

uniformed service who is on duty outside the contiguous states of the United States.

\* \* \* \* \*

(1) \* \* \*

(2) At certification, the State or local agency must require each applicant to present proof of residency (*i.e.*, location or address where the applicant routinely lives or spends the night) and proof of identity. The State or local agency must also check the identity of participants, or in the case of infants or children, the identity of the parent or guardian, or proxies when issuing food or food instruments. The State agency may authorize the certification of applicants when no proof of residency or identity exists (such as when an applicant or an applicant's parent is a victim of theft, loss, or disaster, a homeless individual, or a migrant farmworker). In these cases, the State or local agency must require the applicant to confirm in writing his/her residency or identity. Further, an individual residing in a remote Indian or Native village or an individual served by an Indian tribal organization and residing on a reservation or pueblo may establish proof of residency by providing the State agency their mailing address and the name of the remote Indian or Native village.

\* \* \* \* \*

Dated: November 30, 2000.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 19

[Docket No. 00-33]

RIN 1557-AB88

### Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its

rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996.

**DATES:** This rule is effective December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jean Campbell, Attorney, or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Inflation Adjustment Act<sup>1</sup> requires the OCC, as well as other Federal agencies with CMP authority, to publish regulations to adjust each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on January 22, 1997,<sup>2</sup> and became effective that same day.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor ("CPI-U").<sup>3</sup> In addition, the Inflation Adjustment Act provides rules for rounding off increases,<sup>4</sup> and provides

<sup>1</sup> 28 U.S.C. 2461 note.

<sup>2</sup> See 62 FR 3199, January 22, 1997.

<sup>3</sup> See 28 U.S.C. 2461 note.

<sup>4</sup> See *id.* The statute's rounding rules require that an increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or

that any increase in a CMP applies only to violations that occur after the date of the adjustment.

#### Description of the Rule

This final rule adjusts the amount for each type of CMP that the OCC has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in section 19.240 of our regulations. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The inflation adjustment for the CMPs was calculated by comparing the CPI-U for June 1996 (156.7) with the CPI-U for June 1999 (166.2),<sup>5</sup> resulting in an inflation adjustment of 6.1 percent.<sup>6</sup> The amount of each CMP was multiplied by the appropriate percentage and the resulting dollar amount was rounded up or down according to the rounding requirements of the statute. In some cases, rounding resulted in no adjustment to the CMP. The table below shows both the present CMPs and inflation adjusted CMPs. The table as published in the rule includes only the CMPs as of the effective date of this rule.

equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000.

<sup>5</sup> The Department of Labor (DOL) computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Inflation Adjustment Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC has used the DOL's CPI-U with 1982-84 as the base period because it reflects the most current method of computing the CPI-U.

<sup>6</sup> According to the statute, the inflation adjustment is computed by comparing the CPI-U for June of the year in which the CMPs were "last set or adjusted" with CPI-U for June "of the calendar year preceding [sic] the adjustment." 28 U.S.C. 2461 note. Therefore, a different formula is required for three CMPs that did not increase when the OCC made its initial inflation adjustment in 1997. These CMPs—the \$2,000 penalties under 12 U.S.C. 164 and 12 U.S.C. 3110(c) and the 4350 [penalty under 42 U.S.C. 4012a(f)(5)—did not increase as a result of application of the rounding rules. For those penalties that were not adjusted in 1997, we have used the year in which the CMP was last set by enactment. See footnotes a and b to the table.

U.S. Code citation	Description	Maximum penalty	Amount of increase (6.1 percent)	Amount of increase after rounding	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F).	Tier 1 .....	5,500	336	.....	5,500
	Tier 2 .....	27,500	1,678	.....	27,500
	Tier 3 .....	1,100,000	67,100	75,000	1,175,000
12 U.S.C. 164 and 3110(c) .....	Tier 1 .....	2,000	<sup>a</sup> 678	200	2,200
	Tier 2 .....	22,000	1,342	.....	22,000
	Tier 3 .....	1,100,000	67,100	75,000	1,175,000
12 U.S.C. 1832(c) and 3909(d)(1) .....	.....	1,100	67	.....	1,100
12 U.S.C. 1884 .....	.....	110	7	.....	110
12 U.S.C. 3110(a) .....	.....	27,500	1,678	.....	27,500
15 U.S.C. 78u-2(b) .....	Tier 1 (natural person) .....	5,500	336	.....	5,500
	Tier 1 (other person) .....	55,000	3,355	5,000	60,000
	Tier 2 (natural person) .....	55,000	3,355	5,000	60,000
	Tier 2 (other person) .....	275,000	16,775	25,000	300,000
	Tier 3 (natural person) .....	110,000	6,710	10,000	120,000
	Tier 3 (other person) .....	550,000	33,550	25,000	575,000
	Per violation .....	350	<sup>b</sup> 43	.....	350
42 U.S.C. 4012a(f)(5) .....	Per year .....	105,000	6,405	10,000	115,000

<sup>a</sup>This penalty was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Pub. L. 101-73, 103 Stat. 183 (August 9, 1989). The amount did not change when the OCC adjusted the CMPs for inflation in 1997. Therefore, the percentage increase was calculated by comparing the CPI-U for June 1989 (124.1) to the CPI-U for June 1999 (166.2), resulting in an inflation adjustment of 33.9 percent. The corresponding dollar amount is \$678, which would be rounded to an increase of \$1,000. However, according to the Inflation Adjustment Act, the initial adjustment of a CMP may not exceed 10 percent of such penalty. Thus, the amount of the increase is capped at \$200.

<sup>b</sup>This penalty was enacted in the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). Pub. L. 103-325, 108 Stat. 2160 (September 23, 1994). The amount did not change when the OCC adjusted the CMPs for inflation in 1997. Therefore, the percentage increase was calculated by comparing the CPI-U for June 1994 to the CPI-U for June 1999, resulting in an increase of 12.3 percent.

Section 19.241 states that the adjustments made in section 19.240 apply only to violations that occur after December 11, 2000.

The OCC intends to readjust these amounts in the year 2004 and every four years thereafter, assuming there are no further changes to the mandate imposed by the Inflation Adjustment Act.

**Public Notice and Comment and Delayed Effective Date Not Required**

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are “impracticable, unnecessary, or contrary to the public interest.”<sup>7</sup> As described earlier in the Supplementary Information, the Debt Collection Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC is, accordingly, unable to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. In that case, notice and comment are unnecessary, and there is, in the opinion of the OCC, good cause to dispense with those procedures.

Both the APA and the RCDRIA require that the effective date of the OCC’s regulations generally be delayed.<sup>8</sup> Both statutes contain exceptions if the agency finds good cause to dispense

with the delayed effective date. The amendment adopted in this regulation does not substantively affect the rights or obligations of national banks, nor does it impose any new compliance requirements upon them. It merely adjusts the maximum amounts of civil penalties according to a predetermined formula. Moreover, the timing of the adjustment is set by operation of the law that requires the OCC to publish regulations every four years following the initial adjustment.<sup>9</sup> Under these circumstances, the OCC finds good cause to dispense with the APA and RCDRIA delayed effective date provisions. Accordingly, the adjustment to the OCC’s civil penalty schedule is effective immediately upon publication in the **Federal Register**.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).<sup>10</sup> Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

<sup>9</sup>The Inflation Adjustment Act required the initial adjustment to be made within 180 days following enactment of the statute, that is, by October 23, 1996.

<sup>10</sup>See 5 U.S.C. 601(2).

**Executive Order 12866**

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

**Unfunded Mandates Reform Act of 1995**

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

**List of Subjects in 12 CFR Part 19**

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

**Authority and Issuance**

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

**PART 19—RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 19 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554-557; 12 U.S.C. 93a, 93(b), 164, 505, 1817, 1818, 1820, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78u-2, 78u-3, and 78w; 28 U.S.C.

<sup>7</sup> 5 U.S.C. 553(b)(B).

<sup>8</sup> See 5 U.S.C. 553(d)(APA), 12 U.S.C. 4802 (RCDRIA).

2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

2. Subpart O is revised to read as follows:

**Subpart O—Civil Money Penalty Inflation Adjustments**

**§ 19.240 Inflation adjustments.**

The maximum amount of each civil money penalty within the OCC's

jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code citation	Description	Adjusted maximum penalty
12 U.S.C. 93(b), 504, 1817(j)(16), 1818(i)(2), and 1972(2)(F) ....	Tier 1 .....	5,500
	Tier 2 .....	27,500
	Tier 3 .....	1,175,000
12 U.S.C. 164 and 3110(c) .....	Tier 1 .....	2,200
	Tier 2 .....	22,000
	Tier 3 .....	1,175,000
12 U.S.C. 1832(c) and 3909(d)(1) .....	.....	1,100
12 U.S.C. 1884 .....	.....	110
12 U.S.C. 3110(a) .....	.....	27,500
15 U.S.C. 78u-2(b) .....	Tier 1 (natural person) .....	5,500
	Tier 1 (other person) .....	60,000
	Tier 2 (natural person) .....	60,000
	Tier 2 (other person) .....	300,000
	Tier 3 (natural person) .....	120,000
	Tier 3 (other person) .....	575,000
42 U.S.C. 4012a(f)(5) .....	Per violation .....	350
	Per year .....	115,000

**§ 19.241 Applicability.**

The adjustments in § 19.240 apply to violations that occur after December 11, 2000.

Dated: December 1, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

[FR Doc. 00-31165 Filed 12-8-00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. NM175; Special Conditions No. 25-169-SC]

**Special Conditions: Boeing Model 777-200 Series Airplanes; Overhead Crew Rest Compartment**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Boeing Model 777-200 series airplanes, modified by Flight Structures, Inc. The modification consists of the installation of a crew rest compartment located in the vicinity of door three in the overhead area of the passenger compartment. The crew rest compartment is to be certified for a maximum of ten occupants for use only during flight. The applicable airworthiness regulations do not contain adequate or appropriate safety standards

for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** December 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, FAA, Transport Standards Staff, ANM-115, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (425) 227-2194; facsimile (425) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 25, 1999, Flight Structures, Inc., 4407 172 Street NE, Arlington, Washington, 98223, applied for a supplemental type certificate to install an overhead crew rest compartment in Boeing Model 777-200 series airplanes. The Boeing Model 777-200 series airplane is a large twin-jet engine transport airplane with four pairs of Type A exits, a passenger capacity of 440, and a range of 5000 miles. The overhead crew rest compartment is a single compartment located above the main passenger compartment in the vicinity of door three. The crew rest compartment will contain eight private bunks and two seats, and is to be certified for a maximum of ten occupants. A stairwell entering from the door three aisle is the main entry. Two escape hatches are located on either side of the entryway door. These special conditions are written for an overhead

crew rest compartment that will be occupied only in flight, not during taxi, takeoff, or landing.

**Type Certification Basis**

Under the provisions of § 21.101, Flight Structures, Inc., must show that the Boeing Model 777-200 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777-200 series airplanes include 14 CFR part 25, as amended by Amendments 25-1 through 25-82. The U.S. type certification basis for the Boeing Model 777-200 series airplanes is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Model 777-200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777-200