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United States (US) Footnotes

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US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, and 2483.5–2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

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Non-Federal Government (NG) Footnotes

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NG156 Except as permitted below, the use of the 2000–2020 MHz band is limited to the MSS and ancillary terrestrial component offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the 2000–2020 MHz band, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the mobile-satellite service (MSS); and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

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NG168 Except as permitted below, the use of the 2180–2200 MHz band is limited to the MSS and ancillary terrestrial component offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the 2180–2200 MHz band, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the mobile-satellite service (MSS); and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

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PART 25—SATELLITE COMMUNICATIONS

9. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

10. Section 25.149 is amended by adding paragraph (g) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

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(g) *Spectrum leasing.* Lease of spectrum rights by MSS licensees or system operators for ATC use is subject to the rules spectrum leasing arrangements as set forth in Part 1, subpart X of the rules (*see* §§ 1.9001 through 1.9080 of this chapter.).

[FR Doc. 2010–19824 Filed 8–13–10; 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 1]

RIN 2127–AK78

Civil Penalties

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes to increase the maximum civil penalty amounts for violations covering a related series of violations of the Vehicle Safety Act and violations of the odometer standard with intent to defraud. 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 September 15, 2010.

ADDRESSES: You may submit comments 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.

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://www.regulations.gov>. Follow the online instructions for accessing the dockets.

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. 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 (also referred to as the "Motor Vehicle Safety Act" or "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. On May 16, 2006, the agency adjusted its penalty amounts for violations of the Motor Vehicle Safety Act 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). 71 FR 28279. On February 25, 2008, the agency made adjustments to penalty amounts for odometer-related violations and violations of certain administrative provisions of the Energy Policy and Conservation Act. 73 FR 9955. Most recently, on February 2, 2010, the agency adjusted penalty amounts for violations of the school bus safety provisions, bumper standards provisions, consumer information requirements and odometer tampering and disclosure requirements. 75 FR 5246.

We have reviewed the civil penalty amounts in 49 CFR part 578 and, in this notice, propose to adjust certain penalties under the Adjustment Act. The civil penalties that we propose to adjust are available for a related series of violations of the Motor Vehicle Safety Act and violations of the odometer standard with intent to defraud.

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.

Because the proposed 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 proposes to adjust the penalty for a related series of violations of the Safety Act, in general, as well as Section 30166 violations. These amounts were last adjusted in 2006 (CPI = 607.8). Accordingly, the factor that we use to calculate these proposed increases is 1.06 (646.1/607.8).

NHTSA also proposes to adjust the odometer law's maximum penalty for intent to defraud. This amount was last adjusted in 1999 (CPI = 497.9). Accordingly, the factor that we use to calculate this proposed increase is 1.30 (646.1/497.9).

Next, 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.

Proposed Amendments to Maximum Penalties

Change to 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 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 violation 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, we propose that Section 578.6(a)(1) and Section 578.6(a)(3) each be amended to increase the maximum civil penalty for a related series of violations from \$16,375,000 to \$17,350,000.

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

The maximum civil penalty 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 provision is 49 U.S.C. 32709. 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 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)(2) be amended to increase the maximum civil penalty 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.

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.

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 confidentiality 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, go to <http://www.regulations.gov> and follow the on-line instructions provided.

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 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 the proposed adjustments in this NPRM. Entities that are potentially affected by the proposed amendments vary by statute and may include manufacturers of motor vehicles and motor vehicle equipment, sellers of vehicles and equipment, repair shops and others.

The proposed 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 proposed 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 proposed rule on civil penalties would only increase the maximum penalty amounts that the agency could obtain for certain violations of provisions related to motor vehicle safety, in general, Section 30166 violations, and odometer violations with intent to defraud. This proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the statute for motor vehicle safety, 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. 30165(c). The statute for odometers does not directly address small business size as a consideration, but does require consideration of "any effect on the ability to continue doing business." 49 U.S.C. 32709(a)(3)(B). The agency would consider the size of the business in such a calculation.

The penalty adjustments that are being proposed 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.

Because this proposed regulation would not establish penalty amounts, it 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 to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

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 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. 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.

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

Motor vehicle safety, Penalties.

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

PART 578—CIVIL AND CRIMINAL PENALTIES

1. The authority citation for 49 CFR part 578 is amended 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 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:

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) *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.

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(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.

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(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 to the United States Government for a civil penalty of three times the actual damages or \$3,000, whichever is greater.

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Issued on: August 10, 2010.

O. Kevin Vincent,
Chief Counsel.

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