

TABLE 3.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR HAZARDOUS MATERIALS VIOLATIONS OCCURRING ON OR AFTER AUGUST 10, 2005

United States Code citation	Civil monetary penalty description	Minimum penalty amount	Maximum penalty amount
49 U.S.C. 5123(a): Subparagraph (1) ...	Violation of hazardous materials transportation law, regulation, order, special permit or approval—general.	\$250 per violation, reset 8/10/2005.	\$50,000 per violation, set 8/10/2005.
Subparagraph (2) ...	Violation of hazardous materials transportation law, regulation, order, special permit or approval—results in death, serious illness, severe injury, or substantial property destruction.	\$250 per violation, reset 8/10/2005.	\$100,000 per violation, set 8/10/2005.
Subparagraph (3) ...	Violation of hazardous materials transportation law, regulation, order, special permit or approval—training violation.	\$450 per violation, set 8/10/2005.	\$50,000 per violation, set 8/10/2005.

[61 FR 67445, Dec. 20, 1996, as amended by Amdt. 13–28, 62 FR 4134, Jan. 29, 1997; 67 FR 6366, Feb. 11, 2002; Amdt. 13–33, 71 FR 28522, May 16, 2006; 71 FR 47077, Aug. 16, 2006; 71 FR 52407, Sept. 6, 2006]

Subpart I—Flight Operational Quality Assurance Programs

§ 13.401 Flight Operational Quality Assurance Program: Prohibition against use of data for enforcement purposes.

(a) *Applicability.* This section applies to any operator of an aircraft who operates such aircraft under an approved Flight Operational Quality Assurance (FOQA) program.

(b) *Definitions.* For the purpose of this section, the terms—

(1) *Flight Operational Quality Assurance (FOQA) program* means an FAA-approved program for the routine collection and analysis of digital flight data gathered during aircraft operations, including data currently collected pursuant to existing regulatory provisions, when such data is included in an approved FOQA program.

(2) *FOQA data* means any digital flight data that has been collected from an individual aircraft pursuant to an FAA-approved FOQA program, regardless of the electronic format of that data.

(3) *Aggregate FOQA data* means the summary statistical indices that are associated with FOQA event categories, based on an analysis of FOQA data from multiple aircraft operations.

(c) *Requirements.* In order for paragraph (e) of this section to apply, the operator must submit, maintain, and adhere to a FOQA Implementation and Operation Plan that is approved by the

Administrator and which contains the following elements:

(1) A description of the operator's plan for collecting and analyzing flight recorded data from line operations on a routine basis, including identification of the data to be collected;

(2) Procedures for taking corrective action that analysis of the data indicates is necessary in the interest of safety;

(3) Procedures for providing the FAA with aggregate FOQA data;

(4) Procedures for informing the FAA as to any corrective action being undertaken pursuant to paragraph (c)(2) of this section.

(d) *Submission of aggregate data.* The operator will provide the FAA with aggregate FOQA data in a form and manner acceptable to the Administrator.

(e) *Enforcement.* Except for criminal or deliberate acts, the Administrator will not use an operator's FOQA data or aggregate FOQA data in an enforcement action against that operator or its employees when such FOQA data or aggregate FOQA data is obtained from a FOQA program that is approved by the Administrator.

(f) *Disclosure.* FOQA data and aggregate FOQA data, if submitted in accordance with an order designating the information as protected under part 193 of this chapter, will be afforded the nondisclosure protections of part 193 of this chapter.

(g) *Withdrawal of program approval.* The Administrator may withdraw approval of a previously approved FOQA

program for failure to comply with the requirements of this chapter. Grounds for withdrawal of approval may include, but are not limited to—

(1) Failure to implement corrective action that analysis of available FOQA data indicates is necessary in the interest of safety; or

(2) Failure to correct a continuing pattern of violations following notice by the agency; or also

(3) Willful misconduct or willful violation of the FAA regulations in this chapter.

[Doc. No. FAA-2000-7554, 66 FR 55048, Oct. 31, 2001; Amdt. 13-30, 67 FR 31401, May 9, 2002]

PART 14—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

Subpart A—General Provisions

Sec.

- 14.01 Purpose of these rules.
- 14.02 Proceedings covered.
- 14.03 Eligibility of applicants.
- 14.04 Standards for awards.
- 14.05 Allowance fees and expenses.

Subpart B—Information Required From Applicants

- 14.10 Contents of application.
- 14.11 Net worth exhibit.
- 14.12 Documentation of fees and expenses.

Subpart C—Procedures for Considering Applications

- 14.20 When an application may be filed.
- 14.21 Filing and service of documents.
- 14.22 Answer to application.
- 14.23 Reply.
- 14.24 Comments by other parties.
- 14.25 Settlement.
- 14.26 Further proceedings.
- 14.27 Decision.
- 14.28 Review by FAA decisionmaker.
- 14.29 Judicial review.
- 14.30 Payment of award.

AUTHORITY: 5 U.S.C. 504; 49 U.S.C. 106(f), 40113, 46104 and 47122.

SOURCE: Docket No. 25958, 54 FR 46199, Nov. 1, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 14.01 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (the Act), provides for the award of attorney fees and other ex-

penses to eligible individuals and entities who are parties to certain administrative proceedings (adversary adjudications) before the Federal Aviation Administration (FAA). An eligible party may receive an award when it prevails over the FAA, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the FAA Decisionmaker will use to make them. As used hereinafter, the term "agency" applies to the FAA.

§ 14.02 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the FAA under 49 CFR part 17 and the Acquisition Management System (AMS). These are adjudications under 5 U.S.C. 554, in which the position of the FAA is represented by an attorney or other representative who enters an appearance and participates in the proceeding. This subpart applies to proceedings under 49 U.S.C. 46301, 46302, and 46303 and to the Default Adjudicative Process under part 17 of this chapter and the AMS.

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

(c) Fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which such party has unreasonably protracted the proceedings.

[54 FR 46199, Nov. 1, 1989, as amended by Amdt. 14-03, 64 FR 32935, June 18, 1999]

§ 14.03 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 504(b)(1)(B) and 5 U.S.C. 551(3). The applicant must show that it meets all conditions or eligibility set out in this subpart.

(b) The types of eligible applicants are as follows: