

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union
Administration.

ACTION: Final rule.

SUMMARY: Congress, in the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required all federal agencies with the authority to impose civil monetary penalties (CMPs) to regularly evaluate those CMPs to ensure that they continue to maintain their deterrent value. As a result of these acts, the head of each agency is required, by October 23, 1996, and at least once every four years thereafter, to adjust its CMPs for inflation. In order to comply with Congress' mandate, the National Credit Union Administration is issuing this final rule to implement the required adjustments to the CMPs authorized by the Federal Credit Union Act.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 (DCIA) ¹ amended the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 ² (FCMPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalties (CMPs) ³ provided by law under its jurisdiction by the rate of inflation pursuant to the inflation adjustment formula in section 5(b) of the FCMPIA Act. Each Federal agency is required to issue these implementing regulations by October 23, 1996, which is 180 days after the date that DCIA was enacted, and at least once every 4 years thereafter. Section 7 of the amended FCMPIA Act specifies that inflation-

adjusted CMPs will only apply to violations that occur after October 23, 1996.

The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI) ⁴ for the period from June of the calendar year when the CMP was established or last adjusted until June of the calendar year preceding the adjustment. Furthermore, each CMP that has been adjusted for inflation must be rounded to a number prescribed by section 5(a) of the FCMPIA Act. ⁵ Another provision of the DCIA limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original penalty. The amount of increase in the final regulation would have been more if this limit did not exist.

Section 206(k)(2) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)) authorizes the National Credit Union Administration (NCUA) to impose three levels or tiers of CMPs upon insured credit unions or institution-affiliated parties. First tier CMPs, 12 U.S.C. 1786(k)(2)(A), may be imposed for the violation of any law or regulation, the violation of certain final orders or temporary orders, the violation of conditions imposed in writing by the NCUA Board, or the violation of any written agreement between the credit union and NCUA. The statute presently provides that first tier CMPs shall not be more than \$5,000 for each day the violation continues. After the required adjustment for inflation, the maximum penalty is increased to \$5,500 for each day.

Second tier CMPs, 12 U.S.C. 1786(k)(2)(B), are authorized for violations described in first tier CMPs, the reckless engaging in an unsafe or unsound practice in conducting the affairs of a credit union, or the breach of any fiduciary duty, when the violation, practice or breach is part of a pattern of misconduct, or causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit. The maximum second tier CMP is currently \$25,000 for each day the violation, practice or breach continues. After the required adjustment for inflation, the maximum penalty is increased to \$27,500 per day.

Third tier CMPs, 12 U.S.C. 1786(k)(2)(C), may be imposed for any of the acts described in second tier CMPs that cause a substantial loss to the credit union or a substantial pecuniary

gain or other benefit. The amount of third tier CMPs depends upon the status of the respondent required to pay the CMP (12 U.S.C. 1786(k)(2)(D)). For a person other than an insured credit union, the current maximum third tier CMP is \$1,000,000 for each day the violation, practice or breach continues. For an insured credit union, the current daily maximum CMP is the lesser of \$1,000,000 or 1 percent of the total assets of the credit union. The maximum CMP for a person other than an insured credit union will be increased for inflation to \$1,100,000 per day. The maximum CMP for an insured credit union will be increased to the lesser of \$1,100,000 or 1 percent of the total assets of the credit union.

The NCUA now adopts this final rule which adjusts these three CMPs for the rate of inflation, as required by the DCIA. DCIA provides Federal agencies with no discretion in the adjustment of CMPs for inflation, and it also requires the new regulation to take effect on October 23, 1996. Further, the regulation that the NCUA adopts today to implement DCIA is ministerial and technical. For these reasons, the NCUA finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(3)(B). These same reasons also provide the NCUA with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the Federal Register. Furthermore, the NCUA determines that pursuant to the requirements of section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, this regulation shall take effect prior to the expiration of the 60-day Congressional waiting period for final NCUA regulatory action due to the Congressionally-mandated effective date of October 23, 1996.

Regulatory Requirements

Regulatory Flexibility Act

The NCUA has determined and certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under \$1,000,000 in assets).

Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule. Consequently, no information has been

¹ Pub. L. 104-134, section 31001(s), 110 Stat. 1321-358, (Apr. 26, 1996). The provision is codified at 28 U.S.C. 2461 *note*.

² Pub. L. 101-410, 104 Stat. 890, (Oct. 5, 1990).

³ Section 3(2) of the amended FCMPIA Act defines a CMP as any penalty, fine, or other sanction that: (1) either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

⁴ The CPI is published by the Department of Labor, Bureau of Statistics.

⁵ For example, an increase that is less than \$100 would be rounded to the nearest multiple of \$10, and an increase over \$100 but less than \$1,000 would be rounded to the nearest multiple of \$100.

submitted to the Office of Management and Budget for review.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this final rule will not have a substantial direct effect 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.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions, Penalties.

By the National Credit Union Administration Board on October 28, 1996.
Becky Baker,
Secretary to the Board.

Accordingly, the NCUA amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1784, 1786, and 1787; 42 U.S.C. 4012a; Pub. L. 101-410, 104 Stat. 890; Pub. L. 104-134, 110 Stat. 1321-358 (28 U.S.C. 2461 note).

2. Part 747 is amended by adding Subpart K consisting of § 747.1001 to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996 (Public Law 104-134, 110 Stat. 1321-358 (28 U.S.C. 2461 note)).

(a) A first tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(A), for a violation occurring after October 23, 1996, shall not exceed \$5,500 per day for each day the violation continues.

(b) A second tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(B), for a violation, practice or breach occurring after October 23, 1996, shall not exceed \$27,500 per day for each day the violation, practice or breach continues.

(c) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon any person other than an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed \$1,100,000 per day for each day the violation, practice or breach continues.

(d) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed the lesser of—

(1) \$1,100,000 per day for each day the violation, practice or breach continues; or

(2) 1 percent of the total assets of such credit union for each day the violation, practice or breach continues.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120-AA64

[Docket No. 94-NM-226-AD; Amendment 39-9790; AD 96-22-01]

Airworthiness Directives; Boeing Model 747-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200, -300, and -400 series airplanes, that requires modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP). This amendment is prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. The actions specified by this AD are intended to prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane.

DATES: Effective December 6, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1760; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published as a supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on December 11, 1995 (60 FR 63465). That action proposed to require modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Extend the Compliance Time for Hydraulic Tubing Modification

Two commenters request that the compliance time for accomplishing the proposed modification of the hydraulic tubing of the right inboard elevator PCP be extended from the proposed 1 year to 18 months. The commenters state that such an extension will allow the modification to be accomplished during a regularly scheduled "C" or "D" check, and thereby eliminate any additional expenses that would be associated with special scheduling.

One of these commenters notes that it had submitted an identical request to the FAA during the comment period for the original NPRM, but the FAA denied this request, in part, because it "determined that a heavy maintenance visit is not required to accomplish the modification." The commenter states that the proposed modification requires draining and purging of the stabilizer fuel tank, which is not an activity suited for a line or field maintenance environment. Additionally, access to remove the elevator actuator and modify the hydraulic tubing on the stabilizer aft spar would be difficult to accomplish during line maintenance or at a field maintenance facility.