National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: August 11, 2005.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(108) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(108) Revisions to the State Implementation Plan submitted on June 22, 2004, by the New York State Department of Environmental Conservation, which consists of a revision to the carbon monoxide maintenance plan for Onondaga County.

(i) Incorporation by reference:

(A) Regulation Part 225–3, ''Fuel Composition and Use—Gasoline.'' of Title 6 of the New York Code of Rules and Regulations, filed on October 5, 2001, and effective on November 4, 2001.

■ 3. In § 52.1679, the table is amended by revising the entries under Title 6 for Part 225–3, Part 228, and Part 239 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * *	*	*	* * *
Part 225–3, Fuel Composition and Use—Gasoline	11/4/01	9/08/05 and FR page citation.	The Variance adopted by the State pursuant to section 225–3.5 becomes applicable only if approved by EPA as a SIP revision.
* * *	*	*	* * *
Part 228, ''Surface Coating Processes''	7/23/03	1/23/04, 69 FR 3240.	
* * *	*	*	* * *
Part 239, ''Portable Fuel Container Spillage Control''.	11/4/02	1/23/04, 69 FR 3240.	The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions.
* * *	*	*	* * *

■ 4. Section 52.1682 is amended by adding paragraph (c) to read as follows:

§ 52.1682 Control strategy: Carbon monoxide.

* * * * *

(c) Approval—The June 22, 2004 revision to the carbon monoxide maintenance plan for Onondaga County. This revision contains a second ten-year maintenance plan that demonstrates continued attainment of the National Ambient Air Quality Standard for carbon monoxide through the year 2013 and CO conformity budgets for the years 2003, 2009, and 2013.

[FR Doc. 05–17721 Filed 9–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–05–21161; Notice 2]

RIN 2127–AJ62

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 odometer tampering and disclosure requirements and vehicle theft protection. 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 11, 2005. If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 24, 2005.

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

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

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. For further details on this adjustment process, the statutory formula, and the agency's history of penalty adjustments, we refer readers to our May 25, 2005 Notice of Proposed Rulemaking (''NPRM'') at 70 FR 30051.

Revision of Civil Penalties Prescribed by Section 578.6

In the NPRM, we reviewed penalties in 49 CFR 578.6, calculated updated penalties using the appropriate Consumer Price Index figures, considered the nearest higher multiple specified in the rounding provisions, and proposed that the penalties discussed below be increased.

We received one comment on our proposal from a private individual who recommended that the agency impose no penalty under $1,000,000 and that a maximum penalty of $5,000,000 be imposed on violators of the provisions that we proposed to adjust. As we explained in our earlier notice, the amounts by which the agency can adjust its civil penalties are specifically prescribed by statute. Modifying our proposal as suggested in this comment would be inconsistent with the penalty provisions in the applicable statutes and with the Adjustment Act. Therefore, we are not making the change suggested by the commenter. Instead, we are adjusting the penalties as proposed in our NPRM and as addressed below.

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

The agency last adjusted its civil penalties for violations of odometer tampering and disclosure requirements under 49 U.S.C. Chapter 327 in 2001. Applying the formulation as set out in the NPRM, the adjusted civil penalty amount for violations of 49 CFR 578.6(f)(1) is raised from $120,000 to $130,000. As explained in the NPRM, the maximum civil penalty amount for single violations of 49 CFR 578.6(f)(1) remains at $2,200 because the inflation-adjusted figure is not yet at a level to be increased. *See* 70 FR at 30052. For similar reasons, 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 (49 CFR 578.6(g)(1)–(2))

The civil penalties related to vehicle theft protection were last adjusted in 2001. Applying the appropriate inflation factor as described in the NPRM raises the civil penalty amount in Section 578.6(g)(1) from $300,000 to $325,000. *Id.* Similarly, applying the same statutorily mandated formula to Section 578.6(g)(2) yields an increase from $120,000 to $130,000. Maximum penalties for single violations of 49 U.S.C. 33114(a)(1)–(4) as provided under Section 578.6(g)(1) will remain at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Other Issues—Technical Correction

The agency is also amending the language in 49 CFR 578.6(g)(2) to achieve consistency within the text of the regulation by capitalizing the word ''Government'' after ''United States'' to reflect that word's usage within other parts of Section 578.6.

Rulemaking Analyses and Notices

Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (As Amended)

As earlier discussed, the statutory basis for this final rule is 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. 104–34) (referred to collectively as the ''Adjustment Act'' or, in context, the ''Act''), which provides for agencies to adjust civil penalties for inflation, as warranted, at least once every four years. In 2001, the NHTSA last adjusted the civil penalties for violations of odometer tampering and disclosure requirements under 49 U.S.C. Chapter 327 and the civil penalties related to vehicle theft protection under 49 U.S.C. Chapter 331. Since four years have passed since 2001, under the Adjustment Act, we are now adjusting these civil penalties for inflation.

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 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.[1]

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapters 327 (odometer disclosure and tampering) and, to a lesser extent, 331 (vehicle theft protection). Consequently, these entities may be affected by the adjustments that this rule makes. 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 businesses. Also, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Furthermore, there are about 130 registered importers.

As noted throughout this preamble, this rule only increases 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 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 in the rule 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 does not establish penalty amounts, the rule 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 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.

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 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 regulation.

We have analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this rule does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will 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 12988 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of this rule 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

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995. This rulemaking action will not impose any filing or record keeping requirements on any manufacturer or any other party.

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

Motor vehicle safety, Penalties.

[1] 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.

■ In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 106–414, 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, in paragraph (f)(1), the third sentence; revising, in paragraph (g)(1), the third sentence; and revising paragraph (g)(2), to read as follows:

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

* * * * *

(f) *Odometer tampering and disclosure.* (1) * * * The maximum civil penalty under this paragraph for a related series of violations is $130,000.

* * * * *

(g) *Vehicle theft protection.* (1) * * * 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: September 1, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–17747 Filed 9–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040809233–4363–03; I.D. 083105A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area I Scallop Access Area to General Category Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Closed Area I (CAI) Scallop Access Area for general category scallop vessels for the remainder of the 2005 fishing year (through February 28, 2006). This closure is based on a determination by the Northeast Regional Administrator (RA) that general category scallop vessels will have made all of the 162 allowed trips by 0001 hr local time September 8, 2005. This action is being taken to prevent the allocation of general category trips in CAI Scallop Access Area from being exceeded during the 2005 fishing year in accordance with the regulations implemented under Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework 39 to the Northeast Multispecies FMP (Joint Frameworks) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective 0001 hr local time September 8, 2005, through February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the Sea Scallop Access Areas are found at 50 CFR 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the CAI Scallop Access Area are specified at ' 648.59(b)(5)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the CAI Scallop Access Area under specific conditions, including a cap of 162 trips to be made by general category vessels during the 2005 fishing year. The regulations at ' 648.59(b)(5)(ii) require the RA to close the CAI Scallop Access Area to general category scallop vessels once the RA has determined that the allowed number of trips are projected to be taken.

As of August 26, 2005, 136 trips had been completed by general category scallop vessels fishing in the CAI Scallop Access Area. Based on VMS trip declarations and analysis of fishing effort, a projection concluded that, given current activity levels by general category scallop vessels in the area, the trip cap would be attained by September 8, 2005. Therefore, in accordance with the regulations at 50 CFR 648.59(b)(5)(ii), this action closes the CAI Scallop Access Area to all general category scallop vessels as of 0001 hr local time September 8, 2005. This closure is in effect for the remainder of the 2005 fishing year, which ends February 28, 2006. The CAI Scallop Access Area is scheduled to re-open to scallop fishing, including trips for general category scallop vessels, on June 15, 2006, unless the schedule for Scallop Access Areas is modified by the New England Fishery Management Council.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment because it is impracticable and contrary to the public interest. The regulations at ' 648.59(b)(5)(ii) require the RA to close the CAI Scallop Access Area to general category scallop vessels to ensure that general category scallop vessels do not take more than the allocated number of trips in the Scallop Access Area. Data only recently became available indicating that the allocated trips will be taken by September 8, 2005. Allowing general category vessels to continue to take trips in the CAI Scallop Access Area after September 8, 2005, would result in vessels taking more than the allowed number of trips in the CAI Scallop Access Area, and in the localized over-harvest of the scallop resource. Such overharvest would likely reduce the projected levels of fishing activity within the CAI Scallop Access Area in future years for both general category and limited access scallop vessels. This conflicts with the agency's obligation to achieve the objectives of the FMP and to implement its measures in an effective manner. Based on the foregoing, the AA finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17801 Filed 9–2–05; 2:32 pm]

BILLING CODE 3510–22–S