



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 406

[Docket No. FAA-2016-7004; Amdt. Nos. 13-39, 406-11]

RIN 2120-AK90

2017 Revisions to the Civil Penalty Inflation Adjustment Tables

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule provides the 2017 inflation adjustment to civil penalty amounts that may be imposed for violations of Federal Aviation Administration (FAA) regulations and the Hazardous Materials Regulations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. It also finalizes the catch-up inflation adjustment interim final rule required by the same Act.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking and Applicable Statutes

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. The Secretary of Transportation's authority to regulate the transportation of hazardous materials ("hazmat") by air is in chapter 51 of title 49; civil penalty authority is in section 5123. The Secretary's authority to regulate commercial space transportation may be found at 51 U.S.C. subtitle V, sections 50901–50923 (chapter 509), which provides for the Department of Transportation (DOT), and, through delegation, the FAA to impose civil penalties on persons who violate chapter 509, a regulation issued under chapter 509, or any term or condition of a license or permit issued or transferred under chapter 509. 51 U.S.C. 50906(h)–(i), 50917.

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101-410, as amended by the Debt Collection Improvement Act (DCIA) of 1996, Public Law 104-134, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, codified at 28 U.S.C. 2461 note. The FCPIAA, DCIA, and the 2015 Act require federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula.

Background

On July 5, 2016, the FAA issued an interim final rule entitled, "Revisions to the Civil Penalty Inflation Adjustment Tables" (the IFR) to implement the requirement for an initial catch-up adjustment.¹ This final rule (1) finalizes the catch-up adjustment interim

¹ 81 FR 43463. A correction and technical amendments were made in 81 FR 51079 (Aug. 3, 2016).

final rule; and (2) provides the required annual adjustment of civil penalty maximums and minimums in accordance with the FCPIAA, as amended.²

Overview of Final Rule

The FCPIAA, as amended, provides a formula for annual inflationary adjustments that increase civil penalty maximums and minimums by a cost-of-living adjustment (COLA). Under the FCPIAA, as amended by the 2015 Act, the COLA for each civil penalty is the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for the month of October of the calendar year preceding the adjustment and the CPI-U for the month of October of the previous calendar year. Any resulting increase must be rounded to the nearest \$1. As required by the FCPIAA, this final rule provides the 2017 annual adjustments to the civil penalty maximums and minimums provided in 14 Code of Federal Regulations (14 CFR) 13.301 and 406.9.

Method of Calculation of Adjustments to Civil Penalty Amounts Provided in 14 CFR 13.301 and 406.9

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the 2017 annual inflation adjustment required by the 2015 Act no later than December 15, 2016.³ On December 16, 2016, the OMB released this required guidance, which provides instructions on how to calculate the 2017 annual adjustment.⁴

² 28 U.S.C. 2461 note.

³ 28 U.S.C. 2461 note.

⁴ OMB Memorandum M-17-11.

To derive the 2017 adjustment, the FAA must multiply the maximum or minimum penalty amount by the percent change between the October 2016 CPI-U and the October 2015 CPI-U. In this case, October 2016 CPI-U (241.729) / October 2015 CPI-U (237.838) = Multiplier (1.01636).⁵ Accordingly, the agency multiplied the civil penalty maximums and minimums provided in current 14 CFR 13.301 and 406.9 by 1.01636 to derive the updated maximums and minimums provided in this final rule.

As examples, the agency has provided the calculations for the adjustments for the civil penalties authorized by 49 U.S.C. 5123(a)(1) (hazmat) and 51 U.S.C. 50917 (commercial space):

Adjusted penalty for 2016⁶ * Multiplier = Adjusted penalty for 2017

Sec. 5123(a)(1): \$77,114 * 1.01636 = \$78,376

Sec. 50917: \$225,867 * 1.01636 = \$229,562

Option to Forgo Annual Civil Penalty Adjustment

The agency notes that the 2015 Act provides the Administrator with the option to forgo adjustment only in a single circumstance, which is not present at this time. If, within the twelve months preceding January 15, 2017, an FAA civil penalty subject to this inflation adjustment were increased more than it would be by this inflation adjustment, the Administrator could choose to not make the adjustment. None of the civil penalties subject to the 2017 adjustment increased at all during the relevant time period. Accordingly, the Administrator cannot forego adjustment of any penalty.

Administrative Procedure Act

⁵ 28 U.S.C. 2461 note; OMB Memorandum M-17-11.

⁶ The adjusted penalty for 2016 includes the catch-up adjustment also mandated by the 2015 Act, and reflected in current 14 CFR 13.301 and 406.9 as amended by the IFR. 81 FR 43463 (July 5, 2016) and 81 FR 51079 (August 3, 2016).

Section 553 of the Administrative Procedure Act requires agencies to provide an opportunity for notice and comment on rulemaking and also requires agencies to delay a rule's effective date for 30 days following the date of publication in the Federal Register unless an agency finds good cause to forgo these requirements. However, section 4(b)(2) of the 2015 Act requires agencies to adjust civil monetary penalties notwithstanding section 553 of the Administrative Procedure Act (APA) and publish annual inflation adjustments in the Federal Register. "This means that the public procedure the APA generally requires...is not required for agencies to issue regulations implementing the annual adjustment." OMB Memorandum M-17-11.

Even if the 2015 Act did not except this rulemaking from section 553 of the APA, the agency has good cause to dispense with notice and comment. Section 553(b)(B), authorizes agencies to dispense with notice and comment procedures for rulemaking if the agency finds good cause that notice and comment are impracticable, unnecessary, or contrary to public interest. The annual adjustments to civil penalties for inflation and the method of calculating those adjustments are established by section 5 of the FCPIAA, as amended, leaving no discretion for the Administrator. Accordingly, public comment would be impracticable because the Administrator would be unable to consider such comments in the rulemaking process.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 and Executive Order 13563 direct 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 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. 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 (Public Law 104-4) 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 annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost 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 to 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 follows.

This rule adjusts for inflation to civil penalties for violations of aviation safety, hazmat, and commercial space provisions in accord with the Federal Civil Penalties Inflation Adjustment Act Improvement Act (the 2015 Act), Pub. L. 114-74, Section 701 (November 2, 2015). The Director of OMB provided guidance to agencies in a December

16, 2016 memorandum on how to calculate the 2017 annual adjustment required by the 2015 Act. The FAA must follow the direction of Congress and is using statutorily-mandated guidance provided by OMB in calculating the annual inflation adjustment. Applying Congress's directions and OMB's guidance, the FAA has determined that this rule imposes no additional social cost. Civil penalties are, like taxes, an economic transfer. OMB guidance A-4 states that transfers are monetary payments from one group to another and thus not a social cost. OMB further dictates that transfers should not be included in estimates of the benefits and costs due to regulation. As transfers do not add social cost, this is a minimal cost rule. OMB also directs that distributional impacts of transfers should be considered. The term "distributional effect" refers to the impact of a regulatory action across the population and economy, divided up in various ways (e.g. income groups, race, sex, industrial sector, geography). Distributional effects may arise through transfer payments like civil penalties that stem from regulatory enforcement action. While persons paying civil penalties may experience distributional effects, these discrete effects are far outweighed by the positive effects of civil penalties. Compliance with FAA statutes and regulations is essential to safety. The FAA intends for civil penalties to serve as a punitive action against those who violate FAA statutes and regulations. Civil penalties also deter future violations. As a result, they support the FAA's mission of aviation, hazmat, and commercial space safety, which benefits the public at large. Thus, the cost impact of this rulemaking is minimal, and a full regulatory evaluation is not required in accordance with DOT Order 2100.5.

The Office of Information and Regulatory Affairs (OIRA) Administrator has determined that agency regulations exclusively implementing this annual adjustment are

not significant regulatory actions under E.O. 12866, provided they are consistent with the guidance in OMB Memorandum M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The agency has determined that this regulation is consistent with OMB Memorandum M-17-11 because it serves only to provide the 2017 annual civil penalty adjustment using the formula established by the 2015 Act. Thus, per OMB Memorandum M-17-11, the regulation is not significant.

The FAA has further determined that this final rule is not “significant” as defined in DOT’s Regulatory Policies and Procedures. The FAA made this determination because this final rule does not (a) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (b) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (c) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 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.

The FAA believes that this final rule does not have a significant economic impact on a substantial number of small entities for the following reasons. While this final rule is likely to impact a substantial number of small entities, it will impose only minimal costs. This final rule simply identifies the amount of the inflation adjustment to existing civil monetary penalty maximums and minimums for violations of the statutory and regulatory provisions the FAA enforces. The penalty amounts are those specified by statute or called for under the inflation adjustment statutes, and the information in this rule is required by the Debt Collection Improvement Act of 1996.⁷ As civil penalties are economic transfers, by OMB direction, these are not included in the calculation of social costs. Therefore, as

⁷The 2015 Act, Public Law 114-74, codified at 28 U.S.C. 2461 note, specifies the method of calculating the inflation adjustment, and OMB Memorandum M-17-11 provides the guidance required by the 2015 Act for agencies in calculating the 2017 annual inflation adjustment.

provided in section 605(b), the head of the FAA certifies that this rule will not result in a significant economic impact on a substantial number of small entities.

Moreover, although the FAA has completed the analysis to support the certification provided by section 605(b), the RFA does not apply to this rulemaking because notice and comment rulemaking under section 553 of the APA is not required.⁸ Section 4(b)(2) of the 2015 Act specifically excludes this rulemaking implementing each adjustment following the initial catch-up adjustment from section 553 of the APA.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 aviation safety, hazmat, and commercial space provisions in Titles 49 and 51 of the U.S. Code and regulations issued under those provisions, and thus would have a neutral trade impact. Furthermore, the inflation adjustment is a legitimate

⁸ 5 U.S.C. 604(a).

domestic objective preserving the existing deterrent impact of aviation, hazmat, and commercial space safety statutes and regulations. 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 (Public Law 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 (in 1995 dollars) 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 \$155 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

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.

Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5-6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The FAA has also determined that there are no extraordinary circumstances requiring an environmental assessment or environmental impact statement.

Federalism

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

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). The agency has determined that it is not a “significant energy action” under the executive order 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; or

3. Accessing the Government Printing Office's Web page at

<http://www.gpo.gov/fdsys>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

List of Subjects

14 CFR Part 13

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

14 CFR Part 406

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

The Amendment

Accordingly, the interim rule amending 14 CFR parts 13 and 406 which was published at 81 FR 43463 on July 5, 2016, is adopted as a final rule with the following changes:

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 is revised 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, 44701–44703, 44709– 44710, 44713, 44725, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531– 47532; 49 CFR 1.83.

2. Amend § 13.301 by revising the section heading and paragraph (c) to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

* * * * *

(c) Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are as follows:

Table of Minimum and Maximum Civil Monetary Penalty Amounts for Certain Violations Occurring on or after January 15, 2017

United States Code citation	Civil monetary penalty description	2016 minimum penalty amount	New minimum penalty amount	2016 maximum penalty amount	New maximum penalty amount
49 U.S.C. 5123(a)(1)	Violation of hazardous materials transportation law	N/A	N/A	\$77,114	\$78,376
49 U.S.C. 5123(a)(2)	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction	N/A	N/A	\$179,933	\$182,877

United States Code citation	Civil monetary penalty description	2016 minimum penalty amount	New minimum penalty amount	2016 maximum penalty amount	New maximum penalty amount
49 U.S.C. 5123(a)(3)	Violation of hazardous materials transportation law relating to training	\$463	\$471	\$77,114	\$78,376
49 U.S.C. 46301(a)(1)	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B)	N/A	N/A	\$32,140	\$32,666
49 U.S.C. 46301(a)(1)	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B))	N/A	N/A	\$1,414	\$1,437
49 U.S.C. 46301(a)(1)	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5))	N/A	N/A	\$1,414	\$1,437

United States Code citation	Civil monetary penalty description	2016 minimum penalty amount	New minimum penalty amount	2016 maximum penalty amount	New maximum penalty amount
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section	No change
49 U.S.C. 46301(a)(5)(A)	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii)	N/A	N/A	\$12,856	\$13,066
49 U.S.C. 46301(a)(5)(B) (i)	Violation by an individual or small business concern related to the transportation of hazardous materials	N/A	N/A	\$12,856	\$13,066
49 U.S.C. 46301(a)(5)(B) (ii)	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation	N/A	N/A	\$12,856	\$13,066

United States Code citation	Civil monetary penalty description	2016 minimum penalty amount	New minimum penalty amount	2016 maximum penalty amount	New maximum penalty amount
49 U.S.C. 46301(a)(5)(B) (iii)	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills	N/A	N/A	\$12,856	\$13,066
49 U.S.C. 46301(a)(5)(B) (iv)	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts	N/A	N/A	\$12,856	\$13,066
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	N/A	\$4,126	\$4,194
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States	N/A	N/A	\$22,587	\$22,957
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	\$34,172	\$34,731
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice	N/A	N/A	\$12,856	\$13,066

United States Code citation	Civil monetary penalty description	2016 minimum penalty amount	New minimum penalty amount	2016 maximum penalty amount	New maximum penalty amount
49 U.S.C. 47531	Violation of 49 U.S.C. 47528-47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels	N/A	N/A	See 49 U.S.C. 46301(a)(1) and (a)(5), above	See 49 U.S.C. 46301(a)(1) and (a)(5), above

**CHAPTER III—COMMERCIAL SPACE TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION
PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW**

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

Authority: 51 U.S.C. 50901-50923.

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

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(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 \$229,562 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

Issued under the authority provided by 28 U.S.C. 2461 note, 49 U.S.C. 106(f) and 44701(a), and 51 U.S.C. 50901 in Washington, DC, on February 13, 2017.

Michael P. Huerta,

Administrator.

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