

serves the producer's renewable fuel facility.

(iii) The process heat produced from combustion of gas at a renewable fuel facility described in paragraph (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

* * * * *

6. Section 80.1451 is amended by revising paragraph (b)(1)(ii)(M) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

- (b) * * *
- (1) * * *
- (ii) * * *

(M) The type of co-products produced with each batch.

* * * * *

■ 7. Section 80.1452 is amended as follows:

- a. By revising paragraphs (b) introductory text, (b)(1), (b)(2), (b)(4), (b)(5), (b)(6), (b)(9), (b)(13), and (b)(15).
- b. By revising paragraphs (c) introductory text, (c)(4), (c)(5), and (c)(7).

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) Starting July 1, 2010, each time a domestic or foreign producer or importer of renewable fuel assigns RINs to a batch of renewable fuel pursuant to § 80.1426(e), all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the date of RIN assignment.

- (1) The name of the renewable fuel producer or importer.
- (2) The EPA company registration number of the renewable fuel or foreign ethanol producer, as applicable.

* * * * *

(4) The EPA facility registration number of the renewable fuel or foreign ethanol producer, as applicable.

(5) The importer's EPA facility registration number if applicable.

(6) The D code of RINs generated for the batch.

* * * * *

(9) The fuel type of the batch.

* * * * *

(13) The type and quantity of feedstock(s) used for the batch.

* * * * *

(15) The type and quantity of co-products produced with the batch of renewable fuel.

* * * * *

(c) Starting July 1, 2010, each time any party sells, separates, or retires RINs generated on or after July 1, 2010, all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the reportable event. Starting July 1, 2010, each time any party purchases RINs generated on or after July 1, 2010, all the following information must be submitted to EPA via the submitting party's EMTS account within ten (10) business days of the reportable event. The reportable event for a RIN purchase or sale occurs on the date of transfer per § 80.1453(a)(4). The reportable event for a RIN separation or retirement occurs on the date of separation or retirement as described in § 80.1429.

* * * * *

(4) The RIN status (Assigned or Separated).

(5) The D code of the RINs.

* * * * *

(7) The date of transfer per § 80.1453(a)(4), if applicable.

* * * * *

■ 8. Section 80.1454 is amended by revising paragraph (b)(3)(xi) and adding a new paragraph (b)(3)(xii).

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

- (b) * * *
- (3) * * *

(xi) For RINs generated for ethanol produced from corn starch at a facility using a pathway in Table 1 to § 80.1426 that requires the use of one or more of the advanced technologies listed in Table 2 to § 80.1426, documentation to demonstrate that employment of the required advanced technology or technologies was conducted in accordance with the specifications in Tables 1 and 2 to § 80.1426, including any requirement for application to 90% of the production on a calendar year basis.

(xii) All commercial documents and additional information related to details of RIN generation.

* * * * *

■ 9. Section 80.1464 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

- (b) * * *
- (1) * * *

(iii) Verify that the proper number of RINs were generated and assigned pursuant to the requirements of § 80.1426 for each batch of renewable

fuel produced or imported. For RINs generated for ethanol produced from corn starch at a facility using a pathway in Table 1 to § 80.1426 that requires the use of one or more of the advanced technologies listed in Table 2 to § 80.1426, verify that the required advanced technology or technologies were employed in accordance with the specifications in Tables 1 and 2 to § 80.1426, including any requirement for application to 90% of the production on a calendar year basis.

* * * * *

[FR Doc. 2010-31910 Filed 12-20-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA-2010-0114; Notice 2]

RIN 2127-AK78

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final Rule.

SUMMARY: This document increases the maximum civil penalty amounts for related series of violations of the National Traffic and Motor Vehicle Safety Act, as amended (Vehicle Safety Act) and increases the liability for a violation of odometer disclosure or other odometer requirements with intent to defraud. 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 NHTSA to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: This final rule is effective January 20, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Fourth Floor, Washington, DC 20590, with a copy to the DOT docket. Copies to the docket may be submitted electronically [identified by DOT Docket ID Number NHTSA-2010-0114] by visiting the following Web site:

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

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, 19477-78).

FOR FURTHER INFORMATION CONTACT: Jessica Lang, Office of Chief Counsel, NHTSA, telephone (202) 366-5902, 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. Since that time, we have adjusted available penalties on a number of occasions. See 75 FR 49879, 49880 (Aug. 16, 2010)

On August 16, 2010, the Agency published a Notice of Proposed Rulemaking (NPRM) entitled "Civil Penalties" which proposed the adjustment for inflation of civil penalties for related series of violations of the Vehicle Safety Act and the liability for a violation of the odometer law with intent to defraud. 75 FR 49879. The Agency received no comments to this NPRM.

Under the Adjustment Act, we now adjust the civil penalties available for related series of violations of the Vehicle Safety Act and an amount for a violation of odometer disclosure or other odometer requirements with intent to defraud.

Method of Calculation—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.

Because the adjustment is intended to be effective before December 31, 2010, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" is the CPI for June 2009. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor," is 646.1.¹

NHTSA now adjusts the maximum penalty for a related series of violations of the Vehicle Safety Act, in general, as well as those for violations of 49 U.S.C. 30166 or a regulation thereunder. See 49 U.S.C. 30165(a)(1) and (a)(3). These amounts were last adjusted in 2006 (CPI = 607.8). 71 FR 28279, 28281-82. Accordingly, the factor that we use to calculate these increases is 1.06 (646.1/607.8).

NHTSA also now adjusts the odometer law's maximum penalty for intent to defraud. See 49 U.S.C. 32709(d), 32710(a). This amount was last adjusted in 1999 (CPI = 497.9). 64 FR 37876, 37878. Accordingly, the factor that we use to calculate this increase is 1.30 (646.1/497.9).

Using these inflation factors, 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.

Amendments to Maximum Penalties

Maximum Penalty (a Related Series of Violations) Under the Motor Vehicle Safety Act in General (49 CFR 578.6(a)(1) and Section 30166 (49 CFR 578.6(a)(3))

The maximum civil penalty for a related series of violations under the Vehicle Safety Act or a regulation issued thereunder is \$16,375,000 as specified in 49 CFR 578.6(a)(1). The underlying statutory provision is 49 U.S.C. 30165(a)(1). The maximum civil penalty for a related series of violations of 49 U.S.C. 30166 or a regulation issued thereunder is \$16,375,000 as specified in 49 CFR 578.6(a)(3). The underlying statutory provision is 49 U.S.C. 30165(a)(3).

Applying the appropriate inflation factor (1.06) raises each of the \$16,375,000 penalties to \$17,357,500, an increase of \$982,500. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest \$25,000 in the case of penalties greater than \$200,000. Accordingly, today we amend Section 578.6(a)(1) and Section 578.6(a)(3) of Title 49 Code of Federal Regulations to increase the maximum civil penalty for a related series of violations from \$16,375,000 to \$17,350,000.

Amount for Violation With Intent To Defraud Under the Odometer Standards Provision, 49 U.S.C. Chapter 327 (49 CFR § 578.6(f)(2))

The liability for a violation of the odometer statute, 49 U.S.C. Chapter 327, or a regulation or order, with intent to defraud is three times the actual damages or \$2,000, whichever is greater, as specified in 49 CFR 578.6(f)(2). The underlying statutory provisions are 49 U.S.C. 32709(d)(1) and 49 U.S.C. 32710(a). Applying the appropriate inflation factor (1.30) raises the \$2,000 figure to \$2,600, an increase of \$600. 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

¹ 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.

than \$1,000, but less than or equal to \$10,000. In this case, the increase would be \$1,000. Accordingly, today we amend Section 578.6(f)(2) to increase the amount for a violation of the statute or a regulation prescribed or order issued thereunder with intent to defraud from three times the actual damages or \$2,000, whichever is greater, to three times the actual damages or \$3,000, whichever is greater.

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 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 this final 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 (SBA) 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 Title 49 U.S.C. Chapters 301 (motor vehicles, in general and Section 30166) and 327 (odometer requirements); therefore, small businesses may be affected by this final rule. Entities that are potentially

affected vary by statute and may include manufacturers of motor vehicles and motor vehicle equipment, sellers of vehicles and equipment, repair shops and others.

The adjustment to penalty amounts in 49 U.S.C. 30165(a)(1), relating to motor vehicle safety, in general, and in 49 U.S.C. 30165 (a)(3), relating to Section 30166, potentially impacts numerous entities including manufacturers, sellers and importers of motor vehicles and motor vehicle equipment. We do not have data on how many other entities within the ambit of 49 U.S.C. 30165(a)(1) and (a)(3) are small businesses, but the number is considerable.

The adjustment to penalty amounts in Chapter 327 relating to odometer requirements potentially impacts a number of small businesses including repair businesses, used car dealers, businesses that are lessors of vehicles, auction houses, and entities making devices that could change an odometer's mileage. Although we do not have information on how many of these entities are small businesses, we believe a large percentage are small businesses.

As noted throughout this preamble, this final rule on civil penalties increases the maximum penalty amounts that the agency could obtain for certain violations of provisions related to motor vehicle safety in general and for 49 U.S.C. 30166 violations, including regulations thereunder. This final rule does not set the amount of penalties for any particular series of violations under the Vehicle Safety Act. Under Vehicle Safety Act, the agency takes into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 30165(c).

Today's penalty adjustments would not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (SBREFA). See 62 FR 37115 (July 10, 1997). As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged. In these matters, there would not be a significant economic impact on small businesses.

The amount in civil actions by state attorneys general and private persons for violations of the odometer statute or a regulation prescribed or order issued under that statute is set by statute. It requires intent to defraud, and is three times actual damages or, as set today, \$3,000, whichever is greater. The statute also provides for costs and attorneys fees. 49 U.S.C. 32710. Thus, the \$3,000 figure is but one aspect of costs that a

violator may face. The vast majority of civil actions settle.

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 final 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 Section 6 of 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.

This final 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. 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, 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 final rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This final 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

Motor vehicle safety, Penalties.
■ 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 part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30170, 30505, 32304A,

32308, 32309, 32507, 32709, 32710, 32912, and 33115 as amended; delegation of authority at 49 CFR 1.50.

■ 2. Section 578.6, paragraphs (a)(1), (a)(3) and (f)(2) are revised to read as follows:

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

(a) *Motor vehicle safety*—(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 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 \$6,000 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 \$17,350,000.

* * * * *

(3) *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 \$6,000 per violation per day. The maximum penalty under this paragraph for a related series of daily violations is \$17,350,000.

* * * * *

(f) * * *

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$3,000, whichever is greater.

* * * * *

Issued on: December 15, 2010.

David L. Strickland,
Administrator.

[FR Doc. 2010–32008 Filed 12–20–10; 8:45 am]

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