

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 13****[Docket No. 28762; Amdt. No. 13-28]****RIN 2105-AC63****Inflation Adjustment of Civil Monetary Penalties****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts for inflation the amount of each statutory civil penalty subject to the Federal Aviation Administration's jurisdiction in accordance with the requirements of the Act, as amended.

EFFECTIVE DATE: This final rule is effective January 21, 1997.

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SUPPLEMENTARY INFORMATION:**Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 ("1990 Act"), Public Law (Pub. L.) 101-410, 194 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 ("Act"), Pub. L. 104-134, April 26, 1996, requires the adjustment of civil monetary penalties (CMP) for inflation. This adjustment is intended to ensure that CMPs maintain their deterrent value. The Act requires that not later than 180 days after its enactment, which is October 23, 1996, and at least once every 4 years thereafter, the head of each agency shall, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The inflation adjustment under the Act is to be determined by increasing the maximum CMP by the cost-of-living adjustment (COLA), rounded off as set forth in section 5(a) of the 1990 Act. The COLA is the percentage (if any) for each CMP by which the Consumer Price Index ("CPI")¹ for the month of June of the calendar year preceding the adjustment

(i.e., June 1995 for this initial adjustment) exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. The first adjustment to a CMP may not exceed 10 percent of such penalty.

Any increased penalties apply only to violations that occur after the date on which the increase takes effect.

A typical example of an inflation adjustment of a CMP is as follows:

Section 5123 of Title 49, United States Code (the Federal Hazardous Materials Transportation Law), imposes a minimum \$250 and a maximum \$25,000 penalty for a knowing violation of Chapter 51 or a regulation prescribed or order issued thereunder. The penalty was set in 1990. The CPI for June 1990 was 389.1. The CPI for June 1995 is 456.7. The inflation factor, therefore, is 456.7/389.1, or 1.17. The minimum penalty amount would not be changed after increase and statutory rounding. However, the maximum penalty amount after increase and statutory rounding would be \$30,000 (1.17×\$25,000). The new maximum penalty amount after applying the 10% limit on an initial increase is \$27,500.

A similar calculation was done with respect to each CMP subject to the jurisdiction of the Federal Aviation Administration (FAA). In compliance with the Act, the FAA is hereby amending its regulations by creating a new subpart H in 14 CFR part 13, which will be entitled Civil Monetary Penalty Inflation Adjustment.

Waiver of Notice of Proposed Rulemaking

The Administrative Procedure Act (APA), 5 U.S.C. 553, sets forth procedures for notice and public comment rulemaking. The APA also provides an exception from notice and document procedures when an agency finds good cause for dispensing with those procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. The FAA has determined that under 5 U.S.C. 553, good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports, and is consistent, with the statutory authority set forth in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, with no issues of policy discretion. Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory formula mandated by the Act.

Accordingly, opportunity for prior comment is unnecessary. The FAA, therefore, is issuing these regulations as a final rule that will apply to all future cases under this authority.

Economic Summary

This final rule is exempt from review under Executive Order 12866 because it is limited to the adoption of statutory language without interpretation. As indicated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996 for specific applicable civil monetary penalties under the authority of the FAA.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

The aggregate economic impact of this rulemaking on small business entities should be minimal, affecting only those few entities who choose to engage in prohibited arrangements and schemes in violation of the statutes and regulations the FAA administers. Therefore, the FAA has concluded that this final rule will not have a significant economic impact, positive or negative, on a substantial number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. This rule will not have a competitive trade disadvantage on foreign or domestic operators inasmuch as the maximum civil penalties or ranges of minimum and maximum civil penalties adjusted under this regulation apply equally to foreign and domestic operators who violate the statutes or regulations within the FAA's jurisdiction.

Unfunded Mandate

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the

¹ CPI is defined as the CPI for all urban consumers published annually by the Department of Labor.

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Reform Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Reform Act do not apply.

Federalism Implications

The regulations adopted herein do not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have federalism implications warranting the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA finds no corresponding International Civil Aviation Organization regulations or Joint Aviation Regulations; therefore, no differences exist.

Paperwork Reduction Act

The rule does not contain any collection of information requirements, as defined by the Paperwork Reduction

Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

Conclusion

The FAA has determined that this final rule is exempt from review under Executive Order 12866 because it is limited to the adoption of statutory language without interpretation. For the same reason, it is not a significant rule under the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since any additional costs incurred under this regulation will apply only to those few entities who engage in conduct prohibited under the statutes and regulations that the FAA administers, the FAA certifies under the criteria of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities and that a regulatory flexibility analysis is unnecessary.

List of Subjects in 14 CFR Part 13

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

The Amendments

Accordingly, the Federal Aviation Administration amends 14 CFR part 13 by adding subpart H to read as follows:

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, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Subpart H is added to read as follows:

Subpart H—Civil Monetary Penalty Inflation Adjustment

Sec.

13.301 Scope and purpose.

13.303 Definitions.

13.305 Cost of Living Adjustments of Civil Monetary Penalties.

Subpart H—Civil Monetary Penalty Inflation Adjustment

§ 13.301 Scope and purpose.

(a) This subpart provides a mechanism for the regular adjustment for inflation of civil monetary penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended by the Debt Collection Improvement Act

of 1996, Public Law 104–134, April 26, 1996, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law. This subpart also sets out the current adjusted maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to the FAA's jurisdiction.

(b) Each adjustment to the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, made in accordance with this subpart applies prospectively from the date it becomes effective to actions initiated under this part, notwithstanding references to a specific maximum civil monetary penalty or range of minimum and maximum civil monetary penalties contained elsewhere in this part.

§ 13.303 Definitions.

(a) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law or has a maximum amount provided by Federal law;

(2) Is assessed or enforced by the FAA pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

(b) *Consumer Price Index* means the Consumer Price Index for all urban consumers published by the Department of Labor.

§ 13.305 Cost of Living Adjustments of Civil Monetary Penalties.

(a) Except for the limitation to the initial adjustment to statutory maximum civil monetary penalties or range of minimum and maximum civil monetary penalties set forth in paragraph (c) of this section, the inflation adjustment under this subpart is determined by increasing the maximum civil monetary penalty or range of minimum and maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under paragraph (a) of this section is rounded to the nearest:

(1) Multiple of \$10 in the case of penalties less than or equal to \$100;

(2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.
 (b) For purposes of paragraph (a) of this section, the term "cost-of-living adjustment" means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of

June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.
 (c) Limitation on initial adjustment. The initial adjustment of maximum civil penalty or range of minimum and maximum civil monetary penalties made pursuant to this subpart does not exceed 10 percent of the statutory maximum civil penalty before an

adjustment under this subpart is made. This limitation applies only to the initial adjustment, effective on January 21, 1997.

(d) *Inflation adjustment.* Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are adjusted for inflation as follows:

MINIMUM AND MAXIMUM CIVIL PENALTIES ADJUSTED FOR INFLATION, EFFECTIVE JANUARY 21, 1997

United States Code citation	Civil monetary penalty description	Minimum penalty amount as of 10/23/96	New adjusted minimum penalty amount	Maximum penalty amount as of 10/26/96	New adjusted minimum penalty amount
49 U.S.C. 5123(a) (changed 1990).	Violations of hazardous materials transportation law or regulations.	\$250 per violation per day.	\$250 per violation per day.	\$25,000 per violation per day.	\$27,000 per violation per day.
49 U.S.C. 46301(a)(1) (1958).	Violations of FAA statute or regulations by a person.	N/A	N/A	\$1,000 per violation per day.	\$1,100 per violation per day.
49 U.S.C. 46301(a)(2) (changed 1987).	Violations of FAA statute or regulations by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	\$10,000 per violation per day.	\$11,000 per violation per day.
49 U.S.C. 46301(a)(3)(A) (1974).	Violations of FAA statute or regulations involving the transportation of hazardous materials by air.	N/A	N/A	\$10,000 per violation per day.	\$11,000 per violation per day.
49 U.S.C. 46301(a)(3)(B) (1988).	Violations of FAA statute or regulations involving the registration or recordation under chapter 441 of aircraft not used to provide air transportation.	N/A	N/A	\$10,000 per violation per day.	\$11,000 per violation per day.
49 U.S.C. 46301(b) (1987).	Tampering with a smoke alarm device.	N/A	N/A	\$2,000 per violation	\$2,200 per violation.
49 U.S.C. 46302 (1984).	Knowingly providing false information about alleged violations involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$10,000 per violation	\$11,000 per violation.
49 U.S.C. 46303 (1984).	Carrying a concealed deadly or dangerous weapon.	N/A	N/A	\$10,000 per violation	\$11,000 per violation.

Issued in Washington, DC on December 13, 1996.

Linda Hall Daschle,
 Acting Administrator.

[FR Doc. 96-32258 Filed 12-19-96; 8:45 am]

BILLING CODE 4910-13-M