

DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND NATIONALITY ACT CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT (2011)¹⁹—Continued

[A] INA § Statute	[B] Current penalty	[C] Year last adjusted	[D] CPI factor (2011) (%)	[E] Raw increase (2011) [B × D]	[F] Rounder [Inflation Adjustment Act constraint]	[G] Rounded increase [Inflation Adjustment Act increase]	[H] Raw adjusted penalty* [B + E]	[I] Adjusted penalty [per IAA] [B + G]	[J] Inflation Adjustment Act distortion* [I–H]
INA § 243(c) (1)(B); 8 U.S.C. 1253(c) (1)(B).	\$5,000.00	Enacted 1996 ..	39.10	\$1,955.00	10% statutory cap ..	\$500.00	\$6,955.00	\$5,500.00	–\$1,455.00

* * * * *

The issues with the Federal Civil Penalties Inflation Adjustment Act described above arise from its plain language, and federal regulatory agencies may not themselves adjust the penalty levels to track the inflation rate more closely. As the Government Accountability Office has found, some agencies have attempted to adjust civil monetary penalties in common-sense ways that better reflect the real economic impact of inflation.²⁰ However, these good faith efforts objectively did not comply with the plain language of the Inflation Adjustment Act. They also subjected agencies to the risk of legal challenges to penalty adjustments.

Review of **Federal Register** notices also shows that several agencies have failed to comply with the statutory requirement to review and, if necessary, adjust penalties at least once every four years.²¹ Regular penalty adjustments ensure the continued deterrent effect of civil monetary penalties. This is especially important where maximum penalties are imposed by agencies to punish the worst offenders. It is essential to enforcement policy that the penalties have their intended deterrent effect and are not simply viewed as a cost of doing business.

The Administrative Conference therefore recommends that Congress reexamine the procedures set forth in the Inflation Adjustment Act and make such changes to the Act as are appropriate. The Recommendation also advises agencies to comply with the letter of the law, by applying the rounding adjustment based on

¹⁹ This table presents a subset of four penalties from the table of penalty adjustments contained in the 2011 **Federal Register** notice from the Department of Homeland Security, *id.*, together with two additional columns ([H] and [J], denoted by a *) from the Chen Report, *supra* note 8, at IV.C.

²⁰ *E.g.*, GAO, GAO–02–1084R, Compliance with the Inflation Adjustment Act (2002) (reporting that the Farm Credit Administration had rounded its penalty increase by the size of the increase rather than the penalty size); GAO, GAO–02–1085R, **DEPARTMENT OF COMMERCE: COMPLIANCE WITH THE INFLATION ADJUSTMENT ACT** (2002) (reporting that the Department of Commerce had rounded its penalty increase by the size of the increase rather than the penalty size).

²¹ *E.g.*, Department of Agriculture, *Department of Agriculture Civil Monetary Penalties Adjustment*, 75 FR 17555 (Apr. 7, 2010) (remediating erroneous exclusion of some civil monetary penalties from earlier rounds of adjustments); Department of Transportation, *Civil Penalties*, 75 FR 5244 (Feb. 2, 2010) (reporting last inflation adjustment six years ago, rather than four years ago as the Act’s quadrennial interval prescribes).

the size of the penalty, rather than the size of the increase, and by making adjustments every four years. Agencies should be mindful of the financial or other adverse consequences of failing to adjust civil monetary penalties regularly, in compliance with the Inflation Adjustment Act, or of failing to comply with the adjustment provisions currently set forth in the Act.²²

The current Recommendation is intentionally circumscribed in scope. The underlying research commissioned by the Conference examined only the existing statutory process for inflation adjustments under the Inflation Adjustment Act. The Recommendation does not address other potential issues involving the current process, including: The appropriateness of the Act’s existing exemption for civil monetary penalties under four statutes or whether additional agency programs should be exempt; the effectiveness of self-enforcement by federal agencies; obligations for reporting compliance; the lack of a central authority for administering the Act; alternative metrics for measuring inflation; or alternative forms of civil monetary penalties (*e.g.*, percentages rather than fixed values). These important issues warrant thoughtful consideration and may lead to future Conference recommendations.

Recommendation

A. Recommendation to Congress

1. Congress should change the current statutory framework by which agencies must make periodic inflation adjustments to civil monetary penalties set forth in the Federal Civil Penalties Inflation Adjustment Act, codified as amended at 28 U.S.C. 2461 note (2012), as appropriate in light of the distortions resulting from:

(a) The “inflation gap” created by a ten percent cap on the initial penalty adjustment, which grows over time and can never be closed under the current statutory provision.

(b) The “CPI lag” that results from the statute’s definition of the term “cost-of-living adjustment,” which directs agencies to base their adjustments on CPI data that are at least seven months old and may be as much as 18 months old, and thus lag behind the actual inflation rate.

(c) The rounding rules that tie rounding of increases to the size of the penalty, rather than the size of the increase, and that may result in significant periods of nonadjustment

²² See *supra* notes 20 and 21.

of civil monetary penalties followed by abrupt and substantial increases.

B. Recommendation to Agencies

2. Federal agencies subject to the Inflation Adjustment Act should review and, if necessary, adjust their civil monetary penalties for inflation at least once every four years, as required by the Act. Agencies should review their implementation procedures and practices to ensure that inflation adjustments comply with the plain language of the Act, and particularly its rounding provisions.

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 9, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–

7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Electronic Mailing List Subscription Form—Nutrition and Food Safety.

OMB Control Number: 0518-0036.

Summary of Collection: The National Agricultural Library's Food and Nutrition Information Center (FNIC) currently maintains several on-line "discussion groups." This voluntary "Electronic Mailing List Subscription Form" gives individuals working in the area of nutrition and food safety an opportunity to participate in these groups. Data collected using this form will help FNIC determine a person's eligibility to participate in these discussion groups. The authority for the National Agricultural Library (NAL) to collect this information is contained in the CFR, Title 7, Volume 1, Part 2, and Subpart K, Sec. 2.65 (92).

Need And Use Of The Information: FNIC will collect the name, email address, job title, employer, mailing address and telephone number in order to approve subscriptions for nutrition and food safety on-line discussion groups. Failure to collect this information would inhibit FNIC's ability to provide subscription services to these discussion groups.

Description of Respondents: Individuals or households; State, Local and Tribal Governments.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 17.

Charlene Parker,

Departmental Information Collection Clearance Officer.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS-FV-09-0028, FV-11-327]

United States Standards for Grades of Frozen Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise eight United States Standards for Grades of Frozen Vegetables. AMS is proposing to replace the dual grade nomenclature with single letter grade designations. "U.S. Grade A" (or "U.S. Fancy"), "U.S. Grade B" (or "U.S. Extra Standard"), and "U.S. Grade C" (or "U.S. Standard") would become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C," respectively. This would conform to recent changes in other grade standards. AMS is also proposing to provide updated contact information in order to obtain copies of the grade standards and color standards. These changes would bring these grade standards in line with the present quality levels being marketed today and would provide guidance in the effective utilization of these products. The grade standards covered by these proposed revisions are: frozen asparagus, frozen lima beans, frozen speckled butter beans, frozen cooked squash, frozen summer squash, frozen sweet potatoes, frozen turnip greens with turnips, and frozen mixed vegetables.

DATES: Comments must be submitted on or before March 18, 2013.

ADDRESSES: Written comments may be submitted via the Internet: <http://www.regulations.gov>; by email brian.griffin@ams.usda.gov; or by mail to Brian E. Griffin, Standardization Branch, Specialty Crops Inspection Division, Fruit and Vegetable Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; fax: (202) 690-1527. Copies of the proposed revised United States Standards for Grades are available at the addresses cited above and at the AMS Web site at: <http://www.ams.usda.gov/processedinspection>. All comments should reference the document number, date, and page number of this issue of the **Federal Register**. All comments will be posted without change, including

any personal information provided. All comments submitted in response to this notice will be included in the public record and will be made available to the public on the Internet via <http://www.regulations.gov>. Comments will be made available for public inspection at the above address during regular business hours or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Contact Brian E. Griffin, at the address above, or phone (202) 720-5021; or fax (202) 690-1527.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA, AMS, Fruit and Vegetable Program at the following Web site: <http://www.ams.usda.gov/processedinspection>. AMS is proposing revisions to these U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations.

Background: AMS periodically reviews the processed fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified eighteen grade standards covering various frozen vegetables for possible revision. More recently developed grade standards use a single term, such as "U.S. Grade A" or "U.S. Grade B" to describe each level of quality within a grade standard. Older standards used a dual system, such as "U.S. Grade A" and "U.S. Fancy" to describe the same level of quality within a grade standard. Prior to undertaking detailed work developing the proposed revisions to these grade standards, AMS published a notice in the **Federal Register** on July 23, 2010 [7 FR 43141] soliciting comments on the possible changes and any other comments regarding these grade standards to better serve the industry. A 60 day period was provided for interested persons to submit comments. In response to its request, AMS received one comment which was submitted by the American Frozen Food Institute (AFFI). AFFI is