

State	Wage area	Beginning month of survey	Calendar year of full-scale survey odd or even	
Puerto Rico .....	York .....	May .....	Even.	
	Guaynabo-San Juan .....	February .....	Even.	
Rhode Island .....	Newport .....	July .....	Even.	
South Carolina .....	Charleston .....	February .....	Even.	
	Richland .....	March .....	Even.	
South Dakota .....	Pennington .....	June .....	Even.	
Tennessee .....	Shelby .....	February .....	Even.	
Texas .....	Bell .....	June .....	Odd.	
	Bexar .....	June .....	Even.	
	Dallas .....	June .....	Even.	
	El Paso .....	February .....	Odd.	
	McLennan .....	May .....	Odd.	
	Nueces .....	June .....	Even.	
	Tarrant .....	June .....	Even.	
	Taylor .....	June .....	Odd.	
	Tom Green .....	June .....	Odd.	
	Wichita .....	March .....	Even.	
	Utah .....	Davis-Salt Lake-Weber .....	July .....	Odd.
	Virginia .....	Alexandria-Arlington-Fairfax .....	August .....	Even.
		Chesterfield-Richmond .....	August .....	Odd.
		Hampton-Newport News .....	May .....	Even.
Norfolk-Portsmouth-Virginia Beach .....		May .....	Even.	
Prince William .....		August .....	Even.	
Washington .....	Kitsap .....	June .....	Even.	
	Pierce .....	July .....	Even.	
	Snohomish .....	July .....	Even.	
Wyoming .....	Spokane .....	July .....	Odd.	
	Laramie .....	July .....	Even.	

\* \* \* \* \*

[FR Doc. E8-26561 Filed 11-7-08; 8:45 am]

BILLING CODE 6325-39-P

**OFFICE OF PERSONNEL  
MANAGEMENT****5 CFR Part 731**

RIN: 3206-AL38

**Suitability**AGENCY: Office of Personnel  
Management.

ACTION: Final rule.

**SUMMARY:** In order to limit duplication of efforts by applying reciprocity where appropriate to the investigative and adjudicative processes, the Office of Personnel Management (OPM) is modifying regulations governing Federal employment suitability. The final regulations establish the requirements for applying reciprocity to Federal employment suitability determinations and investigations.

**DATE:** *Effective Date:* The rule is effective January 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Wahlert by telephone at (202) 606-2930; by FAX at (202) 606-2613; or by e-mail at [CWRAP@opm.gov](mailto:CWRAP@opm.gov).

**SUPPLEMENTARY INFORMATION:****Introduction**

On June 23, 2008, OPM published at 73 FR 35358 (2008) proposed amendments to the regulations in part 731 of title 5, Code of Federal Regulations (CFR), to require, with limited exceptions, the application of reciprocity in any case where the person previously was investigated at a level that meets or exceeds that required for the new position, was determined suitable under 5 CFR part 731 or fit based on character or conduct criteria equivalent to the suitability factors of 5 CFR 731.202, and meets continuous service requirements described in the regulations. The public comment period on the proposed amendments ended on August 22, 2008. OPM received comments from two Federal agencies or departments, one union, and two individuals. OPM has carefully considered the comments received. Subsequent to publication of the proposed regulations, President George W. Bush signed Executive Order 13467 (June 30, 2008), which established a governance structure to improve Executive branch policies and procedures regarding various background investigations and adjudications. Section 2.1(c) of E.O. 13467 requires that except as otherwise authorized by law, background investigations and adjudications shall be mutually and reciprocally accepted by all agencies. The E.O. requires that,

with respect to suitability, agencies may not establish additional investigative or adjudicative requirements without the approval of the Suitability Executive Agent, and such approval shall be limited to circumstances where additional requirements are necessary to address significant needs unique to the agency involved or to protect national security. Section 2.3(b) of the E.O. provides that the Director of the Office of Personnel Management shall serve as the Suitability Executive Agent. The exceptions to reciprocity provided in these regulations are consistent with these provisions.

**Reciprocity of Background  
Investigations**

One commenter opposed accepting background checks on contractor employees who have had their background investigations conducted by their employing company. The commenter believes that the Federal suitability process involves more scrutiny and a private company's background checks may not involve the same extensive checks as does the Federal suitability process. The proposed regulation only applies where a Federal agency has previously determined the contract employee was fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202. There is no requirement or expectation

that reciprocity would be granted to investigations or fitness determinations made by private companies on their own employees.

One commenter raised a concern regarding granting reciprocity to a previous investigation and favorable suitability determination without the ability to check whether the individual has performed any acts that might exclude them from employment subsequent to this prior investigation. This commenter raises the example of a person who is arrested for criminal misconduct a year or two subsequent to an investigation and favorable suitability determination by a Federal agency. The commenter argues that when that person applies for employment with a second agency, under the proposed regulations, unless the second agency is aware of the intervening misconduct, it must grant reciprocity to the earlier investigation and favorable suitability determination. In response, we note that the proposed regulations do not change the existing rules governing how the misconduct in the example is identified and addressed. Both under current regulations at 5 CFR 731.104(a)(6) and proposed regulations at 5 CFR 731.104(a)(2), the person in the example would not be subject to a new suitability investigation. Absent a change in risk level, misconduct by an employee subsequent to an investigation and favorable suitability determination can and should be addressed under adverse action procedures provided at 5 CFR part 752. This is true regardless of whether the employee has several years of service with the same agency or has recently transferred to a new agency. There are a variety of ways in which such misconduct can be identified and addressed, including by review of a newly-obtained Declaration for Federal Employment, Optional Form 306.

A related question raised by the same commenter noted that while under the proposed regulations a person will be subject to a new investigation if "an agency obtains new information that calls into question the person's suitability," nowhere does the proposed regulation define or explain how an agency "obtains new information." There are a variety of ways by which new information might be obtained. As explained in the supplementary materials to the proposed regulations, new information might be obtained from a newly-executed Declaration for Federal Employment, Optional Form 306. Other sources include responses to questions raised during employment interviews or during reference checks.

One commenter asked whether the intent of § 731.104(d) is to exclude

public trust positions from the new reciprocity requirements. This is not the intent of this section. This section has been modified to clarify that the provisions in § 731.104, setting out limitations on when an appointment is subject to a new investigation, do not negate agencies' ability to conduct reinvestigations for public trust positions under other authority as described in § 731.106.

Another commenter stated that there is no means to challenge a decision by OPM or an agency that a new investigation or suitability determination is required because a prior fitness determination was not based on criteria substantially equivalent to the factors provided at 5 CFR 731.202. This commenter urged that such decision be subject to review by the Merit Systems Protection Board (MSPB) or alternatively, by OPM. OPM notes that any suitability action taken based on a new investigation, such as removal, cancellation of eligibility, or debarment, may be appealed to MSPB under § 731.501. Furthermore, creation of new appeal or review rights is outside the scope of this regulation and will not be further addressed here.

#### **Investigation Requirements for Position Risk Level Changes**

One commenter pointed out that § 731.106(c)(2) refers to "investigative types" in reference to 5 CFR 732.202 when that regulation instead uses the term "investigative requirements." We have changed the language in § 731.106(c)(2) to "investigative requirements" to be consistent with 5 CFR part 732.

Another comment concerned the meaning of § 731.106(e), which provides when the risk level of a position is changed to a higher level or an employee experiences a change to a position with a higher risk level, he or she can remain in that position pending any upgrade in the investigation required. The commenter stated that it was unclear whether it is the original or new position in which the person could remain. This section was modified in the proposed regulations to clarify that the movement to the higher risk position is not limited to promotion but may include reassignment or even demotion. The modification does not otherwise change the meaning of the section. Thus, as is the case under the current regulations, a person may remain in his or her current position if the risk level for that position changes to a higher level, and may encumber any new position to which he or she moved even if that position has a higher risk level than his or her previous position.

In either case, any upgrade in investigation required for the new risk level should be initiated within 14 calendar days. If the results of the upgraded investigation warranted action such as removal, that removal would be from the new higher risk level position.

One commenter noted that the OPM issuances referenced in § 731.106(c)(2) are limited to official use only and are not made available to the public. This commenter stated that in the absence of being able to review those issuances, it is impossible to provide comments on § 731.106(c)(2). The very limited modification proposed in § 731.106(c)(2) simply reflects the existing relationship between position risk determination under part 731 and the position sensitivity determinations made under 5 CFR part 732 when identifying the appropriate level of investigation needed for a particular position. It makes no substantive change in the regulatory requirement. This commenter questioned the relationship between risk designation and sensitivity designation and asked for an explanation of a position's sensitivity designation on the nature and content of a suitability investigation. They noted that in Executive Order 13467 (June 30, 2008), the President directed that investigative standards for security clearance and suitability investigations be aligned, to the extent possible. They expressed concern that an investigation designed to determine a public trust employee's suitability may be inappropriately broadened to include lines of investigation appropriate only in a security investigation under part 732. As stated in current regulation at § 731.101(a), suitability determinations made under part 731 are "distinct" from determinations of eligibility for assignment to, or retention in, sensitive national security positions. Although the President has directed agencies to ensure that investigative standards for security clearance and suitability investigations are aligned to avoid duplicative steps, the purpose and basis of the two determinations remain distinct and nothing in the proposed regulations changes that distinction.

#### **Reciprocity of Suitability Determinations**

One commenter urged that a definition of "core duties" be provided and stated that in the absence of a definition, each agency would be required to define and "codify" the core duties for their organization. Another commenter on this section recommended that OPM define core duties to narrowly limit the exception provided at § 731.202(d) and that OPM

review all agency definitions of their core duties and the types of conduct alleged to be incompatible with those duties. Specifically, they urged that any incompatibility with core duties generally be limited to a statutory or regulatory bar such as the legal barrier to the employment of a person with a record of domestic abuse in a gun-carrying position.

Whether an individual's prior conduct is incompatible with the core duties of a position is inherently a case-by-case determination focused not only on the unique duties of the specific position, but also on the specific nature of the prior conduct. Incompatibility is not limited to instances where employment would violate a statutory or regulatory bar but could extend to conduct which clearly is antithetical to the key responsibilities of the new position. For example, prior conduct involving financial fraud may be antithetical to the duties of a bank examiner and, as discussed in the supplementary materials to the proposed regulations, prior criminal misconduct may be antithetical to the duties of a law enforcement official. Core duties will vary from agency to agency and from position to position, and the identification of core duties is properly within the discretion of individual agencies. We do not believe that OPM review of agency identification of core duties and incompatible conduct is appropriate. However, we agree that a general definition of "core duty" would assure more consistent application of the exception provided at § 731.202(d). Accordingly, we have added a definition of "core duty."

This commenter further recommended that an agency decision under § 731.202(d) that a person's investigative record on file shows conduct that is incompatible with the core duties of the relevant covered position be subject to review by the Merit Systems Protection Board (MSPB) or, alternatively, by OPM. OPM notes that any action taken based on a negative suitability determination, such as removal, cancellation of eligibility, or debarment, may be appealed to the MSPB under § 731.501. Furthermore, creation of new appeal or review rights is outside the scope of this regulation and will not be further addressed here.

One commenter asked whether a suitability action must be based on specific factors listed at § 731.202 or whether such an action can be based on criteria equivalent to those suitability factors. The proposed regulations provide that reciprocity shall be granted a previous investigation and favorable

suitability determination based on criteria equivalent to the suitability factors listed at § 731.202 as long as the individual meets the continuous service requirement. However, the requirement stated in § 731.202(b) that any suitability action must be based on the factors listed at § 731.202(b) remains unchanged. This same commenter questioned the legal justification for investigative inquiry into such matters as the grounds for a person's divorce, personal finances, or foreign travel and asks about the relationship of such matters to the factors listed at § 731.202(b). These questions will not be addressed here as they concern the factors listed at § 731.202(b) which are outside the scope of the proposed regulation.

#### **Reporting of Suitability Determinations**

One commenter urged that a statement be added to the regulation to make it clear that an agency will not be held to reciprocity if the prior investigation was not reported to OPM. This same commenter also raised questions about the nature and detail of investigative results to be reported and also expressed concern regarding how quickly the new agency would be able to obtain information regarding any prior investigation, suitability determination, and suitability action. Even if information regarding a prior investigation and adjudication has not yet been reported to OPM, agencies must follow the reciprocity requirements of these regulations. If the information regarding a prior investigation and adjudication is not in OPM's database or is insufficient to make a reciprocity decision, agencies should contact the former or current employing agency to obtain the necessary information to either grant or deny reciprocity consistent with these regulations. If after contacting the former or current employing agency, an agency is unable to determine the investigation on file is at the appropriate level or confirm that the other requirements for reciprocity apply, then necessarily no reciprocity may be granted. For these reasons, we believe the recommended statement is neither appropriate nor necessary.

#### **Miscellaneous Comments**

One commenter recommended changing the provisions governing appeals of suitability actions to the Merit Systems Protection Board (MSPB). They recommended that MSPB be authorized to issue summary judgment without a hearing where the MSPB administrative judge finds there are no material facts in dispute or genuine

issues of credibility. We will take this suggestion under advisement for future consideration but it is outside the scope of the current proposed regulation and therefore has not been considered.

Another commenter questioned whether an installation can pass over a selected candidate and proceed to the next preferred candidate when the results of the preliminary suitability determination reveal disqualifying information. Nothing in the proposed regulations alters agency obligations under law to follow proper pass over procedures.

One commenter urged that suitability standards "currently under development" be issued prior to the implementation of these proposed regulations. The suitability factors referenced in the proposed regulations are at 5 CFR 731.202 and are not under development. This same commenter also recommended that appropriate training be provided to all deciding officials, in advance of the implementation of these regulations, so as to ensure the consistency of determinations. Agencies having delegated suitability adjudication authority have been required to use the suitability factors for at least 20 years and agency staff should be well trained in their application.

One commenter stated that language in the supplementary material to the proposed regulations concerning coverage appears inconsistent with the actual regulations. Specifically, the supplementary states that "any proposed changes to these regulations apply only to persons that are in, or in the process of moving into, the competitive service or career Senior Executive Service" and the regulatory language refers to "covered positions," a term which is defined in the current regulations (final regulations effective June 16, 2008). We agree that there may be some confusion since, under the most recent final regulations, the coverage of part 731 was modified to include certain positions in the excepted service. To clarify, the proposed regulations will apply to persons who are in, or in the process of moving to, a covered position as defined at § 731.101(b).

#### **Technical Amendments**

OPM has made a technical amendment to the Authorities for this part to reflect the President's signing of Executive Order 13467 on June 30, 2008, which designates the OPM Director as Suitability Executive Agent.

**Executive Order 12866, Regulatory Review**

The Office of Management and Budget has reviewed the final rule in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they will affect Federal agencies, employees, and applicants only.

**E.O. 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**E.O. 12988—Civil Justice Reform**

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private section, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Congressional Review Act**

This action pertains to agency management, personnel and organization, and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 5 CFR Part 731**

Administrative practices and procedures, Government employees. Office of Personnel Management.

**Michael W. Hager,**  
*Acting Director.*

■ Accordingly, OPM is amending 5 CFR part 731 as follows:

**PART 731—SUITABILITY**

**Subpart A—Scope**

■ 1. The authority citation for part 731 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 7301; E.O. 10577, E.O. 13467, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

■ 2. In § 731.101, amend paragraph (b) by adding a new definition for the term “Core Duty” to read as follows:

**§ 731.101 Purpose.**

\* \* \* \* \*

(b) \* \* \*  
*Core Duty* means a continuing responsibility that is of particular importance to the relevant covered position or the achievement of an agency’s mission.

\* \* \* \* \*

■ 3. In § 731.104, revise paragraphs (a) and (b)(2) and add new paragraphs (d) and (e) to read as follows:

**§ 731.104 Appointments subject to investigation.**

(a) To establish a person’s suitability for employment, appointments to covered positions identified in § 731.101 require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. However, except as provided in paragraph (b)(2), an appointment will not be subject to investigation when the person being appointed has undergone a background investigation and the appointment involves:

(1) Appointment or conversion to an appointment in a covered position if the person has been serving continuously with the agency for at least 1 year in one or more covered positions subject to investigation;

(2) Transfer to a covered position, provided the person has been serving continuously for at least 1 year in a covered position subject to investigation;

(3) Transfer or appointment from an excepted service position that is not a covered position to a covered position, provided the person has been serving continuously for at least 1 year in a position where the person has been determined fit for appointment based on criteria equivalent to the factors provided at 5 CFR 731.202; or

(4) Appointment to a covered position from a position as an employee working as a Federal Government contract employee, provided the person has been serving continuously for at least 1 year in a job where a Federal agency determined the contract employee was

fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202.

\* \* \* \* \*

(b) \* \* \*

(2) An appointment to a covered position also will be subject to investigation when:

(i) The covered position requires a higher level of investigation than previously conducted for the person being appointed; or

(ii) An agency obtains new information in connection with the person’s appointment that calls into question the person’s suitability under § 731.202;

(d) Reinvestigation requirements under § 731.106 for public trust positions are not affected by this section.

(e) For purposes of this section, “criteria equivalent to the factors provided at 5 CFR 731.202” are criteria that provide adequate assurance that the person to be appointed, converted to an appointment, or transferred is suitable to be employed in a covered position, as determined by OPM, in issuances under this regulation. A decision by OPM, or by an agency applying guidance from OPM, that a prior fitness determination was not based on criteria equivalent to the factors provided at 5 CFR 731.202, and that a new investigation or adjudication is necessary is not subject to review under section 731.501 of this part.

■ 4. In § 731.106, revise paragraphs (c)(2) and (e) to read as follows:

**§ 731.106 Designation of public trust positions and investigative requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position’s investigative requirement. Sections 732.201 and 732.202 of this chapter detail the various sensitivity levels and investigative requirements. Procedures for determining investigative requirements for all positions based upon risk and sensitivity will be published in OPM issuances, as described in §§ 731.102(c) and 732.201(b).

\* \* \* \* \*

(e) *Risk level changes.* If an employee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk

level of the employee's position is changed to a higher level, the employee may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

\* \* \* \* \*

### Subpart B—Suitability Determinations and Actions

■ 6. In § 731.202, add a new paragraph (d) to read as follows:

#### § 731.202 Criteria for making suitability determinations.

\* \* \* \* \*

(d) *Reciprocity.* An agency cannot make a new determination under this section for a person who has already been determined suitable or fit based on character or conduct unless a new investigation is required under § 731.104 or § 731.106, or no new investigation is required but the investigative record on file for the person shows conduct that is incompatible with the core duties of the relevant covered position.

■ 7. Add a new § 731.206 to read as follows:

#### § 731.206 Reporting requirements.

Agencies must report to OPM the level and result of each background investigation, suitability determination, and suitability action taken under this part, as required in OPM issuances.

[FR Doc. E8-26558 Filed 11-7-08; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 19

[Docket ID OCC-2008-0020]

RIN 1557-AD11

### Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure, set forth at 12 CFR part 19, to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to administer to account for inflation. This

action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996. The OCC is also amending part 19 to add to our list of penalties a new CMP, which was authorized after the OCC last adjusted its CMPs.

**DATES:** *Effective Date:* December 10, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Michele Meyer, Assistant Director, or Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, or David Weber, Counsel, Enforcement and Compliance Division, (202) 874-4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Inflation Adjustment Act, 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, periodically to publish regulations adjusting for inflation each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on November 10, 2004, 69 FR 65067, and became effective on December 10, 2004.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI-U) published by the Department of Labor.<sup>1</sup> See 28 U.S.C. 2461 note. In addition, the Inflation Adjustment Act provides rules for rounding off increases,<sup>2</sup> and requires that any

<sup>1</sup> The Department of Labor computes the CPI-U using two different base time periods, 1967 and 1982-1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI-U with 1982-84 as the base period. Data on the CPI-U is available at <http://bls.gov>.

<sup>2</sup> The Act's rounding rules require that an increase be rounded to the nearest multiple of: \$10

increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act amended the Inflation Adjustment Act by limiting the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to no more than 10 percent of the amount set by statute. See 28 U.S.C. 2461 note.

#### Description of the Final Rule

##### *Inflation Adjustment*

This final rule adjusts the amount for each CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI-U for June of the calendar year preceding the adjustment with the CPI-U for June of the year in which the CMPs were last set or adjusted. See 28 U.S.C. 2461 note. The majority of CMPs were adjusted in 2004. For those CMPs, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 2004 (189.7). This resulted in an inflation adjustment of 9.8 percent. Two penalties were last adjusted in 2000.<sup>3</sup> For those penalties, we compared the CPI-U for June 2007 (208.352) with the CPI-U for June 2000 (172.4). This resulted in an inflation increase of 20.9 percent. Three penalties were last adjusted in 1997.<sup>4</sup> For those penalties, we compared the CPI-U for June 1997 (160.3) with the CPI-U for June 2007 (208.352). This resulted in an inflation increase of 30.0 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment, added that amount to the current penalty, and rounded the

in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. See 28 U.S.C. 2461 note.

<sup>3</sup> Those penalties last adjusted in 2000 are authorized by 12 U.S.C. 164 and 3110(c), Tier 1. See 65 FR 66250 (Dec. 11, 2000).

<sup>4</sup> Those penalties last adjusted in 1997 are authorized by 12 U.S.C. 1832(c), 12 U.S.C. 3909(d)(1), and 12 U.S.C. 1884. See 62 FR 3199 (Jan. 22, 1997).