

# Rules and Regulations

Federal Register

Vol. 70, No. 99

Tuesday, May 24, 2005

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 3

#### Agricultural Marketing Service

#### 7 CFR Parts 46, 110, 205, 1150, and 1160

#### Food and Nutrition Service

#### 7 CFR Parts 246 and 278

[0510-AA01]

### Department of Agriculture Civil Monetary Penalties Adjustment

**AGENCY:** Office of the Secretary, Agricultural Marketing Service, Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, this final rule adjusts civil monetary penalties imposed by agencies within USDA to incorporate an inflation adjustment.

**DATES:** *Effective date:* Effective June 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Adam J. Hermann, Esq., OGC, USDA, Room 2011-S, 1400 Independence Avenue, SW., Washington, DC 20250-1400, (202) 260-1615.

#### SUPPLEMENTARY INFORMATION:

#### I. The Federal Civil Penalties Inflation Adjustment Act of 1990

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461 note) (Act), as amended, requires Federal agencies to periodically adjust certain civil monetary penalties (CMPs) for inflation. Under the Act, a CMP is defined as any penalty, fine, or other sanction for

which a Federal statute specifies a monetary amount, including a range of minimum and maximum amounts. Each Executive agency is responsible for adjusting, pursuant to the Act, all CMPs within the agency's jurisdiction. The Act does not apply to any CMP under the Internal Revenue Code of 1986, Tariff Act of 1930, Occupational Safety and Health Act of 1970, or Social Security Act.

The Act requires each Executive agency to make an initial inflation adjustment for all applicable CMPs not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) (*i.e.*, April 26, 1996), and subsequent inflation adjustments at least once every 4 years thereafter. USDA published its initial round of inflation adjustments in the **Federal Register** on July 31, 1997, and those adjustments became effective on September 2, 1997 (62 FR 40924, July 31, 1997). The USDA initial CMP adjustments are codified in subpart E of part 3 of title 7 of the Code of Federal Regulations (7 CFR 3.91).

This final rule amends 7 CFR 3.91(b) to reflect the second round of USDA inflation adjustments. In addition, this final rule amends 7 CFR 3.91(a) by: (1) Emphasizing that any increases in CMP dollar amounts reflected in this rule apply only to violations occurring after the effective date of this rule; (2) emphasizing that the descriptions of the CMPs listed in 7 CFR 3.91(b) are for illustrative purposes only, that 7 CFR 3.91 does not amend, interpret, implement, or alter in any way the statutory provisions in which the listed CMPs are set, and that persons should consult the statutory text in which the CMPs are set and any implementing regulations to make applicability determinations; and (3) adding two definitions. This final rule also makes conforming amendments to other agency regulations that currently specify dollar amounts for CMPs that are being adjusted by this final rule.

#### *Method of Calculation*

Under the Act, the required inflation adjustment is determined by adjusting each applicable CMP by the "cost-of-living adjustment" (COLA). The COLA is defined in the Act as the percentage (if any) by which the Consumer Price Index (CPI) for the month of June of the

calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. As required by the Act, USDA used the CPI for all urban consumers published by the U.S. Department of Labor. In calculating the COLA, USDA rounded to the nearest tenth.

When USDA first adjusted its CMPs pursuant to the Act in 1997, USDA explained that "[t]he rule contained in this notice reflects the initial adjustment to the listed civil monetary penalties required by the Act" (62 FR 40924; July 31, 1997). USDA continues to interpret the Act such that all listed CMPs undergo the required adjustment whenever USDA adjusts those CMPs by regulation pursuant to the Act and publishes the regulation in the **Federal Register**. In other words, a CMP is considered to have been adjusted even though the dollar amount of the penalty does not increase (a situation that arises due to application of the rounding formulas in section 5(a) of the Act). Thus, all CMPs contained in this final rule are being adjusted pursuant to the Act. USDA believes that this interpretation most accurately reflects the plain language of the statutory text.

For all CMP adjustments in this final rule, USDA used the CPI for the month of June 2004 (189.7) as the numerator CPI. However, USDA used different denominator CPI values depending on the penalty being adjusted:

(1) For those CMPs that were last adjusted in 1997 via regulation (62 FR 40924, July 31, 1997), USDA used the CPI for the month of June 1997. Nearly all of the CMPs being adjusted in this final rule fall into this category.

(2) For those CMPs specified in statutory provisions that became effective after the effective date of the initial round of USDA CMP adjustments (Sept. 2, 1997), USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in this category are specified in the following 13 subparagraphs of 7 CFR 3.91(b), as amended by this final rule: (1)(l), (1)(li), (1)(lii), (1)(liii), (2)(iii), (2)(v), (2)(vi), (2)(vii), (3)(v), (3)(vi), (7)(ii), (8)(ii), and (8)(iii).

(3) For those CMPs specified in statutory provisions that were effective prior to Sept. 2, 1997, but were erroneously excluded from the initial round of USDA CMP adjustments, USDA used the CPI for the month of June of the year in which those CMPs were last set in statute. The CMPs in that category are specified in the following 2 subparagraphs of

7 CFR 3.91(b), as amended by this final rule: (2)(xiii) and (8)(i).

*Limitations on Adjustment—Rounding*

The adjustment of these CMPs is limited by six specific rounding formulas set forth in section 5(a) of the Act. Under the Act, raw inflationary increases are rounded to the nearest: (1) Multiple of \$10 in the case of penalties less than or equal to \$100; (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

Due to these restrictive rounding rules, not all CMP amounts are being increased in this final rule. For example, the CMP for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act was adjusted to \$11,000 in the initial round of USDA CMP adjustments in 1997. The inflation rate from June 1997 to June 2004 increased by a factor of 1.2, resulting in a raw adjustment of \$2,200 for this second

round of adjustments. The Act specifies that inflationary increases for penalties greater than \$10,000 but less than or equal to \$100,000 must be rounded to the nearest multiple of \$5,000. \$2,200, rounded to the nearest multiple of \$5,000, is 0. Therefore, in this final rule, USDA did not increase the \$11,000 amount for this CMP.

Determining which rounding formula to apply depends on the current amount of the CMP at the time the calculation is performed, not on the size of the raw inflationary increase. Thus, in the example above, the \$2,200 raw inflationary increase is subject to rounding formula #4 because the amount of that CMP is \$11,000.

*Limitations on Adjustment—The “10 Percent” Cap on Initial Adjustments*

Adjustment of CMPs under the Act is limited in another important respect. The Act specifies that the first adjustment of a CMP may not exceed 10 percent of such penalty. Again, USDA interprets the Act such that the required adjustment takes place each time USDA adjusts its CMPs under the Act via regulation published in the **Federal Register**. Therefore, all CMPs that are currently in 7 CFR 3.91 underwent their initial adjustment and were subject to the “10 percent” cap when that regulation became effective on September 2, 1997.

In this final rule, USDA applied the “10 percent” cap only to those CMPs specified in statutes (1) that became effective after the effective date of the initial round of USDA CMP adjustments (Sept. 2, 1997); or (2) that became effective prior to Sept. 2, 1997, but were erroneously excluded from the initial round of USDA adjustments. The CMPs in these two categories are considered to have undergone their initial adjustment in this final rule, regardless of whether the CMP dollar amounts are being increased.

*Special Considerations*

In adjusting the CMPs in this final rule, USDA determined that some CMPs currently set forth in 7 CFR 3.91 were not adjusted correctly when that regulation was published in 1997. For those penalties, USDA re-calculated the COLA and applied the statutory rounding formulas to determine what the adjusted CMP amount(s) should have been when 7 CFR 3.91 was promulgated in 1997. USDA then used the corrected dollar amount in determining the adjusted CMP figures in this final rule. However, USDA will not retroactively apply these corrected dollar amounts to violations occurring prior to the effective date of this regulation.

| Old section                     | New section                     | Old incorrect CMP amount(s) | Old corrected CMP amount(s) | New CMP amount(s) |
|---------------------------------|---------------------------------|-----------------------------|-----------------------------|-------------------|
| 7 CFR 3.91(b)(1)(xxxviii) ..... | 7 CFR 3.91(b)(1)(xxxviii) ..... | \$530                       | 550                         | 650               |
| 7 CFR 3.91(b)(1)(xxxix) .....   | 7 CFR 3.91(b)(1)(xxxix) .....   | 5,300                       | 5,500                       | 6,500             |
| 7 CFR 3.91(b)(1)(xl) .....      | 7 CFR 3.91(b)(1)(xl) .....      | 1,030                       | 1,100                       | 1,100             |
| 7 CFR 3.91(b)(1)(xli) .....     | 7 CFR 3.91(b)(1)(xli) .....     | 520                         | 550                         | 650               |
| 7 CFR 3.91(b)(2)(xv) .....      | 7 CFR 3.91(b)(2)(x) .....       | 25,000                      | 27,500                      | 32,500            |
| 7 CFR 3.91(b)(2)(xvi) .....     | 7 CFR 3.91(b)(2)(xi) .....      | 12,000                      | 13,200                      | 18,200            |
| 7 CFR 3.91(b)(2)(xvii) .....    | 7 CFR 3.91(b)(2)(xii) .....     | 500                         | 550                         | 650               |
| 7 CFR 3.91(b)(3)(ii) .....      | 7 CFR 3.91(b)(3)(ii) .....      | 20,000                      | 22,000                      | 27,000            |
| 7 CFR 3.91(b)(3)(iii) .....     | 7 CFR 3.91(b)(3)(iii) .....     | 40,000                      | 44,000                      | 54,000            |
| 7 CFR 3.91(b)(3)(iv) .....      | 7 CFR 3.91(b)(3)(iv) .....      | 20,000                      | 22,000                      | 27,000            |
| 7 CFR 3.91(b)(3)(iv) .....      | 7 CFR 3.91(b)(3)(iv) .....      | 40,000                      | 44,000                      | 54,000            |
| 7 CFR 3.91(b)(7) .....          | 7 CFR 3.91(b)(7)(i) .....       | 100,000,000                 | 110,000,000                 | 132,000,000       |
| 7 CFR 3.91(b)(7) .....          | 7 CFR 3.91(b)(7)(i) .....       | 10,000                      | 11,000                      | 11,000            |

**II. Civil Monetary Penalties Affected by This Rule**

Several USDA agencies administer laws that provide for the imposition of CMPs being adjusted by this final rule. Those agencies are: (1) Agricultural Marketing Service; (2) Animal and Plant Health Inspection Service; (3) Food and Nutrition Service; (4) Food Safety and Inspection Service; (5) Forest Service; (6) Grain Inspection, Packers and Stockyards Administration; (7) Federal Crop Insurance Corporation; and (8) Rural Housing Service. The CMPs in

this final rule are listed according to the applicable administering agency.

**III. Waiver of Proposed Rulemaking**

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports and is

consistent with the statutory authority required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing this revised regulation as a final rule that will apply to all future cases.

#### IV. Procedural Requirements

##### *Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions of this final rulemaking contain inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, for specific applicable civil monetary penalties. The great majority of individuals, organizations, and entities affected by this regulation do not engage in prohibited activities and practices, and as a result, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statutes.

##### *Regulatory Flexibility Act*

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

##### *Paperwork Reduction Act*

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

##### **List of Subjects in 7 CFR Parts 3, 46, 110, 205, 246, 278, 1150, and 1160**

Administrative practice and procedure, Claims, Debt management, Penalties.

■ For the reasons set forth in the preamble, amend 7 CFR parts 3, 46, 110, 205, 246, 278, 1150, and 1160 as follows:

#### **PART 3—DEBT MANAGEMENT**

##### **Subpart E—Adjusted Civil Monetary Penalties**

■ 1. The authority citation for subpart E continues to read as follows:

**Authority:** 28 U.S.C. 2461 note.

■ 2. Revise subpart E to read as follows:

##### **Subpart E—Adjusted Civil Monetary Penalties**

##### **§ 3.91 Adjusted civil monetary penalties.**

(a) *In general.* (1) The Secretary will adjust the civil monetary penalties,

listed in paragraph (b) of this section, to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended.

(2) Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section shall apply only to violations occurring after June 23, 2005.

(3) The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) do not necessarily contain a complete description of the circumstances (e.g., requirements regarding the “state of mind” of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(4) As used in this section, the following terms have the following meanings:

(i) *Secretary* means the Secretary of Agriculture; and

(ii) *Department* means the United States Department of Agriculture.

(b) *Penalties*—(1) *Agricultural Marketing Service*—(i) Civil penalty for improper pesticide recordkeeping, codified at 7 U.S.C. 136i-1(d), has:

(A) A maximum of \$650 in the case of the first offense; and

(B) A minimum of \$1,100 in the case of subsequent offenses, except that the penalty shall be less than \$1,100 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of \$2,200.

(iii) Civil penalty for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of \$1,200 for each such offense and not more than \$350 for each day it continues, or a maximum of \$350 for each such offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum of

\$2,000 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of \$110 and a maximum of \$11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of \$110 and a maximum of \$11,000.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of \$1,100.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of \$110.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$37.50 and a maximum of \$650.

(x) Civil penalty for failure to collect any assessment or fee or for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of \$1,100.

(xi) Civil penalty for a violation of a cease and desist order, or for deceptive marketing, under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of \$650 and a maximum of \$11,000.

(xii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of \$650 and a maximum of \$6,500.

(xiii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of \$650.

(xiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of \$650 and a maximum of \$6,500.

(xv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of \$650.

(xvi) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7

U.S.C. 2908(a)(2), has a maximum of \$6,500.

(xvii) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of \$1,100.

(xviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of \$650 and a maximum of \$6,500.

(xix) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of \$650.

(xx) Civil penalty for a violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of \$1,100.

(xxi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of \$650 and a maximum of \$6,500.

(xxii) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of \$650.

(xxiii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of \$1,100.

(xxiv) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of \$650.

(xxv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of \$650 and a maximum of \$6,500.

(xxvi) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of \$650.

(xxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of \$1,100 and a maximum of \$11,000.

(xxviii) Civil penalty for failure to obey a cease and desist order under the

Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of \$1,100.

(xxix) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of \$650 and a maximum of \$6,500.

(xxx) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of \$650.

(xxxi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of \$650 and a maximum of \$6,500.

(xxxii) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of \$650.

(xxxiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1)(A), has a maximum of \$1,100.

(xxxiv) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of \$6,500.

(xxxv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of \$650 and a maximum of \$6,500, or in the case of a violation that is willful, codified at 7 U.S.C.

6411(c)(1)(B), has a minimum of \$11,000 and a maximum of \$130,000.

(xxxvi) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of \$6,500.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(a), has a maximum of \$11,000.

(xxxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C.

6808(c)(1)(A)(i), has a minimum of \$650 and a maximum of \$6,500.

(xxxix) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of \$6,500.

(xl) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of \$1,100.

(xli) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of \$650.

(xlii) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of \$1,200 and a maximum of \$12,000 for each violation.

(xlili) Civil penalty for a violation of a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of \$1,200 and a maximum of \$12,000 for each day the violation occurs.

(xliv) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of \$1,200 for each violation.

(xlv) Civil penalty for a violation of a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of \$6,000 for each day the violation occurs.

(xlvi) Civil penalty for a violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of \$600 and a maximum of \$6,000 for each violation.

(xlvii) Civil penalty for a violation of a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of \$600 for each day the violation occurs.

(xlviii) Civil penalty for a violation of an order or regulation issued under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of \$1,200 for each violation.

(xlix) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$6,500 for each violation.

(l) Civil penalty for a violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of \$1,100 and a maximum of \$11,000 for each violation.

(li) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of \$11,000 for each offense.

(lii) Civil penalty for a violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(a)(1), has a maximum of \$11,000 for each violation.

(liii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified at 7 U.S.C. 1636b(g)(3), has a maximum of \$11,000 for each violation.

#### (2) Animal and Plant Health

*Inspection Service*—(i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of \$37.50 and a maximum of \$650.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$3,750, and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspections by the Department, codified at 7 U.S.C. 2279e(a), has a maximum of \$11,000.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of \$11,000.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified at 7 U.S.C. 7734(b)(1), has a maximum of the greater of: \$55,000 in the case of any individual (except that the civil penalty may not exceed \$1,100 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), \$275,000 in the case of any other person for each violation, and \$550,000 for all violations adjudicated in a single proceeding; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in the PPA

that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person [except as provided in 7 U.S.C. 8309(d)] that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: \$55,000 in the case of any individual, except that the civil penalty may not exceed \$1,100 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, \$275,000 in the case of any other person for each violation, and \$550,000 for all violations adjudicated in a single proceeding; or twice the gross gain or gross loss for any violation or forgery, counterfeiting, or unauthorized use, alteration, defacing or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of \$275,000 in the case of an individual and \$550,000 in the case of any other person.

(viii) Civil penalty for a violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of \$2,200.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of \$4,300.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), as set forth at 16 U.S.C. 1540(a), has a maximum of \$32,500.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation issued under the Endangered

Species Act of 1973, as set forth at 16 U.S.C. 1540(a), has a maximum of \$18,200.

(xii) Civil penalty for any other violation, with respect to terrestrial plants, of the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as set forth at 16 U.S.C. 1540(a), has a maximum of \$650.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of \$110 and a maximum of \$550.

(3) *Food and Nutrition Service*—(i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of \$11,000 per violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of \$27,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$54,000.

(iii) Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of \$27,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$54,000.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of \$132,000,000.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$11,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is \$44,000.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of \$11,000 for each violation, except that

the maximum penalty for violations occurring during a single investigation is \$44,000.

(4) *Food Safety and Inspection Service*—(i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of \$6,500 for each violation.

(ii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 467d, has a maximum of \$110 per day for each day the report is not filed.

(iii) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 677, has a maximum of \$110 per day for each day the report is not filed.

(iv) Civil penalty for failure to timely file certain reports, codified at 21 U.S.C. 1051, has a maximum of \$110 per day for each day the report is not filed.

(5) *Forest Service*—(i) Civil penalty for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of \$650,000 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of \$97,500 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of \$65,000 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act of 1990 or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of \$650,000.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of \$11,000.

(6) *Grain Inspection, Packers and Stockyards Administration*—(i) Civil penalty for a packer or swine contractor

violation, codified at 7 U.S.C. 193(b), has a maximum of \$11,000.

(ii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of \$650 and not more than \$37.50 for each day the violation continues.

(iii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of \$650 and not more than \$37.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violation, codified at 7 U.S.C. 213(b), has a maximum of \$11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order violation, codified at 7 U.S.C. 215(a), has a maximum of \$650.

(vi) Civil penalty for a failure to file required reports, codified at 15 U.S.C. 50, has a maximum of \$110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of \$27,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of \$97,500.

(7) *Federal Crop Insurance Corporation*—(i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to an insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum of \$11,000.

(ii) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to an insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or \$11,000.

(8) *Rural Housing Service*—(i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified at 42 U.S.C. 1490p(e)(2), has a maximum of \$110,000 in the case of an individual, and a maximum of \$1,100,000 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified at 42 U.S.C.

1490s(a)(2), has a maximum of \$27,500.

(iii) Civil penalty under section 543(b) of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property security in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights statutes and regulations, codified at 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages the Department, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or \$55,000 per violation.

**PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930.**

■ 3. The authority citation for part 46 continues to read as follows:

**Authority:** Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

■ 4. Revise § 46.45(c)(1)(iii) to read as follows:

**§ 46.45 Procedure in administering section 2(5) of the Act.**

\* \* \* \* \*

(c) \* \* \*

(iii) (A) The schedule for informal disposition is as follows:

| Violation |       | Disposition |
|-----------|-------|-------------|
| 1st ..... | ..... | (1)         |
| 2d .....  | ..... | (1)         |
|           | (2)   | (3)         |
| 3d .....  | \$200 | \$250       |
| 4th ..... | 350   | 500         |
| 5th ..... | 500   | 1,000       |
| 6th ..... | 1,000 | 2,200       |
| 7th ..... | 2,200 | 2,200       |

<sup>1</sup> Warning letter.  
<sup>2</sup> If serious violation.  
<sup>3</sup> Very serious violation.

(B) Informal disposition of misrepresentation violations is not limited to seven occurrences and will be considered for further violations.

\* \* \* \* \*

**PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS.**

■ 5. The authority citation for part 110 continues to read as follows:

**Authority:** 7 U.S.C. 136a(d)(1)(C), 136i–1, and 450; 7 CFR 2.17, 2.50.

■ 6. Revise § 110.7 to read as follows:

#### § 110.7 Penalties.

Any certified applicator who violates 7 U.S.C. 136i–1(a), (b), or (c) or this part shall be subject to a civil penalty of not more than the amount specified in section § 3.91(b)(1)(i)(A) of this title in the case of the first offense, and in the case of subsequent offenses, be subject to a civil penalty of not less than the amount specified in § 3.91(b)(1)(i)(B) of this title for each violation, except that the civil penalty shall be less than the amount specified in § 3.91(b)(1)(i)(B) of this title if the Administrator determines that the certified applicator made a good faith effort to comply with 7 U.S.C. 136i–1(a), (b), and (c) and this part.

#### PART 205—NATIONAL ORGANIC PROGRAM

■ 7. The authority citation for part 205 continues to read as follows:

**Authority:** 7 U.S.C. 6501–6522.

#### § 205.100 [Amended]

■ 8. Amend § 205.100(c)(1) by removing “\$10,000” and adding in its place “the amount specified in § 3.91(b)(1)(xxxvii) of this title”.

#### PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 9. The authority citation for part 246 continues to read as follows:

**Authority:** 42 U.S.C. 1786.

#### § 246.12 [Amended]

■ 10. Amend § 246.12(l)(1)(x)(C) as follows:

■ a. Remove in the third sentence “shall be \$10,000.” and add in its place “shall be \$10,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the civil money penalty shall be the maximum amount per violation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments.”; and

■ b. Remove in the fifth sentence “may not exceed \$40,000.” and add in its place “may not exceed \$40,000, except for those violations listed in paragraph (l)(1)(i) of this section, where the total amount of civil money penalties may not exceed the maximum amount for violations occurring during a single investigation specified in § 3.91(b)(3)(v) of this title for trafficking violations, or § 3.91(b)(3)(vi) of this title for selling

firearms, ammunition, explosives, or controlled substances in exchange for food instruments.”.

#### PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

■ 11. The authority citation for part 278 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

#### § 278.6 [Amended]

■ 12. Amend § 278.6(j) as follows:

■ a. Remove “\$20,000” and add in its place “the amount specified in § 3.91(b)(3)(ii) of this title;” and

■ b. Remove “\$40,000” and add in its place “the amount specified in § 3.91(b)(3)(ii) of this title”.

#### PART 1150—DAIRY PROMOTION PROGRAM

■ 13. The authority citation for part 1150 continues to read as follows:

**Authority:** 7 U.S.C. 4501–4513.

#### § 1150.156 [Amended]

■ 14. Amend § 1150.156(b) by removing “\$1,000” and adding in its place “the amount specified in § 3.91(b)(1)(xx) of this title”.

#### PART 1160—FLUID MILK PROMOTION PROGRAM

■ 15. The authority citation for part 1160 continues to read as follows:

**Authority:** 7 U.S.C. 6401–6417.

#### § 1160.214 [Amended]

■ 16. Amend § 1160.214(b) as follows:

■ a. Remove in the first sentence “not less than \$500 nor more than \$5,000 for each such violation” and add in its place “not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation”; and

■ b. Remove in the second sentence “not less than \$10,000 nor more than \$100,000 for each such violation” and add in its place “not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation”.

Done at Washington, DC, this 11th day of May, 2005.

**Mike Johanns,**

*Secretary, U.S. Department of Agriculture.*

(For amendments to 7 CFR Part 3)

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

(For amendments to 7 CFR Parts 46, 110, 205, 1150, and 1160)

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

(For amendments to 7 CFR Parts 246 and 278)

[FR Doc. 05–10153 Filed 5–23–05; 8:45 am]

**BILLING CODE 3410–01–P**

---

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 04–065–1]

#### Tuberculosis; Reduction in Timeframe for Movement of Cattle and Bison From Modified Accredited and Accreditation Preparatory States or Zones Without an Individual Tuberculin Test

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations concerning tuberculosis in cattle and bison by reducing, from 6 months to 60 days, the period following a whole herd test during which animals may be moved interstate from a modified accredited State or zone or from an accreditation preparatory State or zone without an individual tuberculin test. We have determined that the 6-month period during which individual tuberculin tests have not been required is too long given the risks of exposure to tuberculosis that exist in modified accredited and accreditation preparatory States or zones, especially in such States or zones where there are wildlife populations affected with tuberculosis. This interim rule will lower the potential risk of movement of infected animals and decrease the likelihood of tuberculosis transmission.

**DATES:** This interim rule is effective May 18, 2005. We will consider all comments that we receive on or before July 25, 2005.

**ADDRESSES:** You may submit comments by any of the following methods: