



7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No.: NTSB-GC-2017-0001]

RIN 3147-AA20

Civil Monetary Penalty Catch Up Inflation Adjustment and Annual Inflation Adjustment.

**AGENCY:** National Transportation Safety Board (NTSB).

**ACTION:** Interim Final Rule with request for comments.

**SUMMARY:** This Interim Final Rule adjusts for inflation the maximum civil penalty that the NTSB may assess against a person for violating certain NTSB statutes and regulations.

**DATES:** This Interim Final Rule is effective on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. The NTSB will accept written comments on this Interim Final Rule on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** A copy of this Interim Final Rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW, Washington, D.C. 20594-003. Alternatively, a copy is available on the government-wide website on regulations at <http://www.regulations.gov> (Docket ID Number NTSB-GC-2017-0001).

You may send comments identified by Docket ID Number NTSB-GC-2017-0001 using any of the following methods:

1. Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

2. Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East, SW, Washington, D.C. 20594-003.

3. Facsimile: Fax comments to 202-314-6090.

4. Hand Delivery: Bring comments to 490 L'Enfant Plaza East, SW, 6th Floor, Washington, D.C., between 9 a.m. and 5 p.m., Monday through Friday, except Legal public holidays.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Sean Dalton, Acting General Counsel, (202) 314-6389.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Pursuant to 49 U.S.C. 1155(a), the NTSB may impose a civil penalty up to \$1,000 on a person who violates 49 U.S.C. 1132 (prescribing the NTSB's general authority to investigate aircraft accidents); 1134(b) (governing NTSB inspection and testing of aircraft and property on an aircraft); 1134(f)(1) (permitting the NTSB to conduct or order autopsies); 1136(g) (prohibiting attorneys from sending unsolicited communications to victims of aircraft accidents or their family members).

The \$1,000 maximum civil penalty amount must be adjusted for inflation in several ways. First, the NTSB must publish a catch-up adjustment to account for the effect of inflation since the maximum amount was established by Congress. Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, sec. 701, 129 Stat. 584 (codified at 28 U.S.C. 2461 note) (hereinafter

“Inflation Adjustment Act”).<sup>1</sup> Second, the NTSB must publish an annual inflationary adjustment no later than January 15th of each year, beginning in 2017. The Office of Management and Budget (OMB) has published guidance on the initial catch-up adjustment, OMB, M 16-06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (2016) (hereinafter “OMB catch-up guidance”), and the 2017 yearly adjustment. OMB, M 17-11, *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (2016) (hereinafter “OMB annual guidance”). This Interim Final Rule combines the NTSB’s catch-up adjustment that was due by July 1, 2016, and the NTSB’s 2017 annual inflation adjustment. *See* OMB annual guidance, *supra*, at 4 (stating that agencies can finalize their catch-up adjustments in the same rulemaking as their annual adjustments).

## **II. The catch-up adjustment.**

### **A. The catch-up adjustment increases the NTSB’s \$1,000 maximum penalty amount to \$1,591.**

In order to complete the catch-up adjustment required by the Inflation Adjustment Act, the NTSB must first identify the year in which the \$1,000 maximum penalty amount was either (1) established by Congress, or (2) last adjusted by Congress or the agency through regulation, other than pursuant to the Inflation Adjustment Act, whichever is later. Next, the NTSB must modify the maximum penalty amount based on the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the

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<sup>1</sup> The 2015 Act replaced inflation adjustment procedures established by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, sec. 31001(s)(1), 110 Stat. 1321–373.

month of October 2015, not seasonally adjusted, exceeds the CPI-U for the month of October for the calendar year when the penalty amount was established or last adjusted. 28 U.S.C. 2461 note, sec 4(a), 5(b)(2); OMB catch-up guidance, *supra*, at 3. The OMB catch-up guidance contains a table listing multipliers that can be used to adjust the maximum penalty amount based on the year the penalty was established or last adjusted (the “CPI-U Multiplier”). OMB catch-up guidance, *supra*, at 6. After applying this multiplier, the NTSB must round all penalty amounts to the nearest dollar. 28 U.S.C. 2461 note, sec. 5(a).

The \$1,000 maximum penalty amount was established in 1994, Pub. L. 103-272, sec. 1(d), 108 Stat. 745 (1994), and has not since been modified. 49 U.S.C. 1155(a). OMB’s CPI-U Multiplier for 1994 is 1.59089. OMB catch-up guidance, *supra*, at 6. A maximum penalty amount of \$1,000 multiplied by 1.59089 equals \$1,590.89. Rounding to the nearest dollar equals \$1,591. This is less than a 150% increase, and therefore does not need to be reduced. 28 U.S.C. 2461 note, sec. 5(b)(2)(C); OMB catch-up guidance, *supra*, at 8.

**B. The NTSB will not seek an adjustment below the otherwise required catch-up adjustment amount.**

The Inflation Adjustment Act permits the NTSB to adjust the maximum civil penalty amount by less than the required amount if OMB concurs and the NTSB determines that the required adjustment will have a negative economic impact, or the social costs will outweigh the benefits. 28 U.S.C. 2461 note, sec. 4(c). The NTSB is not seeking an adjustment below the otherwise required amount. The required catch-up adjustment amount is sufficient to deter violations of the NTSB’s statutes and

regulations, and the NTSB does not perceive that a negative economic impact or social cost will result from the catch-up adjustment.

### **III. The annual adjustment.**

The maximum civil penalty amount established by the catch-up adjustment, \$1,591, must be adjusted annually for inflation by January 15th of each year, beginning in 2017. 28 U.S.C. 2461 note, sec. 4(b); OMB annual guidance, *supra*, at 1. The OMB annual guidance states that the CPI-U multiplier representing the increase from the October 2015 CPI-U to the October 2016 CPI-U is 1.01636. OMB annual guidance, *supra*, at 1. Multiplying \$1,591 times 1.01636 equals \$1617.02876. Rounding to the nearest dollar equals \$1,617.

The new maximum penalty amount applies only to civil penalties assessed after the effective date of this Interim Final Rule. The NTSB will next adjust this amount for inflation by January 15, 2018.

### **IV. Regulatory Analysis.**

The Inflation Adjustment Act requires the NTSB to complete its catch-up adjustment in an Interim Final Rule. 28 U.S.C. 2461 note, sec. 4(b)(1)(A). Similarly, the Act provides that annual adjustments shall be completed “notwithstanding [5 U.S.C. 553]”. 28 U.S.C. 2461 note, sec. 4(b)(2).

This rule does not require an assessment of its potential costs and benefits under section 6(a)(3) of E.O. 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993), because it is not a “significant regulatory action” under section 3(f) of that Order. Thus, the Office of Management and Budget has not reviewed this rule under E.O. 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates

Reform Act, 2 U.S.C. 1501-71, or the National Environmental Policy Act, 42 U.S.C. 4321-47.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under E.O. 13132, Federalism, 64 FR 43255 (Aug. 4, 1999).

This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

NTSB has evaluated this rule under: E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (Mar. 15, 1988); E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, 62 FR 19885 (Apr. 21, 1997); E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000); E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001); and the National Technology Transfer and Advancement Act, Pub. L. 104-113, 110 Stat. 775, Mar. 7, 1996. The NTSB has concluded that this Interim Final Rule neither violates, nor requires further consideration under those Orders and statutes.

The NTSB invites comments relating to any of the foregoing determinations and notes the most helpful comments reference a specific portion of this Interim Final Rule, explain the reason for any recommended change, and include supporting data.

## **List of Subjects in 49 CFR Part 831**

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

Accordingly, for the reasons stated in the Preamble, the NTSB amends 49 CFR part 831 as follows:

### **PART 831—INVESTIGATION PROCEDURES**

1. The authority citation for part 831 is revised to read as follows:

Authority: 49 U.S.C. 1113(f).

Section 831.15 also issued under Pub. L. 101-410, 104 Stat. 890, amended by Pub. L. 114-74, sec. 701, 129 Stat. 584 (28 U.S.C. 2461 note).

2. Add § 831.15 to read as follows:

#### **§ 831.15 Civil penalties.**

The NTSB is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, sec. 701, 129 Stat. 584 (codified at 28 U.S.C. 2461 note) to adjust the maximum amount of each civil monetary penalty within its jurisdiction by the rate of inflation. Accordingly, for violations of 49 U.S.C. 1132, 1134(b), 1134(f)(1), or 1136(g), the NTSB may assess a civil penalty pursuant to 49 U.S.C. 1155(a) no greater than \$1,617 against any person, except a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice, when the member or employee is performing official duties.

Robert L. Sumwalt III,

Chairman.

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