

records fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, \$10.00. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) *Other charges.* When a response to a request requires services or materials other than those described in paragraphs (c)(1) through (3) of this section, the direct cost of such services to the Foundation may be charged, providing the requestor has been given an estimate of such cost before it is incurred.

§ 1502.8 Exemptions.

The categories of records maintained by the Foundation which may be exempted from disclosure are described in 5 U.S.C. 552(b).

§ 1502.9 Processing of requests.

(a) *Processing.* A person who has made a written request for records which meets the requirements of § 1502.4 shall be informed by the Chief FOIA Officer within 20 working days after receipt of the request of the Foundation's decision whether to deny or grant access to the records and the right of the requestor to seek assistance from the Foundation's Chief Public Liaison.

(b) *Denials.* If the Chief FOIA Officer, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 90 calendar days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within the time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision, of the right to a judicial review of the decision in the federal courts, and of the dispute resolution services offered by the FOIA Public Liaison of the Foundation or the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation.

(c) *Extension of time.* In unusual circumstances, as defined by the FOIA, to the extent reasonably necessary to the proper processing of requests, the time required to respond to a FOIA request or an appeal may be extended for an additional 10 working days upon

written notification to the requestor providing the reasons for the extension. If the extension goes beyond 10 working days, USADF will notify the requestor of services provided by the FOIA Public Liaison and the Office of Government Information Services.

(d) *Expedited processing.* USADF shall process requests and appeals on an expedited basis where the requestor demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v). USADF shall make a determination of whether to provide expedited processing, and shall notify the requestor of the determination, within 10 calendar days after the receipt of the request. USADF shall provide expeditious consideration of administrative appeals of determinations of whether to provide expedited processing.

(e) *Confidential commercial information.* Whenever records containing confidential commercial information are requested under the FOIA and USADF determines that it may be required to disclose the records, USADF shall promptly provide written notice to the submitter of the confidential commercial information, in conformity with the procedures set forth in Executive Order 12600, Predislosure Notification Procedures for Confidential Commercial Information, 3 CFR, 1987 Comp., p. 235.

§ 1502.10 Judicial review.

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B)).

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DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OAG 156; AG Order No. 3823-2017]

Civil Monetary Penalties Inflation Adjustment for 2017

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in

accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015.

DATES: *Effective date:* This rule is effective February 3, 2017.

Applicability date: The adjusted civil penalty amounts are applicable only to civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW., Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015), titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the "2015 Amendments"), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the "Inflation Adjustment Act"), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the 2015 Amendments, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule ("2016 interim rule") to adjust for inflation the civil monetary penalties assessed by components of the Department after August 1, 2016, whose associated violations occurred after November 2, 2015 (the so-called "catch-up" adjustments). See 28 CFR 85.5. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. After considering the public comments submitted in response to the 2016 interim rule, the Department will finalize the 2016 interim rule.

II. Inflation Adjustments Made by This Rule

The 2015 Amendments also provide for agencies to adjust for inflation their civil penalty amounts by January 15,

2017, and not later than January 15 of each year thereafter. Accordingly, the Department is publishing this final rule to adjust the civil penalty amounts that were most recently adjusted as of August 1, 2016.

This rule provides the current inflation adjustments being made in 2017. This rule adjusts the civil penalty amounts as established in the 2016 interim rule (which added 28 CFR 85.5), rounded to the nearest dollar. This means that the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty is increased by the cost-of-living adjustment, which is the “percentage (if any) for each civil monetary penalty by which—(A) the Consumer Price Index for the month of October preceding the date of [this] adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).” Inflation Adjustment Act, as amended, sec. 5(b)(1), 28 U.S.C. 2461 note.

As provided in the 2015 Amendments, the adjustments made by this rule are based on the Bureau of Labor Statistics’ Consumer Price Index for October 2016.¹ The inflation factor used in calculating the adjustments was provided to all federal agencies in the OMB Memorandum for the Heads of Executive Departments and Agencies M–17–11 (December 16, 2016). https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf (last visited December 22, 2016). The applicable inflation factor for this adjustment is 1.01636.

An example of how the adjustment is calculated using this inflation factor is set forth below.

Example:

The Program Fraud Civil Remedies Act penalty was increased to \$10,781 in 2016, in accordance with the catch-up adjustment requirement of the 2015 Amendments. This amount is then multiplied by the inflation factor, as shown below:

$$\$10,781 \times 1.01636 = \$10,957.38$$

When rounded to the nearest dollar, the new penalty is \$10,957.

This rule adjusts for inflation the civil monetary penalties assessed by components of the Department of Justice for purposes of the Inflation Adjustment

Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department’s litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

III. Effective Date of Adjusted Civil Penalty Amounts

The adjusted civil penalty amounts added by this rule are applicable only to civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Amendments.

The penalty amounts set forth in 28 CFR 85.5, as added by the June 30, 2016, interim rule are applicable only to civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015. For convenient reference, this rule amends the table in 28 CFR 85.5 to include both the adjusted penalty amounts as added by the 2016 interim rule as well as the new adjusted civil penalty amounts being adopted in this final rule.

Violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in the Department’s regulations 28 CFR parts 20, 22, 36, 68, 71, 76 and 85 as such regulations existed prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016).

Statutory and Regulatory Analyses *Administrative Procedure Act*

The Inflation Adjustment Act, as amended by the 2015 Amendments, provides that for the second adjustment made after the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and each adjustment thereafter, the head of an agency shall adjust civil monetary penalties and shall make the adjustment notwithstanding 5 U.S.C. 553. See Public Law 114–74, sec. 701(b)(1)(D) (amending section 4(b)(2) of the Inflation Adjustment Act). Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a 30-day delayed effective date.

Regulatory Flexibility Act

Only those entities that are determined to have violated federal law and regulations would be affected by the

increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. See 5 U.S.C. 603(a).

Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review” section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, Regulatory Planning and Review, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the 2015 Amendments by making an across-the-board adjustment of the civil penalty amounts to account for inflation since the adoption of the 2016 interim rule. The 2016 interim rule itself was determined not to be a significant regulatory action under Executive Order 12866.

Executive Order 13132—Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the 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 the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards 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, and tribal governments, in the aggregate, or by the

¹ For inflation adjustments *other* than the “initial adjustment” made in the 2016 rule, the adjustment will be determined by the difference in the Consumer Price Index between the October preceding the date of the new adjustment and the October the year before. See Public Law 114–74, sec. 701(b)(2)(B) (amending section 5(b) of the Inflation Adjustment Act).

private sector, of \$100 million 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 rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 85

Administrative practice and procedure, Penalties.
Accordingly, for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

- 1. The authority citation for part 85 continues to read as follows:
Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.
- 2. Section 85.5 is revised to read as follows:

§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.

For civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the fifth column of the following table. For civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of the following table.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/2016 (\$) ¹	DOJ penalty assessed after 2/3/2017 (\$) ²
ATF				
18 U.S.C. 922(t)(5)	Brady Law—Nat’l Instant Criminal Check System; Transfer of firearm without checking NICS.	.....	8,162	8,296.
18 U.S.C. 924(p)	Child Safety Lock Act; Secure gun storage or safety device, violation.	.....	2,985	3,034.
Civil Division				
12 U.S.C. 1833a(b)(1)	Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation.	28 CFR 85.3(a)(6)	1,893,610	1,924,589.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing) (per day)	28 CFR 85.3(a)(7)	1,893,610	1,924,589.
12 U.S.C. 1833a(b)(2)	FIRREA Violation (continuing)	28 CFR 85.3(a)(7)	9,468,050	9,622,947.
22 U.S.C. 2399b(a)(3)(A) ..	Foreign Assistance Act; Fraudulent Claim for Assistance (per act).	28 CFR 85.3(a)(8)	5,500	5,590.
31 U.S.C. 3729(a)	False Claims Act; ³ Violations	28 CFR 85.3(a)(9)	Min. 10,781 Max. 21,563	Min. 10,957. Max. 21,916.
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim).	28 CFR 71.3(a)	10,781	10,957.
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement).	28 CFR 71.3(f)	10,781	10,957.
40 U.S.C. 123(a)(1)(A)	Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act).	28 CFR 85.3(a)(12)	5,500	5,590.
41 U.S.C. 8706(a)(1)(B) ...	Anti-Kickback Act; Violation Involving Kickbacks ⁴ (per occurrence).	28 CFR 85.3(a)(13)	21,563	21,916.
18 U.S.C. 2723(b)	Driver’s Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day).	.....	7,954	8,084.
18 U.S.C. 216(b)	Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes ⁵ (per violation).	28 CFR 85.3(c)	94,681	96,230.
41 U.S.C. 2105(b)(1)	Office of Federal Procurement Policy Act; ⁶ Violation by an individual (per violation).	.....	98,935	100,554.
41 U.S.C. 2105(b)(2)	Office of Federal Procurement Policy Act; ⁶ Violation by an organization (per violation).	.....	989,345	1,005,531.
42 U.S.C. 5157(d)	Disaster Relief Act of 1974; ⁷ Violation (per violation)	.....	12,500	12,705.
Civil Rights Division (excluding immigration-related penalties)				
18 U.S.C. 248(c)(2)(B)(i) ...	Freedom of Access to Clinic Entrances Act of 1994 (“FACE Act”); Nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(1)(i)	15,909	16,169.
18 U.S.C. 248(c)(2)(B)(ii) ..	FACE Act; Nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(1)(ii)	23,863	24,253.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/2016 (\$) ¹	DOJ penalty assessed after 2/3/2017 (\$) ²
18 U.S.C. 248(c)(2)(B)(i) ...	FACE Act; Violation other than a nonviolent physical obstruction, first violation.	28 CFR 85.3(b)(2)(i)	23,863	24,253.
18 U.S.C. 248(c)(2)(B)(ii) ..	FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation.	28 CFR 85.3(b)(2)(ii)	39,772	40,423.
42 U.S.C. 3614(d)(1)(C)(i)	Fair Housing Act of 1968; first violation	28 CFR 85.3(b)(3)(i)	98,935	100,554.
42 U.S.C. 3614(d)(1)(C)(ii)	Fair Housing Act of 1968; subsequent violation	28 CFR 85.3(b)(3)(ii)	197,869	201,106.
42 U.S.C. 12188(b)(2)(C)(i)	Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation.	28 CFR 36.504(a)(3)(i)	89,078	90,535.
42 U.S.C. 12188(b)(2)(C)(ii).	Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation.	28 CFR 36.504(a)(3)(ii)	178,156	181,071.
50 U.S.C. App. 597(b)(3) ..	Servicemembers Civil Relief Act of 2003; first violation.	28 CFR 85.3(b)(4)(i)	59,810	60,788.
50 U.S.C. App. 597(b)(3) ..	Servicemembers Civil Relief Act of 2003; subsequent violation.	28 CFR 85.3(b)(4)(ii)	119,620	121,577.

Criminal Division

18 U.S.C. 983(h)(1)	Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim.	.....	Min. 342	Min. 348.
18 U.S.C. 1956(b)	Money Laundering Control Act of 1986; Violation ⁸ .....	.....	Max. 6,834 ..	Max. 6,946.
			21,563	21,916.

DEA

21 U.S.C. 844a(a)	Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation).	28 CFR 76.3(a)	19,787	20,111.
21 U.S.C. 961(1)	Controlled Substance Import Export Act; Drug abuse, import or export.	28 CFR 85.3(d)	68,750	69,875.
21 U.S.C. 842(c)(1)(A)	Controlled Substances Act ("CSA"); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: Controlled substances (per violation).	.....	62,500	63,523.
21 U.S.C. 842(c)(1)(B)	CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: Controlled substances.	.....	14,502	14,739.
21 U.S.C. 842(c)(1)(C)	CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation).	.....	500,855	509,049.
21 U.S.C. 842(c)(1)(D)	CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation).	.....	1,002	1,018.
21 U.S.C. 842(c)(2)(C)	CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard ⁹.	.....	375,613	381,758.
21 U.S.C. 856(d)	Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises ¹⁰.	.....	321,403	326,661.

Immigration-Related Penalties

8 U.S.C. 1324a(e)(4)(A)(i)	Immigration Reform and Control Act of 1986 ("IRCA"); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i)	Min. 539	Min. 548.
8 U.S.C. 1324a(e)(4)(A)(ii)	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii)	Max. 4,313 ..	Max. 4,384.
8 U.S.C. 1324a(e)(4)(A)(iii)	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii)	Max. 10,781	Max. 10,957.
8 U.S.C. 1324a(e)(5)	IRCA; Paperwork violation (per relevant individual)	28 CFR 68.52(c)(5)	Min. 6,469 ..	Min. 6,575.
8 U.S.C. 1324a (note)	IRCA; Paperwork violation (per relevant individual)	28 CFR 68.52(c)(5)	Max. 21,563	Max. 21,916.
8 U.S.C. 1324a (note)	IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual).	28 CFR 68.52(c)(6)	Min. 216	Min. 220.
8 U.S.C. 1324a(g)(2)	IRCA; Violation/prohibition of indemnity bonds (per violation).	28 CFR 68.52(c)(7)	Max. 2,156 ..	Max. 2,191.
8 U.S.C. 1324b(g)(2)(B)(iv)(I).	IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against).	28 CFR 68.52(d)(1)(viii)	Min. 751	Min. 763.
8 U.S.C. 1324b(g)(2)(B)(iv)(II).	IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against).	28 CFR 68.52(d)(1)(ix)	Max. 1,502 ..	Max. 1,527.
8 U.S.C. 1324b(g)(2)(B)(iv)(III).	IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against).	28 CFR 68.52(d)(1)(x)	2,156	2,191.
			Min. 445	Min. 452.
			Max. 3,563 ..	Max. 3,621.
			Min. 3,563 ..	Min. 3,621.
			Max. 8,908 ..	Max. 9,054.
			Min. 5,345 ..	Min. 5,432.
			Max. 17,816	Max 18,107.

U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/2016 (\$) ¹	DOJ penalty assessed after 2/3/2017 (\$) ²
8 U.S.C. 1324b(g)(2)(B)(iv)(IV).	IRCA; Unfair immigration-related employment practices, document abuse (per individual discriminated against).	28 CFR 68.52(d)(1)(xii)	Min. 178 Max. 1,782 ..	Min. 181. Max. 1,811.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(i)	Min. 445 Max. 3,563 ..	Min. 452. Max. 3,621.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document).	28 CFR 68.52(e)(1)(iii)	Min. 3,563 ... Max. 8,908 ..	Min. 3,621. Max. 9,054.
8 U.S.C. 1324c(d)(3)(A)	IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(ii)	Min. 376 Max. 3,005 ..	Min. 382. Max. 3,054.
8 U.S.C. 1324c(d)(3)(B)	IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document).	28 CFR 68.52(e)(1)(iv)	Min. 3,005 ... Max. 7,512 ..	Min. 3,054. Max. 7,635.
FBI				
49 U.S.C. 30505(a)	National Motor Vehicle Title Identification System; Violation (per violation).	.....	1,591	1,617.
Office of Justice Programs				
42 U.S.C. 3789g(d)	Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation.	28 CFR 20.25	27,500	27,950.

¹ The figures set forth in the fourth column represent the civil penalty amounts as last adjusted by the Department of Justice, effective August 1, 2016.

² All figures set forth in this table are maximum penalties, unless otherwise indicated.

³ Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. *Id.* section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

⁴ Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than \$10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

⁵ Section 216(b) of Title 18 provides that the civil penalty should be no more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

⁶ Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. *Id.* section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

⁷ The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

⁸ Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or \$10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

⁹ Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

¹⁰ Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of \$250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

Dated: January 13, 2017.

Loretta E. Lynch,
Attorney General.

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DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE-2017-0001; 17XE1700DX EX1SF0000.DAQ000 EEEE50000]

RIN 1014-AA34

Civil Penalty Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of the maximum civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and Office of Management and Budget (OMB) guidance. The civil penalty inflation adjustment using a 1.01636 multiplier accounts for one year of inflation spanning from October 2015 to October 2016.

DATES: This rule is effective on February 3, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Fisher, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208-3955 or by email: regs@bsee.gov.

SUPPLEMENTARY INFORMATION:

- I. Background and Legal Authority
- II. Calculation of Adjustments
- III. Procedural Requirements
 - A. Regulatory Planning and Review (E.O. 12866 and 13563)
 - B. Regulatory Flexibility Act
 - C. Small Business Regulatory Enforcement Fairness Act
 - D. Unfunded Mandates Reform Act
 - E. Takings (E.O. 12630)
 - F. Federalism (E.O. 13132)
 - G. Civil Justice Reform (E.O. 12988)
 - H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)
 - I. Paperwork Reduction Act
 - J. National Environmental Policy Act
 - K. Effects on the Energy Supply (E.O. 13211)

I. Background and Legal Authority

The OCSLA, at 43 U.S.C. 1350(b)(1), directs the Secretary of the Interior to

adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation. On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (FCPIA of 2015). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Agencies are required to publish the annual inflation adjustments in the **Federal Register** by no later than January 15, 2017, and by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

BSEE last updated civil penalty amounts in BSEE regulations through RIN 1014-AA30 [81 FR 41801] effective July 28, 2016. Consistent with OMB guidance, BSEE’s interim final rule (IFR) implemented the catch-up adjustments required by the FCPIA of 2015, through October 2015. No public comments were received on the IFR, and BSEE published the final rule on November 17, 2016 [81 FR 80994].

The OMB Memorandum M-17-11 (Implementation of the 2017 annual adjustment pursuant to the FCPIA of 2015; https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf) explains agency responsibilities for: Identifying applicable penalties and performing the annual adjustment; publishing in the **Federal Register**; finalizing 2016 interim final rules; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BSEE is promulgating this 2017 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties “notwithstanding Section 553 of the Administrative Procedure Act.” (FCPIA of 2015 at § 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to

be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M-17-11. (OMB Memorandum M-17-11 at 3 (“This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.”)).

II. Calculation of Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M-17-11, BSEE has identified the applicable civil monetary penalty and calculated the necessary inflation adjustment. The previous OCSLA civil penalty inflation adjustment accounted for inflation through October 2015. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2016.

Annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the October preceding the date of the adjustment, and the prior year’s October CPI-U. Consistent with the guidance in OMB Memorandum M-17-11, BSEE divided the October 2016 CPI-U by the October 2015 CPI-U to calculate the multiplying factor. In this case, October 2016 CPI-U (241.729)/October 2015 CPI-U (237.838) = 1.01636.

For 2017, OCSLA and the FCPIA of 2015 require that BSEE adjust the OCSLA maximum civil penalty amount. To accomplish this, BSEE multiplied the existing OCSLA maximum civil penalty amount (\$42,017) by the multiplying factor ($\$42,017 \times 1.01636 = \$42,704.40$). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest \$1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is \$42,704.

Pursuant to the FCPIA of 2015, the increase in the OCSLA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predates such increase. Consistent with the provisions of OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalty per day per violation: