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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–9009; 34–59449; IA–2845; IC–28635]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Commission is adopting a rule adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002.

DATES: *Effective Date:* March 3, 2009.

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel, at (202) 551–5168, or James A. Cappoli, Office of the General Counsel, at (202) 551–7923.

SUPPLEMENTARY INFORMATION:

I. Background

This rule implements the Debt Collection Improvement Act of 1996 (''DCIA'').[1] The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (''FCPIAA'')[2] to require each federal agency to adopt regulations at least once every four years that adjust for inflation the maximum amount of the civil monetary penalties (''CMPs'') under the statutes administered by the agency.[3]

A civil monetary penalty (''CMP'') is defined in relevant part as any penalty, fine, or other sanction that: (1) Is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.[4] This definition covers the monetary penalty provisions contained in the statutes administered by the Commission. In addition, this definition encompasses the civil monetary penalties that may be imposed by the Public Company Accounting Oversight Board (the ''PCAOB'') in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).[5]

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in Section 5 of the FCPIAA.[6] The cost-of-living adjustment is defined in the FCPIAA as the percentage by which the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'')[7] for the month of June for the year preceding the adjustment exceeds the CPI–U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.[8] The statute contains specific rules for rounding each increase based on the size of the penalty.[9] Agencies do not have discretion over whether to adjust a maximum CMP, or the method used to determine the adjustment. Although the DCIA imposes a 10 percent maximum increase for each penalty for the first adjustment pursuant thereto, that limitation does not apply to subsequent adjustments.

The Commission administers four statutes that provide for civil monetary penalties: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. In addition, the Sarbanes-Oxley Act of 2002 provides the PCAOB (over which the Commission has jurisdiction) authority to levy civil monetary penalties in its disciplinary proceedings.[10] Penalties administered by the Commission were last adjusted by rules effective February 14, 2005.[11] The DCIA requires the civil monetary penalties to be adjusted for inflation at least once every four years. The Commission is therefore obligated by statute to increase the maximum amount of each penalty by the appropriate formulated amount.

Accordingly, the Commission is adopting an amendment to 17 CFR Part 201 to add § 201.1004 and Table IV to Subpart E, increasing the amount of each civil monetary penalty authorized by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

II. Summary of the Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 2005, we will use the following example. Under the current provisions, the Commission may impose a maximum CMP of $1,275,000 for certain insider trading violations by a controlling person. To determine the new CMP amounts under the amendment, first we determine the appropriate CPI–U for June of the calendar year preceding the year of adjustment. Because we are adjusting CMPs in 2009, we use the CPI–U for June of 2008, which was 218.815. We must also determine the CPI–U for June of the year the CMP was last adjusted for inflation. Because the Commission last adjusted this CMP in 2005, we use the CPI–U for June of 2005, which was 194.5.

Second, we calculate the cost-of-living adjustment or inflation factor. To

[1] Public Law 104–134, 110 Stat. 1321–373 (1996) (codified at 28 U.S.C. 2461 note).

[2] 28 U.S.C. 2461 note.

[3] Increased CMPs apply only to violations that occur after the increase takes effect.

[4] 28 U.S.C. 2461 note (3)(2).

[5] The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. *See* Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Securities Exchange Act of 1934. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties ''enforced'' by the Commission for purposes of the Act. *See Adjustments to Civil Monetary Penalty Amounts*, Release No. 33–8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

[6] 28 U.S.C. 2461 note (5).

[7] 28 U.S.C. 2461 note (3)(3).

[8] 28 U.S.C. 2461 note (5)(b).

[9] 28 U.S.C. 2461 note (5)(a)(1)–(6).

[10] 15 U.S.C. 7215(c)(4)(D).

[11] *See* 17 CFR 201.1003.

do this we divide the CPI for June of 2008 (218.815) by the CPI for June of 2005 (194.5). Our result is 1.1250.

Third, we calculate the raw inflation adjustment (the inflation adjustment before rounding). To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,275,000 multiplied by the inflation factor of 1.1250 equals $1,434,391.

Fourth, we round the raw inflation amounts according to the rounding rules in Section 5(a) of the FCPIAA. Since we round only the increase amount, we calculate the increased amount by subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increase amount for the maximum penalty in our example is $159,391 (*i.e.*, $1,434,391 less $1,275,000). Under the rounding rules, if the *penalty* is greater than $200,000, we round the *increase* to the nearest multiple of $25,000. Therefore, the maximum penalty increase in our example is $150,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,275,000 plus $150,000 yields a maximum inflation adjustment penalty amount of $1,425,000.[12]

III. Related Matters

A. Administrative Procedure Act—Immediate Effectiveness of Final Rule

Under the Administrative Procedure Act (''APA''), a final rule may be issued without public notice and comment if the agency finds good cause that notice and comment are impractical, unnecessary, or contrary to public interest.[13] Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by the cost-of-living adjustment formula set forth in Section 5 of the FCPIAA, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the APA.[14] Specifically, the Commission finds that because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary.[15]

Under the DCIA, agencies must make the required inflation adjustment to civil monetary penalties: (1) According to a very specific formula in the statute; and (2) within four years of the last inflation adjustment. Agencies have no discretion as to the amount of the adjustment and have limited discretion as to the timing of the adjustment, in that agencies are required to make the adjustment at least once every four years. The regulation discussed herein is ministerial, technical, and noncontroversial. Furthermore, because the regulation concerns penalties for conduct that is already illegal under existing law, there is no need for affected parties to have thirty days prior to the effectiveness of the regulation and amendments to adjust their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.[16]

B. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. This regulation merely adjusts civil monetary penalties in accordance with inflation as required by the DCIA, and has no impact on disclosure or compliance costs. The benefit provided by the inflationary adjustment to the maximum civil monetary penalties is that of maintaining the level of deterrence effectuated by the civil monetary penalties, and not allowing such deterrent effect to be diminished by inflation. Furthermore, Congress, in mandating the inflationary adjustments, has already determined that any possible increase in costs is justified by the overall benefits of such adjustments.

C. Paperwork Reduction Act

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[17]

D. Statutory Basis

The Commission is adopting these amendments to 17 CFR Part 201, Subpart E pursuant to the directives and authority of the DCIA, Public Law 104–134, 110 Stat. 1321–373 (1996).

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Lawyers, Securities.

Text of Amendment

■ For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF PRACTICE

Subpart E—Adjustment of Civil Monetary Penalties

■ 1. The authority citation for part 201, Subpart E, is revised to read as follows:

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

■ 2. Section 201.1004 and Table IV to Subpart E are added to read as follows:

§ 201.1004 Adjustment of civil monetary penalties—2009.

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002 are adjusted for inflation in accordance with Table IV to this subpart. The adjustments set forth in Table IV apply to violations occurring after March 3, 2009.

[12] The adjustments in Table IV to Subpart E of Part 201 reflect that the operation of the statutorily mandated computation, together with rounding rules, does not result in any adjustment to one penalty. This particular penalty will be subject to slightly different treatment when calculating the next adjustment. Under the statute, when we next adjust these penalties, we will be required to use the CPI–U for June of the year when this particular penalty was ''last adjusted,'' rather than the CPI–U for 2009.

[13] 5 U.S.C. 553(b)(3)(B).

[14] 5 U.S.C. 553(b)(3)(B).

[15] A regulatory flexibility analysis under the Regulatory Flexibility Act (''RFA'') is required only when an agency must publish a general notice of proposed rulemaking for notice and comment. *See* 5 U.S.C. 603. As noted above, notice and comment are not required for this final rule. Therefore, the RFA does not apply.

[16] Additionally, this finding satisfies the requirements for immediate effectiveness under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 808(2); *see also id.* 801(a)(4).

[17] 44 U.S.C. 3501 *et seq.*

Table IV to Subpart E	Civil monetary penalty inflation adjustments			
U.S. Code citation	Civil monetary penalty description	Year penalty amount was last adjusted	Maximum penalty amount pursuant to last adjustment	Adjusted maximum penalty amount
Securities and Exchange Commission:	.....			
15 U.S.C. 77t(d)	For natural person	2001	$6,500	$7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses or risk of losses to others.	2005	130,000	150,000
	For any other person/substantial losses or risk of losses to others.	2005	650,000	725,000
15 U.S.C. 78ff(b)	Exchange Act/failure to file information documents, reports.	1996	110	110
15 U.S.C. 78ff(c)(1)(B)	Foreign Corrupt Practices—any issuer	1996	11,000	16,000
15 U.S.C. 78ff(c)(2)(C)	Foreign Corrupt Practices—any agent or stockholder acting on behalf of issuer.	1996	11,000	16,000
15 U.S.C. 78u–1(a)(3)	Insider Trading—controlling person	2005	1,275,000	1,425,000
15 U.S.C. 78u–2	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses to others/gains to self.	2005	130,000	150,000
	For any other person/substantial losses to others/gain to self.	2005	650,000	725,000
15 U.S.C. 78u(d)(3)	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses or risk of losses to others.	2005	130,000	150,000
	For any other person/substantial losses or risk of losses to others.	2005	650,000	725,000
15 U.S.C. 80a–9(d)	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses to others/gains to self.	2005	130,000	150,000
	For any other person/substantial losses to others/gain to self.	2005	650,000	725,000
15 U.S.C. 80a–41(e)	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses or risk of losses to others.	2005	130,000	150,000
	For any other person/substantial losses or risk of losses to others.	2005	650,000	725,000
15 U.S.C. 80b–3(i)	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses to others/gains to self.	2005	130,000	150,000
	For any other person/substantial losses to others/gain to self.	2005	650,000	725,000
15 U.S.C. 80b–9(e)	For natural person	2001	6,500	7,500
	For any other person	2005	65,000	75,000
	For natural person/fraud	2005	65,000	75,000
	For any other person/fraud	2005	325,000	375,000
	For natural person/substantial losses or risk of losses to others.	2005	130,000	150,000
	For any other person/substantial losses or risk of losses to others.	2005	650,000	725,000
15 U.S.C. 7215(c)(4)(D)(i)	For natural person	2005	110,000	120,000
	For any other person	2005	2,100,000	2,375,000
15 U.S.C. 7215(c)(4)(D)(ii)	For natural person	2005	800,000	900,000
	For any other person	2005	15,825,000	17,800,000

Dated: February 25, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–4379 Filed 3–2–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–029; Order No. 587–T]

Standards for Business Practices for Interstate Natural Gas Pipelines

Issued February 24, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations that establish standards for interstate natural gas pipeline business practices and electronic communications to incorporate by reference into its regulations the most recent version of the standards, Version 1.8, adopted by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) and to make other minor corrections. This rule upgrades the Commission's current business practice and communication standards to reflect the latest version approved by the NAESB WGQ (i.e., the Version 1.8 Standards), and is necessary to increase the efficiency of the pipeline grid, make pipelines' electronic communications more secure, and is consistent with the mandate that agencies provide for electronic disclosure of information.

DATES: This rule will become effective April 2, 2009. Natural gas pipelines are required to implement these standards on the first day of the month three months after the effective date of this rule and file tariff sheets to reflect the changed standards on the first day of the month one month after the effective date of this rule. The Director of the Federal Register has approved the incorporation by reference of the standards addressed in this Final Rule effective April 2, 2009.

FOR FURTHER INFORMATION CONTACT:

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Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Acting Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its regulations (which establishes standards for natural gas pipeline business practices and electronic communications) [1] to incorporate by reference the most recent version (Version 1.8) of the standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). In addition, the Commission is amending § 284.12(b) of its regulations to make minor corrections.

I. Background

2. Since 1996, in the Order No. 587 series,[2] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by the WGQ (formerly the Gas Industry Standards Board or GISB), a private consensus standards developer composed of members from all segments of the natural gas industry. The WGQ is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On September 14, 2007, NAESB submitted a report to the Commission stating that it had adopted a new version of its standards, Version 1.8, dated September 30, 2006.[3] NAESB reported that the Version 1.8 Standards include a new set of standards for ''Internet Electronic Transport'' that is applicable to the retail gas and electric markets as well as the wholesale gas market,[4] changes to the Electronic Delivery Mechanism (EDM) Related Standards, an additional standard related to reporting on gas quality, and maintenance changes to the Nomination Related Standards and Flowing Gas Related Standards. NAESB also reported that the Version 1.8 standards included several standards already adopted by the Commission, including gas-electric coordination standards to support communications between pipelines and gas-fired generators,[5] gas quality reporting standards to support reporting of gas quality specifications and reporting of the underlying assumptions and methodologies, and business practice standards to support implementation of Order No. 2004 on Standards of Conduct.[6]

4. On September 18, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) [7] that proposed to incorporate by reference the WGQ's Version 1.8 Standards and to make minor corrections to § 284.12(b) of the Commission's regulations. The sole comment was filed by American Gas Association (AGA), which supported the adoption of Version 1.8 of the standards, but requested modifications to the Commission's relationship with NAESB.

II. Discussion

5. The Commission's NOPR proposal to amend part 284 of its regulations to incorporate by reference Version 1.8 of the NAESB WGQ's consensus standards,[8] with the two exceptions

[1] 18 CFR 284.12.

[2] *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, 61 FR 39053 (July 26, 1996), FERC Stats. & Regs., ¶ 31,038 (1996).

[3] Some of the standards subsequently were corrected and these minor corrections were applied to the Version 1.8 Capacity Release Related Standards on Dec. 13, 2006.

[4] In this Final Rule, the Commission is requiring interstate natural gas pipelines to comply with these standards. We are not making these standards mandatory for retail transactions.

[5] *Standards for Business Practices for Interstate Natural Gas Pipelines; Standards for Business Practices for Public Utilities,* Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats, & Regs ¶ 31,251 (2007); *order granting clarification and denying reh'g,* Order No. 698–A, 121 FERC ¶ 61,264 (2007).

[6] *Standards of Conduct for Transmission Providers,* Order No. 2004, 68 FR 69134 (Dec. 11, 2003), FERC Stats. & Regs., ¶ 31,155 (2003); *order on reh'g*, Order No. 2004–B, 69 FR 23562 (Apr. 29, 2004), FERC Stats. & Regs., ¶ 31,161 (2004); *order on reh'g,* Order No. 2004–B, 69 FR 48371 (Aug. 10, 2004), FERC Stats. & Regs., ¶ 31,166 (2004); *order on reh'g*, Order No. 2004–C, 70 FR 284 (Jan. 4, 2005), FERC Stats. & Regs., ¶ 31,172 (2004); *order on clarification and reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005).

[7] *Standards for Business Practices for Interstate Natural Gas Pipelines,* Notice of Proposed Rulemaking, 73 FR 55460 (Sep. 18, 2008), FERC Stats. & Regs. ¶ 32,636 (2008).

[8] In its Version 1.8 Standards, the WGQ made the following changes to its Version 1.7 standards:

It revised Principles 1.1.9, 4.1.2, 4.1.6, and 4.1.7, Definitions 2.2.4, 4.2.1, 4.2.11, 4.2.12, 4.2.13, and 4.2.20, Standards 1.3.54, 1.3.60, 1.3.61, 1.3.63,