

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 13**

[Docket No. FAA-2002-11483; Amendment No. 13-31]

RIN 2120-AH21

**Civil Penalty Inflation Adjustment Revisions**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This final rule adjusts certain civil monetary penalties for inflation. This action is required by the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, to preserve the deterrent effect of civil monetary penalties.

**DATES:** Effective March 13, 2002.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Final Rule Procedure**

We find good cause exists under 5 U.S.C. 553(b)(3)(B) and (d)(3) for immediate implementation of this final rule without prior notice and comment. This rule is a nondiscretionary ministerial action to conform the amount of civil penalties we assess for violations of the statutes, regulations, and orders we enforce. The calculation of these adjustments follows the mathematical formula set forth in section 5 of the Adjustment Act.

**Availability of Final Rules**

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- (1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).
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You can also get an electronic copy using the Internet through FAA's web page at <http://www.faa.gov/avr/arm/>

[nprm/nprm.htm](http://www.faa.gov/avr/arm/) or the **Federal Register's** web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.gov/avr/arm/sbreffa.htm>. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

**Background**

The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 ("Adjustment Act") 28 U.S.C. 2461 note, Public Law 101-410, as amended by the Debt Collection Improvement Act of 1996 ("Collection Act") Public Law 104-134, requires us and other Federal agencies to regularly adjust civil monetary penalties for inflation to preserve the deterrent impact. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil monetary penalties, and must make further adjustments of these penalty amounts at least once every four years.

In Amendment No. 13-28 (61 FR 67445, December 20, 1996), we made our initial adjustment of civil monetary penalties under these legislative authorities. We established subpart H, Civil Monetary Penalty Inflation Adjustment, to 14 CFR part 13, which applies to violations that occur on and after January 21, 1997. The maximum permissible increase for this initial adjustment was 10 percent. For example, the maximum penalty of \$1,000 for violations covered under 49 U.S.C. 46301(a), was increased by 10 percent and adjusted to \$1,100.

In accordance with the mandate to make further adjustments of civil monetary penalties at least once every four years, this rulemaking adjusts the civil penalties for violations of the

statutes, regulations and orders we enforce.

**Method of Calculation**

Under the Adjustment Act, as amended by the Collection Act, we calculate the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment (COLA), and then applying a rounding factor. 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."

To calculate the COLA for this adjustment, we divided the consumer price index (CPI) for June 2000 (the month of June of the calendar year preceding the adjustment), which is 172.3, by the CPI for June 1996 (the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted), which is 156.7. The resulting inflation factor is 1.099553 (rounded to the sixth decimal point). We multiplied this inflation factor by the previous maximum civil penalty and applied the rounding factor.

The rounding formula is set forth in Section 5(a) of the Adjustment Act. Under the 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 \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000;
- (6) multiple of \$25,000 in the case of penalties greater than \$200,000."

**Penalties That We Are Increasing**

Upon review, we concluded that only the penalty for violations of hazardous materials transportation law, regulations, or orders under 49 U.S.C. 5123(a) should be increased at this time. Other penalty amounts remain unchanged because the raw figures are

not high enough to trigger rounding to the next higher amount. For example, the current maximum civil penalty for a violation of the FAA's statute or regulations by a person under 49 U.S.C. 46301(a)(1) is \$1,100. When \$1,100 is multiplied by the cost of living factor of 1.099553, the result is \$1,210. The rounding formula, however, requires the increase to be rounded to the nearest \$1,000. Because the nearest \$1,000 is less than the current penalty, the current penalty amount is not adjusted.

The computation for the civil penalty for violations of the hazardous materials transportation law or regulations under 49 U.S.C. 5123(a) is \$27,500 multiplied by the cost of living factor of 1.099553, which equals \$30,238, which the rounding formula requires to be rounded off to the nearest \$5,000. Therefore, the adjusted civil penalty for violations of the statute or regulations under 49 U.S.C. 5123(a) rounds off to \$30,000.

A second civil penalty provision, 49 U.S.C. 46301(a)(5), was amended by Congress on November 20, 1997 (Pub. L. 105-102) to authorize the amount of a civil penalty assessed under section 46301(a)(5) for a violation of 49 U.S.C. 47107(b), any assurance made under that section, or a violation of 49 U.S.C. 47133 to be increased "above the otherwise applicable maximum amount" under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section. The statutory provision for the "otherwise applicable maximum amount" of a civil penalty assessed for a violation of 47107(b) appears in 49 U.S.C. 47107(n)(4), enacted on October 9, 1996 (Pub. L. 104-264). Section 47107(n)(4) imposes liability for a civil penalty in an "amount equal to the illegal diversion in question plus interest."

The maximum civil penalty under these provisions is tied to the amount of aviation revenues diverted rather than to a set maximum civil penalty. These sections do not set forth a specific amount upon which we can base an adjustment or apply the rounding formula. Although it might be possible to apply the provisions of the Adjustment Act, as amended by the Collection Act, and our regulations in CFR part 13, subpart H, on a case by case basis to violations of 49 U.S.C. 47101(b) and 47133, we do not believe that such an approach would be consistent with Congress's intent as expressed in either the Adjustment Act or the Collection Act, or with the language in 49 U.S.C. 46301(a)(5) and 49 U.S.C. 47107(n)(4). Therefore, we will not attempt to provide an adjustment to

the "otherwise applicable maximum" civil penalty for cases arising under these provisions absent specific direction from Congress to the contrary. Neither shall we include a reference to this provision in the Table of Minimum and Maximum Civil Penalties in 14 CFR 13.305(d).

#### **Other Changes to the Table of Minimum and Maximum Civil Penalties**

In addition to adjusting the amounts of civil penalties to the existing Civil Penalties, we are making three other, minor changes to the Table of Minimum and Maximum Civil Penalties.

First, we are updating the table to include new statutory provisions involving civil penalties. These provisions include:

1. 49 U.S.C. 46301(a)(3)(C) relating to limiting the construction or establishment of landfills;

2. 49 U.S.C. 46301(a)(3)(D) relating to the safe disposal of life-limited aircraft parts;

3. 49 U.S.C. 46318, relating to interference with cabin or flight crew. These additions will keep the Table current, with respect to the statutory provisions we are responsible for enforcing, even though most of these provisions have been recently enacted, and are not yet subject to adjustment for inflation.

Second, in the column labeled "Civil Monetary Penalty Description" we are modifying the descriptions for clarity, especially to indicate that they include orders or other actions that are issued under statutory provisions, as appropriate.

Third, in the columns labeled "Minimum penalty amount as of 10/23/96," "Maximum penalty amount as of 10/23/96" and "New adjustment maximum penalty amount," we are deleting references to "per flight or per day," as redundant to the provision for continuing violations in 49 U.S.C. 46301(a)(4).

#### **Paperwork Reduction Act**

This rule does not contain any collection of information requirements, as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

#### **International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO

Standards and Recommended Practices that correspond to these regulations.

#### **Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

#### **Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, 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 \$100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full Evaluation, a statement to

that effect and the basis for it is included in proposed regulation. Since this final rule only identifies the increase in penalties as required by the Debt Collection Improvement Act of 1996, the impact of this rulemaking is minimal.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will have a significant impact, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action simply identifies the CPI adjustment for civil monetary penalties as required by the Debt Collection Improvement act of 1996. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small rotorcraft manufacturers.

#### International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the

United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

#### Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply.

#### Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

#### List of Subjects

##### 14 CFR part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

#### The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 13 of Title 14 of the Code of Federal Regulations as follows:

#### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

**Authority:** 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121-5124, 40113-40114, 44103-44106, 44702-44703, 44709-44710, 44713, 46101-46110, 46301-46316, 46501-46502, 46504-46507, 47106, 47111, 47122, 47306, 47531-47532.

2. Amend § 13.305 by revising paragraph (d) to read as follows:

#### § 13.305 Cost of Living Adjustments of Civil Monetary Penalties

\* \* \* \* \*

(d) Inflation adjustment. Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are adjusted for inflation as follows: Minimum and Maximum Civil Penalties—Adjusted for Inflation, Effective March 13, 2002.

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or Adjusted Maximum penalty amount
49 U.S.C. 5123(a) .....	Violations of hazardous materials transportation law, regulations, or orders..	\$250 per violation adjusted 1/27/1997.	\$250 per violation.	\$27,500 per violation adjusted 1/21/1997.	\$30,000 per violation, adjusted effective 3/30/02.
49 U.S.C. 46301(a)(1) .....	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions..	N/A .....	N/A .....	\$1,100 per violation, adjusted 1/21/1997.	\$1,100 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(2) .....	Violations of statutory provisions listed in 49 USC 46301(a)(2), regulations prescribed, or orders issued under those provisions by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A .....	N/A .....	\$11,000 per violation, adjusted 1/21/1997.	\$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(A) .....	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions relating to the transportation of hazardous materials by air..	N/A .....	N/A .....	\$11,000 per violation, adjusted 1/21/1997.	\$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(B) .....	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions relating to the registration or recordation under chapter 441 of Title 49, United States Code, or an aircraft not used to provide air transportation..	N/A .....	N/A .....	\$11,000 per violation, adjusted 1/21/1997.	\$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46301(a)(3)(C) .....	Violations of 49 U.S.C. 44718(d), or regulations prescribed or orders issued under it, relating to limiting construction or establishment of landfills.	N/A .....	N/A .....	\$10,000, set 10/9/1996.	\$10,000, set 10/9/1996.
49 U.S.C. 46301(a)(3)(D) .....	Violations of 49 U.S.C. 44725, or regulations prescribed or orders issued under it, relating to the safe disposal of life-limited aircraft parts.	N/A .....	N/A .....	\$10,000, adopted 4/5/2000.	\$10,000, adopted 4/5/2000.
49 U.S.C. 46301(b) .....	Tampering with a smoke alarm device. ....	N/A .....	N/A .....	\$2,200 per violation, adjusted 1/21/1997.	\$2,200 per violation, adjusted 1/21/1997.
49 U.S.C. 46302 .....	Knowingly providing false information about alleged violations involving the special aircraft jurisdiction of the United States..	N/A .....	N/A .....	\$11,000 per violation, adjusted 1/21/1997.	\$11,000 per violation adjusted 1/21/1997.
49 U.S.C. 46303 .....	Carrying a concealed dangerous weapon ..	N/A .....	N/A .....	\$11,000 per violation, adjusted 1/21/1997.	\$11,000 per violation, adjusted 1/21/1997.
49 U.S.C. 46318 .....	Interference with cabin or flight crew .....	N/A .....	N/A .....	\$25,000 per violation, adopted 4/5/2000.	\$25,000 per violation, adopted 4/5/2000.

Issued in Washington, DC, on December 27, 2001.

**Jane F. Garvey,**  
Administrator.

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**BILLING CODE 4910-13-M**