

# Rules and Regulations

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 747

#### Civil Monetary Penalty Inflation Adjustment

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** Congress, in the Federal Civil Penalties 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. In order to comply with Congress' mandate to adjust CMPs for inflation at least every four years, NCUA is issuing this final rule to implement the required adjustments to the CMPs authorized by the Federal Credit Union Act and other relevant laws.

**DATES:** Effective November 1, 2004.

**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:**

#### A. Background

The Debt Collection Improvement Act of 1996<sup>1</sup> (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990<sup>2</sup> (FCPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalty

(CMP)<sup>3</sup> provided by law under its jurisdiction by the rate of inflation pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Each Federal agency was required to issue these implementing regulations by October 23, 1996, and at least once every 4 years thereafter. Section 6 of the amended FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).<sup>4</sup> Specifically, section 5(b) of the FCPIA Act defines the term "cost-of-living adjustment" as "the percentage (if any) for each civil monetary penalty by which—(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law." Furthermore, each CMP that has been adjusted for inflation must be rounded to a number prescribed by section 5(a) of the FCPIA Act.<sup>5</sup>

The CMPs which NCUA is authorized to impose were last adjusted by NCUA in either 1996 or 2000. For those CMPs that were adjusted in 2000, the current adjustment will be the percentage by which the CPI for the month of June 2003 exceeds the CPI for the month of June 2000. According to the Bureau of Labor Statistics, the CPI for the month of June 2000 was 172.4 and the CPI for the month of June 2003 was 183.7. The percentage by which the 2003 figure exceeds the 2000 figure is 6.55 percent. Thus, the CMPs that were last adjusted in 2000 should be increased by 6.55

<sup>3</sup> Section 3(2) of the amended FCPIA 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.

<sup>4</sup> The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: <http://data.bls.gov/cgi-bin/survey/most>.

<sup>5</sup> In 2000, NCUA recognized that the rounding provision of the FCPIA Act was capable of differing interpretations. Since then, the Comptroller General has interpreted the rounding requirements of the FCPIA Act the same way as NCUA did in calculating the 2000 inflation adjustments. Comp. Gen. B-290021, 2002 U.S. Comp. Gen. LEXIS 266, July 15, 2002.

percent to arrive at the new adjusted amounts (before required rounding).

For those CMPs that were adjusted in 1996, the current adjustment will be the percentage by which the CPI for the month of June 2003 exceeds the CPI for the month of June 1996. According to the Bureau of Labor Statistics, the CPI for the month of June 1996 was 156.7 and the CPI for the month of June 2003 was 183.7. The percentage by which the 2003 figure exceeds the 1996 figure is 17.23 percent. The CMPs that were last adjusted in 1996 should be increased by 17.23 percent to arrive at the new adjusted amounts (before required rounding).

#### B. Mathematical Calculations of the Adjustments

##### 1. 12 U.S.C. 1782a(a)(3)

NCUA is authorized to require credit unions to periodically provide reports of condition. The failure to submit a required report or the submission of a false or misleading report subjects a credit union to three levels of CMPs, depending upon the reasons for noncompliance.

##### Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782a(a)(3) were last adjusted by NCUA in 2000.<sup>6</sup> Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for an inadvertent failure to submit a report or the inadvertent submission of a false or misleading report is \$2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$2,200 for each day. Multiplying the current penalty of \$2,200 by 6.55 percent results in an increase of \$144.10. When that number is rounded as required by the FCPIA Act,<sup>7</sup> the inflation-adjusted maximum remains \$2,200.

<sup>6</sup> The previous inflation adjustments were made to 12 U.S.C. 1782. That provision has been redesignated as 1782a.

<sup>7</sup> "Any increase determined under this subsection shall be rounded to the nearest— \* \* \* (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." Section 5(a), FCPIA Act. Therefore, \$144.10 is rounded to the nearest multiple of \$1,000 or to \$0.

<sup>1</sup> Pub. L. 104-134, 31001(s), 110 Stat. 1321-373, (Apr. 26, 1996). The Provision is codified at 28 U.S.C. 2461 note.

<sup>2</sup> Pub. L. 101-410, 104 Stat. 890, (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for a non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report is \$20,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$22,000 for each day. Multiplying the current penalty of \$22,000 by 6.55 percent results in an increase of \$1,441. When that number is rounded as required by the FCPIA Act,<sup>8</sup> the inflation-adjusted maximum remains \$22,000.

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is \$1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$1,100,000 for each day. Multiplying the current penalty of \$1,100,000 by 6.55 percent results in an increase of \$72,050. When that number is rounded as required by the FCPIA Act,<sup>9</sup> the inflation-adjusted maximum becomes \$1,175,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

## 2. 12 U.S.C. 1782a(d)(2)

In a provision similar to that discussed above, NCUA is authorized to require each credit union to provide periodic certified statements of the amount of insured shares in the credit union, as well as to pay required deposits into the National Credit Union Share Insurance Fund. The failure to submit a required certified statement or the submission of a false or misleading statement subjects a credit union to three levels or tiers of CMPs, depending upon the reasons for noncompliance.

### Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782a(d)(2) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive

at the new adjusted amounts (before required rounding).

### First Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(A) for an inadvertent failure to timely submit a certified statement or an inadvertent submission of a false or misleading certified statement is \$2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$2,200 for each day. Multiplying the current penalty of \$2,200 by 6.55 percent results in an increase of \$144.10. When that number is rounded as required by the FCPIA Act,<sup>10</sup> the inflation-adjusted maximum remains \$2,200.

### Second Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(B) for a non-inadvertent failure to timely submit a certified statement, or a non-inadvertent submission of a false or misleading certified statement, or the failure or refusal to pay any required deposit or premium for insurance is \$20,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$22,000 for each day. Multiplying the current penalty of \$22,000 by 6.55 percent results in an increase of \$1,441. When that number is rounded as required by the FCPIA Act,<sup>11</sup> the inflation-adjusted maximum remains \$22,000.

### Third Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(C) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is \$1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$1,100,000 for each day. Multiplying the

current penalty of \$1,100,000 by 6.55 percent results in an increase of \$72,050. When that number is rounded as required by the FCPIA Act,<sup>12</sup> the inflation-adjusted maximum becomes \$1,175,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

## 3. 12 U.S.C. 1785(e)(3)

Pursuant to 12 U.S.C. 1785(e)(1), NCUA is authorized to promulgate regulations to provide minimum standards with which each insured credit union must comply with respect to security devices and procedures to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such acts. A credit union that violates such a regulation is subject to a CMP for each day the violation continues.

### Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1785(e)(3) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 12 U.S.C. 1785(e)(3) for non-compliance with NCUA security regulations is \$100 for each day the violation continues. After the required adjustment for inflation in 2000, the maximum penalty was increased to \$110 for each day. Multiplying the current penalty of \$110 by 6.55 percent results in an increase of \$7.21. When that number is rounded as required by the FCPIA Act,<sup>13</sup> the inflation-adjusted maximum remains \$110.

## 4. 12 U.S.C. 1786(k)(2)

NCUA is authorized to impose three levels or tiers of CMPs upon insured credit unions or institution-affiliated parties for certain conduct. First and second tier CMPs were not increased for inflation in 2000 because the amount of the increase was not large enough as a result of the rounding rules. Because these CMPs were last adjusted for inflation in 1996, they should now be increased by 17.23 percent to arrive at the new adjusted amounts (before

<sup>8</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000." Section 5(a), FCPIA Act. Therefore, \$1,441 is rounded to the nearest multiple of \$5,000 or to \$0.

<sup>9</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (6) multiple of \$25,000 in the case of penalties greater than \$200,000." Section 5(a), FCPIA Act. Therefore, \$72,050 is rounded to the nearest multiple of \$75,000 or to \$75,000.

<sup>10</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." Section 5(a), FCPIA Act. Therefore, \$144.10 is rounded to the nearest multiple of \$1,000 or to \$0.

<sup>11</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000." Section 5(a), FCPIA Act. Therefore, \$1,441 is rounded to the nearest multiple of \$5,000 or to \$0.

<sup>12</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (6) multiple of \$25,000 in the case of penalties greater than \$200,000." Section 5(a), FCPIA Act. Therefore, \$72,050 is rounded to the nearest multiple of \$75,000 or to \$75,000.

<sup>13</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000." Section 5(a), FCPIA Act. Therefore, \$7.21 is rounded to the nearest multiple of \$100 or to \$0.

required rounding). Third tier CMPs were increased for inflation in 2000 and therefore, should now be increased by 6.55 percent (before required rounding).

#### First Tier CMPs

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 provides that first tier CMPs shall not be more than \$5,000 for each day the violation continues. After the required adjustment for inflation in 1996, the maximum penalty was increased to \$5,500 for each day. Multiplying the current penalty of \$5,500 by 17.23 percent results in an increase of \$947.65. When that number is rounded as required by the FCPIA Act,<sup>14</sup> the inflation-adjusted maximum for a first tier CMP becomes \$6,500.

#### Second Tier CMPs

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 statute provides a maximum second tier CMP of \$25,000 for each day the violation, practice or breach continues. After the required 1996 adjustment for inflation, the maximum penalty was increased to \$27,500 per day. Multiplying the current penalty of \$27,500 by 17.23 percent results in an increase of \$4,738.25. When that number is rounded as required by the FCPIA Act,<sup>15</sup> the inflation-adjusted maximum for a second tier CMP becomes \$32,500.

#### Third Tier CMPs

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, under the statute, the maximum third tier CMP is \$1,000,000 for each day the violation, practice or breach continues. For an insured credit union, the statute provides a daily maximum CMP of the lesser of \$1,000,000 or 1 percent of the total assets of the credit union. In 2000, the maximum CMP for a person other than an insured credit union was increased for inflation to \$1,175,000 per day. At the same time, the maximum CMP for an insured credit union was increased to the lesser of \$1,175,000 or 1 percent of the total assets of the credit union. Multiplying the current penalty of \$1,175,000 by 6.55 percent results in an increase of \$76,962.50. When that number is rounded as required by the FCPIA Act,<sup>16</sup> the new maximum inflation-adjusted third tier CMP becomes \$1,250,000.

#### 5. 42 U.S.C. 4012a(f)

Pursuant to 42 U.S.C. 4012a(f), NCUA is authorized to impose CMPs against a credit union that is found to have a pattern or practice of committing certain specified actions in violation of the National Flood Insurance Program.

#### Calculation of the Adjustment

The CMPs authorized by 42 U.S.C. 4012a(f) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 42 U.S.C. 4012a(f) is \$350 for each violation, up to a maximum of \$100,000 per calendar year. After the required adjustments for inflation in 2000, the maximum penalty was increased to \$385 for each day, up to a maximum of \$110,000 per calendar year. Multiplying the current penalty of \$385 by 6.55 percent results in an increase of \$25.22. When that number is rounded as required by the FCPIA Act,<sup>17</sup> the inflation-adjusted maximum remains

\$385. Multiplying the current annual maximum of \$110,000 by 6.55 percent results in an increase of \$7,205. When that number is rounded as required by the FCPIA Act,<sup>18</sup> the inflation-adjusted annual maximum penalty becomes \$120,000 per calendar year.

The NCUA Board now adopts this final rule to adjust the forgoing CMPs for the rate of inflation, as required by the FCPIA Act. As provided in the final rule, the revised CMP amounts will only apply to violations that occur after the effective date of the final rule.

### C. Regulatory Procedures

#### *Final Rule Under the Administrative Procedures Act*

The FCPIA Act requires adjustments of CMPs for inflation to occur at least every four years. Additionally, the FCPIA Act provides federal agencies with no discretion in the adjustment of CMPs for inflation. Thus, NCUA is unable to vary the amount of the adjustments to reflect any views or suggestions provided by commenters. Further, the regulation is ministerial and technical. For all of these reasons, the NCUA Board 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(b)(3)(B).

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

#### *Paperwork Reduction Act*

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory

<sup>14</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000." Section 5(a), FCPIA Act. Therefore, \$947.65 is rounded to the nearest multiple of \$1,000 or to \$1,000.

<sup>15</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000." Section 5(a), FCPIA Act. Therefore, \$4,738.25 is rounded to the nearest multiple of \$5,000 or to \$5,000.

<sup>16</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (6) multiple of \$25,000 in the case of penalties greater than \$200,000." Section 5(a), FCPIA Act. Therefore, \$76,962.50 is rounded to the nearest multiple of \$25,000 or to \$75,000.

<sup>17</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000." Section 5(a), FCPIA Act. Therefore, \$25.22 is rounded to the nearest multiple of \$100 or to \$0.

<sup>18</sup> "Any increase determined under this subsection shall be rounded to the nearest- \* \* \* (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000." Section 5(a), FCPIA Act. Therefore, \$7,205 is rounded to the nearest multiple of \$10,000 or to \$10,000.

actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. This final rule will apply to all federally-insured credit unions, but it will 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. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

*The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

*Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, it is not a major rule.

**List of Subjects in 12 CFR Part 747**

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on September 27, 2004.

**Mary Rupp,**

*Secretary of 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 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134.

■ 2. Part 747, Subpart K is revised to read as follows:

**Subpart K—Inflation Adjustment of Civil Monetary Penalties**

**§ 747.1001 Adjustment of civil money penalties by the rate of inflation.**

(a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3) .....	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	\$22,000.
(2) 12 U.S.C. 1782(a)(3) .....	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	\$22,000.
(3) 12 U.S.C. 1782(a)(3) .....	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	\$1,175,000 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A) .....	First tier .....	\$2,200.
(5) 12 U.S.C. 1782(d)(2)(B) .....	Second tier .....	\$22,000.
(6) 12 U.S.C. 1782(d)(2)(C) .....	Third tier .....	\$1,175,000 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(e)(3) .....	Non-compliance with NCUA security regulations.	\$110.
(8) 12 U.S.C. 1786(k)(2)(A) .....	First tier .....	\$6,500.
(9) 12 U.S.C. 1786(k)(2)(B) .....	Second tier .....	\$32,500.
(10) 12 U.S.C. 1786(k)(2)(C) .....	Third tier .....	For a person other than an insured credit union: \$1,250,000; For an insured credit union \$1,250,000 or 1 percent of the total assets of the credit union, whichever is less.
(11) 42 U.S.C. 4012a(f) .....	Per violation .....	\$385
	Per calendar year .....	\$120,000.

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring beginning on November 1, 2004.

[FR Doc. 04-22537 Filed 10-6-04; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003-CE-40-AD; Amendment 39-13795; AD 2004-19-01]

RIN 2120-AA64

**Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2004-19-04, which was published in the *Federal Register* on September 17, 2004 (69 FR 55943), and applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. We incorrectly referenced the AD number as AD 2004-19-04. The correct AD number is 2004-19-01. This action corrects the regulatory text.

**DATES:** The effective date of this AD remains November 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946-4123; facsimile: (316) 946-4107.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

On September 8, 2004, FAA issued AD 2004-19-04, Amendment 39-13795 (69 FR 55943, September 17, 2004), which applies to certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. This AD supersedes AD 86-26-04 with a new

AD that requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated.

#### Need for the Correction

The FAA incorrectly referenced the AD number as 2004-19-04. The correct AD number is AD 2004-19-01. This correction is needed to ensure that the correct AD number is entered in the logbook and to eliminate misunderstanding in the field.

#### Correction of Publication

■ Accordingly, the publication of September 17, 2004 (69 FR 55943), of Amendment 39-13795; AD 2004-19-04, which was the subject of FR Doc. 04-20774, is corrected as follows:

##### § 39.13 [Corrected]

■ On page 55945, in section 39.13 [Amended], replace 2004-19-04 with 2004-19-01.

Action is taken herein to correct this reference in AD 2004-19-04 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains November 1, 2004.

Issued in Kansas City, Missouri, on September 23, 2004.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-21814 Filed 10-6-04; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-235-AD; Amendment 39-12861; AD 2002-16-22]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error that appeared in airworthiness directive (AD) 2002-16-22 (final rule, correction) that was published in the *Federal Register* on August 16, 2004 (69 FR 50299). The error resulted in an incorrect reference to certain

supplemental type certificates. This AD is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration. This AD requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

**DATES:** Effective September 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** M. Hassan Amani, Aerospace Engineer, Airframe Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6080; fax (770) 703-6097.

#### SUPPLEMENTARY INFORMATION:

Airworthiness Directive (AD) 2002-16-22, amendment 39-12861, applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying ("freighter") configuration, was published in the *Federal Register* on August 15, 2002 (67 FR 53434). That AD requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

On August 16, 2004, we issued a final rule, correction (69 FR 50299, August 16, 2004), to AD 2002-16-22. The final rule, correction corrects an error that resulted in an incorrect reference to a supplemental type certificate. As published, the title of final rule, correction states "Boeing Model 727 Series Airplanes Modified with Supplemental Type Certificate SA1767S0 or SA1768SO." However, the correct applicable supplemental type certificates (STC) are SA1444SO, SA1509SO, SA1543SO, or SA1896SO, as specified in AD 2002-16-22.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the *Federal Register*.

The effective date of this AD remains September 19, 2002.

##### § 39.13 [Corrected]

■ On page 50299, in the second column, the title of AD 2002-16-22 is corrected to read as follows:

\* \* \* \* \*

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO.

\* \* \* \* \*