



DEPARTMENT OF TRANSPORTATION

4910-9X

Office of the Secretary

14 CFR Part 383

RIN 2105-AE51

Revisions to Civil Penalty Amounts

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Interim Final Rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Transportation is issuing an interim final rule to adjust for inflation the maximum civil penalty amounts for violations of certain aviation economic statutes and the rules and orders issued pursuant to these statutes.

DATES: The rule is effective [Insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

I. Regulatory Information

DOT is promulgating this interim final rule to ensure that the maximum civil penalty liability amounts set forth in 14 CFR Part 383 that may be assessed by the Department as a result of violations of certain economic provisions of Title 49 of the United States Code reflect the statutorily mandated maximums as adjusted for inflation. Pursuant to section 701 of the Federal

Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), DOT is required to promulgate a “catch-up adjustment” through an interim final rule. Public Law 114-74. The 2015 Act requires the Department to adjust certain civil penalty amounts and provides clear direction for how to adjust the civil penalties, which leaves the agency little room for discretion. By operation of the 2015 Act, DOT must publish the catch-up adjustment by July 1, 2016, and the new levels must take effect no later than August 1, 2016. For these reasons, pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), 553(d)(3), DOT finds that good cause exists for immediate implementation of this interim final rule without prior notice and comment and with an immediate effective date.

II. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments for inflation.

The method of calculating inflation adjustments in the 2015 Act differs substantially from the methods used in past inflation adjustment rulemakings conducted pursuant to the Inflation Adjustment Act. Previously, adjustments to civil penalty amounts were conducted under requirements that mandated significant rounding of figures. For example, a penalty increase that was greater than \$1,000, but less than or equal to \$10,000 would be rounded to the nearest multiple of \$1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if inflation had increased but not by a large enough

factor. Furthermore, increases to penalties were capped at 10 percent. Over time, this formula caused penalties to lose value relative to total inflation.

The 2015 Act has removed these rounding requirements; now, penalty amounts are simply rounded to the nearest \$1. While this results in penalty amounts that are no longer round numbers, it does ensure that penalty amounts will be increased each year to a figure commensurate with the actual calculated inflation. Furthermore, the 2015 Act “resets” the inflation calculations by excluding prior inflationary adjustments made under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was originally enacted by Congress or last adjusted by statute or regulation, other than pursuant to the Inflation Adjustment Act. DOT has determined that the maximum levels for the civil penalties that may be assessed for violations of aviation economic statutes and regulations pursuant to 14 CFR Part 383 were established by Vision 100-Century of Aviation Reauthorization Act of 2003 (“Vision 100”) (Section 503, Pub. L. 108-176; 117 Stat. 2490, December 12, 2003), and have not been adjusted since, excluding Inflation Adjustment Act revisions.

III. Completing the Catch-Up Adjustment

The table below shows the penalties that we are increasing pursuant to the 2015 Act. These calculations follow guidance by the Office of Management and Budget (OMB), M-16-06, “Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,” dated Feb. 24, 2016.

In the first column, we have provided a description of the penalty. In the second column (“Citation,”) we have provided the United States Code (U.S.C.) statutory citation for the provision that authorizes that penalty. In the third column (“Current Penalty”), we have listed the existing penalty, and in the fourth column (“Baseline Penalty”), we have provided the amount of the penalty as enacted by Congress or changed through a mechanism other than pursuant to the Inflation Adjustment Act, which in the case of all five of these adjustments is by Vision 100. The multiplier that we have used to adjust from the CPI-U of the year of this last adjustment (2003) to the CPI-U for the current year was provided by the Office of Management and Budget; it is 1.28561. Multiplying the baseline penalty by the multiplier provides the “New Penalty” listed in the final column, rounded to the nearest dollar. In accordance with the 2015 Act and OMB memorandum M-16-06, however, DOT did not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. The adjusted penalty is to be the lesser of either the preliminary new penalty arrived at via the multiplier or an amount equal to 250% of the current penalty. In the case of these five penalties, the lesser number was the figure that resulted from applying the multiplier.

Where applicable, DOT has also made conforming edits to regulatory text. In addition, we are deleting a reference to the Debt Collection Improvement Act of 1996 in section 383.1(b) of the regulatory text. The Debt Collection Improvement Act of 1996 amended the Federal Civil Penalties Inflation Adjustment Act of 1990,. Additionally, in the regulatory text for section 383.1(b) we are deleting the reference to the Inflation Adjustment Act because it has been amended by the 2015 Act.

Pursuant to the 2015 Act, in the event a violation took place prior to the effective date of the new penalty level, and the DOT assessed a penalty after the effective date, the new penalty

level shall be assessed in a manner consistent with applicable law. The 2015 Act does not alter DOT's statutory authority, to the extent it exists, to assess penalties below the maximum level. As the 2015 Act applies to penalties assessed after the effective date of the applicable adjustment, the 2015 Act adjusts penalties prospectively. The 2015 Act does not retrospectively change previously assessed or enforced penalties that DOT is actively collecting or has collected.

Description	Citation	Current Penalty	Base Line Penalty	New Penalty
General civil penalty for violations of certain aviation economic regulations and statutes	49 U.S.C. 46301(a)(1)	\$27,500	\$25,000	\$32,140
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern	49 U.S.C. 46301(a)(1)	\$1,100	\$1,100	\$1,414
Civil penalties for individuals or small businesses for violations of most provisions of Chapter 401 of Title 49, including the anti-discrimination provisions of sections 40127 and 41705 and rules and orders issued pursuant to these provisions	49 U.S.C. 46301(a)(5)(A)	\$11,000	\$10,000	\$12,856
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision	49 U.S.C. 46301(a)(5)(C)	\$5,500	\$5,000	\$6,428
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules	49 U.S.C. 46301(a)(5)(D)	\$2,750	\$2,500	\$3,214

and orders issued pursuant to that provision				
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REGULATORY ANALYSIS AND NOTICES

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Orders 12866 and 13563 or DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

The increase of the maximum civil penalty will impact entities and individuals that are found to be in violation of certain aviation economic and consumer protection statutes, rules, and orders. There is no direct cost to any regulated entity or individual unless the entity or individual is found to have committed a violation. Furthermore, the economic impact of the interim final rule is expected to be minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601, *et seq.*) requires an assessment of the impact of proposed and final rules on small entities unless the agency certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities. An air carrier or a foreign air carrier is a small business if it provides air transportation only with small aircraft (i.e., aircraft with up to 60 seats/18,000 pound payload capacity). *See* 14 CFR 399.73.

The revision of the civil penalty amount will raise potential penalties for individuals and small businesses with regard to violations of certain aviation economic regulations and statutes

or consumer protection rules and orders. Because the largest increase to the maximum civil penalty affecting small entities is only \$2,856, the aggregate economic impact of this rulemaking on small entities should be minimal and would only be borne by those entities found in violation of the regulations.

Accordingly, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

In addition, DOT has determined the RFA does not apply to this rulemaking. The 2015 Inflation Act requires DOT to publish an interim final rule and does not require DOT to complete notice and comment procedures under the APA. The Small Business Administration's A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (2012), provides that:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]....If an NPRM is not required, the RFA does not apply.

Therefore, because the 2015 Inflation Act does not require an NPRM for this rulemaking, the RFA does not apply.

C. Executive Order 13132 (Federalism)

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This regulation has no substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments. It does not contain any new provision that preempts state law, because states are

already preempted from regulating in this area under the Airline Deregulation Act, 49 U.S.C. § 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because none of the measures in the rule will significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the Federal Register providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning, each proposed collection of information. This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this interim final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental

assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” The purpose of this rulemaking is to adjust the maximum civil penalties for violations of certain aviation consumer protection statutes, regulations, and orders. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

G. Unfunded Mandates Reform Act

The Department analyzed the interim final rule under the factors in the Unfunded Mandates Reform Act of 1995. The Department considered whether the rule includes a federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The Department has determined that this interim final rule will not result in such expenditures. Accordingly, this interim final rule is not subject to the Unfunded Mandates Reform Act.

List of Subjects in 14 CFR Part 383

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, the Office of the Secretary of Transportation amends 14 CFR part 383 as set forth below:

Part 383 – CIVIL PENALTIES

1. The authority citation for 14 CFR Part 383 is revised to read as follows:

Authority: Sec. 701, Pub. L. 114-74, 129 Stat. 584; Sec. 503, Pub. L. 108-176, 117 Stat. 2490; Pub. L. 101-410, 104 Stat. 890; Sec. 31001, Pub. L. 104-134.

2. Section 383.1 is revised to read as follows:

§ 383.1 Purpose and periodic adjustment.

(a) *Purpose.* This part adjusts the civil penalty liability amounts prescribed in 49 U.S.C. 46301(a) for inflation in accordance with the Act cited in paragraph (b) of this section.

(b) *Periodic Adjustment.* DOT will periodically adjust the maximum civil penalties set forth in 49 U.S.C. 46301 and this part as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

3. Section 383.2 is revised to read as follows:

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than \$32,140 (or \$1,414 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section, (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general \$1,414 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of \$12,856 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued pursuant to those provisions (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of \$6,428 applies for violations of section 41719 and rules and orders issued pursuant to that provision (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of \$3,214 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

Issued in Washington, DC, under authority delegated at 49 CFR 1.27(n), on: August 5, 2016

Molly J. Moran

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