

Rules and Regulations

Federal Register

Vol. 81, No. 128

Tuesday, July 5, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

Federal Aviation Administration

14 CFR Parts 1, 11, 121, 125, and 135

[Docket No.: FAA-2014-0554; Amdt. Nos. 1-69; 11-60; 121-374, 125-65, 135-133]

RIN 2120-AK32

Acceptance Criteria for Portable Oxygen Concentrators Used on Board Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA) and the Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule which replaces the existing process by which the Federal Aviation Administration (Agency or FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. The FAA currently assesses each POC make and model on a case-by-case basis and if the FAA determines that a particular POC is safe for use on board an aircraft, the FAA conducts rulemaking to identify the specific POC model in an FAA regulation. The final rule replaces the current process and allows passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. The labeling requirement only affects POCs intended for use on board aircraft that were not previously approved for use on aircraft by the FAA. Additionally, the rulemaking will eliminate redundant operational

requirements and paperwork requirements related to the physician's statement. As a result, the rulemaking will reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators. The final rule also made conforming amendments to the Department of Transportation's (Department or DOT) rule implementing the Air Carrier Access Act (ACAA) to require carriers to accept all POC models that meet FAA acceptance criteria as detailed in this rule.

DATES: This correction will become effective on July 5, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact DK Deaderick, 121 Air Carrier Operations Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, AFS-220, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7480; email dk.deaderick@faa.gov. For questions regarding the Department's disability regulation (14 CFR part 382), contact Clereece Kroha, Senior Attorney, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9041; email clereece.kroha@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2016, the FAA published a final rule entitled, "Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft" (81 FR 33098).

The final rule affects the use of POCs on board aircraft in operations conducted under title 14 of the Code of Federal Regulations (14 CFR) parts 121, 125, and 135, by replacing the existing FAA case-by-case approval process for each make and model of POC in Special Federal Aviation Regulation (SFAR) No. 106, with FAA acceptance criteria. Under SFAR No. 106, each time the FAA approves a specific model of POC for use on board aircraft, the agency updates the list of approved POCs in the SFAR.

The final rule removes SFAR No. 106 and replaces it with POC acceptance criteria and specific labeling requirements to identify POCs that conform to the acceptance criteria. POCs

that conform to the final rule acceptance criteria will be allowed on board aircraft without additional FAA review and rulemaking.

As with existing requirements for FAA approval of POCs that may be used on aircraft, the final rule acceptance criteria and labeling requirement only apply to POCs intended for use on board aircraft.

However, the final rule was published with an incorrect references to AC 120-95B, when the new AC is actually AC 120-95A.

Correction

In FR Doc. 2016-11908, pages 33102, 33111, and 33113, in the **Federal Register** of May 24, 2016, make the following corrections:

1. On page 33102, third column, footnote 5, first line, correct "AC 120-95B" to "AC 120-95";
2. On page 33111, in the first column, tenth line from the bottom, correct "AC 120-95B" to read as "AC 120-95A";
3. On page 33113, in the first column, third line from the top in parenthesis, correct "AC 120-95B" to read as "AC 120-95A";
4. On page 33113, in the second column, second paragraph, thirteenth line, correct "AC 120-95B" to read as "AC 120-95A".

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on June 23, 2016.

Dale A. Boufflou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016-15770 Filed 7-1-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 406

[Docket No. FAA-2016-7004; Amdt. Nos. 13-38, 406-10]

RIN 2120-AK90

Revisions to the Civil Penalty Inflation Adjustment Tables

AGENCY: Federal Aviation Administration, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule is the catch-up inflation adjustment to civil penalty amounts that may be imposed

for violations of Federal Aviation Administration regulations, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: These amendments become effective August 5, 2016.

FOR FURTHER INFORMATION CONTACT: Cole R. Milliard, Attorney, Office of the Chief Counsel, Enforcement Division, AGC-300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3452; email Cole.Milliard@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking and Applicable Statutes

The Federal Aviation Administration (FAA's) authority to issue rules on aviation safety is found in title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. The Secretary of Transportation's authority to regulate the transportation of hazardous materials ("hazmat") by air is in chapter 51 of title 49; civil penalty authority is in section 5123. The Secretary's authority to regulate commercial space transportation may be found at 51 U.S.C. subtitle V, sections 50901-50923 (chapter 509), which provides for the Department of Transportation (DOT), and, through delegation, the 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, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015 (2015 Act), Public Law 114-74, codified at 28 U.S.C. 2461 note.

The FCPIAA, DCIA, and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts for inflation to preserve their deterrent impact. The 2015 Act amended the formula and frequency of inflation adjustments. It requires an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of penalty amounts. The amount of the adjustment must be made using a strict statutory formula discussed in more detail below.

Background

The FCPIAA determines inflationary adjustments by increasing civil penalties by a cost-of-living adjustment (COLA). Under the FCPIAA, as amended by the 2015 Act, the COLA for each civil penalty is normally the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (CPI-U) for the month of October of the calendar year preceding the adjustment and the CPI-U for the month of October of the previous calendar year.

However, under the 2015 Act, the FAA must first use a different "catch-up adjustment" formula. To determine the amount of the catch-up, it must use the percent change between the CPI-U from the October of the calendar year in which the penalty was last set or adjusted by statute or regulation other than by inflation adjustments under the FCPIAA and the CPI-U from the October preceding the adjustment. The increase must be rounded to the nearest \$1, and can be no greater than 150% of the penalty levels in effect on the date of the 2015 Act's enactment, which was November 2, 2015.

Method of Calculation

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the inflation adjustments required by the 2015 Act no later than February 29, 2016.¹ On

February 24, 2016, the OMB released this required guidance, which contains complete instructions on how to calculate the catch-up adjustment.² An agency calculates the catch-up adjustment by multiplying the maximum or minimum penalty amount by a multiplier calculated based on the year the penalty was last set or adjusted by Congress or rulemaking (other than inflation adjustments under the FCPIAA). As examples, here are how the adjustments for 49 U.S.C. 5123(a)(1) (hazmat) and 51 U.S.C. 50917 (commercial space) were calculated:

(1) Find the multiplier listed in the OMB guidance for the year the penalty was last set or reset.

Section 5123 was last adjusted in 2012, so the multiplier is 1.02819.

Section 50917 was last set in 1984, so the multiplier is 2.25867.

(2) Multiply the penalty amount by the multiplier, and round to the nearest dollar.

$\$75,000 \times 1.02819 = \$77,114$

$\$100,000 \times 2.25867 = \$225,867$

(3) Multiply the 2015 penalty amount (including any prior adjustments under the Inflation Adjustment Act) by 2.5,³ and round to the nearest dollar to find the 150% cap for the catch-up adjustment.

$\$75,000 \times 2.5 = \$187,500$

$\$120,000 \times 2.5 = \$300,000$

(4) Compare the dollar amount from (3) to the dollar amount in (2). If (2) < (3), (2) is below the 150% cap and is the adjusted penalty. If (2) > (3), the 150% cap is applied and becomes the adjusted penalty.

$\$77,114 < \$187,500$. Therefore, \$77,114 is the adjusted penalty.

$\$225,867 < \$300,000$. Therefore, \$225,867 is the adjusted penalty.

The following chart shows the values used in the calculations and the rounded catch-up adjustment. All of the penalty adjustments fell below the 150% cap on the catch-up adjustment:

49 U.S.C. Statute	Year last set/ adjusted	Penalty when last set/ad- justed	Multiplier from OMB	Catch-up adjustment
5123(a)(1)	2012	\$75,000	1.02819	\$77,114
5123(a)(2)	2012	175,000	1.02819	179,933
5123(a)(3)	2005	* 450	1.19397	537
5123(a)(3)	2012	** 75,000	1.02819	77,114
46301(a)(1)	2003	25,000	1.28561	32,140
46301(a)(1)	2003	1,100	1.28561	1,414
46301(a)(3) ⁴	N/A	N/A	N/A	N/A

¹ 28 U.S.C. 2461 note.

² OMB Memorandum M-16-06.

³ It is 2.5 rather than 1.5 because the cap is described in terms of the amount of the *increase*;

that is, the amount added to the penalty as a catch-up cannot be greater than 150% of the penalty, rather than being limited to 150% of the penalty itself. 28 U.S.C. 2461 note ("The amount of the increase in a civil monetary penalty . . . shall not

exceed 150 percent of the amount of that civil monetary penalty on the date of enactment"). Thus, the cap is $x + 1.5x = 2.5x$, where x is the penalty amount.

49 U.S.C. Statute	Year last set/ adjusted	Penalty when last set/ad- justed	Multiplier from OMB	Catch-up adjustment
46301(a)(5)	2003	10,000	1.28561	12,856
46301(b)	1987	2,000	2.06278	4,126
46302	1984	10,000	2.25867	22,587
46318	2000	25,000	1.36689	34,172
46319	2003	10,000	1.28561	12,856
47531 ⁵	N/A	N/A	N/A	N/A
51 U.S.C. 50917 ⁶	1984	100,000	2.25867	225,867

* Minimum.

** Maximum.

Provision for Reduced Catch-Up Adjustment

The 2015 Act allows an agency to request that a catch-up adjustment be lower than what is calculated using the 2015 Act's formula. This requires a determination by the head of the agency, following a notice of proposed rulemaking, opportunity for comment, and a final rule, that the catch-up adjustment will have a negative economic impact or has social costs that outweigh the benefits. In addition, the director of OMB must concur with the agency head's determination as the adjustment is an economic transfer. The Administrator of the FAA does not believe that any of the catch-up adjustments in this rule will have a negative economic impact or have social costs that outweigh their benefits.

Amendments to Subpart H of 14 CFR Part 13

The FAA codified the statutory formula for inflation adjustments under the FCPIAA and DCIA in subpart H of 14 CFR part 13. Rather than amending the subpart to match the 2015 Act, paragraphs (a)–(c) of § 13.305 containing the formula are being deleted as unnecessarily duplicative of the statute. Section 13.303 is also being deleted because it duplicates definitions of terms given in the statute. Section 13.301(a) is being amended to include a reference to the 2015 Act.

⁴ The penalty for 46301(a)(3) is an “increase[] above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.” As it depends on the other maximum penalties in 46301, there is no separate calculation needed for 46301(a)(3).

⁵ Section 47531 explicitly states that the applicable civil penalties are “the same . . . as a person violating section 44701(a) or (b) or any of sections 44702–44716 of this title.” Sections 46301(a)(1)(A) and (a)(5) provide the civil penalty amounts for those violations, and no separate calculation is needed.

⁶ Section 50917 was added by the Commercial Space Launch Act, Public Law 98–575, section 19, 98 Stat. 3055, 3062 (1984), and was codified as section 70115 of title 49 before being recodified in title 51.

Amendment to Section 406.9(a)

The current version of 14 CFR 406.9(a) states the maximum civil penalty that can be imposed under its authority “as adjusted for inflation.” This clause is being deleted as redundant and unnecessary. The maximum penalty amount as amended by this rule will already be adjusted for inflation, as will the future annual adjustments required by the 2015 Act. Retaining this clause could also create a false impression that the penalty amount is adjusted for inflation other than by the 2015 Act. Therefore, the “as adjusted for inflation” clause is being removed.

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 impracticable, 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, as amended, in order to maintain the deterrent effect of civil penalties and promote compliance with the law. As the Administrator of the FAA has determined that none of the catch-up adjustments should be lowered due to negative economic impact or social costs that outweigh benefits, there is no place where the FAA might apply discretion or policy judgments in calculating the adjustments. The formula for determining the adjustments is laid out by statute and cannot be amended by the FAA, even in response to public comment. Accordingly, public comment is unnecessary in this case.

Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. 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) 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 annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost 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 to 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 follows.

This rule adjusts for inflation to civil penalties for violations of aviation safety, hazmat, and commercial space provisions in accord with the Federal Civil Penalties Inflation Adjustment Act Improvement Act (the 2015 Act), Public Law 114–74, Section 701 (November 2, 2015). The Director of OMB provided guidance to agencies in a February 24, 2016 memorandum on how to calculate

the initial adjustment required by the 2015 Act. The FAA must follow the direction of Congress and is using statutorily-mandated guidance provided by OMB in calculating the catch-up inflation adjustment. Applying Congress's directions and OMB's guidance, the FAA has determined that this rule imposes no additional social cost. Civil penalties are, like taxes, an economic transfer. OMB guidance A-4 states that transfers are monetary payments from one group to another and thus not a social cost. OMB further dictates that transfers should not be included in estimates of the benefits and costs due to regulation. As transfers do not add social cost, this is a minimal cost rule. OMB also directs that distributional effects of transfers should be considered. The term "distributional effect" refers to the impact of a regulatory action across the population and economy, divided up in various ways (e.g. income groups, race, sex, industrial sector, geography). Distributional effects may arise through transfer payments like civil penalties that stem from regulatory enforcement action. While persons paying civil penalties may experience distributional effects, these discrete effects are far outweighed by the positive effects of civil penalties. Compliance with FAA statutes and regulations is essential to safety. Civil penalties are a punishment for those who violate FAA statutes and regulations. They also deter future violations. As a result, they support the FAA's mission of aviation, hazmat, and commercial space safety, which benefits the public at large. Thus, the cost impact of this rulemaking is minimal, and a full regulatory evaluation is not required in accordance with DOT Order 2100.5.

The FAA has determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 because it does not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities for the following reasons:

(i) Based on the FAA's review of civil penalties assessed in fiscal year 2015, the total amount assessed was about \$18 million. Even if this total itself were increased to the catch-up adjustment cap of a 150% increase (which is not being done here), it would only result in an increase of \$27 million, bringing the total amount assessed to \$45 million, which is substantially less than \$100 million. Thus, the amount of the

statutorily mandated inflation adjustment in this rulemaking will not have an annual effect on the economy of \$100 million or more; and

(ii) The process of determining whether or not a civil penalty is imposed is not affected by this change as this rulemaking only impacts the minimum and maximum possible amount of the penalty.

The FAA has further determined that this final rule is not a "significant regulatory action" because it does not (a) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (b) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (c) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Finally, the FAA has determined that this final rule is not "significant" as defined in DOT's Regulatory Policies and Procedures.

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.

The FAA believes that this final rule does not have a significant economic

impact on a substantial number of small entities for the following reasons. While this final rule is likely to impact a substantial number of small entities, it will impose only minimal costs. This final rule simply identifies the amount of the inflation adjustment to existing civil monetary penalty maximums and minimums for violations of the statutory and regulatory provisions the FAA enforces. The penalty amounts are those specified by statute or called for under the inflation adjustment statutes, and the information in this rule is required by the Debt Collection Improvement Act of 1996.⁷ As civil penalties are economic transfers, by OMB direction these are not included in the calculation of social costs.

In addition, FAA has determined the RFA does not apply to this rulemaking. The 2015 Act requires FAA to publish an interim final rule and there is good cause for issuing this rule without notice and comment under 5 U.S.C. 553(b)(B). The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2003), provides that:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If an NPRM is not required, the RFA does not apply.

Because there is good cause for issuing this final rule without notice and comment (*i.e.*, without an NPRM), the RFA does not apply. Therefore, as provided in section 605(b), the head of the FAA certifies that this rule will not result in 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), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as

⁷ The 2015 Act, Public Law 114-74, codified at 28 U.S.C. 2461 note, specifies the method of calculating the inflation adjustment, and OMB Memorandum M-16-06 provides the guidance required by the 2015 Act for agencies in calculating the inflation adjustment.

the protection of safety, and does not operate in a manner that excludes imports that meet this objective. 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 aviation safety, hazmat, and commercial space provisions in titles 49 and 51 of the U.S. Code and regulations issued under those provisions, and thus would have a neutral trade impact. Furthermore, the inflation adjustment is a legitimate domestic objective preserving the existing deterrent impact of aviation, hazmat, and commercial space safety statutes and regulations. 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 (in 1995 dollars) 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 \$155 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

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.

Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The FAA has also determined that there are no extraordinary circumstances requiring an environmental assessment or environmental impact statement.

Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

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). The agency has determined that it is not a “significant energy action” under the executive order 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; or
3. Accessing the Government Printing Office’s Web page at <http://www.gpo.gov/fdsys>.

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.

List of Subjects

14 CFR Part 13

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

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 chapters I and III of title 14, Code of Federal Regulations as follows:

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

- 1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5128, 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.47.

- 2. Amend § 13.301 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 13.301 Scope and purpose.

(a) This subpart sets out the current adjusted maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to the FAA’s jurisdiction under title 49 of the U.S. Code. These penalties have been adjusted for inflation in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, April 26, 1996, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, November 2, 2015, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law.

* * * * *

(c) Minimum and maximum civil monetary penalties within the jurisdiction of the FAA are as follows:

TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS OCCURRING ON OR AFTER AUGUST 1, 2016

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New or adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted by Congress	New or adjusted maximum penalty amount
49 U.S.C. 5123(a), subparagraph (1).	Violation of hazardous materials transportation law.	Deleted 7/6/2012.	N/A	\$75,000 per violation, adjusted 7/6/2012.	\$77,114.
49 U.S.C. 5123(a), subparagraph (2).	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	Deleted 7/6/2012.	N/A	\$175,000 per violation, adjusted 7/6/2012.	\$179,933.
49 U.S.C. 5123(a), subparagraph (3).	Violation of hazardous materials transportation law relating to training.	\$450 per violation, set 8/10/2005.	\$537	\$75,000 per violation, adjusted 7/6/2012.	\$77,114.
49 U.S.C. 46301(a)(1).	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	\$25,000 per violation, set 12/12/2003.	\$32,140.
49 U.S.C. 46301(a)(1).	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	\$1,100 per violation, adjusted 12/12/2003.	\$1,414.
49 U.S.C. 46301(a)(1).	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	\$1,100 per violation, adjusted 12/12/2003.	\$1,414.
49 U.S.C. 46301(a)(3).	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues that are used in violation of such section.	No change.
49 U.S.C. 46301(a)(5)(A).	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	\$10,000 per violation, set 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(i).	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	\$10,000 per violation, set 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(ii).	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	\$10,000 per violation, set 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(iii).	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	\$10,000 per violation, set 12/12/2003.	\$12,856.
49 U.S.C. 46301(a)(5)(B)(iv).	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	\$10,000 per violation, set 12/12/2003.	\$12,856.
49 U.S.C. 46301(b) ..	Tampering with a smoke alarm device	N/A	N/A	\$2,000 per violation, set 12/22/1987.	\$4,126.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$10,000 per violation, set 10/12/1984.	\$22,587.
49 U.S.C. 46318	Interference with cabin or flight crew	N/A	N/A	\$25,000, set 4/5/2000	\$34,172.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	\$10,000 per day, set 12/12/2003.	\$12,856.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See 49 U.S.C. 46301(a)(1)(A) and (a)(5), above.	No change.

§§ 13.303 and 13.305 [Removed]

- 3. Remove §§ 13.303 and 13.305.

**CHAPTER III—COMMERCIAL SPACE
TRANSPORTATION, FEDERAL AVIATION
ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION**

**PART 406—INVESTIGATIONS,
ENFORCEMENT, AND
ADMINISTRATIVE REVIEW**

- 4. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

- 5. Revise § 406.9(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 \$225,867 for each violation. A separate violation occurs for each day the violation continues.

* * * * *

Issued under authority provided by 28 U.S.C. 2461 and 49 U.S.C. 106(f), 44701(a), and 46301 in Washington, DC, on June 23, 2016.

Michael P. Huerta,
Administrator.

[FR Doc. 2016–15744 Filed 7–1–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2015–5034; Special Conditions No. 23–273–SC]

**Special Conditions: Kestrel Aircraft
Company, Model K–350 Turboprop,
Lithium Batteries**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Kestrel Aircraft Company, Model K–350 Turboprop airplane. This airplane will have a novel or unusual design feature associated with the installation of a rechargeable lithium battery. 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.

DATES: These special conditions are effective July 5, 2016 and are applicable on June 23, 2016.

FOR FURTHER INFORMATION CONTACT:

Ruth Hirt, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Programs and Procedures Branch, ACE–114, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4108, facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2011, Kestrel Aircraft Company applied for a type certificate for their new Model K–350. The Kestrel Aircraft Company Model K–350 is a single-engine turboprop airplane with the primary structure constructed largely of carbon and epoxy composite material. The turboprop engine will be a Honeywell Model TPE331–14GR–801KT that is integrated with a Hartzell 4 bladed, 110-inch carbon composite propeller. The standard seating configuration offers a one plus five cabin (one pilot and five passengers). Alternate interior configurations will be available from two seats (cargo configuration) up to eight seats total. The K–350 will incorporate an integrated avionics system, retractable landing gear, and a conventional tail configuration.

Specifications expected for the K–350 include the following:

- Maximum altitude: 31,000 Feet
- Maximum cruise speed: 320 Knots True Air Speed
- Maximum takeoff weight: 8,900 Pounds
- Maximum economy cruise: 1,200 Nautical Miles

The K–350 will be certified for single-pilot operations under part 91 and part 135 operating rules. The following operating conditions will be included:

- Day and Night Visual Flight Rules
- Instrument Flight Rules
- Flight Into Known Icing (Phase B certification)

Kestrel Aircraft Company plans to utilize a rechargeable lithium main battery on their new Model K–350 turboprop airplane. The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the application of rechargeable lithium batteries in airborne applications. This type of battery possesses certain failure and operational characteristics with maintenance requirements that differ

significantly from that of the nickel-cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes. Therefore, the FAA is issuing this special condition to require that (1) all characteristics of the rechargeable lithium batteries and their installation that could affect safe operation of the K–350 are addressed, and (2) appropriate Instructions for Continued Airworthiness that include maintenance requirements are established to ensure the availability of electrical power from the batteries when needed.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Kestrel Aircraft Company must show that the K–350 meets the applicable provisions of part 23, as amended by amendments 23–1 through 23–62 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the K–350 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the K–350 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the Noise Control Act of 1972.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The K–350 will incorporate the following novel or unusual design feature:

Installation of a rechargeable lithium battery as the main or engine start aircraft battery.

Discussion

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the