



**[44910-13]**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 406**

**[Docket No. FAA-2014-0822; Amdt. No. 406-8]**

**RIN 2120-AK55**

**Civil Penalty Inflation Adjustment for Commercial Space Adjudications; Second Amendment**

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

**ACTION:** Immediately adopted final rule.

**SUMMARY:** This final rule is the second mandatory inflation-based adjustment to the maximum civil penalty authorized for violations of the Commercial Space Launch Act of 1984, as amended. This adjustment is done to bring the authorized penalty for violations into compliance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Alex Zektser, General Attorney, Office of the Chief Counsel, International Law, Legislation, and Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; e-mail [Alex.Zektser@faa.gov](mailto:Alex.Zektser@faa.gov).

## **SUPPLEMENTARY INFORMATION:**

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

The statute under which the Secretary of Transportation regulates commercial space transportation, 51 U.S.C. Subtitle V, sections 50901-50923 (chapter 509), provides for the Department of Transportation (DOT), and, through delegation, the Federal Aviation Administration (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 (Pub. L.) 101-410, as amended by the Debt Collection Improvement Act (DCIA) of 1996, Public Law 104-134, codified at 28 U.S.C. 2461 note.

The FCPIAA and DCIA require 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 four years. The agency must adjust the amount of the penalty using a strict statutory formula discussed in more detail below.

### **Prior Rulemakings**

This rule is the FAA's second adjustment to the maximum civil penalty found in 14 CFR part 406 which governs commercial space transportation adjudications. The initial adjustment to the maximum civil penalty found in 14 CFR part 406 occurred in 2010.<sup>1</sup>

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<sup>1</sup> Civil Penalty Inflation Adjustment for Commercial Space Adjudications, 75 FR 30690 (June 2, 2010).

## **Background**

The FCPIAA determines inflationary adjustments by increasing civil penalties by a cost-of-living adjustment (COLA). Under the FCPIAA, 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.

### *Method of Calculation*

Section 406.9 of 14 CFR currently imposes a maximum civil penalty of \$110,000 for violations of chapter 509, a regulation proscribed under chapter 509, or any term or condition of a license or permit issued or transferred under chapter 509. To determine the appropriate adjustment that must be made pursuant to the FCPIAA, we first find the CPI-U for June of the calendar year preceding the year of adjustment is determined. Because the adjustment in this case is being made in 2014, we will use the June of 2013 CPI-U, which is 233.504.<sup>2</sup> Next, we determine the CPI-U for June of the year the civil penalty was last adjusted. Because the civil penalty was last adjusted in 2010, we would use the CPI-U for June of 2010, which is 217.965.<sup>3</sup>

Next, we use the above CPI-U numbers to calculate the COLA. To do this, we subtract the CPI-U for June 2010 (217.965) from the CPI-U of June 2013 (233.504). We then divide the resulting difference (15.539) by the CPI-U for June 2010 (217.965). The resulting quotient (.07129) is then multiplied by 100 yielding a COLA of 7.129%.

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<sup>2</sup> See Bureau of Labor Statistics, CPI Detailed Report: Data for June 2013, Table 1, which may be found at <http://www.bls.gov/cpi/cpid1306.pdf>.

<sup>3</sup> See Bureau of Labor Statistics, CPI Detailed Report: Data for June 2010, Table 1, which may be found at <http://www.bls.gov/cpi/cpid1006.pdf>.

To calculate the raw inflationary increase we multiply the current maximum civil penalty (\$110,000) by the COLA (7.129%). This provides a raw inflation increase of \$7,842. Next, we 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 \$110,000 would be that “[a]ny increase . . . is rounded to the nearest . . . [m]ultiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000 . . .” Thus, the raw increase of \$7,842 becomes \$10,000 after being rounded to the nearest \$10,000. Finally, the increase of \$10,000 is added to the current civil penalty \$110,000, resulting in an inflation-adjusted civil penalty of \$120,000.

#### **Good Cause for Not Having Notice and Comment**

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(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 case 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. The FCPIAA serves as a Congressional mandate and the FAA may not exercise any discretion or policy judgments. The FAA also has no discretion as to the amount of the adjustment because the amount of the adjustment is determined using a strict statutory formula. Since the FCPIAA does not provide the FAA with any discretion regarding any aspect of this rulemaking, the FAA would be unable to make any changes to this rule in response to public comment. Accordingly, public comment is unnecessary in this case.

#### **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 51 U.S.C. subtitle V, chapter 509. 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 \$151 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/rulemaking/](http://www.faa.gov/regulations_policies/rulemaking/); 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://www.regulations.gov>.

### **Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the 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/>.

### **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:** 51 U.S.C. 50901-50923.

2. 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 \$120,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

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Issued under authority provided by 49 U.S.C. 106(f) and 51 U.S.C. 50904-50905 in Washington, DC, on September 29, 2014.

Michael P. Huerta

Administrator

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