

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 622

RIN 3052-AD45

#### 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:** This regulation is effective on January 27, 2021, and is applicable beginning January 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Brian Camp, Accountant, Office of Regulatory Policy, Farm Credit Administration, (703) 254-3004, TTY (703) 883-4056, or Autumn R. Agans, Senior Counsel, Office of General Counsel, Farm Credit Administration, (703) 883-4082, TTY (703) 883-4056.

#### 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 penalty<sup>1</sup> 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>2</sup>

The FCA imposes and enforces CMPs through the Farm Credit Act<sup>3</sup> and the FDPA, as amended.<sup>4</sup> 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 a maximum daily amount of \$1,000,<sup>5</sup> for each day 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 \$500<sup>6</sup> 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.<sup>7</sup>

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.<sup>8,9</sup>

###### 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.

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be made yearly no later than January 15 of

<sup>1</sup> 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.

<sup>2</sup> See 28 U.S.C. 2461 note.

<sup>3</sup> Public Law 92-181, as amended.

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

<sup>5</sup> The inflation-adjusted CMP in effect on January 15, 2020, for a violation of a final order is \$2,404 per day, as set forth in § 622.61(a)(1) of FCA

regulations. We discovered a transposition error, and note that the correct number for 2020 is \$2,367.

<sup>6</sup> The inflation-adjusted CMP in effect on January 15, 2020, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is \$1,071 per day, as set forth in § 622.61(a)(2) of FCA regulations.

<sup>7</sup> Prior adjustments were made under the 1990 Act and continue to be made each year.

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

<sup>9</sup> The inflation-adjusted CMP in effect on January 15, 2020, for a flood insurance violation is \$2,226, as set forth in § 622.61(b) of FCA regulations.

each year.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

## 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.<sup>13</sup>

## III. Yearly Adjustments

### A. Mathematical Calculations of 2021 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2021 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2020 White House Office of Management and Budget (OMB) guidance<sup>14</sup> is based on the percentage by which the CPI for October 2020 exceeds the CPIs for October 2019. The OMB set forth guidance, as required by the 2015 Act,<sup>15</sup> with a multiplier for

calculating the new CMP values.<sup>16</sup> The 2020 OMB multiplier for the 2021 CMPs is 1.01182.

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 1.01182. 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, 2020, is a maximum daily amount of \$2,367.<sup>17</sup> Multiplying the \$2,367 CMP by the 2020 OMB multiplier, 1.01182, yields a total of \$2,394.98. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to \$2,395. Thus, the new CMP maximum is \$2,395, for violations that occur on or after January 15, 2021.

#### 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, 2020, is a maximum daily amount of \$1,071.<sup>18</sup> Multiplying the \$1,071 CMP maximum by the 2020 OMB multiplier, 1.01182, yields a total of \$1,083.66. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to \$1,084. Thus, the new CMP maximum is \$1,084, for violations that occur on or after January 15, 2021.

#### 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, 2020, is \$2,226. Multiplying \$2,226 by the 2020 OMB multiplier, 1.01182, yields a total of \$2,252.31. 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 \$2,252. Thus, the

new CMP maximum is \$2,252, for violations that occur on or after January 15, 2021.

## 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

<sup>10</sup> Public Law 114–74, sec. 701(b)(1).

<sup>11</sup> The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: <https://www.bls.gov/cpi/>.

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

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

<sup>14</sup> OMB Circular M–21–10, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

<sup>15</sup> 28 U.S.C. 2461 *note*, section 7(a).

<sup>16</sup> OMB Circular M–21–10, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

<sup>17</sup> 12 CFR 622.61(a)(1). As noted above, we discovered a transposition error, so the correct maximum daily amount for 2020 is \$2,367. Accordingly, we use the corrected amount to compute the maximum amount for CMP violations that occur on or after January 15, 2021.

<sup>18</sup> 12 CFR 622.61(a)(2).

for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is \$2,395 for violations that occur on or after January 15, 2021.

(2) Amount of civil money penalty for violation of the Act or regulations: The maximum daily amount is \$1,084 for each violation that occurs on or after January 15, 2021.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is \$2,252 for each violation that occurs on or after January 15, 2021, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: January 22, 2021.

**Dale Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2021-01796 Filed 1-26-21; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 361

[Docket No. 210122-0011]

**RIN 0625-AB18**

#### **Aluminum Import Monitoring and Analysis System: Delay of Effective Date**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Final rule; delay of effective date; request for comments.

**SUMMARY:** The U.S. Department of Commerce (Commerce) is delaying the effective date of the final rule, entitled “Aluminum Import Monitoring and Analysis System,” from January 25, 2021 until March 29, 2021. Commerce is also soliciting comments on the final rule.

**DATES:** The effective date of the rule amending 19 CFR part 361 published at 85 FR 83804 (Dec. 23, 2020), is delayed from January 25, 2021, to March 29, 2021.

To be assured of consideration, written comments on the final rule must be received no later than February 26, 2021.

**ADDRESSES:** Submit comments only through the Federal eRulemaking Portal at <http://www.Regulations.gov>, Docket No. ITA-2021-0001.<sup>1</sup> Due to the

COVID-19 situation, Commerce is not able to accept comments submitted by mail or hand-delivery at this time. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at <http://www.Regulations.gov>. Commerce will not accept response comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance Communications office at (202) 482-0063 or [ECCcommunications@trade.gov](mailto:ECCcommunications@trade.gov).

The AIM system website is <https://www.trade.gov/aluminum>.

**FOR FURTHER INFORMATION CONTACT:** Julie Al-Saadawi at (202) 482-1930 or Jessica Link at (202) 482-1411.

**SUPPLEMENTARY INFORMATION:** On December 23, 2020, Commerce published the final rule and accompanying regulations establishing the Aluminum Import Monitoring and Analysis (AIM) system.<sup>2</sup> The original effective date for the *Final Rule* was January 25, 2021. Commerce is now delaying the effective date until March 29, 2021.

This delay in effective date is necessary to allow the incoming Administration time to review the *Final Rule* and consider any additional comments before implementation. Unless otherwise announced, the majority of the final rule will be effective on March 29, 2021. The remaining portions of the final rule concerning an option to state “unknown” for certain fields on the aluminum license form will be effective on December 24, 2021, as originally stated in the final rule. For further background and information, see the *Final Rule*. Parties are invited to comment on all aspects of the *Final Rule* and the AIM system.

The AIM system website (<https://www.trade.gov/aluminum>) continues to be operational. However, licenses will not be required for covered aluminum imports until on or after March 29, 2021. Further guidance on licenses already issued and the issuance of new

*Rule*, can be found by searching for the *Proposed Rule* on the Federal eRulemaking portal at <http://www.regulations.gov>.

<sup>2</sup> Aluminum Import Monitoring and Analysis System, 85 FR 83804 (Dec. 23, 2020) (*Final Rule*).

licenses during the intervening period prior to March 29, 2021 will be provided on the AIM system website.

Dated: January 22, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2021-01804 Filed 1-22-21; 4:15 pm]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### 29 CFR Part 89

**RIN 1290-AA41**

#### **Rescission of Department of Labor Rule on Guidance**

**AGENCY:** Office of the Secretary, U.S. Department of Labor.

**ACTION:** Final rule; rescission of regulations.

**SUMMARY:** On August 28, 2020, the Department of Labor published a final rule on guidance implementing an Executive order entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents,” and providing policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice and comment process for significant guidance; and taking and responding to petitions about guidance. In accordance with the “Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation,” issued by President Biden on January 20, 2021, this final rule rescinds the Department’s rule on guidance.

**DATES:** This final rule is effective January 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Erin Fitzgerald, Senior Policy Advisor, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-5076 (this is not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Discussion**

On August 28, 2020, the Department of Labor published an internal final rule on guidance implementing E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” signed by President Trump on October 9, 2019. As required by the E.O., the rule contained policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice and comment

<sup>1</sup> Comments on the previously issued proposed rule, *Aluminum Import Monitoring and Analysis System*, 85 FR 23748 (April 29, 2020) (*Proposed*