

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 13**

[Docket No. 27854; Amendment No. 13–32]

RIN 2120–AE84

**Civil Penalty Assessment Procedures****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule.

**SUMMARY:** The Federal Aviation Administration (FAA) is adopting procedures for administratively assessing civil penalties for violations of the laws and regulations the agency enforces. These procedures pertain to initiating and adjudicating a civil penalty against an individual acting as a pilot, flight engineer, mechanic, or repairman. These procedures are needed because the National Transportation Safety Board now reviews these civil penalty actions and the FAA's existing rules for civil penalty actions are not sufficiently flexible to adequately address the procedural differences that review in a different forum entails. This final rule also makes other minor modifications to the FAA's procedures for assessing civil penalties against persons other than individuals acting as pilots, flight engineers, mechanics, or repairmen.

**DATES:** Effective Date: This rule is effective on November 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce Redos, Attorney, Enforcement Division (AGC–300), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3137.

**SUPPLEMENTARY INFORMATION:****Availability of This Action**

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(3) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html).

You can also get a copy of this action if you submit 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 docket number, notice

number, or amendment 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://dms.dot.gov>.

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Enforcement Fairness Act (SBREFA) of 1996 requires 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 a local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at <http://www.faa.gov/avr/arm/sbrefa.cfm> or by e-mailing us at [AWA-SBREFA@faa.gov](mailto:AWA-SBREFA@faa.gov).

**Background <sup>1</sup>**

The FAA has authority to assess civil penalties for certain violations of the FAA's governing statute and regulations or orders issued under that statute as well as other statutes, regulations, or orders the agency enforces. This authority formerly covered all civil penalty actions involving a civil penalty of \$50,000 or less.

In 49 U.S.C. 46301(d)(5), Congress transferred the authority to review the FAA's administrative civil penalty actions against individuals acting as pilots, flight engineers, mechanics, or repairmen to the National Transportation Safety Board (NTSB). Proceedings against individuals acting as pilots, flight engineers, mechanics and repairmen, therefore, are adjudicated under the NTSB's Rules of Practice in Air Safety Proceedings, located in 49 CFR part 821.

This rulemaking adopts procedures under a new section of the FAA's

<sup>1</sup> On December 12, 2003, Public Law 108–176, “Vision 100—Century of Aviation Reauthorization Act,” (Vision 100) was signed into law. Among other things, Vision 100 modified the maximum amount of civil monetary penalties the FAA can administratively assess under 49 U.S.C. 46301(d). For violations occurring on or after December 12, 2003, the FAA now has authority to assess administratively a maximum civil penalty of \$400,000 against persons other than individuals or small business concerns. For individuals and small business concerns, the maximum civil penalty the FAA can assess administratively remains \$50,000.

regulations, 14 CFR 13.18, for initiating civil penalty actions adjudicated by the NTSB. It amends existing 14 CFR 13.16 to exclude actions covered under new § 13.18. It adds a new section, 14 CFR 13.14, that lists those provisions that, if violated, may result in a civil penalty being sought or assessed administratively. Section 13.14(c) also states that the amounts of civil penalties are periodically adjusted for inflation under the formula set by Congress in 28 U.S.C. 2461 note. We implemented this formula in 14 CFR part 13, subpart H. This regulation also makes other clarifying changes to part 13.

Although the FAA published the notice of proposed rulemaking (NPRM) almost 10 years ago, the final rule adopts procedural rules and publishes informational regulations. Therefore, another opportunity for notice and comment is not warranted.

**Disposition of Comments**

Three commenters responded to the NPRM, which the FAA issued on July 29, 1994 (59 FR 40192, Aug. 5, 1994). The first commenter questioned two aspects of the NPRM. Those aspects related to (1) which forum has jurisdiction of security screening cases involving pilots and (2) why the penalty for disrupting a flight crewmember's duties is less than the penalty for tampering with a smoke alarm device. The first comment is moot because Congress transferred responsibility for aviation security to the Department of Homeland Security. The second comment is beyond the scope of the NPRM because Congress set the penalty amounts in question, not the agency. In any event, in 49 U.S.C. 46318, Congress set a maximum penalty of \$25,000 for certain violations involving interference with a crewmember.

The second commenter raised a number of concerns about the fairness of the proposed rule and the FAA's authority to assess civil penalties. All but one of this commenter's concerns were unresponsive to, or otherwise beyond the scope of, the rulemaking. The remaining comment was “[t]he way the system looks now, the first a person hears of a problem is when the government sends him/her a notice specifying a violation of the FARs with the amount they owe the gov[ernment]. That just is [not] fair and is not right.” The commenter seemingly misunderstood the intent of the notice of proposed assessment. Contrary to the comment, the notice of proposed assessment does not constitute a finding of a violation. Nor does the notice impose a civil penalty. The notice of proposed assessment gives an alleged

violation notice of a violation being charged and the proposed sanction for that violation. Following the notice of proposed assessment, an alleged violator has an opportunity to speak with the agency informally and present evidence on the alleged violator's behalf before the FAA issues an order of assessment.

The third commenter raised the issue of stale complaint, arguing that the NTSB's 6-month stale complaint rule for certificate actions should apply to civil penalty actions against pilots, flight engineers, mechanics and repairmen. This comment is moot because the NTSB has adopted a rule extending its 6-month stale complaint rule to civil penalty actions against pilots, flight engineers, mechanics and repairmen. 59 FR 59050, 59051–59052 (Nov. 24, 1994).

### Discussion of the Rule

#### *Interpretation of "Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman"*

In the NPRM, the FAA proposed an interpretation of the phrase "a person acting in the capacity of a pilot, flight engineer, mechanic or repairman." When Congress recodified the FAA's statute, it changed this phrase to "an individual acting as a pilot, flight engineer, mechanic or repairman". Congress intended no substantive change. The only comment directed at the definition outlined in the NPRM was the objection that the proposed definition would allow the FAA decisionmaker to review security screening violations involving pilots. As stated above, that objection is moot due to the transfer of aviation security functions to the Department of Homeland Security.

The FAA interprets the phrase "an individual acting as a pilot, flight engineer, mechanic, or repairman" to refer to an individual who has engaged in conduct that involves the exercise of the privileges and duties of these certificates, regardless of whether that individual holds a valid pilot, flight engineer, mechanic, or repairman certificate.

In adopting this interpretation, the FAA considered whether an individual must hold a relevant certificate to obtain NTSB review under 49 U.S.C. 46301(d)(5). The FAA concluded that holding one of these certificates is not determinative because the phrase "acting as" describes the alleged violator in terms of the activities he or she performs, not the alleged violator's legal status. Therefore, it is the nature of the activity involved in the violation that determines whether the case falls

within the scope of 49 U.S.C. 46301(d)(5).

Furthermore, if the Congress had intended to limit NTSB review of civil penalty actions to those against certificate holders, it would have drafted section 46301(d)(5)(A) differently. For example, section 46301(a)(5) distinguishes between civil penalty liability of an "individual" and of an "airman serving as an airman." The Congress' failure to use more specific language is evidence of its intent that "individual acting as a pilot, flight engineer, mechanic, or repairman" be given a noticeably broader construction than "holder."

The term "acting" may include the failure to act. For example, acting as a pilot, flight engineer, mechanic, or repairman includes failing to surrender a pilot, flight engineer, mechanic, or repairman certificate when it has been revoked, as required by 14 CFR 61.19(f), 63.15(c), or 65.15(c). As this example shows, the privileges and duties under the FAA's regulations extend beyond actually flying an aircraft or performing maintenance on an aircraft. Therefore, the NTSB also reviews these cases.

In the NPRM, the FAA proposed that "\* \* \* any civil penalty action for violations by a person acting in the capacity of a flight instructor would be heard under the NTSB procedures." (59 FR 40193.) Even though the FAA specifically welcomed comments on the interpretation of "person acting in the capacity of a pilot \* \* \*," the FAA received no comments on the flight instructor aspect of the interpretation. On further review, the statement in the NPRM would be, in some instances, inconsistent with the proposition that "\* \* \* [i]t is the nature of the activity that triggers the applicability of" NTSB review. For example, a flight instructor usually is not exercising the privileges of a pilot certificate when the flight instructor gives ground training or executes or maintains pilot records. (See 14 CFR part 61, subpart H.) In addition, 49 U.S.C. 46301(d) does not refer to "acting as flight instructor." Therefore, NTSB review in cases involving a flight instructor certificate will arise only when the violation involves his or her exercise of pilot privileges.

An inspection authorization differs from a flight instructor certificate in that it is more like a rating on a mechanic certificate than a separate certificate. Both the NTSB and its predecessor, the Civil Aeronautics Board, have recognized the inspection authorization as a rating on the mechanic certificate. *Administrator v. Luster*, NTSB Order No. EA–3974, pp. 3–4 (Aug. 24, 1993); *Gene Rawdon*, 31 CAB 1167, 1168 (Sep.

9, 1960). The NTSB therefore reviews civil penalty actions involving an inspection authorization not because one must hold a mechanic certificate to obtain an inspection authorization, but because exercising the privileges and duties of the inspection authorization results in one exercising the privileges and duties of the mechanic certificate.

The mere fact that an individual holds a pilot, flight engineer, mechanic, or repairman certificate is not sufficient to vest jurisdiction in the NTSB to review a case. If an alleged violator is not exercising the privileges associated with one of these certificates in connection with the alleged violation, then the case will be reviewed by the FAA decisionmaker under section 46301(d)(7) even though the alleged violator happens to hold one or more of these certificates. For example, the FAA decisionmaker would review a case involving a passenger who interferes with a cabin or flight crewmember even if the passenger holds a pilot certificate because the passenger's conduct did not involve the exercise of the privileges of the passenger's pilot certificate.

### Procedures

New 14 CFR 13.18 implements the statutory requirements for initiating cases that the NTSB reviews. Section 46301(d)(5)(A) of the FAA's statute provides that the Administrator may issue an order imposing a civil penalty against an individual acting as a pilot, flight engineer, mechanic, or repairman only after (1) advising the individual of the charges or any reason relied on by the FAA for the proposed action, and (2) providing the individual with an opportunity to answer the charges. Once the Administrator has issued an order, section 46301(d)(5)(B) authorizes the individual against whom it was issued to appeal the order to the NTSB. In addition, section 46301(d)(5)(D) provides that filing an appeal to the NTSB stays the Administrator's order. These procedural requirements are substantially similar to the procedural requirements set forth in 49 U.S.C. 44709(c) through (e) of the FAA's statute for non-emergency certificate actions.

In preparing the final rule, we have reorganized the subsections of new § 13.18 to reflect as closely as possible the actual step-by-step processing of a civil penalty action.

### Applicability

New 14 CFR 13.18(a)(1) states the statutory authority for administratively assessing a civil penalty against an individual acting as a pilot, flight engineer, mechanic, or repairman. Under 49 U.S.C. 46301(d)(5)(B), the

NTSB reviews cases falling within the scope of 14 CFR 13.18. Section 13.18(a)(2) states when a United States district court has exclusive jurisdiction of a civil penalty action against a pilot, flight engineer, mechanic, or repairman.

#### *Definitions and Delegations*

The FAA did not receive any comments on proposed § 13.18 (b) and (d), which contained definitions and delegations of authority, respectively. With some minor changes to paragraph (d) to improve clarity, including separating the delegations into numbered subparagraphs, these sections are adopted as § 13.18(b) and (c), respectively.

#### *Notice and Informal Process*

Under new § 13.18(d), the FAA initiates a civil penalty action against an individual acting as a pilot, flight engineer, mechanic, or repairman by issuing a notice of proposed assessment. The notice contains a statement of the charges and the amount of the proposed civil penalty. The notice also sets forth the procedures for responding to the notice. Subsections 13.18(d)(1)–(4) state the specific options for responding to the notice. The options are (1) submitting the amount of proposed civil penalty, (2) answering the charges in writing, (3) submitting a written request for an informal conference with an agency attorney and submitting relevant information or documents, or (4) requesting that an order be issued in accordance with the notice of proposed assessment so that the individual charged may appeal to the NTSB. The notice of proposed assessment and the opportunity to respond using informal procedures satisfy the statutory requirement in section 46301(d)(5)(A) of the FAA's statute to advise alleged violators of the charges and give them an opportunity to answer.

#### *Order of Assessment*

After the informal response procedures outlined above are completed, the FAA considers all information the alleged violator has supplied. If the parties have not agreed to resolve the case, the FAA will issue an order of assessment under new § 13.18(f). Before issuing the order of assessment, the FAA considers all the information available in the record at that point. The individual charged may then appeal the order of assessment to the NTSB, as provided in 14 CFR 13.18(g). These procedures satisfy the requirements of 49 U.S.C. 46301(d)(5)(B). As stated previously, once the individual charged has filed a notice of appeal with the NTSB, the case

is subject to the NTSB's Rules of Practice in Air Safety Proceedings, located in 49 CFR part 821.

Under new § 13.18(e), the FAA may also issue an order of assessment if the individual charged does not respond to the notice of proposed assessment within 15 days. Furthermore, if the individual does not file a notice of appeal with the NTSB within the time provided by the NTSB's rules of practice, the order of assessment becomes final.

#### *Appeal to the NTSB*

Under 14 CFR 13.18(g), the alleged violator may file an appeal from an order of assessment with the NTSB. A timely appeal to the NTSB stays the effectiveness of the order of assessment until the NTSB issues a final decision in the matter, as required by 49 U.S.C. 46301(d)(5)(D).

#### *Exhaustion of Administrative Remedies*

Section 13.18(h) states the provision for judicial review of a final decision of the NTSB provided for in 49 U.S.C. 46301(d)(6). Appeal is to a United States court of appeals for the circuit in which the individual charged resides or has his or her principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. Section 13.18(h) also specifies, based on 49 U.S.C. 46110(d), that the Administrator's order of assessment is not a final order for the purpose of judicial review unless it has first been appealed to the NTSB.

#### *Compromise Orders*

Section 46301(i)(1) of the FAA's statute authorizes the Secretary of Transportation to compromise the amount of a civil penalty. The Secretary has delegated this authority to the Administrator in 49 CFR 1.47. New § 13.18(i)(1) provides agency attorneys with the authority to compromise civil penalty assessment actions initiated under 49 U.S.C. 46301(d)(5) against an individual acting as a pilot, flight engineer, mechanic, or repairman with no finding of a violation. New § 13.18(i)(2) authorizes agency attorneys to compromise the amount of a civil penalty proposed or assessed in an order with a finding of a violation as well.

Existing § 13.16(l)(1), on which § 13.18(i) is modeled, does not specifically require the alleged violator either to pay the civil penalty or sign a promissory note before a compromise order is issued. As stated in the NPRM, the FAA has experienced problems with this approach. In some cases, when the FAA did not receive payment before it

issued the compromise order, the alleged violator has subsequently failed to pay the civil penalty. Also, if the person has not signed a promissory note agreeing to the amount of the penalty and a payment schedule, a risk exists that the person will dispute whether the amount in the compromise order is the amount the parties agreed on, complicating collection procedures. Debt collection procedures often are time-consuming and costly, and may not result in recovery of the full amount of the debt.

To avoid these problems, the FAA proposed in the NPRM that it will not issue a compromise order under new § 13.18(i) unless the alleged violator has prepaid the civil penalty or has signed a promissory note providing for installment payments. The FAA did not receive any comments on this issue. We are therefore adopting these changes as proposed. The FAA also amends current § 13.16(l) to incorporate these changes; it is redesignated as § 13.16(n).

#### *Payment of Civil Penalties*

Under 14 CFR 13.18(j), the individual charged must pay the civil penalty assessed in an order of assessment within 30 days, unless the individual has filed a timely notice of appeal with the NTSB. In cases that have been appealed, § 13.18(j) further requires the individual charged to pay the civil penalty within 30 days after a final order of the Board or the Court of Appeals affirms the order of assessment in whole or in part.

#### *Debt Collection*

The NPRM included a provision, now located in new § 13.18(k), for collection of civil penalties. That proposed subsection was copied nearly verbatim from current 14 CFR 13.16(j). The provision was not discussed in the preamble to the NPRM. In reviewing the FAA's actual debt collection procedures, however, it appears that § 13.16(j), and therefore proposed § 13.18(i), do not reflect all methods the FAA may use to collect a delinquent debt. Following the enactment of the Debt Collection Act of 1996, the FAA generally transfers delinquent debts to the Department of the Treasury for collection. In addition, we have deleted reference to failure to pay within 60 days. The timeframe for payment after which a debt becomes delinquent is subject to change. In addition, an order of assessment, like an order assessing civil penalty, states when the debt imposed by the order may become delinquent and, if a delinquency notice is issued, it states what actions to recover the debt may be taken and

timeframe for taking them. Therefore, the FAA has determined that both current §§ 13.16(j) and 13.18(k) should be revised to reflect more generally the agency's practice to use all methods under the law to collect delinquent debts, which includes referring a case to the United States Attorney General for collection. Current § 13.16(j) is redesignated as § 13.16(l).

#### Changes to 14 CFR Part 13, Subpart G

The preamble to the NPRM proposed amending certain sections of the Rules of Practice in FAA Civil Penalty Actions. The FAA did not receive any comments on the proposed amendments. The FAA therefore adopts these amendments as proposed in the NPRM.

#### Civil Penalties Other Than Administrative Assessment

The FAA did not receive any comments on the proposed revision of the heading for 14 CFR 13.15. We are therefore adopting it as proposed.

#### Conforming Changes in the Final Rule That Were Not Proposed in the NPRM

Since the NPRM was issued, Congress has recodified the Federal transportation law, increased the amounts of civil penalties available for certain violations, provided a requirement for agencies to periodically adjust for inflation the amount of the minimum and maximum civil penalties for statutes the agencies enforce, and added provisions to the FAA's statute that include new authority to seek or administratively assess civil penalties. The FAA's Office of the Chief Counsel has also undergone certain organizational changes, including the creation of a new Deputy Chief Counsel for Operations position. We are conforming §§ 13.15, 13.16, and 13.18 to these changes. As discussed elsewhere, we are also adopting a new § 13.14, which among other things, lists in one place the statutory provisions for which the FAA has authority to seek or administratively assess civil penalties.

#### Civil Penalty Assessments Against Persons Other Than Individuals Acting as Pilots, Flight Engineers, Mechanics, and Repairmen

##### Applicability

Existing § 13.16(a) contains an obsolete list of the statutory provisions authorizing the FAA to assess civil penalties. In the NPRM, the FAA proposed to update the list to provide more information. Proposed § 13.16(a)(1) would have set forth a new list of the statutory provisions authorizing the FAA to assess civil

penalties. Proposed § 13.16(a)(2) would have set forth the maximum amount of civil penalties that could be assessed. Because of recent changes in the FAA's governing statute and our adoption of regulations governing the periodic adjustment for inflation of civil monetary penalties, in compliance with 28 U.S.C. 2461 note, we have concluded that proposed § 13.16(a)(2) would be redundant. Accordingly, we are deleting proposed § 13.16(a)(2) from the final rule. Because we are adopting a new 14 CFR 13.14, discussed below, we are revising the remainder of § 13.16(a) to state that the FAA uses the procedures in § 13.16 when it assess a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic or repairman for a violation cited in 49 U.S.C. 46301(d)(2) or 47531. We are adding a new paragraph (b) indicating when the United States district courts have exclusive jurisdiction. We are adding a new § 13.16(c) for violations of 49 U.S.C. chapter 51, the Federal hazardous materials transportation law. We are revising current § 13.16(d) to delete references to the statutes the FAA enforces and redesignating it as § 13.16(f). We are also redesignating the remaining paragraphs of current § 13.16 to accommodate the addition of new §§ 13.16(b) and 13.16(c). These actions are simply informational or editorial in nature. The agency has, therefore, determined that prior notice and opportunity for comment is unnecessary under section 553 of the Administrative Procedure Act.

#### Change to § 13.16(k). Judicial Review—Jurisdiction in Actions for Violations of the Federal Hazardous Materials Transportation Law

Under 49 U.S.C. 46110, exclusive jurisdiction for judicial review of final orders of the Administrator issued under the FAA's statute is in the United States courts of appeals. Current § 13.16(k) incorporates that statutory review provision.

Current § 13.16(k) makes no distinction between cases involving the FAA's governing statute and the Federal hazardous materials transportation law, 49 U.S.C. chapter 51, for purposes of judicial review. The Federal hazardous materials transportation law itself, however, is silent on the issue of judicial review. That statute's silence on the issue of judicial review results in judicial review in an appropriate United States district court under 5 U.S.C. 701 *et seq.* and 28 U.S.C. 1331. Section 702 of title 5, United States Code, states that "[a] person suffering legal wrong because of agency action, or adversely

affected or aggrieved by agency action with the meaning of a relevant statute, is entitled to judicial review." Section 1331 of title 28, United States Code, states that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Because we pursue hazardous materials violations under the Federal hazardous materials transportation law in 49 U.S.C. chapter 51, we are amending current § 13.16(k) to add a separate judicial review provision for such actions. We are also redesignating § 13.16(k) as § 13.16(m). Existing § 13.16(k) will become § 13.16(m)(1), and new § 13.16(m)(2) will state that judicial review of final agency orders under 49 U.S.C. chapter 51 is available in an appropriate district court of the United States, in accordance with 5 U.S.C. 701 *et seq.* and 28 U.S.C. 1331. Although this change was not included in the NPRM, the FAA finds good cause for not conducting notice-and-comment rulemaking on it based on the need to conform our rules to the law.

References to the FAA's Governing Statute and the Federal Hazardous Materials Transportation Law in §§ 13.15 and 13.16

The FAA published a final rule on December 28, 1995 (60 FR 67254), revising the authority citations for its regulations in Chapter I of Title 14 of the Code of Federal Regulations (14 CFR parts 1–199), including the authority citation for part 13. In adopting the revised authority citations, the FAA stated:

In July 1994, the Federal Aviation Act of 1958 and numerous other pieces of legislation affecting transportation in general were recodified. The statutory material became "positive law" and was recodified at 49 U.S.C. 1101 *et seq.*

The Federal Aviation Administration is amending the authority citations for its regulations in Chapter I of 14 CFR to reflect the recodification of its statutory authority. No substantive change was intended to any statutory authority by the recodification, and no substantive change is introduced to any regulation by this change.

\* \* \* \* \*

Because of the editorial nature of this change, it has been determined that prior notice is unnecessary under the Administrative Procedure Act. \* \* \*

In line with that revision to the authority citation to part 13, we are amending current §§ 13.15 and 13.16 to bring the statutory citations they contain into conformity with the recodification and the revised authority citation. The statutory citations in new § 13.18 also conform to the recodification and the revised authority citation. This action,

like the revision to the authority citations, is editorial in nature. The agency has, therefore, determined that prior notice and opportunity for comment is unnecessary under section 553 of the Administrative Procedure Act.

Changes in Position Titles in §§ 13.15, 13.16 and 13.18

The NPRM had proposed amending part 13 with respect to delegations of authority to reflect the reorganization of the former Regulations and Enforcement Division into two separate divisions. The proposed amendments are no longer necessary as the FAA published a final rule reflecting organizational changes and delegations of authority in various parts of the FAA's regulations on September 4, 1997 (62 FR 46864).

On March 3, 2004, however, the FAA published Notice 1100.290. Notice 1100.290 announces the realignment of functions and responsibilities within the Office of the Chief Counsel. Among other things, the new organizational structure created the position of Deputy Chief Counsel for Operations. Based on Notice 1100.290, we are revising §§ 13.15(b), (c)(1), (c)(3), 13.16(e)(1–4), and 13.18(d)(1–3) to replace references to the Deputy Chief Counsel with references to the Deputy Chief Counsel for Operations.

#### Other Changes

In preparing the final rule, we concluded that it would be helpful to list in one place those provisions of the statutes the FAA enforces, and rules, regulations, or orders issued under those statutes, for which civil penalties may be sought or administratively assessed. We also concluded that it would be helpful to include a statement indicating that the maximum amounts of civil penalties are subject to periodic adjustment for inflation under the formula established by Congress. Therefore, we are adopting a new section, 14 CFR 13.14. We have concluded that notice and comment are unnecessary because this new section does no more than list the applicable statutory provisions and states that Congress has established a formula for periodically adjusting the maximum amounts of civil penalties. That formula is implemented in 14 CFR part 13, subpart H.

#### **Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive

Order 12866 directs that each Federal agency may propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 \$120.7 million or more annually, adjusted for inflation.

#### **Regulatory Evaluation Summary**

The FAA believes that the procedural changes adopted in this rule conform the existing procedural rules to amendments made in the FAA's statute, and clarify existing rules where necessary. The changes do not, in economic terms, alter the basic processes by which civil penalties are assessed within the agency. For this reason, a full Regulatory Evaluation is not warranted. This regulatory evaluation examines the potential costs and benefits of the amendments to part 13.

#### **Benefits**

The potential benefits of this rule include clarifying the rule and explaining in detail how portions of the Administrator's administrative civil penalty assessment authority are implemented. These changes will provide potentially affected aviation parties (e.g., pilots, flight engineers, mechanics, and repairmen) with a better understanding of the civil penalty process.

#### **Costs**

The potential costs of the rule are zero because it consists only of procedural and clarifying changes to part 13. The procedural changes do no more than explain how the requirements of the Administrator's administrative civil penalty assessment authority under the FAA's statute and other statutes are implemented. The changes do not impose new economic requirements on

potentially affected parties. The clarifying changes will enhance the public's comprehension of the civil penalty assessment process.

#### *International Trade Impact Assessment*

The rule represents procedural and clarifying changes only. These changes do not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by U.S. operators abroad or foreign operators in the United States.

#### **Regulatory Flexibility Determination**

Under the Regulatory Flexibility Act of 1980, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because the rule addresses procedures for initiating civil penalty actions against persons who have violated the statutes the FAA enforces, or rules, regulations, or orders issued under those statutes. Such changes do not impose any cost burdens or result in any cost savings.

#### **Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act 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) in any 1 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 \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

#### **Federalism Implications**

This amendment does not have substantial direct effects 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. The respondents affected by the new procedures are private persons, not state governments. Therefore, under Executive Order 12612, preparation of a federalism assessment is not warranted.

## Paperwork Reduction Act

This rule does not contain any information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). There are no requirements for information collection associated with this rule.

## Conclusion

For the reasons discussed in the preamble, and based on the findings of the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this regulation is not economically significant under Executive Order 12866. Although there has been significant public interest in the FAA's rules of practice in civil penalty assessment actions in the past, the FAA has determined that this regulation is a nonsignificant regulatory action under the Executive Order. This regulation is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In view of the minimal economic impact of this final rule, a full regulatory evaluation is unnecessary.

## List of Subjects in 14 CFR Part 13

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

## The Amendments

■ Therefore, the Federal Aviation Administration amends part 13 of the Federal Aviation Regulations, as follows:

### PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. Revise the authority citation for part 13 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, 46318, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532; 49 CFR 1.47.

■ 2. Add § 13.14 to part 13 to read as follows:

#### § 13.14 Civil penalties: General.

(a) Any person who violates chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b)

or (c), chapter 447 (except section 44717 and 44719–44723), chapter 451, 46301(b), 46302–46303, 46318, 46319, 47528–47530 of Title 49 of the United States Code, or any rule, regulation, or order issued thereunder, is subject to a civil penalty.

(b) Any person who violates any of the following statutory provisions, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in 49 U.S.C. chapter 463 for each violation:

(1) Chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117);

(2) Chapter 441 (except section 44109);

(3) Section 44502(b) or (c);

(4) Chapter 447 (except sections 44717 and 44719–44723);

(5) Chapter 451;

(6) Sections 46301(b), 46302, 46303, 46318, or 46319; or

(7) Sections 47528 through 47530.

(c) Any person who knowingly commits an act in violation of 49 U.S.C. chapter 51 or a regulation prescribed or order issued under that chapter, is subject to a civil penalty under 49 U.S.C. 5123.

(d) The minimum and maximum amounts of civil penalties for violations of the statutory provisions specified in paragraphs (a) and (b) of this section, or rules, regulations, or orders issued thereunder, are periodically adjusted for inflation in accordance with the formula established in 28 U.S.C. 2461 note and implemented in 14 CFR part 13, subpart H.

■ 3. In § 13.15 revise the section heading, paragraphs (a), (b), (c) introductory text, (c)(1), (c)(3), and (c)(5), to read as follows:

#### § 13.15 Civil penalties: Other than by administrative assessment.

(a) The FAA uses the procedures in this section when it seeks a civil penalty other than by the administrative assessment procedures in §§ 13.16 or 13.18.

(b) The authority of the Administrator, under 49 U.S.C. chapter 463, to seek a civil penalty for a violation cited in § 13.14(a), and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions sought by the Administrator is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and

the Technical Center Counsel. This delegation applies to cases involving:

(1) An amount in controversy in excess of:

(i) \$50,000, if the violation was committed by any person before December 12, 2003;

(ii) \$400,000, if the violation was committed by a person other than an individual or small business concern on or after December 12, 2003;

(iii) \$50,000, if the violation was committed by an individual or small business concern on or after December 12, 2003; or

(2) An in rem action, seizure of aircraft subject to lien, suit for injunctive relief, or for collection of an assessed civil penalty.

(c) The Administrator may compromise any civil penalty proposed under this section, before referral to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; or the Technical Center Counsel sends a civil penalty letter to the person charged with a violation cited in § 13.14(a). The civil penalty letter contains a statement of the charges, the applicable law, rule, regulation, or order, the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

\* \* \* \* \*

(3) If the person charged with the violation offers to compromise for a specific amount, that person must send to the agency attorney a certified check or money order for that amount, payable to the Federal Aviation Administration. The Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; Aeronautical Center Counsel; or the Technical Center Counsel may accept the certified check or money order or may refuse and return the certified check or money order.

\* \* \* \* \*

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the

Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 46305, to prosecute and collect the civil penalty.

\* \* \* \* \*

■ 4. Amend § 13.16 as follows:

■ a. Revise the section heading and paragraph (a);

■ b. Redesignate paragraphs (j) through (l) as (l) through (n) and revise newly designated paragraphs (l), (m), and (n) introductory text, (n)(1) introductory text, and (n)(1)(i);

■ c. Redesignate paragraphs (e) through (i) as (g) through (k);

■ d. Redesignate paragraphs (c) and (d) as (e) and (f), and revise newly redesignated paragraph (e) and the first sentence of paragraph (f) introductory text;

■ e. Redesignate paragraph (b) as paragraph (d); and

■ f. Add paragraphs (b) and (c).

■ The revisions and additions read as follows:

**§ 13.16 Civil penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.**

(a) The FAA uses these procedures when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in 49 U.S.C. 46301(d)(2) or 47531.

**(b) District court jurisdiction.**

Notwithstanding the provisions of paragraph (a) of this section, the United States district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in those paragraphs, under 49 U.S.C. 46301(d)(4), if—

(1) The amount in controversy is more than \$50,000 for a violation committed by any person before December 12, 2003;

(2) The amount in controversy is more than \$400,000 for a violation committed by a person other than an individual or small business concern on or after December 12, 2003;

(3) The amount in controversy is more than \$50,000 for a violation committed by an individual or a small business concern on or after December 12, 2003;

(4) The action is in rem or another action in rem based on the same violation has been brought;

(5) The action involves an aircraft subject to a lien that has been seized by the Government; or

(6) Another action has been brought for an injunction based on the same violation.

**(c) Hazardous materials violations.**

The FAA may assess a civil penalty against any person who knowingly commits an act in violation of 49 U.S.C. chapter 51 or a regulation prescribed or order issued under that chapter, under 49 U.S.C. 5123 and 49 CFR 1.47(k). An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder, is issued only after the following factors have been considered:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) With respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) Such other matters as justice may require.

\* \* \* \* \*

**(e) Delegation of authority.** (1) The authority of the Administrator under 49 U.S.C. 46301(d), 47531, and 5123, and 49 CFR 1.47(k) to initiate and assess civil penalties for a violation of those statutes or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(2) The authority of the Administrator under 49 U.S.C. 5123, 49 CFR 1.47(k), 49 U.S.C. 46301(d), and 49 U.S.C. 46305 to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(3) The authority of the Administrator under 49 U.S.C. 46301(f) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(4) The authority of the Administrator under 49 U.S.C. 5123(e) and (f) and 49 CFR 1.47(k) to compromise the amount of a civil penalty imposed is delegated to the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief

Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

**(f) Notice of proposed civil penalty.** A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation or on the agent for service for the person under 49 U.S.C. 46103.

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**(l) Collection of civil penalties.** If an individual does not pay a civil penalty imposed by an order assessing civil penalty or other final order, the Administrator may take action provided under the law to collect the penalty.

**(m) Exhaustion of administrative remedies and judicial review.** (1) *Cases under the FAA statute.* A party may petition for review only of a final decision and order of the FAA decisionmaker to the courts of appeals of the United States for the circuit in which the individual charged resides or has his or her principal place of business or the United States Court of Appeals for the District of Columbia Circuit, under 49 U.S.C. 46110, 46301(d)(6), and 46301(g). Neither an initial decision nor order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under those sections.

(2) *Cases under the Federal hazardous materials transportation law.* A party may seek judicial review only of a final decision and order of the FAA decisionmaker involving a violation of the Federal hazardous materials transportation law or a regulation or order issued thereunder to an appropriate district court of the United States, under 5 U.S.C. 703 and 704 and 28 U.S.C. 1331. Neither an initial decision or order issued by an administrative law judge that has not been appealed to the FAA decisionmaker, nor an order compromising a civil penalty action, may be appealed under these sections.

**(n) Compromise.** The FAA may compromise the amount of any civil penalty imposed under this section, under 49 U.S.C. 5123(e), 46301(f), 46302(b), 46303(b), or 46318 at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees not to make a finding of violation. Under such agreement, a

compromise order is issued following the payment of the agreed-on amount or the signing of a promissory note. The compromise order states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

\* \* \* \* \*

■ 5. Add § 13.18 to Part 13 to read as follows:

**§ 13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.**

(a) *General.* (1) This section applies to each action in which the FAA seeks to assess a civil penalty by administrative procedures against an individual acting as a pilot, flight engineer, mechanic, or repairman, under 49 U.S.C. 46301(d)(5), for a violation listed in 49 U.S.C. 46301(d)(2). This section does not apply to a civil penalty assessed for violation of 49 U.S.C. chapter 51, or a rule, regulation, or order issued thereunder.

(2) *District court jurisdiction.* Notwithstanding the provisions of paragraph (a)(1) of this section, the United States district courts have exclusive jurisdiction of any civil penalty action involving an individual acting as a pilot, flight engineer, mechanic, or repairman for violations described in that paragraph, under 49 U.S.C. 46301(d)(4), if:

(i) The amount in controversy is more than \$50,000.

(ii) The action involves an aircraft subject to a lien that has been seized by the Government; or

(iii) Another action has been brought for an injunction based on the same violation.

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Flight engineer* means an individual who holds a flight engineer certificate issued under part 63 of this chapter.

(2) *Individual acting as a pilot, flight engineer, mechanic, or repairman* means an individual acting in such capacity, whether or not that individual holds the respective airman certificate issued by the FAA.

(3) *Mechanic* means an individual who holds a mechanic certificate issued under part 65 of this chapter.

(4) *Pilot* means an individual who holds a pilot certificate issued under part 61 of this chapter.

(5) *Repairman* means an individual who holds a repairman certificate issued under part 65 of this chapter.

(c) *Delegation of authority.* (1) The authority of the Administrator under 49 U.S.C. 46301(d)(5), to initiate and assess civil penalties is delegated to the Chief

Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(2) The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(3) The authority of the Administrator to compromise the amount of a civil penalty under 49 U.S.C. 46301(f) is delegated to the Chief Counsel; the Deputy Chief Counsel for Operations; the Assistant Chief Counsel for Enforcement; Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; the Regional Counsel; the Aeronautical Center Counsel; and the Technical Center Counsel.

(d) *Notice of proposed assessment.* A civil penalty action is initiated by sending a notice of proposed assessment to the individual charged with a violation specified in paragraph (a) of this section. The notice of proposed assessment contains a statement of the charges and the amount of the proposed civil penalty. The individual charged with a violation may do the following:

(1) Submit the amount of the proposed civil penalty or an agreed-on amount, in which case either an order of assessment or a compromise order will be issued in that amount.

(2) Answer the charges in writing.

(3) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents.

(4) Request that an order be issued in accordance with the notice of proposed assessment so that the individual charged may appeal to the National Transportation Safety Board.

(e) *Failure to respond to notice of proposed assessment.* An order of assessment may be issued if the individual charged with a violation fails to respond to the notice of proposed assessment within 15 days after receipt of that notice.

(f) *Order of assessment.* An order of assessment, which assesses a civil penalty, may be issued for a violation described in paragraph (a) of this section after notice and an opportunity

to answer any charges and be heard as to why such order should not be issued.

(g) *Appeal.* Any individual who receives an order of assessment issued under this section may appeal the order to the National Transportation Safety Board. The appeal stays the effectiveness of the Administrator's order.

(h) *Exhaustion of administrative remedies.* An individual substantially affected by an order of the NTSB or the Administrator may petition for review only of a final decision and order of the National Transportation Safety Board to a court of appeals of the United States for the circuit in which the individual charged resides or has his or her principal place of business or the United States Court of Appeals for the District of Columbia Circuit, under 49 U.S.C. 46110 and 46301(d)(6). Neither an order of assessment that has not been appealed to the National Transportation Board, nor an order compromising a civil penalty action, may be appealed under those sections.

(i) *Compromise.* The FAA may compromise any civil penalty action initiated under this section, in accordance with 49 U.S.C. 46301(f).

(1) An agency attorney may compromise any civil penalty action where an individual charged with a violation agrees to pay a civil penalty and the FAA agrees to make no finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-on amount or the signing of a promissory note. The compromise order states the following:

(i) The individual has paid a civil penalty or has signed a promissory note providing for installment payments;

(ii) The FAA makes no finding of violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed or assessed in an order.

(j) *Payment.* (1) An individual must pay a civil penalty by:

(i) Sending a certified check or money order, payable to the Federal Aviation Administration, to the FAA office identified in the order of assessment, or

(ii) Making an electronic funds transfer according to the directions specified in the order of assessment.

(2) The civil penalty must be paid within 30 days after service of the order of assessment, unless an appeal is filed with the National Transportation Safety Board. The civil penalty must be paid within 30 days after a final order of the

Board or the Court of Appeals affirms the order of assessment in whole or in part.

(k) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order of assessment or other final order, the Administrator may take action provided under the law to collect the penalty.

■ 6. In § 13.201 remove paragraph (c) and revise paragraph (a) to read as follows:

§ 13.201 Applicability.

(a) This subpart applies to all civil penalty actions initiated under § 13.16 of this part in which a hearing has been requested.

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■ 7. In § 13.233 revise paragraphs (b) introductory text, (1) and (3), and the first sentence of paragraph (j) introductory text to read as follows:

§ 13.233 Appeal from initial decision.

\* \* \* \* \*

(b) *Issues on appeal.* In any appeal from a decision of an administrative law judge, the FAA decisionmaker considers only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

\* \* \* \* \*

(3) Whether the administrative law judge committed any prejudicial errors that support the appeal.

\* \* \* \* \*

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, when considering the issues on appeal. \* \* \*

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Issued in Washington, DC, on September 19, 2004.

Marion C. Blakey,

Administrator.

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