Ambler, AK, Ambler, NDB RWY 36, Amdt 1A
Hope, AR, Hope Muni, VOR/DME or GPS RWY 4, Amdt 6 Cancelled
Hope, AR, Hope Muni, VOR/DME RWY 4, Amdt 6
Hope, AR, Hope Muni, NDB or GPS RWY 16, Amdt 3 Cancelled
Hope, AR, Hope Muni, NDB RWY 16, Amdt 3
Monticello, AR, Monticello, Muni, VOR or GPS–A, Amdt 4A Cancelled
Monticello, AR, Monticello, Muni, VOR–A, Amdt 4A
Hays, KS, Hays Muni, VOR or GPS RWY 16, Amdt 3 Cancelled
Hays, KS, Hays Muni, VOR RWY 16, Amdt 3
Jefferson City, MO, Jefferson City Memorial, NDB or GPS RWY 12, Amdt 1 Cancelled
Jefferson City, MO, Jefferson City Memorial, NDB RWY 12, Amdt 1
Forsyth, MT, Tillitt Field, NDB or GPS RWY 26, Amdt 2A Cancelled
Forsyth, MT, Tillitt Field, NDB RWY 26, Amdt 2A
Glasgow, MT, Glasgow Intl, VOR or GPS RWY 12, Amdt 3 Cancelled
Glasgow, MT, Glasgow Intl, VOR RWY 12, Amdt 3
Alliance, NE, Alliance Muni, VOR or GPS RWY 12, Amdt 2B Cancelled
Alliance, NE, Alliance Muni, VOR RWY 12, Amdt 2B
York, NE, York Muni, NDB or GPS RWY 35, Amdt 3 Cancelled
York, NE, York Muni, NDB RWY 35, Amdt 3
Las Vegas, NV, McCarran Intl, VOR/DME or GPS RWY 1R, Orig-A Cancelled
Las Vegas, NV, McCarran Intl, VOR/DME RWY 1R, Orig-A
Chandler, OK, Chandler Muni, NDB or GPS RWY 35, Orig Cancelled
Chandler, OK, Chandler Muni, NDB RWY 35, Orig
Corvallis, OR, Corvallis Muni, NDB or GPS RWY 17, Amdt 1 Cancelled
Corvallis, OR, Corvallis Muni, NDB RWY 17, Amdt 1
Providence, RI, Theodore Francis Green State, VOR/DME or GPS RWY 16, Amdt 4 Cancelled
Providence, RI, Theodore Francis Green State, VOR/DME RWY 16, Amdt 4
Houston, TX, Ellington Field, VOR/DME or TACAN or GPS RWY 17R, Amdt 3 Cancelled
Houston, TX, Ellington Field, VOR/DME or TACAN RWY 17R, Amdt 3
Houston, TX, Ellington Field, VOR/DME or TACAN or GPS RWY 35L, Amdt 3 Cancelled
Houston, TX, Ellington Field, VOR/DME or TACAN RWY 35L, Amdt 3
Marfa, TX, Marfa Muni, VOR or GPS RWY 30, Amdt 4 Cancelled
Marfa, TX, Marfa Muni, VOR RWY 30, Amdt 4

[FR Doc. 97–3673 Filed 2–12–97; 8:45 am]
BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Parts 217 and 241

[Docket No. OST–96–1049]

RIN 2105–AC34

International Data Submissions by Large Air Carriers (Form 41 Schedules T–100, T–100(f), and P–1.2)

AGENCY: Office of the Secretary, (DOT).
ACTION: Final rule.

SUMMARY: This rule reduces the period of confidential treatment of international nonstop segment and on-flight market data from three years to immediately following the Department's determination that the data base is complete, but no sooner than six months after the date of the data. It also requires collection of aircraft capacity data from foreign air carriers and rescinds the requirement that Group III (large U.S.) air carriers specify passenger enplanements, passengers transported, and seating capacity by cabin configuration. At the same time, the Department defers a final decision on changes to Schedule P–1.2—Statement of Operations. The issues pertinent to that schedule will be addressed in a supplementary notice of proposed rulemaking that will be completed soon.

In order to provide the reporting air carriers with additional time to make changes to their systems, we have established a period of several months between the effective date and compliance dates.

DATES: *Effective date*. This rule shall become effective on March 17, 1997.

Compliance dates: The compliance date for foreign air carriers to report the additional capacity data is July 1, 1997. The compliance date of the new reduced level of reporting for large U.S. Group III air carriers is July 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Harman, Office of Aviation Analysis, or John Schmidt, Office of Aviation and International Economics, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 400 Seventh St. SW., Washington, DC 20590 at (202) 366–1059 or 366–5420, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1996, the Department of Transportation published a notice of proposed rulemaking (NPRM) [61 FR 5963] to make the changes summarized above. We also distributed over 500 copies of the notice to the aviation community. This rulemaking action was taken on the Department's initiative in order to make data available for planning and efficient resource allocation purposes, to ensure the accuracy of the data that are used by the Department in administering its program responsibilities, and to eliminate collection of data that are no longer needed for regulatory purposes.

We received comments from five U.S. air carriers: American Airlines (American), Federal Express Corporation (FedEx), Trans World Airlines (TWA), United Air Lines (United), and USAir; one foreign air carrier, Alia—the Royal Jordanian Airline (Royal Jordanian); the Airports Council International—North America (ACI-NA) whose member airports handle approximately 90% of the passenger traffic in the United States; and the Air Line Pilots Association (ALPA), the bargaining representative of more than 44,000 pilots of 38 airlines. Most commenters supported the rulemaking.

Discussion of Comments

(1) Confidentiality of International T–100 Data

American, TWA, United, USAir, ACI-NA, and ALPA strongly supported reducing the period of confidentiality from three years to immediately following the Department's determination that the data base is complete, but no sooner than six months after the date of the data. In fact, American said that the data should be published as soon as the Department determines that the data base is complete and that there is little reason to impose an arbitrary requirement withholding release for a minimum of six months. United urged that the rule provide by its terms that the release date will be six months after submission and that any release beyond that date be the exception and not the rule. While that carrier appreciated that all data, both U.S. and foreign carrier, should be released at the same time and that database preparation delays may occur, it would prefer to have a fixed date for release rather than an open-ended one. With respect to American's suggestion, the Department did not initially propose to release international T–100 data in less than six months in deference to perceived carrier concerns that the data might be used for day-to-day competitive purposes and also because it expected that receipt, edit, and publication of the data from a large number of foreign carriers would take about six months. As regards United's view that we specify only a six month release date, while we fully expect to be in a position to make the data public

within that time frame, there may be circumstances where a slightly longer period of time may be required. We have, therefore, decided to retain our proposed language stating that we will release the data following a determination by the Department that the database is complete, but no sooner than six months after the date of the data.

Royal Jordanian argued that the Department should seriously reexamine its proposal to amend the confidentiality afforded detailed nonstop segment and on-flight market data reported by foreign carriers under the T–100 program, and upon review, should maintain the current three-year confidentiality period for such data. Royal Jordanian proposed that, in the event the Department does not re-think this proposal in its entirety, it should at least maintain the three-year confidentiality period for traffic data in single-carrier markets. Royal Jordanian relied on the Department's analysis in the 1988 rulemaking for support of its statement. In commenting that there are no compelling reasons to modify the current protections of confidentiality on T–100 data, Royal Jordanian argued that ''I–92 reports contain accurate data about the origin and destination traffic in specific international city-pair markets, which provides perfectly useful information for purposes of route planning and market analysis.''

In response, we note that the I–92 data are not origin-destination data at all, but rather a count of the number of passengers onboard any flight segment arriving in or departing from the United States. As Royal Jordanian, itself, remarked, T–100 data is more comprehensive. More specifically, T–100 data include onboard data for non-stop segments operated into and out of the United States by both foreign and U.S. carriers as well as similar data for U.S. carrier flight segments operated beyond the foreign gateway. Moreover, they also include on-flight market data (similar to origin-destination data in that they tally the passengers traveling between any two points on that flight) for those flights operating into and out of the U.S. In addition, T–100 data include capacity and operational data for these flights such as seats, departures, aircraft type, and block hours. T–100 reports include U.S.-Canadian traffic whereas 1–92 reports do not. Finally, T–100 incorporates both freight and passenger information whereas I–92 gives only the passenger cabin count. Because T–100 data are taken from airline records, there are other system data available to validate any questionable numbers. This provides a basis for expecting a high level of reliability. These advantages combined with the fact that Royal Jordanian has not documented any irrevocable harm would lead us to make the T–100 data available, as proposed, to planners, analysts, and other users.

FedEx (an all-cargo carrier) stated that the three-year rule should not be changed because the data collected are so specific and sensitive that they should not be revealed prematurely. It further argued that the data are only of use to the government, and the need for them is declining as the U.S. becomes more successful in obtaining open-skies agreements. With respect to FedEx's suggestion that the data collected are unnecessarily specific, the Department notes that international routes are still awarded on a city-to-city basis and are frequently limited-entry and that airports are planned and constructed at specific cities. With respect to FedEx's assertion that the data are sensitive, the discussion in the notice of proposed rulemaking recognized that the availability of data could be expected to change the nature of the marketplace and, in fact, make it more efficient and competitive. FedEx has not, however, documented its assertion that the more timely availability of data to all would create an unfair competitive advantage. In addition, FedEx did not rebut the carriers' or communities' needs for current market data to support negotiating positions and requests for route awards. ACI–NA and United described the airports' and carriers' needs for these data.

FedEx also stated that the three-year rule should not be changed because the data are so flawed and subject to so many differing interpretations that an earlier release may actually damage the interests that the Department is trying to promote. FedEx asserted that, while the T–100 system gathers detailed information on U.S. carriers' activities in foreign markets, much of the foreign carrier activity that is in direct competition with the U.S. carriers is not reported. It said that the T–100 system should not undercut the U.S. position at negotiations because of the lop-sided reporting structure, but should be used primarily for internal U.S. analysis, recognizing its shortcomings. All these comments apparently refer to the fact that U.S. carriers report all international market and segment records, while foreign carriers only report those market and segment records that have a U.S. point. In order that U.S. air carriers not be placed at a competitive disadvantage because of data disclosure incompatibility, the Department, in its notice of proposed rulemaking, proposed to continue to restrict availability of nonstop segment and on-flight market data for segments involving no U.S. points for three years. For example, individual U.S. carrier data between two foreign airports would be held confidential for three years. (On this same subject, American Airlines argued for expanded reporting by foreign carriers, including disclosure of 'behind' and 'beyond' totals for reportable 'on-flight' traffic.) With respect to FedEx's concerns about flawed data, the timely use and scrutiny of these data by industry practitioners, once they are removed from the veil of confidentiality, can be expected to have a positive effect on the quality of data filed.

(2) Reporting of Capacity Data by Foreign Air Carriers

ACI–NA, TWA, United, and USAir explicitly supported the collection of minimal capacity data from foreign carriers and no commenter objected to the collection of these data. Significantly, Royal Jordanian, the only foreign carrier to comment, did not oppose the collection. As discussed under (4) Other Subjects, American suggested that we require expanded reporting by foreign carriers including disclosure of ''behind'' and ''beyond'' totals for reportable on-flight traffic. (Foreign carriers currently do file ''beyond'' U.S. data if the market includes a U.S. point. For example, Japan Airlines reports Los Angeles-Sao Paulo operations.) In supporting our proposal, TWA stated that it is not unreasonable to require two additional data items from foreign carriers and that, even with the new items, the burden placed on foreign carriers will be no worse than the burden placed on U.S. carriers by foreign governments. Similarly, United emphasized the fact that our proposal removes a discriminatory aspect of the previous rule that imposed a greater burden on U.S. carriers than on their foreign competitors. Total capacity, both U.S. and foreign, is important to analyze adequacy of service in a given market. We will, therefore, adopt the proposal that foreign carriers report both available seats and available payload weight.

(3) Reduction of Data Reporting by Class of Service by U.S. Carriers

Only United and USAir explicitly supported the reduction of data reporting by class of service by U.S. carriers. As mentioned above, American argued for expanded reporting by foreign carriers, saying that little cost is incurred by complying with the existing

requirement to report passenger traffic and revenue by class of service while the reprogramming of data processing systems would impose an immediate burden. TWA did not believe that the Department's proposal would reduce reporting burden and did believe that it would deprive both the Department and the carriers of important information. The carrier suggested either requiring foreign carriers to report class of service information, restricting availability of the data only to those U.S. carriers that report it, or, in the extreme, collecting it and releasing it after six months despite foreign carriers' failure to provide similar information.

We are adopting our proposal to reduce the amount of data currently reported by the large Group III U.S. carriers by no longer requiring these carriers to report data by cabin configuration. In the NPRM, the Department stated that the proposal to reduce the number of data items would reduce the reporting burden on U.S. air carriers while providing for data comparability among all reporting carriers. Although American considered it unfortunate that we proposed to eliminate this level of detail and TWA stated that these data were very important, we find that the resulting comparability in reported data among all competing U.S. and foreign carriers with regard to this specific database outweighs the concerns raised by American and TWA. Moreover, since we find that the earlier release of data will be procompetitive, it is important, at the same time, to ensure that no carriers are adversely affected by a continuing requirement to report more detailed data than their competitors.

With regard to the Department's statement in the NPRM that the proposal to reduce the number of data items would reduce the reporting burden on U.S. air carriers, we have revised our position and we now acknowledge that American and TWA correctly pointed out that the proposal may produce an initial reporting burden. These carriers' comments have led us to assume that the reduction of the number of data elements may require some changes to computer programs that extract, process, and format the data for submission to the Department. We recognize that the impact of these changes will vary among airlines. However, no commenters (including American and TWA) submitted data that would help us to assess this burden. Our initial presumption is that changes to programs that involve relatively simple functions, such as data extraction and formatting, would not impose a significant burden. However, even if the required changes were significant, they would be one-time changes that would affect only the initial implementation. Over the long term, the reduced reporting requirements should lessen the total burden.

(4) Other Subjects

The commenters raised a number of other issues not directly relating to proposals made in the NPRM. These issues go beyond the scope of the current rulemaking, although there may be merit to some of them. With these issues in mind, we will continue to assess the quality of T–100 data received and ways to improve them. However, no action is being taken on the following subjects in this rulemaking.

FedEx asserted that the international air cargo data collected through the T–100 system is so severely flawed and unfair to U.S. carriers that the system should be abandoned. It suggested that the Department should seriously consider extending the exemption for cargo that presently covers domestic operations to the international sector. FedEx was specifically concerned about the reporting and publication of U.S. carrier Fifth Freedom data when similar data from foreign carriers is not collected or published. (American reflected this same concern when it requested expanded reporting by foreign carriers, including disclosure of ''behind'' and ''beyond'' totals for reportable ''on-flight'' data.) FedEx pointed out a similar data incompatibility that arises among vendors of international freight services when one company carries the freight on its own flights for the entire trip while another company (for example) carries the freight on its own flight(s) on the domestic part of the trip, but serves only as a freight forwarder, shipping its cargo on another carrier's flight(s), on the foreign part of the trip. FedEx also complained that the T–100 system only shows on-flight movements, so that any change in flight numbers results in either a double-counting problem (for U.S. carriers that transfer freight) or a gap in data (for freight moved off of a foreign carrier's flight originating in the U.S. onto a flight the does not touch the U.S.). The carrier noted that the on-flight market data only show where traffic is enplaned and deplaned, rather than its true origin. American urged the Department to require the same level of reporting from the foreign airlines as we require from U.S. carriers. Specifically, American suggested that we require expanded reporting by foreign carriers to disclose information on the ''behind'' and ''beyond'' totals for reportable on-flight traffic. Alternatively, American suggested that we create an enhanced origin and destination survey in which both U.S. and foreign carriers would be required to submit comparable data.

On another issue, ACI–NA urged the Department to require that commuter carriers operating aircraft with 19 or more seats file international data. They pointed out that no data are currently available on commuter services in transborder Canadian and Mexican markets and in U.S.-Caribbean markets, which are growing in importance. The Department recognizes the importance of these markets and the lack of available data. However, since the scope of this rulemaking applies only to large air carriers, the Department cannot apply these requirements to the commuter airline industry in this proceeding. Nevertheless, we will continue to monitor the need for and value of the data and will propose the necessary changes to reporting requirements that are needed to meet our analytical goals.

ACI–NA also urged the Department to add a requirement that airlines provide data on the citizen/alien breakout of their passengers. In support, they pointed out that the nationality data is key to calculating some of the direct and indirect benefits from foreign tourists and business travelers. They noted the precarious financial situation involving programs at the Department of Commerce, where the I–92 data showing passenger nationality are now produced, might have an impact on the currently available data. The timing of this rulemaking and the lack of resolution with regard to the future of the I–92 data, makes it impractical to consider the nationality issue as part of this rulemaking. Depending upon further developments with I–92 data, we may need to reconsider the matter.

TWA noted that the Department has not finalized its proposal of October 23, 1995, that U.S. carriers that are code sharing with foreign carriers be required to report both for the ticketing and operating carriers for code share traffic in their Origin and Destination reports. TWA urged the Department to act expeditiously to implement the new reporting requirements. This is beyond the scope of this rulemaking.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, and therefore it was not reviewed by the

Office of Management and Budget. The Department has placed a regulatory evaluation that examines the estimated costs and effects of the rule in the docket.

The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034), because it does not change Departmental policy concerning aviation information collection.

The economic impact of this regulation is insignificant. The change in confidentiality restriction has no impact at all on the reporting burden of the carriers. For large Group III U.S. air carriers, the changes in requirements for reporting passenger and capacity data will result in an initial burden for programming changes, but these changes are minor and involve one-time costs. Over the long term, these changes will reduce the reporting burden for these air carriers by approximately 96 hours annually.

On the other hand, the foreign air carriers will incur an initial and annual increase in reporting burden. However, the Department does not believe that the increased reporting burden will be significant or onerous because this regulation adds only two capacity data items, which are readily available from the carriers'' computerized data files or other easily accessible reference documents. In order to quantify broadly the increased burden, the Department assumed that each of the 176 foreign air carriers would submit two new data items each month and that the process of collecting and transmitting the data would take no more than one hour each month. The resulting hourly burden would not exceed 12 hours on an annual basis for any foreign air carrier, and the resulting total hourly burden on an annual basis for all the foreign air carriers as a group would be 2,112 hours. For all air carriers, this would be a net burden of 2,016 hours annually or $20,966 based on an estimated industry salary rate of about $10.40 an hour. (See 60 FR 61478, November 30, 1995.)

The benefits to the public, the industry, and the Department of accurate capacity data reported on a reliable and consistent basis, although unquantifiable, outweigh the limited increase in reporting burden and the small increase in cost.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and DOT has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify this rule will not have a significant economic impact on a substantial number of small entities. The amendments would affect only large U.S. certificated air carriers and foreign air carriers with large certificated carriers defined as air carriers holding a certificate issued under 49 U.S.C. 41102, as amended, and that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds or that conduct international operations.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with The Paperwork Reduction Act of 1995 (PL 104–113) under OMB NO: 2139–0040, formerly OMB NO: 2138–0040; *Administration:* Office of the Secretary; *Title:* T–100 International Data; *Need for Information:* Passenger and Capacity Information for Aviation Planning and Regulation; *Proposed Use of Information:* Electronic Dissemination to Transportation Planners and Analysts; *Frequency:* Monthly; *Burden Estimate:* 2,016 annual hours; *Average Burden Hours per Respondent:* 12 annual hours; *Estimated Number of Respondents:* 8 Air Carriers and 176 Foreign Air Carriers; *For Further Information Contact:* IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4735. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. This final rule contains information collection requirements that have been approved under OMB No. 2138–0040 and that expire on October 31, 1997.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2105-AC34 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Parts 217 and 241

Air carriers, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 14 CFR Chapter II as follows:

PART 217—[AMENDED]

1. The authority for part 217 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. In § 217.5, paragraphs (b)(12) and (b)(13) are added to read as follows:

§ 217.5 Data collected (data elements).

* * * * *

(b) * * *

(12) *Available capacity-payload (Code 270).* The available capacity is collected in kilograms. This figure shall reflect the available load (see load, available in 14 CFR part 241 Section 03) or total available capacity for passengers, mail and freight applicable to the aircraft with which each flight stage is performed.

(13) *Available seats (Code 310).* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. Report the total available seats in item 310.

PART 241—[AMENDED]

1. The authority for part 241 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 411, 417.

2. In Sec. 19–5 paragraphs (c) (7), (8), and (18) are revised to read as follows:

* * * * *

Section 19 * * *

Sec. 19–5 Air Transport Traffic and Capacity Elements

* * * * *

(c) * * *

(7) *110 Revenue passengers enplaned.* The total number of revenue passengers enplaned at the origin point of a flight, boarding the flight for the first time; an unduplicated count of passengers in a market. Under the T–100 system of reporting, these enplaned passengers are the sum of the passengers in the individual on-flight markets. Report only the total revenue passengers enplaned in item 110. For all air carriers and all entities, item 110 revenue passengers enplaned is reported on Form 41 Schedule T–100 in column C–1, as follows:

	Col.	All carrier groups and entities
C–1	110	Revenue passengers enplaned.

(8) *130 Revenue passengers transported.* The total number of revenue passengers transported over single flight stage, including those already on board the aircraft from a previous flight stage. Report only the total revenue passengers transported in item 130. For all air carriers and all entities, item 130 revenue passengers transported is reported on Form 41 Schedule T–100 in Column B–7, as follows:

	Col.	All carrier groups and entities
B–7	130	Revenue passengers transported.

* * * * *

(18) *310 Available seats.* The number of seats available for sale. This figure reflects the actual number of seats available, excluding those blocked for safety or operational reasons. Report the total available seats in item 310. For all air carriers and all entities, item 310 available seats, total is reported on Form 41 Schedule T–100 in column B–4, as follows.

	Col.	All carrier groups and entities
B–4	310	Available seats, total.

* * * * *

3. In Section 19–6 paragraph (b) introductory text is revised to read as follows:

Section 19–6 Public Disclosure of Traffic Data

* * * * *

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports shall be publicly available immediately following the Department's determination that the database is complete, but no earlier than six months after the date of the data. Data for on-flight markets and nonstop segments involving no U.S. points shall not be made publicly available for three years. Industry and carrier summary data may be made public before the end of six months or the end of three years, as applicable, provided there are three or more carriers in the summary data disclosed. The Department may, at any time, publish international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the confidentiality periods as follows:

* * * * *

Issued in Washington, DC on February 6, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–3576 Filed 2–12–97; 8:45 am]

BILLING CODE 4910–62–P

14 CFR Part 383

49 CFR Part 31

[OST Docket No. OST–97–2116]

RIN 2105–AC63

Program Fraud Civil Remedies; Civil Penalties

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: In accordance with Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates the penalty inflation adjustments for civil money penalties imposed by the Office of the Secretary of Transportation.

EFFECTIVE DATE: This rule is effective on March 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mark A. Holmstrup, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (C–70), Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–9349.

SUPPLEMENTARY INFORMATION:

I. The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) was amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104–134, section 31001) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make further adjustments at least once every four years thereafter for these penalty amounts.

The Debt Collection Improvement Act of 1996 further stipulates that (i) any resulting increases in a CMP due to the calculated inflation adjustments should apply only to the violations that occur after October 23, 1996—180 days after the date of enactment of the statute—and (ii) the initial adjustment of a CMP under the Act may not exceed 10 percent of that CMP. Penalties that fall under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, and the Social Security Act are specifically exempt from the requirements of the Act.

Method of Calculation

Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The ''cost-of-living'' adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP (if any) was last set or adjusted in accordance with the law. Any calculated increase under this adjustment is subject to a specific rounding formula set forth in the 1990 statute.

II. OST Civil Money Penalties Affected by This Adjustment

There are two penalty authorities under our jurisdiction, as described below, for which adjustments are required and are now being made.

Title 49 of the United States Code (Transportation)

Section 46301(a)(1) of Title 49 (formerly section 1471(a) of the Federal Aviation Act, 49 U.S.C. App. § 901(a)) sets forth a CMP of not more than $1,000 for persons who violate certain provisions of Title 49, Subtitle VII (Aviation Programs). The penalty was enacted in 1962 and has not been increased with respect to matters within the jurisdiction of the Office of the Secretary.

Based on the penalty amount inflation factor calculation, derived from dividing the June 1995 CPI by the CPI from June 1962, after rounding and applying the 10 percent maximum ceiling, we are adjusting the maximum penalty amount for the CMP under Section 46301(a)(1) to $1,100 per violation.

The Program Fraud Civil Remedies Act of 1986

In 1986, sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–501) set forth the Program Fraud Civil Remedies Act of 1986 (PFCRA). Specifically, this authority established a CMP and an