

CLIENT ALERT

NHTSA Maximum Civil Penalties on the Rise

November 27, 2012

Recent regulatory and Congressional action will increase the maximum civil penalties allowable for violations of certain statutes administered by the National Highway Traffic Safety Administration ("NHTSA"). Before the end of 2012, the maximum civil penalty for a series of related violations will rise to \$17,350,000. That maximum allowable penalty will more than double to \$35,000,000 on October 1, 2013.

Today's Federal Register published NHTSA's final rule to increase the current maximum civil penalties allowable for violations of certain statutes administered by NHTSA. The final rule, which will take effect on December 27, 2012, adjusts the maximum civil penalties for inflation as required by the Federal Civil Monetary Penalty Inflation Adjustment Act. The rule specifically provides for the following penalty maximum increases:

Rules	Current Maximum Penalty	Proposed Maximum Penalty
Motor Vehicle Safety Rules (including reporting safety-related defects) 49 U.S.C. §§ 30112, 30115, 30117-30122, 30123(a), 30125(c), 30127, 30141-30147	<ul style="list-style-type: none"> • Single per-day violation: \$6,000 • Series of related violations: \$16,375,000 	<ul style="list-style-type: none"> • Single per-day violation: \$7,000 • Series of related violations: \$17,350,000
School Buses 49 U.S.C. §§ 30112(a)(1), (a)(2)	<ul style="list-style-type: none"> • Series of related violations: \$16,650,000 	<ul style="list-style-type: none"> • Series of related violations: \$17,250,000
Inspections, Investigations and Records 49 U.S.C. § 30166	<ul style="list-style-type: none"> • Single per-day violation: \$6,000 • Series of related violations: \$16,375,000 	<ul style="list-style-type: none"> • Single per-day violation: \$7,000 • Series of related violations: \$17,350,000
Bumper Standards 49 U.S.C. § 32506(a)	<ul style="list-style-type: none"> • Series of related violations: \$1,175,000 	<ul style="list-style-type: none"> • Series of related violations: \$1,225,000
Consumer Information 49 U.S.C. § 32308	<ul style="list-style-type: none"> • Series of related violations: \$575,000 	<ul style="list-style-type: none"> • Series of related violations: \$600,000

Medium- and Heavy-Duty Vehicle Fuel Efficiency 49 C.F.R. § 535	<ul style="list-style-type: none"> • None codified 	<ul style="list-style-type: none"> • Series of related violations: \$37,500 per vehicle or engine
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The final rule amends the current regulations, published at 49 C.F.R. § 578.

The increased maximum penalty of \$17,350,000 will, however, be short-lived. On July 6, 2012, President Obama signed into law the Moving Ahead for Progress in the 21st Century Act ("MAP-21"), which increases the statutory maximum civil penalty to \$35,000,000 for violations of the motor vehicle safety rules, and the inspections, investigations and records provisions. MAP-21 also establishes factors the Secretary of Transportation must consider in determining the appropriate penalty to impose. Though the Secretary may consider "other appropriate factors," MAP-21 identifies the following considerations:

- "the nature of the defect or noncompliance";
- "knowledge of the person charged of its obligations";
- "severity of the risk of injury";
- "the occurrence or absence of injury";
- "the number of motor vehicles or items of motor vehicle equipment distributed with the defect or noncompliance";
- "actions taken by the person charged to identify, investigate, or mitigate the condition";
- "the appropriateness of such penalty in relation to the size of the business of the person charged, including the potential for undue adverse economic impacts"; and
- "whether the person has been assessed civil penalties under this section during the most recent 5 years."

While the existing statute does require the Secretary of Transportation to consider the appropriateness of the penalty to the size of the business charged and the gravity of the violation, the new list of considerations is far more specific, and may allow for more tailored penalties. Further, MAP-21 requires NHTSA to publish a rule interpreting the penalty factors and related issues by October 1, 2013, which may provide additional guidance on appropriate civil penalties.

The penalty provisions of MAP-21 will revise 49 U.S.C. § 30165, and will become effective on October 1, 2013.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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