III. Regulatory Impact Statement

Executive Order 12866

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under both Executive Order 12866 and DOT's Regulatory Policies and Procedures. The rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The provisions are required by current regulatory language, without interpretation.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires an assessment of the impact of proposed and final rules on small entities unless the agency certifies that the proposed regulation will not have a significant economic impact on a substantial number of small entities. This revision of 14 CFR Part 254 provides for a periodic inflation adjustment to the amount of the minimum limit on baggage liability that air carriers may incur in cases of mishandled baggage. It will pose minor additional costs only in those instances in which carriers lose, damage or delay baggage and where the amount of the passenger's claim in those instances exceeds the old minimum liability limit of $3,000. The maximum potential impact in those instances is $300 on each such claim. Reports filed each month with the Department by airlines that each account for at least one percent of total domestic scheduled-service passenger revenues show that, at the present time, less than five percent of all domestic passengers experience a mishandled bag. That percentage has been trending downward throughout this year, possibly as a result of fees for checked bags imposed by many airlines beginning this year. Most of the instances of mishandled baggage represented in the reports to DOT do not result in a claim in an amount that is affected by the liability limit in this rule. In addition, this revision affects only flight segments operated with large aircraft and other flight segments appearing on the same ticket as a large-aircraft segment. As a result, many operations of small entities, such as air taxis and many commuter air carriers, are not covered by the rule. Moreover, any additional costs for small entities associated with the rule should be minimal and may be covered by insurance. Accordingly, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 14 CFR Part 254

Air carriers, Administrative practice and procedure, Consumer Protection, Department of Transportation.

■ Accordingly, the Department of Transportation amends 14 CFR part 254 as follows:

PART 254—DOMESTIC BAGGAGE LIABILITY

■ 1. The authority citation for part 254 continues to read as follows:

Authority: 49 U.S.C. 40113, 41501, 41504, 41510, 41702 and 41707.

§ 254.4 [Amended]

■ 2. Section 254.4 is amended by removing ''$3,000'' and adding ''$3,300'' in its place.

§ 254.5 [Amended]

■ 3. Section 254.5(b) is amended by removing ''$3,000'' and adding ''$3,300'' in its place.

■ 4. Section 254.6 is amended by revising the last sentence in the formula to read as follows:

§ 254.6 Periodic adjustments.

* * * * *

b = the CPI–U figure in December 1999 when the inflation adjustment provision was added to Part 254.

Issued in Washington, DC on November 14, 2008.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E8–27772 Filed 11–20–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 383

[Docket No. DOT–OST–2008–0333]

RIN 2105–AD77

Civil Penalties

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Final rule.

SUMMARY: This rule raises the maximum civil penalties that can be assessed as a result of DOT aviation enforcement actions for violations of certain economic provisions of U.S.C. Title 49. This inflation adjustment is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996.

DATES: *Effective Date:* This rule is effective December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Senior Attorney, Office of Aviation Enforcement and Proceedings (C–70), Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–9349.

SUPPLEMENTARY INFORMATION:

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) provides a detailed formula on how federal monetary civil penalties should be adjusted for inflation. The Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001) requires each agency to adjust monetary civil penalties within its jurisdiction at least once every four years. The adjustment is based on changes to the Consumer Price Index All Urban Consumers (CPI–U) of the prior year. The 1996 Act further provides that if an inflation adjustment has never been applied to a civil monetary penalty amount, the first increase to the maximum penalty cannot be more than ten percent of the original amount.

The civil penalty amounts at issue here, relating to certain violations of aviation economic regulations and statutes, were last set by Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176; 117 Stat. 2490, December 12, 2003). This final rule updates some (but not all) of the civil penalties based on the increase in the CPI–U from June 2003 to June 2007 (an inflation factor of 1.13) to the civil penalties of the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 1088–176; 117 Stat. 2490, December 12, 2003). As a result, the current general penalty amount is raised from $25,000 to $27,500.

The current $1,100 general civil penalty for small businesses and individuals is not changed, however, because the 1990 Act provides that if the current unadjusted penalty is greater than $1,000 and less than or equal to $10,000, the penalty increase should be rounded to the nearest multiple of $1,000.

14 CFR Part 383 currently allows small businesses and individuals to be assessed higher penalties for particular specific aviation law provision. Because of the rounding provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, only two of those three maximum penalties applicable to small businesses and individuals are being changed by this

rule. First, this final rule increases the current $10,000 civil penalty amount to $11,000 for violations of most provisions of Chapter 401, including the anti-discrimination provisions of section 401217 (general provision) and 41705 (discrimination against the disabled), and rules and orders issued under those provisions. Second, this final rule raises the current $5,000 civil penalty amount to $5,500 for violations of section 41719 regarding essential air service and consumer protection rules or orders issued under that section. The current maximum civil penalty of $2,500 for violations of section 41712 (unfair and deceptive practices and unfair methods of competition) is not being raised because of the rounding provision discussed above. Finally, the final rule makes a number of non-substantive editorial changes for clarity.

Regulatory Analyses and Notices

The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures when they are impracticable, unnecessary or contrary to the public interest. We find that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the usual requirements for notice and public comment. This rulemaking is a ministerial action required the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act of 1990. It is based on a statutory formula. Accordingly, we find that opportunity for notice and comment is unnecessary and contrary to the public interest, and we are issuing these updates as a final rule.

Executive Order 12866

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 or DOT's Regulatory Policies and Procedures. The rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The provisions are required by current regulatory language, without interpretation.

Regulatory Flexibility Act

In addition, we must prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–602) unless we certify that a regulation will not have a significant economic impact on a substantial number of small entities. In this case the revision of the civil penalty amounts will raise potential penalties for all aviation businesses; however, there are special reduced penalties for individuals and small businesses with regard to specific kinds of violations. With respect to two categories of violations committed by small businesses and individuals, the inflation adjustment results in no change. Those two categories are the general civil penalty amount of $1,100 and civil penalty of $2,500 for violations of 49 U.S.C. 41712, prohibiting unfair and deceptive business practices and unfair methods of competition. A third category of penalty applicable to small businesses, for violations of 49 U.S.C. 41719, does increase from $5,000 to $5,500 as a result of the inflation adjustment made by this rulemaking. Violations of this provision, having to do with essential air service requirements, are rare and should affect few, if any, small businesses. Violations of most provisions of Chapter 401 increase from $10,000 to $11,000. The aggregate economic impact of this rulemaking on small entities should be minimal. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

This final rule imposes no new reporting or record keeping requirements necessitating paperwork clearance by OMB.

Unfunded Mandates Reform Act of 1995

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995, as amended, do not apply to this rulemaking.

List of Subjects

14 CFR Part 383

Administrative practice and procedures; Penalties.

■ Accordingly, the Department of Transportation revises 14 CFR part 383 to read as follows:

PART 383—CIVIL PENALTIES

Sec.

383.1 Purpose and Periodic Adjustment.
383.2 Amount of Penalty.

Authority: Sec. 503, Public Law 108–176, 117 Stat. 2490; Public Law 101–410, 104 Stat. 890; Public Law 104–134, § 31001.

§ 383.1 Purpose and Periodic Adjustment.

(a) *Purpose.* This part adjusts the civil penalty liability amounts prescribed in 49 U.S.C. 46301(a) for inflation in accordance with the Acts cited in paragraph (b) of this section.

(b) *Periodic Adjustment.* DOT will periodically adjust the maximum civil penalties set forth in 49 U.S.C. 46301 and this part as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996.

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than $27,500 (or $1,100 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section, (*see* 49 U.S.C. 46301(a)(1));

(b) With respect to small businesses and individuals, notwithstanding the general $1,100 civil penalty, the following civil penalty limits apply:

(1) A maximum civil penalty of $11,000 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued thereunder (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of $5,500 applies for violations of section 41719 and rules and orders issued thereunder (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of $2,500 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

Issued in Washington, DC on November 14, 2008.

Mary E. Peters,

Secretary.

[FR Doc. E8–27774 Filed 11–20–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 634

[FHWA Docket No. FHWA–2008–0157]

RIN 2125–AF28

Worker Visibility

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim Final Rule (IFR).

SUMMARY: The FHWA is revising its regulations to address safety concerns