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FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052-AD41

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) (collectively FDPA, as amended).

DATES: *Effective date:* This regulation is effective on February 4, 2020.

Applicability date: The inflation-adjusted CMP were applicable beginning January 15, 2020.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by

the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate and adjust, if necessary, those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law. Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty¹ 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.²

The FCA imposes and enforces CMPs through the Farm Credit Act³ and the FDPA, as amended.⁴ FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules regarding persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

B. CMPs Issued Under the Farm Credit Act

The Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of a cease-and-desist order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay up to a maximum daily

amount of \$1,000⁵ during which such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act "shall be treated" as a final order issued under section 5.25 of the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that "[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than \$500⁶ per day for each day during which such violation continues." This CMP maximum was set by the Agricultural Credit Act of 1987, which was enacted in 1988, and amends the Farm Credit Act. Current, inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.⁷

The FCA also enforces the FDPA, as amended, which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The existing maximum CMP for a violation under the Flood Disaster Protection Act of 1973 is \$2,000.^{8,9}

C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

1. In General

The 2015 Act required all Federal agencies to adjust the CMPs yearly, starting January 15, 2017.

⁵ The inflation-adjusted CMP in effect on January 15, 2019, for a violation of a final order is \$2,326 per day, as set forth in § 622.61(a)(1) of FCA regulations.

⁶ The inflation-adjusted CMP in effect on January 15, 2019, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is \$1,052 per day, as set forth in § 622.61(a)(2) of FCA regulations.

⁷ Prior adjustments were made under the 1990 Act.

⁸ Public Law 112-141, 126 Stat. 405 (July 6, 2012).

⁹ The inflation-adjusted CMP in effect on January 15, 2019, for a flood insurance violation is \$2,187, as set forth in § 622.61(b) of FCA regulations.

¹ Note: While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term "civil monetary penalties" for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term "civil money penalties." Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

² See 28 U.S.C. 2461 note.

³ Public Law 92-181, as amended.

⁴ 42 U.S.C. 4012a and Public Law 103-325, title V, 108 Stat. 2160, 2255-87 (September 23, 1994).

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be made yearly no later than January 15 of each year.¹⁰ Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this 1990 Act applies only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term “cost-of-living adjustment” as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index (CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October 1 year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.¹¹

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.¹²

2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.¹³

III. Yearly Adjustments

A. Mathematical Calculations of 2020 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2020 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2019 White House Office of Management and Budget (OMB) guidance¹⁴ is based on the percentage by which the CPI for October 2019 exceeds the CPIs for October 2018. The OMB set forth guidance, as required

by the 2015 Act,¹⁵ with a multiplier for calculating the new CMP values.¹⁶ The 2019 OMB multiplier for the 2020 CMPs is 1.01764.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. The adjustment multiplier is the same for all FCA enforced CMPs, set at 1.01764. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973.

1. New Penalty Amount in § 622.61(a)(1)

The inflation-adjusted CMP currently in effect for violations of a final order occurring on or after January 15, 2019, is a maximum daily amount of \$2,326.¹⁷ Multiplying the \$2,326 CMP by the 2019 OMB multiplier, 1.01764, yields a total of \$2,403.67. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to \$2,404. Thus, the new CMP maximum is \$2,404, for violations that occur on or after January 15, 2020.

2. New Penalty Amount in § 622.61(a)(2)

The inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after January 15, 2019, is a maximum daily amount of \$1,052.¹⁸ Multiplying the \$1,052 CMP maximum by the 2019 OMB multiplier, 1.01764, yields a total of \$1,070.56. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to \$1,071. Thus, the new CMP maximum is \$1,071, for violations that occur on or after January 15, 2020.

3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) occurring on or after January 15, 2019, is \$2,187. Multiplying \$2,187 by the 2019 OMB multiplier, 1.01764, yields a total of \$2,225.58. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is \$2,226. Thus, the new CMP maximum is \$2,226, for

violations that occur on or after January 15, 2020.

IV. Notice and Comment Not Required by Administrative Procedure Act

The 1990 Act, as amended, gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in *final* form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA’s jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 *note*), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued

¹⁰ Public Law 114–74, sec. 701(b)(1).

¹¹ The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.txt>.

¹² Pursuant to section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest \$1.

¹³ Pursuant to section 4(d) of the 1990 Act, as amended.

¹⁴ OMB Circular M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

¹⁵ 28 U.S.C. 2461 *note*, section 7(a).

¹⁶ OMB Circular M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

¹⁷ 12 CFR 622.61(a)(1).

¹⁸ 12 CFR 622.61(a)(2).

under section 5.25 or 5.26 of the Act: The maximum daily amount is \$2,404 for violations that occur on or after January 15, 2020.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is \$1,071 for each violation that occurs on or after January 15, 2020.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is \$2,226 for each violation that occurs on or after January 15, 2020, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: January 23, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2020-0032; Special Conditions No. 25-765-SC]

Special Conditions: Airbus Defense and Space Model C-295 Series Airplane; Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Defense and Space (Airbus DS) C-295 series airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is airplane electronic systems and networks that allow access from external sources (e.g., wireless devices, internet connectivity) to the airplane's previously isolated, internal electronic components. 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: This action is effective on Airbus DS on February 4, 2020. Send comments on or before March 20, 2020.

ADDRESSES: Send comments identified by Docket No. FAA-2020-0032 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov/>, including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478).

Docket: Background documents or comments received may be read at <http://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuan Nguyen, Airplane and Flight Crew Interface Section, AIR-671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3365; email Thuan.T.Nguyen@faa.gov.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On August 2, 2018 Airbus DS applied for a change to Type Certificate No. A21NM to update the Avionics System Rockwell Collins Proline II to the Avionics System based on Proline Fusion in the Airbus DS C-295 series airplane. The Airbus DS C-295 series airplane, currently approved under Type Certificate No. A21NM, is a twin-engine, transport category airplane configured for freighter use, with a maximum takeoff weight of 46,300 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus DS must show that the C-295 series airplane, as changed, meets the applicable provisions of the regulations listed in Type Certificate No. A21NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus DS C-295 series airplane 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 novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus DS C-295 series airplane must comply with the fuel vent and exhaust emission requirements of