

from the 007° bearing from the airport clockwise to the 127° bearing from the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, May 25, 2010.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. 2010-13137 Filed 6-1-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No. FAA-2010-0563; Amendment No. 91-315 (Related to Docket No. FAA-18334)]

#### Minimum Altitudes for IFR Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Technical amendment.

**SUMMARY:** The FAA is correcting the introductory text in paragraph (a) of § 91.177 that was published on August 18, 1989. The phrase, “or unless otherwise authorized by the Administrator” was inadvertently removed from paragraph (a) introductory text. This action reinstates that phrase with a minor revision.

**DATES:** Effective June 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ellen Crum, Air Traffic Systems Operations, Airspace and Rules Group, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-8783; e-mail [ellen.crum@faa.gov](mailto:ellen.crum@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 18, 1989 (54 FR 34288), the FAA published a final rule that revised 14 CFR part 91. In the final rule, the phrase in § 91.177 (a) introductory text “unless otherwise authorized by the Administrator” was inadvertently removed. The impact of this action was not apparent until the FAA recently amended the guidelines for establishing minimum vectoring altitudes. Without this phrase in the regulation, certain altitudes are unavailable to air traffic control. This action corrects this error with a minor revision. We are replacing the word “Administrator” with “FAA”. The new phrase will read “unless otherwise authorized by the FAA”.

#### Good Cause for Immediate Adoption of This Final Rule

Until recently, the FAA was unaware of the erroneous amendment to this regulation and its impact on minimum vectoring altitudes. The FAA concludes that immediate action is necessary to correct this error and therefore, finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon publication.

#### List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

#### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter 1 of Title 14, Code of Federal Regulations, as follows:

#### PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Amend § 91.177 by revising paragraph (a) introductory text to read as follows:

#### § 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, or unless otherwise authorized by the FAA, no person may operate an aircraft under IFR below—

\* \* \* \* \*

Issued in Washington, DC on May 27, 2010.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. 2010-13132 Filed 6-1-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 406

[Docket No. FAA-2009-1240; Amendment No. 406-6]

RIN 2120-AJ63

#### Civil Penalty Inflation Adjustment for Commercial Space Adjudications

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule brings Federal Aviation Administration commercial space transportation regulations into compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule makes mandatory inflation-based adjustments to the maximum civil penalty contained in 14 CFR part 406 authorized for violations of the Commercial Space Launch Act of 1984, as codified at 49 U.S.C. subtitle IX, ch. 701, Commercial Space Launch Activities.

**DATES:** This amendment becomes effective July 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Laura Montgomery, Senior Attorney, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3150; facsimile (202) 267-7971; e-mail [laura.montgomery@faa.gov](mailto:laura.montgomery@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking and Applicable Statutes

The statute under which the Secretary of Transportation regulates commercial space transportation, 49 U.S.C. Subtitle IX, sections 70101-70121 (chapter 701), provides for the Department of Transportation (DOT), and, through delegation, the Federal Aviation Administration (FAA) to impose civil penalties on persons who violate chapter 701, a regulation issued under chapter 701, or any term or condition of a license or permit issued or transferred under chapter 701. 49 U.S.C. 70105a(h)(i), 70115.

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law (Pub. L.) 101-410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, codified at 28 U.S.C. 2461 note.

The FCPIAA requires Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil monetary penalties, and further adjust these penalties at least once every 4 years. The FCPIAA required the first adjustment to the maximum civil penalty found in 14 CFR part 406 to have been made in 1996.

### Prior Rulemakings

This rule is the FAA's initial adjustment to the maximum civil penalty found in 14 CFR part 406 which governs commercial space transportation adjudications. The FAA has routinely adjusted for inflation civil monetary penalties for aviation contained in 14 CFR part 13. [See 61 FR 67445, Dec. 20, 1996, as amended by Amdt. 13-28, 62 FR 4134, Jan. 29, 1997; 67 FR 6366, Feb. 11, 2002; Amdt. 13-33, 71 FR 28522, May 16, 2006; 71 FR 47077, Aug. 16, 2006; 71 FR 52407, Sept. 6, 2006.]

### Background

The FCPIAA determines inflationary adjustments by increasing civil penalties by a cost-of-living adjustment (COLA). The COLA for each civil penalty is the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil penalty was last set or adjusted pursuant to the FCPIAA. The FCPIAA contains specific rules for rounding the inflationary increase based on the initial amount of the civil penalty being adjusted. However, the FCPIAA limits the increase to a maximum of ten percent for the first adjustment. This limitation does not apply to subsequent adjustments.

### Method of Calculation

14 CFR 406.9 states that under 49 U.S.C. 70115(c)(1)(a) a maximum civil penalty of \$100,000 is imposed for violations of chapter 701, a regulation proscribed under chapter 701, or any term or condition of a license or permit issued or transferred under chapter 701. However, this rulemaking is our initial adjustment and any adjustment in civil penalty is limited by statute to a maximum ten percent increase. Thus, instead of using the COLA, the penalty is increased by ten percent of \$100,000, which is \$10,000. Therefore, the new

civil penalty becomes \$110,000 (\$100,000 + \$10,000).

Four years from now, when the next adjustment is due, we will employ the COLA methodology. It works as follows, using the current year only as an example. Were we using the COLA method this year, we would first determine the appropriate CPI-U for June of the calendar year preceding the year of adjustment. For an adjustment in 2010, we would use the CPI-U for June of 2009, which was 215.693. We would also determine the CPI-U for June of the year the civil penalty came into force. Because the civil penalty came into force in 1984, we would use the CPI-U for June of 1984, which was 103.7.

Second, we would calculate the COLA. To do this we would subtract the CPI-U for June 1984 (103.7) from the CPI-U of June 2009 (215.693). Next, we would divide the resulting difference (111.993) by the CPI-U for June 1984 (103.7). The resulting quotient (1.07997) is then multiplied by 100 yielding a COLA of 107.997%.

Were this not our initial adjustment, we would calculate the raw inflationary increase by multiplying the maximum civil penalty (\$100,000) by the COLA (107.997%). This would provide a raw inflation increase of \$107,997. Next, we would round the raw inflation amounts by the statutory rounding formula found in Section 5(a) of the FCPIAA. Determination of the proper rounding formula depends on the current amount of the civil penalty at the time the calculation is made, not the size of the raw inflationary increase. The applicable rounding formula for the existing civil penalty of \$100,000 would be that "[a]ny increase \* \* \* is rounded to the nearest \* \* \* [m]ultiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000 \* \* \*". Thus, the raw increase of \$107,997 would become \$105,000 after rounding. Finally, the increase of \$105,000 would be added to the initial civil penalty \$100,000 for an adjusted civil penalty of \$205,000.

### Good Cause for Immediate Effectiveness of Final Rule

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), a final rule may be issued without public notice and comment if the agency finds good cause that notice and comment are impractical, unnecessary, or contrary to public interest. Good cause exists in this rule to dispense with public notice and comment because adjustments to civil penalties for inflation are required by Congress, as set forth in Section 5 of the FCPIAA, in order to maintain the deterrent effect of civil penalties and

promote compliance with the law. This rulemaking is ministerial, technical, and noncontroversial. The FCPIAA serves as a Congressional mandate and the FAA may not exercise any discretion or policy judgments. The FAA has no discretion as to the amount of the adjustment. Furthermore, it would be contrary to the public interest to delay these adjustments in order to receive public comment because the regulation concerns a civil penalty for conduct that is already illegal under existing law. Also, any delay would be unnecessary as the FAA cannot change the method of application of the mandatory inflation adjustment as defined by the FCPIAA.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no current or new requirements for information collection associated with this rule.

### International Compatibility

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

### Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

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 regulations justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA), Public Law 96-354, codified at 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1999 (Trade Act), Public Law 96-39, codified at 19 U.S.C. 2501-2581, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the U.S. In developing U.S. standards, the Trade Act requires agencies to consider

international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995, (Pub. L. 104-4), codified at 2 U.S.C. 658, 1501-03, and 1531-34, 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).

DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination is as follows. This rule adjusts for inflation the maximum civil penalty for violations of the Commercial Space Launch Act of 1984, to be in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990. This inflation adjustment is an economic transfer and not a social cost.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify

and a 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.

As already noted, this rule adjusts for inflation only, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990. Therefore, as FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### **International Trade Impact Assessment**

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in 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.

The FAA has assessed the potential effect of this final rule and determined that it would impose identical inflation adjusted civil penalties on domestic and international entities that violate 14 CFR part 406, and thus would have a neutral trade impact. Furthermore, the inflationary adjustment is a legitimate domestic objective preserving the existing deterrent impact of 49 U.S.C. subtitle IX, chapter 701. Therefore, we have determined that this rule will result in a neutral impact on international trade.

#### **Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) 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 an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) 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." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million.

Because this final rule only increases a civil penalty by \$10,000, as required by FCPIAA, it does not contain a mandate that meets this threshold amount. Therefore, the requirements of Title II of the act do not apply.

#### **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.

#### **Environmental Analysis**

FAA Order 1050.1E defines FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

#### **Regulations That Significantly Affect Energy Supply, Distribution, or Use**

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **Availability of Rulemaking Documents**

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending 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 rulemaking.

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 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

### 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. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### List of Subjects in 14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

### The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 406 of Title 14, Code of Federal Regulations as follows:

#### PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 1. The authority citation for part 406 continues to read as follows:

**Authority:** 49 U.S.C. 70101–70121.

■ 2. Amend § 406.9 by revising paragraph (a) to read as follows:

#### § 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 49 U.S.C. 70115(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than \$110,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

\* \* \* \* \*

Issued in Washington, DC, on May 25, 2010.

**J. Randolph Babbitt,**  
Administrator.

[FR Doc. 2010–13218 Filed 6–1–10; 8:45 am]

BILLING CODE 4910–13–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

[Docket No. SSA–2008–0016]

RIN 0960–AG20

### Revised Medical Criteria for Evaluating Hearing Loss

**AGENCY:** Social Security Administration.  
**ACTION:** Final rules.

**SUMMARY:** We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving hearing loss under titles II and XVI of the Social Security Act (Act). The revisions reflect our adjudicative experience, advances in medical knowledge, treatment, and methods of evaluating hearing loss, and public comments we received in response to a Notice of Proposed Rulemaking (NPRM).

**DATES:** These rules are effective August 2, 2010.

**FOR FURTHER INFORMATION CONTACT:** Tiya Marshall, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–9291. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Background

We are revising and making final the rules for evaluating hearing loss we proposed in an NPRM we published in the **Federal Register** on August 13, 2008 (73 FR 47103). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rules as published, we are not repeating that information here. Interested readers may refer to the preamble to the NPRM, available at <http://www.regulations.gov>.

We are making a number of changes from the NPRM as a result of public comments. We explain those changes in our summary of the public comments and our responses later in this preamble.

*Why are we revising the listings for hearing loss?*

We are revising the listings for hearing loss to update the medical criteria, provide more information about how we evaluate hearing loss, and reflect our adjudicative experience. The listings for hearing loss are in the special senses and speech body system, which also includes listings for visual disorders, disturbances of labyrinthine-vestibular function, and loss of speech. In the NPRM, we proposed changes only to the listings for hearing loss and their accompanying introductory text. We published final rules revising the listings for visual disorders in the **Federal Register** on November 20, 2006 (71 FR 67037). We intend to separately publish proposed rules for disturbances of labyrinthine-vestibular function and loss of speech.

*When will we use these final rules?*

We will use these final rules beginning on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of the final rules and to claims that are pending on and after the effective date.<sup>1</sup>

*How long will the rules in the special senses and speech body system be in effect?*

We are extending the effective date of the special senses and speech body system in parts A and B of the listings until 5 years after the effective date of these final rules, except we intend to revise the Disturbance of labyrinthine-vestibular function and Loss of speech listings before then. The rules will remain in effect only until that date unless we extend them. We will continue to monitor the rules and may revise them before the end of the 5-year period.

#### Public Comments on the NPRM

In the NPRM, we provided the public with a 60-day comment period, which ended on October 14, 2008. We received 17 public comment letters. The comments came from national medical organizations, advocacy groups, a national group representing Social

<sup>1</sup> This means that we will use these final rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses the Commissioner's final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.