

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Maps are available for inspection at 51 N Street, NE., Suite 5020, Washington, DC 20002.

Send comments to Mr. Timothy Karikari, P.E., CPESC, NFIP Coordinator, 51 N Street, NE., 5th Floor, Room 5021, Washington, DC 20002.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 18, 2007.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. E7-18951 Filed 9-25-07; 8:45 am]

**BILLING CODE 9110-12-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 578**

**[Docket No. NHTSA-2007-28445; Notice 1]**

**RIN 2127-AK07**

**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 the odometer tampering and disclosure requirements and certain administrative provisions of the Energy Policy and Conservation Act. 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 October 26, 2007.

Proposed effective date: 30 days after date of publication of the final rule in the **Federal Register**.

**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number NHTSA-2007-28445] by any of the following methods:

If filing comments by September 27, 2007, please use:

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted

between September 28, 2007, and October 1, 2007.

If filing comments on or after October 1, 2007, use:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202-493-2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.dms.dot.gov> or <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* 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 (65 FR 19477-78).

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> until September 27, 2007, or the street address listed above. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the internet access to the docket will be at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:**

Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366-5263, facsimile (202) 366-3820, 1200 New Jersey Avenue, SE., 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 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 penalties under statutes administered by NHTSA, as adjusted, in 49 CFR Part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties. 64 FR 37876. In 2000, the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act increased the maximum 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 Part 578 on November 14, 2000. 65 FR 68108. On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer tampering and disclosure requirements and vehicle theft prevention. 66 FR 41149. On September 28, 2004, we adjusted the maximum penalty amounts for a related series of violations involving the agency's provisions governing vehicle safety, bumper standards, and consumer information. 69 FR 57864. On September 8, 2005, the agency adjusted its penalty amounts for violations of its

vehicle theft protection standards and those involving a related series of odometer-related violations. 70 FR 53308. Most recently, on May 16, 2006, the agency adjusted its penalty amounts for violations of the Motor Vehicle Safety Act, as amended, and codified amendments made to the Motor Vehicle Safety Act by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU). 119 Stat. 1144, 1942–43 (Aug. 10, 2005).

We have reviewed the civil penalty amounts in 49 CFR Part 578 and propose in this notice to adjust certain penalties under the Adjustment Act. Those civil penalties that we are proposing to adjust address penalty amounts pertaining to single violations involving (1) odometer tampering and disclosure and (2) administrative provisions of the automobile fuel economy law.

#### Method of Calculation—Proposed Adjustments

Under the Adjustment Act, we first calculate the inflation adjustment for each applicable civil penalty by arithmetically increasing the maximum civil penalty amount per violation by a cost-of-living adjustment. 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, 2007, the “Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment” would be the CPI for June 2006.<sup>1</sup> This figure, based on the Adjustment Act’s requirement of using the CPI “for all-urban consumers published by the Department of Labor” is 607.8.<sup>2</sup> The penalty amounts that NHTSA proposes to adjust for single violations of both the agency’s odometer tampering and disclosure requirements

<sup>1</sup> We note that in the event that this rule becomes effective in 2008, the agency would use the CPI for June 2007 to calculate this adjustment.

<sup>2</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>. Scroll down to “Most Requested Statistics” and select the “All Urban Consumers (Current Series)” option, select the “U.S. ALL ITEMS 1967=100—CUUR0000AA0” box, and click on the “Retrieve Data” button.

and certain administrative provisions of the Energy Policy and Conservation Act of 1975 as amended and recodified (EPCA), which generally regulates fuel economy, were last set in 1997 based on the Adjustment Act’s requirements. The CPI figure for June 1997 is 480.2.

Accordingly, the factor that we are using in calculating the proposed increases is 1.27 (607.8/480.2) for both penalty amounts.

Second, using this inflation factor, increases above the current maximum penalty levels are calculated and 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.

#### Change to Maximum Penalty (Single Violation) Under the Odometer Tampering and Disclosure Provision, 49 U.S.C. Chapter 327 (49 CFR 578.6(f)(1))

The maximum civil penalty for a single violation of the odometer tampering and disclosure statutory provisions or a regulation prescribed thereunder is \$2,200, as specified in 49 CFR 578.6(f)(1). See 62 FR 5167. The underlying statutory civil penalty provision is contained in 49 U.S.C. 32709(a). Applying the appropriate inflation factor (1.27) raises the \$2,200 figure to \$2,794, an increase of \$594. Under the rounding formula, any increase in a penalty’s amount shall be rounded to the nearest multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000. In this case, the increase would be \$1,000. Accordingly, we propose that Section 578.6(f)(1) be amended to increase the maximum civil penalty from \$2,200 to \$3,200 for a single violation.

#### Change to Maximum Penalty (Single Violation) Under the Automobile Fuel Economy Provisions, 49 U.S.C. Chapter 329 (49 CFR 578.6(h)(1))

The maximum civil penalty for a single violation of certain administrative provisions of EPCA is \$11,000, as specified in 49 CFR 578.6(h)(1). See 62 FR 5167. Specifically, Section 578.6(h)(1) applies a maximum penalty of \$11,000 for a violation of 49 U.S.C. 32911(a), which applies generally to violations of 49 U.S.C. Chapter 329, excluding 49 U.S.C. 32902 (average fuel economy standards), 32903 (credits for exceeding average fuel economy standards), 32908(b) (fuel economy labeling requirements), 32917(b) (executive agency fleet average fuel economy), and 32918 (retrofit devices). Section 32911(a) applies, for example, to inaccurate reports to NHTSA under 49 U.S.C. 32907 and regulations promulgated thereunder. The underlying statutory civil penalty provision is 49 U.S.C. 32912(a). Applying the appropriate inflation factor (1.27) raises the \$11,000 figure to \$13,970, an increase of \$2,970. Under the rounding formula, any increase in a penalty’s amount shall be rounded to the nearest multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000. In this case, the increase would be \$5,000. Accordingly, we propose that § 578.6(h)(1) be amended to increase the maximum civil penalty from \$11,000 to \$16,000 for a single violation.

#### 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-2006-1234," 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 (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.

Many small businesses are subject to the penalty provisions of the odometer laws in 49 U.S.C. Chapter 327. Some small businesses are subject to the EPCA provisions in 49 U.S.C. Chapter 329 and therefore may be affected by the adjustments that this NPRM proposes to make. As noted throughout this preamble, this proposed rule would increase only the maximum penalty amounts that the agency could obtain for a single violation of the odometer tampering and disclosure provisions and administrative provisions of EPCA. The proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the odometer laws, the applicable penalty provision requires the agency to take into account the ability to pay and any effect on the ability to continue doing business when determining the appropriate civil penalty in an individual case. See 49 U.S.C. 32709(a)(3)(B). Although EPCA does not provide for consideration of business size, it contains a provision for the compromise or remittitur of penalties for violations of 49 U.S.C. 32911(a). See 49 U.S.C. 32912(a) and 32913(a). The agency would also consider the size of a business under its civil penalty policy when determining the appropriate civil penalty amount for violations of 49 U.S.C. 32701 *et seq.* or 49 U.S.C. 32911(a). 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.

Since this proposed regulation would not establish penalty amounts, this proposal will not have a significant economic impact on small businesses.

Small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not 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.

#### *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 proposed regulation.

This proposed rule will not 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, as specified in Executive Order 13132. The reason is that this proposed rule would apply to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply.

#### *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 proposed rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

#### *National Environmental Policy Act*

We have also analyzed this proposed rulemaking action under the National Environmental Policy Act and determined that it would have no significant impact on the human environment.

#### *Executive Order 12778 (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.

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

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

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

## **PART 578—CIVIL AND CRIMINAL PENALTIES**

In consideration of the foregoing, 49 CFR Part 578 would be amended as set forth below.

1. The authority citation for 49 CFR Part 578 would continue to read as follows:

**Authority:** Pub. L. 101-410, Pub. L. 104-134, Pub. L. 106-414, 49 U.S.C. 30165, 49 U.S.C. 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 (f)(1) and (h)(1) 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) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$3,200 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is \$130,000.

\* \* \* \* \*

(h) *Automobile fuel economy.* (1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than \$16,000 for each violation. A separate violation occurs for each day the violation continues.

\* \* \* \* \*

Issued on: September 21, 2007.

**Anthony M. Cooke,**

*Chief Counsel.*

[FR Doc. E7-19019 Filed 9-25-07; 8:45 am]

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