RMA indicated that its members report that the process of gathering information and completing the reports has been more complex than anticipated. In addition, MEMA commented that some of its members are part of large multi-national organizations that require more time to identify EWR information, translate it to English and prepare the applicable EWR report. Lastly, the Alliance and AIAM stated that the additional time to provide reports would ensure that its members provide complete and accurate reports to NHTSA.

We also received one comment against the proposal from a private citizen. That individual commented that 60 days to report EWR information is unreasonable since computers have the ability to quickly collate information.

**III. Discussion**

When we issued the EWR final rule, and when we postponed the initial reporting period on reconsideration, we believed that after manufacturers had three opportunities to gain experience