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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2025-2514]

RIN 2105-ZA20

### Notice Regarding Investigatory and Enforcement Policies and Procedures of the Office of Aviation Consumer Protection

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

**ACTION:** Notice of Proposed Guidance.

**SUMMARY:** The U.S. Department of Transportation is proposing to revise and update the investigatory and enforcement policies and practices of its Office of Aviation Consumer Protection (OACP), including the sanctions brought by OACP for non-compliance with aviation consumer protection requirements.

**DATES:** Comments should be filed by [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-OST-2025-2514 by any of the following methods:

- Federal eRulemaking Portal: go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001.
- Hand Delivery or Courier: U.S. Department of Transportation, Docket Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Commenters using this method of delivery should contact Docket Services at 202-366-9826 or 202-366-9317 before delivery to ensure staff is available to receive the delivery.

*Instructions:* You must include the agency name and docket number DOT-OST-2025-2514 or the Regulatory Identification Number (RIN 2105-ZA20) for the rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone can search the electronic form of all comments received in 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.) For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

*Docket:* For access to the docket to read background documents and comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Ryan Patanaphan or Blane A. Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, 202-366-9342, 202-366-7152 (fax), [ryan.patanaphan@dot.gov](mailto:ryan.patanaphan@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

**SUPPLEMENTAL INFORMATION:** OACP, a unit within the Office of the General Counsel, is responsible for enforcing aviation consumer protection statutes and regulations. On January 3, 2023, OACP published on its website guidance describing its investigatory and enforcement practices, including an attachment listing the criteria the office uses to determine an appropriate sanction for violations.<sup>1</sup> In February 2025, President Trump issued Executive Order 14219, titled "Ensuring Lawful Governance and Implementing the President's Department of Government Efficiency Deregulatory Initiative," which directs Federal agencies to prioritize enforcement of regulations that are explicitly authorized by the Constitution and Federal statutes.<sup>2</sup> In March 2025, the Department's Acting General Counsel issued a memorandum clarifying the procedural requirements governing enforcement actions

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<sup>1</sup> [https://www.transportation.gov/airconsumer/Notice\\_Investigatory\\_Enforcement\\_Policies\\_Procedures](https://www.transportation.gov/airconsumer/Notice_Investigatory_Enforcement_Policies_Procedures)

<sup>2</sup> 90 FR 10583 (Feb. 25, 2025).

initiated by the Department in order to ensure that DOT enforcement actions satisfy principles of due process and remain lawful, reasonable, and consistent with Administration policy.<sup>3</sup> In May 2025, the Department issued a notice of proposed rulemaking that proposes, among other things, to codify the provisions of that memorandum.<sup>4</sup> OACP is proposing to revise its existing investigatory and enforcement policies and procedures to be consistent with current Departmental and Administration policy and to ensure that OACP is carrying out its enforcement responsibilities in a fair and just manner. The substantive text of the proposed updated notice, including its attachment, is produced for public comment following this section.

Signed in Washington, D.C., on December 31, 2025.

Blane A. Workie

Assistant General Counsel

Office of Aviation Consumer Protection

U.S. Department of Transportation

#### NOTICE REGARDING INVESTIGATORY AND ENFORCEMENT POLICIES AND PROCEDURES

The U.S. Department of Transportation's Office of Aviation Consumer Protection (OACP), a unit within the Office of the General Counsel, is responsible for monitoring airline and ticket agent compliance with the Department's aviation consumer protection, civil rights, and economic licensing requirements. The office has broad authority to investigate violations of these requirements and the discretion to determine whether and how to conduct such investigations and initiate enforcement actions. OACP also has authority, under 49 U.S.C. 46301, to assess civil penalties. This notice is being issued to

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<sup>3</sup> <https://www.transportation.gov/administrations/office-general-counsel/general-counsel%E2%80%99s-enforcement-memorandum>

<sup>4</sup> 90 FR 20956 (May 16, 2025).

ensure alignment between OACP's investigatory and enforcement policies and practices and the Administration's directives and priorities.

Executive Order 14219, issued on February 25, 2025, directs Federal agencies to de-prioritize actions to enforce regulations that are based on anything other than the best reading of a statute or go beyond the powers vested in the Federal Government by the Constitution. Consistent with this Executive Order and the Department's enforcement objectives, OACP intends to modify its enforcement program to ensure that all enforcement actions taken against affected parties are founded on a positive grant of statutory authority and that monetary penalties, if sought, are based upon statutory text that clearly grants the Department the authority to impose such penalties for the asserted violations. In the proper exercise of enforcement discretion, OACP will apply the best reading of the statutory text and not adopt or rely upon overly broad interpretations of the governing statutes or regulations.

In addition, consistent with the Administration's enforcement philosophy, OACP's enforcement focus will be on ensuring compliance with civil rights and consumer protection regulations rather than finding and penalizing entities for violations. Proactive measures to promote compliance benefit the public by creating a culture of compliance where regulated entities work to prevent violations from happening in the first place. OACP intends to work with the regulated entities to ensure that they understand and meet their obligations. If OACP finds violations, it will attempt to address the problem by issuing a warning letter to help the regulated entity achieve compliance and resolve the issues before pursuing enforcement actions, which may result in negotiated settlement orders assessing civil penalties. When OACP has evidence of widespread, systemic, egregious, or intentional violations, it may determine that enforcement action is appropriate. In all enforcement actions, OACP will carry out its responsibilities in a fair and just manner, which includes ensuring that the affected parties are provided due process and ensuring actions are based on established law and grounded in factual evidence.

Once OACP has determined that enforcement action is appropriate, it will attempt to negotiate an order assessing a reasonable civil penalty and requiring reasonable corrective actions such as ensuring consumers are made whole. If the regulated entity and OACP are not able to reach agreement

on the terms of a consent order, OACP may seek resolution of the matter by filing a formal complaint before the Department's Office of Hearings for a decision by an Administrative Law Judge (ALJ). A civil action in a district court of the United States may also be initiated to enforce violations of aviation consumer protection and civil rights statutes or regulations. OACP's approach of prioritizing compliance efforts before resorting to enforcement action is a more effective and efficient way to improve the air travel environment for consumers.

## **How OACP Learns About Potential Problems**

Most of OACP's investigations and enforcement actions are based on consumer complaints. OACP receives complaints directly from consumers about services they received or requested from an airline or ticket agent that do not relate to airline safety or security. A team of Transportation Industry Analysts reviews consumer complaints and tracks trends to identify problematic practices. OACP also learns about potential problems through its own investigation by monitoring websites, advertisements, and other materials produced by airlines and ticket agents. OACP may also learn about potential problems through inspections of airline headquarters or airports, referrals from other government agencies, required submissions from airlines, reports from airline competitors, and media stories. OACP's Aviation Complaint, Enforcement, and Reporting System (ACERS) manages consumer complaints and reports submitted by regulated entities.

## **Investigation Process**

Consistent with due process, once sufficient facts are established for OACP to open an investigation, OACP generally sends an investigation letter to the alleged violator. This letter advises the regulated entity of the potential problematic conduct, requests additional information, and allows the respondent to inform OACP of defenses, mitigating circumstances, or additional facts while encouraging voluntary cooperation. When an investigation letter is sent to a regulated entity, OACP considers the entity to be on sufficient notice of OACP's jurisdiction over the particular conduct and the legal standards applicable to that conduct. OACP may also contact third parties to conduct interviews or obtain documents for review. Once OACP has received enough information to determine whether a

violation occurred and the extent of the violation(s), OACP evaluates and decides how to resolve the matter.

## **Results of Investigations**

OACP investigations can result in a finding of a violation, no violation, or insufficient information if there is not adequate evidence of whether a violation occurred. If a violation is found, OACP will work with the airline or ticket agent to ensure that corrective action is taken. OACP may also initiate enforcement action if appropriate. If OACP finds that no violation occurred following an investigation, OACP will close the investigation without prejudice to further investigation and will inform the entity being investigated of the decision (if the entity was previously made aware of the investigation or other pre-enforcement activity). If there is insufficient information to identify whether a violation occurred, OACP may close the case or decide to monitor the practices of the entity being investigated.

## **Types of Enforcement Action**

- ***Consent Orders:*** OACP generally takes enforcement action when it sees a pattern or practice of violations. If enforcement action is warranted, OACP primarily resolves these cases by negotiating with the alleged violator and reaching a settlement agreement in the form of a consent order. The consent order is an order directing the alleged violator to cease and desist from the problematic practice. In many cases, the consent order will assess an administrative civil penalty. All settlements are made public through OACP's website and the regulations.gov public docket.
- ***Enforcement Proceeding in Front of the Office of Hearings:*** If OACP and a regulated entity cannot reach a satisfactory resolution of an enforcement matter using the negotiated consent order process, then OACP may choose to pursue such violations through the initiation of a formal enforcement proceeding before an ALJ as expressly authorized by 49 U.S.C. 46301. In accordance with 49 U.S.C. 46301, these enforcement actions likely would seek civil penalties, cease and desist provisions, and other remedial relief deemed appropriate by OACP. The formal

complaint that OACP files with the ALJ becomes public on OACP’s website. Following the ALJ’s decision, parties may file for further review from the Department decisionmaker.

- ***Civil Action in District Court:*** OACP is not limited to initiating a proceeding before an ALJ and also has the option to bring a civil action in a United States District Court as authorized by 49 U.S.C. 46106 and 46107.
- ***Warning Letters:*** If OACP determines that enforcement action through an order, an administrative proceeding before an ALJ, or a civil action in district court is not warranted (for example, if the violating entity took sufficient corrective action prior to OACP’s learning about the violation), OACP plans to exercise its discretion and send a warning letter to the violating entity. The letter places the violator on notice that OACP is aware of the violation and may pursue enforcement action if similar violations occur in the future.

### **Voluntary Self-Disclosure**

A regulated entity’s voluntarily self-disclosing violations of the Department’s requirements in a timely manner will strongly weigh in favor of no enforcement action or reduced penalties for that entity. OACP will consider the entity’s disclosure and corrective actions in determining whether to take enforcement action and the remedies if action is taken. Depending on the level of consumer harm, OACP may determine enforcement action is not warranted if the entity has corrected the issue and made whole any consumers negatively impacted by the violations. In the alternative, OACP may take the self-disclosure into account as a factor in determining the civil penalty assessed against the entity. A self-disclosure is not considered voluntary if the disclosure is required by law.

### **Case Closure**

OACP may close a case if it determines that no violation occurred, if there is insufficient information to decide, if OACP’s resources are better utilized elsewhere, or if the violation has been remedied and no further action is required.

### **Sanctions**

OACP's enforcement program focuses on ensuring compliance with Departmental requirements rather than penalizing entities for violations. The office's enforcement program seeks to encourage voluntary compliance, including voluntary self-disclosure of violations, before pursuing enforcement actions that could include assessment of civil penalties. When warranted, civil penalties are meant to change the violator's behavior and bring about compliance. Civil penalties should be reasonable and proportional to the violation and its impacts, and the bases for penalty assessments should be consistent and transparent to the public. OACP continually reevaluates its penalty structure to ensure that its administrative civil penalties are set fairly and consistent with statutory authority.

Within the boundaries of statutory authority, multiple factors may impact the level of a civil penalty assessment. These include the scope and scale of the violation, the degree of harm caused, the violator's history of non-compliance, the violator's ability to pay, the Department's past actions for similar violations, the possibility of incentivizing or deterring future actions, and the size of the business in question. Penalties are assessed on a per-violation basis. If civil penalties are insufficient due to the criminal nature of the violating conduct, OACP may refer the case to the Department's Office of the Inspector General for review, investigation, and potential prosecution. OACP may also refer matters to the Department of Justice (DOJ) for civil enforcement, where appropriate. For a full list of criteria used by OACP in calculating a sanction, please see the Attachment "Criteria Considered in Setting Civil Penalties."

This notice supersedes the previous notice dated January 3, 2023.

## ATTACHMENT

### U.S. Department of Transportation

#### Office of Aviation Consumer Protection

#### Criteria Considered in Setting Civil Penalties

The Office of Aviation Consumer Protection (OACP) considers the factors listed below in determining the civil penalty it would seek or settle for in an enforcement proceeding and considers other relevant factors as appropriate. The civil penalty amounts referenced in this document are annually adjusted based on inflation pursuant to statute.<sup>5</sup> OACP will update the penalty amounts in this attachment when that occurs and include the date of this change.

- 1) The maximum assessable amount of the civil penalty under 49 U.S.C. 46301 and 14 CFR part 383, as adjusted for inflation. As of 2025, the maximum civil penalty assessable per violation is as follows:

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<sup>5</sup> The Department's civil penalties are adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Pub. L. No. 101-410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. No. 114-74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts to preserve their deterrent impact. The 2015 Act specifically required an initial catch-up adjustment, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula.

For example, violations by entities not qualifying as a small business concern occurring from May 3, 2021 to March 20, 2022 are subject to a maximum civil penalty amount per violation up to \$35,188. Revisions to Civil Penalty Amounts, 86 Fed. Reg. 23241 (May 3, 2021) (codified at 14 CFR 383.2). For violations occurring from March 21, 2022, to January 5, 2023, the applicable maximum civil penalty amount per violation is up to \$37,377. Revisions to Civil Penalty Amounts, 87 Fed. Reg. 15839 (March 21, 2022). For violations occurring from January 6, 2023, to December 27, 2023, the applicable maximum civil penalty amount per violation is up to \$40,272. Revisions to Civil Penalty Amounts, 88 Fed. Reg. 1114 (January 6, 2023). For violations occurring from December 28, 2023, to May 15, 2024, the applicable maximum civil penalty amount per violation is up to \$41,477. Revisions to Civil Penalty Amounts, 88 Fed. Reg. 89551 (December 28, 2023). The FAA Reauthorization Act of 2024, Pub. L. No. 118-63, increased the maximum civil penalty amount to \$75,000 for each violation occurring on or after May 16, 2024.

Furthermore, under 49 U.S.C. 46301(a)(7), a violation of section 41705 that involves damage to a passenger's wheelchair or other mobility aid or injury to a passenger with a disability may be increased above the otherwise applicable maximum amount to an amount not to exceed 3 times the maximum penalty otherwise allowed.

- The **General Penalty Provision** for violations of Title 49 and Department orders and regulations is \$75,000 per violation for all entities, other than small business or individuals, to which a general penalty amount of \$1,875 per violation applies. For OACP purposes, the \$1,875 per violation penalty is usually applicable only in cases involving reporting violations by small carriers.

- For **small businesses**, as defined in 13 CFR part 121, 15 U.S.C. 632, and **individuals**, three specialized penalty amounts apply to specific kinds of violations:

- \$17,062 for violations of certain provisions of chapter 401 (see statute for specifics), including the anti-discrimination provisions of section 40127 and those applying to passengers with disabilities (49 U.S.C. 41705) and related rules and orders;
- \$8,531 for violations of 49 U.S.C. 41719 (related to essential air service) and related rules and orders;
- \$4,267 for violations of 49 U.S.C. 41712 (unfair and deceptive practices) and related rules and orders.

- For **continuing violations**, each day a violation continues is a separate violation for penalty purposes.

- 2) The number of violations.
- 3) How long the violations continued, especially after the alleged violator's management became aware of them.
- 4) The harm caused by the violations, as well as steps taken to reimburse passengers or otherwise correct the harm.
- 5) Whether the violations were inadvertent or deliberate.
- 6) The alleged violator's enforcement history.
- 7) The alleged violator's compliance disposition:
  - a. did the entity expend resources to prevent such violations?

- b. did the entity have procedures in place to prevent such violations?
- c. did the entity provide training to employees in the area?
- d. how quickly was the problem corrected after OACP notification?
- e. what resources did the entity expend to correct the situation (e.g., for training, new equipment, new procedures, additional personnel)?

8) The alleged violator's ability to pay (e.g., carrier in financial distress).

9) The Department's history and past practices in assessing penalties for similar violations, adjusting for statutory penalty increases and inflation.

10) The alleged violator's experience/sophistication level (e.g., new airline or established carrier; foreign carrier with limited service to U.S.).

11) The need to eliminate/disgorge any profits attributable to the violations.

12) Any valid excuses for the violations (e.g., were they beyond the alleged violator's control?).

13) Whether the violations were voluntarily self-reported by the alleged violator

In addition, to encourage future compliance, OACP may permit the inclusion of a suspended civil penalty amount, as appropriate for each case. This amount becomes immediately due if the regulated entity violates the cease-and-desist or payment provisions of the order within a set period, usually one year from the issuance date of the order. The office also may include "offsets" in settlements for expenditures the violator makes that go above and beyond the Department's aviation consumer requirements, e.g., providing compensation to consumers when not required under the Department's regulations, or purchasing equipment or implementing systems that will provide tangible consumer benefits in the future beyond what is required to comply with the law.

Finally, it should be noted that virtually every settlement the office enters into involves the issuance of a cease-and-desist order with findings of violations. Consent orders become final orders of the Department 10 days after issuance, unless a petition for review is filed or the Department takes review on its own initiative. Consent orders have become a valuable source of Department enforcement case precedent, but they do not create new regulatory obligations for entities that are not named in the order.

